

Order: 24th February,

Issue: 24th February,



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Airports Economic Regulatory Authority of India

Order No. 38/2013-14

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

Date of Order: 24th February, 2014

Date of Issue: 24th February, 2014

In the matter of Determination of Tariffs for Aeronautical Services in respect of Rajiv Gandhi International Airport, Shamshabad, Hyderabad for the First Control Period (01.04.2011 – 31.03.2016)

1. Brief facts

- 1.1.** Earlier, Airports in India were developed, owned and managed by Airports Authority of India (AAI). To keep with anticipated air traffic growth, Government of India (GoI) initiated the process of upgrading the existing airports in the country through AAI and also encouraged the setting up of Greenfield airports through private sector participation (PSP). In 1994 GoI also amended the Airports Authority of India Act, 1994 (AAI Act) allowing inter alia carrying out airport related activities through Public-Private Partnership (PPP) model, except for certain reserved activities such as air traffic control, security, customs etc. GoI also announced several fiscal incentives and concessions such as the availability of land from respective State Governments, financial assistance by way of equity/interest free loans etc.
- 1.2.** Like many airports in the country, the then existing Begumpet airport in Hyderabad needed expansion of airside as well as landside facilities. To cater to the increasing demand of the passenger and the cargo traffic, a new international airport in Hyderabad was planned. The Government of Andhra Pradesh (GoAP), in association with GoI/AAI took initiatives in 1998 to develop a Greenfield international airport through PPP at Shamshabad near Hyderabad about 22 kms from the then existing Begumpet airport. GoI accorded its approval for a Greenfield airport at

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

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

Table 1: Shareholding Pattern of HIAL as on 31.03.2013

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

- 1.5.** The airport, named as Rajiv Gandhi International Airport (RGI Airport / Hyderabad airport), Hyderabad, is India's one of the recent airports to be operationalized under the PPP model. The RGI Airport, Hyderabad, designed by Hong Kong architects Winston Shu and Gumund Stokke, was commissioned in 31 months and designed for a capacity of 12 million passengers per annum (mppa) and 1,50,000 tons of cargo handling capacity per annum. The airport was inaugurated on 14th March, 2008 and started the commercial operations from 23rd March, 2008. The

Brief facts

RGI Airport, Hyderabad, can be expanded to accommodate over 40 mppa. It has a 4,260 meter Code-F runway and a parallel standby runway.

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

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

Milestones in the Commercial opening	Date
International Competitive Bidding initiated	December 1999
Request for proposal documents	July 2000
Submission of Final bids	December 2000
Selection of GMR led Consortium as preferred bidder	31 st May 2001
Declaration of GMR led Consortium as JV partner	August 2003
Signing of SHA and other documents	30 th September 2003
Signing of Concession Agreement	20 th December 2004
Commencement of Construction	September 2005
Commencement of Commercial Operation	23 rd March 2008

- 1.7. The key agreements governing the working of HIAL inter alia include:

- a) Concession Agreement
- b) Land Lease Agreement
- c) State Support Agreement
- d) Sponsors' Agreement
- e) CNS/ ATM Agreement
- f) Shareholder's Agreement

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

Concession Agreement

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

Brief facts

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

Brief facts

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

Land Lease Agreement

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

Brief facts

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

State Support Agreement

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

Sponsors Agreement

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

Brief facts

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

CNS / ATM agreement

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

Shareholders Agreement

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

all civil operations. Following a process of competitive bidding, the Private Promoters have been selected as Joint venture partners for the Project.

- GoAP issued a notification dated 26 July 2003 appointing the GMR-MAHB Consortium as the developer of the project.
- The Private Promoters had proposed that the Project is feasible only with State Support and lease of Land on concessional terms, as financing for the Project could not be fully met through the equity contributions and the debt financing from Lenders. In view of the aforesaid, Gol and GoAP have agreed to support the Company in terms of Concession Agreement, State Support Agreement and Land Lease Agreement.
- AAI Equity Cap means the maximum Equity Contribution of AAI, not exceeding the lower of (i) Rs. 50,00,00,000/- (Rupees Fifty Crore) or (ii) amount corresponding to 13% Shareholding percentage on a fully diluted and fully converted basis.
- Authorised Share Capital : The authorised share capital of the Company was Rs. 50,00,00,000/- (Rupees Fifty Crore) only, divided into 5,00,00,000 (Five Crore) equity shares of the face value of Rs. 10/- (Rupees Ten) each.
- Shareholding and Capital Structure: Upon subscription to the Shares in accordance with this Agreement, the paid-up capital structure of the Company shall be as follows:
 - Private Promoters and Other Investors (collectively) – 74%
 - State Promoters (collectively) – 26%
- Lock-in period - The shareholding of the Sponsors and State Promoters shall be subject to the following lock-in restrictions during the periods set out below ("Lock-in Period"):
 - (i) The Sponsors shall subscribe to and hold at least forty five percent (45%) shareholding of HIAL (of which GMR will hold minimum 40% and MAHB will hold a minimum of 5%) until the expiration of three (3) years from the Commercial Operations Date, and in no event less than twenty six percent (26%) shareholding for a period up to seven (7) years after Commercial Operations Date.

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

1.9. The Concession Agreement, is one of the most important agreements, for development, construction, operation and maintenance of the Hyderabad Airport. The Concession Agreement was entered into between GoI through the Ministry of Civil Aviation (MoCA) and HIAL, on 20th December 2004. The Concession Agreement which defines the terms and conditions under which HIAL, as a private company, is entitled to build and run the airport. The parties to this agreement recognized and acknowledged 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 Concession Agreement sets out the terms and conditions upon which the project, being undertaken through a public / private sector approach, will be implemented. The term of the concession is for a period of 30 years from the Airport Opening date i.e., 23th March, 2008, extendable by a further period of 30 years at HIAL's option. As per the Concession Agreement, 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 and air traffic management will be performed by AAI. HIAL shall, in consideration for the grant of Concession by Government of India, pay to Government of India a fee amounting to four per cent (4%) of gross revenue annually.

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

“HIAL 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.”

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

- 1.11.** Based on the above provision in the Concession Agreement, HIAL made a UDF application before the Ministry of Civil Aviation (MoCA). MoCA allowed a levy of UDF @ Rs. 1,000/- (inclusive of taxes) per international departing passenger w.e.f. 23.04.2008 and @ Rs. 375/- (inclusive of taxes) per departing domestic passenger w.e.f. 18.08.2008 (vide letters No.AV.20015/03/2003-AAI dated 28.02.2008 and No.AV.20036/28/2004-AAI (Vol.IV) dated 18.08.2008 respectively), on ad-hoc basis. Excluding the service tax component, the UDF worked out to Rs. 340/- per departing domestic passenger and Rs. 907/- per departing international passenger.
- 1.12.** HIAL, vide their letter no. GHIAL/UDF/Domestic/04/2008 dated 01.09.2008, had submitted to MoCA that in their original business plan furnished to MoCA, the average UDF amount was arrived @ Rs.725/- per passenger for both international and domestic passengers and since the UDF for international passengers was approved for Rs. 1,000/- by MoCA, the corresponding amount for domestic passengers should be Rs. 600/- so as to be in consonance with their business plan. HIAL submitted that in the meanwhile, they had started collecting the provisionally approved domestic UDF @ Rs.375/- per departing passenger, under protest. HIAL also stated that as a result of the lower UDF approved for domestic passengers, they were incurring a substantial loss of Rs. 16 crore per month.
- 1.13.** HIAL vide their letter Ref: GHIAL/F&A/UDF/2009-10/2 dated 02.08.2009 addressed to MoCA, requested for upward revision of UDF as under:
- 1.13.1. If 28.54% hike in Landing, Housing and Parking Charges is allowed: Domestic UDF @ Rs. 450/- plus taxes and International UDF @ Rs. 2,840/- plus taxes.
- 1.13.2. If 28.54% hike in Landing, Housing and Parking Charges is not allowed: Domestic UDF @ Rs. 450/- plus taxes and International UDF @ Rs. 2,918/- plus taxes.
- 1.14.** Pursuant to the coming into force of the AERA Act with effect from 01.01.2009 and the notification of the powers and functions of the Authority with effect from 01.09.2009, MoCA transferred the issue of determination of UDF for RGI Airport, Hyderabad for the Authority's consideration (vide Letter No F.No.AV.20036/014/2009-AD dated 06.10.2009), along with copies of extracts of some files and correspondences.

- 1.15.** Upon scrutiny of the aforesaid application made by HIAL, the Authority observed that the auditor's certificate for classification of assets was not available and the methodology of calculation of UDF was not clear. The Authority, vide its letter no. AERA/20010/ HIAL-DUF/2009-10 dated 09.12.2009, requested HIAL to furnish the above information at the earliest.
- 1.16.** The Authority had noted that in addition to the initial project cost of Rs. 2,478 crore, MoCA had approved the proposal of HIAL for additional investment to the tune of Rs.442 crore (at the project execution stage) subject to the following conditions (Ref letter No.AV.20014/003/2006-AAI dated 02.04.2008):
- 1.16.1. It will not require any additional contribution from stakeholders
 - 1.16.2. There will not be any additional liability to the user. No additional UDF will be considered on this account;
 - 1.16.3. All the works may be taken through competitive bidding process.
- 1.17.** MoCA had, vide its letter No.AV.20014/003/2006-AAI dated 09.08.2010, conveyed that the conditions imposed by the Ministry vide its letter of even no. dated 02.04.2008 on the investment of Rs.442 crore at RGI Airport, Hyderabad, stand withdrawn.
- 1.18.** Subsequently, HIAL, vide its letter dated 18.08.2010, submitted an application for revision in UDF seeking approval of the Authority for revised rates of Rs.500/- per departing domestic passenger and Rs. 2,825/- per departing international passenger, w.e.f. 01.09.2010, excluding service tax. HIAL had stated that the UDF proposed by them had been worked out on single till basis and had been calculated for five years (From FY 2009 to FY 2013) including last two completed years of FY 2009 and FY 2010.
- 1.19.** Further, vide its clarifications dated 13.09.2010, HIAL submitted the following points to be considered by the Authority in its appraisal of the UDF proposal:
- 1.19.1. A hotel asset existing in the books of account of HIAL had been demerged through a 100% owned subsidiary namely, GMR Hotels & Resorts Ltd. The capital cost of the hotel had not been assumed in the asset base. Revenues and cost of the same had been excluded from the projections of HIAL.

- 1.19.2. As per scheme of demerger, an amount of Rs.110 crore was treated as equity investment of HIAL in the subsidiary whereas an amount of Rs.140 crore was considered as unsecured loan extended to the subsidiary, i.e. GMR Hotels & Resorts Ltd., by HIAL.
- 1.19.3. The unsecured loan of Rs.140 crore (advanced by HIAL to its subsidiary, i.e. GMR Hotels & Resorts Ltd.) was considered by HIAL as received from the subsidiary and repaid to the existing lenders during the year 2010-11.
- 1.19.4. No land cost associated with the hotel was considered for determination of UDF. However, HIAL proposed to charge a lease rent of Rs. 35 per sq. meter per month for the land occupied by the hotel (i.e. 7.03 acres).
- 1.19.5. As per HIAL submissions, the total project cost of HIAL, including the hotel, was Rs. 2,920 crore, which consisted of Rs. 2,120 crore loan and Rs. 800 crore equity and quasi-equity. The bifurcation of equity and loans was as under:

Table 3: Bifurcation of Equity and Loans

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

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

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

- 1.19.9. Landing, Parking and Housing (LPH) charges were taken as per existing rates for the year 2010-11 and the 10% escalation was considered, year on year, starting from 2011-12.
- 1.19.10. The reduced discount of 2% on domestic LPH was considered w.e.f. 01.11.2010.
- 1.19.11. Similarly, a landing charge of Rs.4000/- per landing for aircraft with less than 80 seats was considered w.e.f. 01.11.2010.
- 1.19.12. The revenue share from the Cargo was considered as aeronautical revenue whereas Rs. 5.77 crore without any escalation was considered as rental revenues and considered as Non Aeronautical revenue.
- 1.20.** Based on the above points, HIAL revised its earlier submitted proposal for levy of UDF and requested for approval for levy of UDF at the revised rates of Rs. 500/- per departing domestic passenger and Rs. 2,987/- per departing international passenger, exclusive of service tax, w.e.f. 01.11.2010.
- 1.21.** The Authority had examined the proposal submitted by HIAL for levy of UDF in respect of various aspects including Regulatory Asset Base, Weighted Average Cost of Capital, Traffic projections, Aeronautical and Non-Aeronautical Revenue projections and Operating Cost projections.
- 1.22.** The Authority thereafter had issued Consultation Paper No. 07/2010-11 dated 23.09.2010 presenting its examination of HIAL submissions and its views on the UDF rates. A stakeholder consultation meeting was also held on 29.09.2010 at Novotel Hotel, RGI Airport, Shamshabad, Hyderabad, which was attended by a wide range of stakeholders including GoAP, MoCA, AAI, National Aviation Company of India Ltd (presently Air India), Jet Airways, Indigo, Kingfisher, Association of Private Airport Operators (APAO), Blue Dart Aviation Ltd, Federation of Indian Airlines (FIA), Federation of Indian Chambers of Commerce and Industry (FICCI), Federation of Andhra Pradesh Chambers of Commerce and Industry and Federation of Indian Export Organization (FIEO).

- 1.23.** Based on the stakeholder consultation and examination by the Authority, it issued Order No. 06/2010-11 dated 26.10.2010 (Ad-Hoc UDF Order) in the matter of Revision of User Development Fee (UDF) at Rajiv Gandhi International Airport, Hyderabad, wherein the Authority had stated as under,

“In exercise of powers conferred by Section 13(1)(b) of the Act read with rule 89 of the Aircraft Rules, 1937, the rate of User Development Fee (UDF) to be levied at the Rajiv Gandhi International Airport, Hyderabad is revised to Rs. 430/- (Rupees Four Hundred and Thirty only) per embarking domestic passenger and Rs.1700/- (Rupees One Thousand Seven Hundred only) per embarking International passenger (exclusive of service tax, if any), purely on an ad-hoc basis, with effect from 01.11.2010 based on the figures for a period of 5 year. This ad-hoc determination would be reviewed at the stage of tariff determination for the first cycle and thereafter at such intervals as the Authority may determine, from time to time.”

- 1.24.** As per the above Ad-Hoc UDF Order dated 26.10.2010, the Authority is required to review its determination of ad-hoc UDF in respect of RGI Airport, Hyderabad at the stage of determination of tariff for first Control Period. This Ad-Hoc UDF Order dated 26.10.2010, has not been challenged either by HIAL or any of the stakeholders. The Consultation Paper No. 07/2010-11 dated 23.09.2010, the minutes of the stakeholder consultation Meeting held on 29.09.2010 and the Ad-hoc UDF Order are available on the website of the Authority (www.aera.gov.in).
- 1.25.** Meanwhile, the Authority was in the process of finalizing its approach for economic regulation that culminated in issue of Order No. 13/2010-11 dated 10.01.2011 wherein the Authority finalized the approach in the matter of Regulatory Philosophy and Approach in Economic Regulations of Airport Operators (i.e. the Airport Order). Further, the Authority vide its Direction No. 5/2010-11 dated 28.02.2011, finalized the Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Airport Operators), Guidelines 2011 (i.e. Airport Guidelines).

- 1.26.** As per the Airport Order, 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 i.e. the period 2011-12 to 2015-16. Further, as per Clause 3.1 of the Airport Guidelines, all Airport Operator(s) were required, within four months of the date of issue of the Airport Guidelines (i.e., 28.02.2011), to submit to the Authority for its consideration, a Multi Year Tariff Proposal (MYTP) for the first Control Period in the form and manner specified in the said Guidelines. The last date for submission of the MYTP in terms of the Guidelines was 30.06.2011.
- 1.27.** Further, in terms of Section 13 (1) (a) of the AERA Act, the Authority shall, inter alia, determine the tariff for the aeronautical services, development fees including user development fees and passengers services fees to be levied as per the Aircrafts Rule, 1937.
- 1.28.** The Authority was conscious of the fact that in the nature of the timelines specified in the Airport Guidelines, it would not be possible to determine the tariff in respect of any of the major airports before 01.04.2011. In this light, the Authority had proposed to permit the concerned airport operators to continue charging the tariffs for aeronautical services provided by them, at the existing rates, in the interim period for which a separate order was issued after due stakeholder consultation (Order No.17/2010-11 dated 31.03.2011).
- 1.29.** HIAL filed an appeal before the Airports Economic Regulatory Authority Appellate Tribunal (i.e. the Appellate Tribunal or AERAAT) against the Airport Order and the Airport Guidelines issued by the Authority. The Appellate Tribunal, vide its Order dated 11.05.2011 in the matter of Appeals No 08 of 2011 and 10 of 2011, directed HIAL to furnish the requisite Tariff Proposal to the Authority and directed the Authority not to make the final determination without leave of the Appellate Tribunal. The Appellate Tribunal's Order dated 11.05.2011 stated 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.”

- 1.30.** In line with the Appellate Tribunal’s Order dated 11.05.2011, HIAL, vide its letter no GHIAL/AERA/2011-12/01, submitted its MYTP in respect of RGI Airport, Hyderabad on 31.07.2011. The Yield Per Passenger (YPP) under this MYTP submission was calculated by HIAL following dual till approach for the first control period. HIAL mentioned that it, being the fuel farm operator, has filed a tariff proposal for the fuel farm facility separately. HIAL stated as under,

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

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

The current proposal is for the approval of Yield Per Pax (computed by dividing the Aggregate Revenue Requirement by the total number of passengers in the control period. The yield has been computed for the control period effective from April 1st 2011 to March 31st 2016. This yield per pax will require suitable upward adjustment based on the shortfall in collection as a result of actual date of charging being a future date rather than April 1st 2011. After this approval from AERA, we shall submit a detailed pricing proposal to achieve this Yield Per Pax which will be a combination of various aeronautical charges, UDF, Discounts etc.

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

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

"This is in continuation to our letter no. GHIAL\AERA\2011-12\01 dated 31st July, 2011 in respect of furnishing Multi Year Tariff Proposal of GHIAL. Further to our application, we are submitting Form(s)/information/data required as prescribed in the guidelines issued by the Authority to the extent possible under dual till."

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

"This is in reference to our letter number GHIAL\AERA\2011-12\03 dated August 30 2011 on the aforesaid subject wherein we had submitted to provide for GHIAL tariff filing for the first control period based on Single Till.

Enclosed is our MYTP for the first control period...

The fuel farm tariff proposal has been filed by us separately...

The current Tariff proposal has not been approved by the Board of GHIAL and same will be presented to board in the next board meeting in October 2011. We have also not submitted a 10 year business plan and the same shall be submitted after approval by Board...

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

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

"This is in reference to our MYTP filing made vide letter no. GHIAL\AERA\2011-12\04 dated September 13th 2011 under Single Till.

Substantial period has elapsed since our earlier filing and there has been material change in the filed numbers thus necessitates a revision of our application. The actual audited financials of 2011-12 are now

available and the same will give us a better insight in future forecasts. As such it will be prudent to incorporate the actual numbers of 2011-12...

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

.....

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

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

- 1.34.** Meanwhile, the Appellate Tribunal, vide its Order dated 15.02.2013 in the Appeals No 08/2011 and 10/2011 of HIAL against Order No 14/2010-11 dated 28.02.2011 and Direction No 5/2010-11 of the Authority, stated as under,

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

...

In that view, we would dispose off these appeals with the direction 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.

- 1.35.** In pursuance to the above Order of the Appellate Tribunal, HIAL, vide its submission dated 27.02.2013, submitted additional tariff model prepared on dual till basis. Further, HIAL also submitted an application to the Authority vide its letter dated 15.03.2013 to make a presentation to the Authority with its requests on certain aspects including request for consideration of dual till for RGI Airport, Hyderabad. Subsequently HIAL made a presentation to the Authority on 01.04.2013 requesting the Authority to take into consideration the points made in the said presentation. HIAL during the presentation also reiterated that the points made in the presentation were also raised by it as part of its appeal before the Appellate Tribunal. In addition to these points, HIAL also made certain additional submissions.
- 1.36.** The Authority noted that HIAL, in its submission before the Appellate Tribunal, had argued in favour of dual till on various grounds. The Authority had also filed its reply in the form of counter-affidavit before the Appellate Tribunal. As part of the present tariff determination and in line with the Order dated 15.02.2013 of the Appellate Tribunal, the Authority carefully considered the submissions of HIAL. The submissions, which specifically related to the regulatory building blocks of tariff determination were considered and analysed/discussed in the respective building blocks. In addition, HIAL also made certain general submissions in support of dual till. These general submissions in support of dual till were carefully analysed and discussed (presented in Para 4.3 below).
- 1.37.** Further, HIAL, vide its letter No. Ref: GHIAL/MOCA/regulatory/2012-13/001 dated 20.04.2013, addressed to the Hon'ble Minister for Civil Aviation and copy endorsed to this Authority, requested MoCA to issue a direction to AERA under Section 42 of the AERA Act, for fixation of Regulated Charges at RGIA, Hyderabad in line with Concession Agreement and particularly with respect to the following (vide Para 20 of HIAL's letter).

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

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

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

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

- 1.41.** The tariff model, submitted by HIAL with its submissions dated 06.02.2013, was considered by the Authority for its review. This tariff model was updated for the numbers from the auditor certificates and the tariff model was updated during various meetings. Based on the auditor certificates submitted by HIAL at various stages before the issue of Consultation Paper No 09/2013-14 dated 21.05.2013, a tariff model was frozen on 09.05.2013 and was considered as the Base Model for the Consultation stage (the components of Base Model are given in Table 4). The Authority had noted that the YPP numbers submitted by HIAL (in the tariff model as submitted by it on 06.02.2013) were Rs. 863.30 under single till and Rs. 1,048.23 under dual till. The Authority incorporated the figures for various building blocks as per auditor certificates / clarifications submitted by HIAL, in this model submitted by it on 06.02.2013. After incorporating these figures, the YPP number as per the Base Model worked out to Rs. 861.99 under single till and Rs. 1,042.41 under dual till. This Base Model was based on single till and had the functionality to perform calculations on dual till also. The considerations under single till and dual till, as made by HIAL for calculation of above YPP values in its Base Model, are presented below:

Table 4: Various factors under Single Till and Dual Till – HIAL’s Base Model (with actuals till FY 2011-12)

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

Parameters	Value under Single Till	Value under Dual Till
Cost of Equity	24%	24%
Past Losses	455.19	537.18
Date of Tariff Hike	01.04.2013	01.04.2013
Inflation on YPP number	Not considered	Not considered
Final Calculated YPP*	Rs. 861.99	Rs. 1042.41
* - Based on corrections from the Auditor Certificates		

1.42. However, at the stage of issuing this Tariff Order, audited Annual Report for HIAL for FY 2012-13, approved and adopted by its Board, is available. Hence to make the determination of tariff more realistic, the Authority sought from HIAL the actual numbers to be considered in the tariff model for FY 2012-13 as per its audited Annual Report. Accordingly, HIAL was asked to furnish the auditor certificates for the historical numbers till FY 2012-13 used in the model. HIAL has submitted the Auditor Certificates for the same. The Authority considered these submissions in the tariff model.

1.43. The Authority has carefully gone through the comments received from the stakeholders on the Authority's position on these aspects, presented in its Consultation Paper No 09/2013-14 dated 21.05.2013. The Authority's reasoned decisions on these aspects are discussed in the following sections.

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

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

1.44.1.a. First section presents a summary of HIAL's submissions on the issue at the Consultation stage

1.44.1.b. Second section presents a summary of the Authority's discussion on the issue, as presented in the Consultation Paper No 09/2013-14 dated 21.05.2013.

1.44.1.c. Third section presents the comments made by the Stakeholders to the Authority's position on the issue stated in the Consultation Paper No 09/2013-14 dated 21.05.2013.

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- 1.44.1.d. Fourth section presents the response made by HIAL to the comments made by the Stakeholders on the issue.
 - 1.44.1.e. Fifth section presents the comments made by HIAL itself on the issue in addition to its responses to the Stakeholder comments.
 - 1.44.1.f. Sixth and the final section presents the Authority's examination of Stakeholders' comments, HIAL's responses and HIAL's own comments on that issue.
- 1.44.2. Decisions taken by the Authority on various issues in respect of RGI Airport, Hyderabad are summarized in Para 27 below.

2. Investments

- 2.1.** The Authority understands that HIAL has incorporated some subsidiary companies. As per the audited balance sheets of HIAL for FY 2012-13, the subsidiary companies are as below:

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

a Stakeholder Comments on Issues pertaining to Investments

- 2.2.** Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the tentative proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its Consultation Paper No 09/2013-14 dated 21.05.2013. Stakeholders have also commented on consideration of investments made by HIAL. These comments are presented below:

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

“In the Consultation Paper, it has been revealed that HIAL has three (3) wholly owned subsidiaries, namely (a) GMR Hyderabad Aviation SEZ Limited; (b) GMR Hotels and Resorts Limited; and (c) Hyderabad Duty Free Retail Limited. HIAL’s stake in other companies has not been revealed in the Consultation Paper. Authority has considered HIAL as a stand-alone entity without any consolidation with its subsidiaries and accordingly, for the purpose of computing aeronautical tariff has not

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

...

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

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

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

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

b HIAL's response to Stakeholder Comments on Issues pertaining to Investments

2.5. Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 09/2013-14 dated 21.05.2013, the Authority forwarded these comments to HIAL seeking its response to these comments. HIAL has provided responses to the Stakeholders' comments, which are presented below:

2.6. HIAL's response to FIA's comments on exclusion of wholly owned subsidiaries of HIAL is as under:

"The subsidiaries which have been referred are the 100% subsidiaries of GHIAL.

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

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

- 2.7.** In response to AAI’s comments on the need to define airport and non-airport activity, HIAL stated as under:

“We had made filing wherein the subsidiaries were also included.

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

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

- *on a conjoint reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement and not regulate any Other Charges in respect of the facilities and services provided at the Airport nor using the revenue therefrom to subsidize the Aero Charges.*

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

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

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

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

c HIAL’s own comments on Issues pertaining to Investments

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

d Authority's Examination of Stakeholder Comments on Issues pertaining to Investments

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

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

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

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

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

- 2.11.** Based on the above, the Authority considered that the shareholding of HIAL in its other subsidiaries / companies, at present, does not impact the tariff determination for HIAL and is not required to be further examined.
- 2.12.** The Authority notes AAI's comment that *"AERA need to define the airport activity and non airport activity in view that the entire land has been acquired for airport"*. The Authority's consideration of different uses of land in according a treatment to the commercial exploitation of land has been presented in Para 10 below. As regards defining airport activity and non-airport activity for the purpose of treatment of land, the Authority derives its legislative guidance for factors to be considered in determination of tariff for aeronautical services from the AERA Act. The Act provides consideration of revenue from other than aeronautical services as a factor in this determination. The Act also provides guidance on consideration of certain services as aeronautical and others as non-aeronautical.
- 2.13.** Further the Authority notes 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. Hence, even going by the Concession Agreement, the Authority is to regulate "any aspect" of "airport activities". The Agreement 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. The remit of the Authority would thus be what the legislature has given to it and this has already been embodied and expressly provided for in the Concession Agreement. In view of this remit and the consideration of treatment of land presented in Para 10 below, the Authority does not consider it necessary to separately define the airport activity and non-airport activity for the purposes of use of land.
- 2.14.** As regards the other comment of AAI – *"It has not been stated whether HIAL has received any interest free security deposit from its concessionaire, which has been used in the Project"*, the Authority understands that the security deposit received by HIAL from the concessionaires in the terminal building are of short term duration and hence have not been considered towards means of finance.

- 2.15.** As far as the suggestion of FIA regarding *“the market value of land on which Hotel and SEZ are constructed should be subtracted from RAB, which in effect will bring down the aeronautical tariffs”* is concerned, such mechanics of linking the lease of land by the GoAP to HIAL (for the airport project) with the feasibility of the airport has been indicated as one of the procedure in the Authority’s Order No. 13 /2010-2011 dated 12.01.2011. Since the land is acquired by the GoAP and leased to HIAL, the Authority has separately sought the views of the GoAP on this issue. The views of the GoAP and the Authority’s analysis of the same have been presented in Paras 10.38 and 10.39 below.

3. Guiding Principles for the Authority

Legislative Policy Guidance and Principles

3.1. The legislature has provided policy guidance to the Authority regarding the determination of tariff for the aeronautical services under the provisions of the AERA Act. The Authority is required to adhere to this legislative policy guidance in the discharge of its functions in respect of the major airports. These functions are indicated in Section 13 (1) of the AERA Act:

- 3.1.1. Determination of the tariff for the aeronautical services;
- 3.1.2. Determination of the amount of the development fees including User Development Fee;
- 3.1.3. Determination of the amount of the passenger service fee levied under rule 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 these 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.** Thus the Authority is acting in accordance with the legislative policy guidance as above. To operationalize the mandate of the legislature, the Authority had issued the Airport Order and the Airport Guidelines. In normal course it would have proceeded to determine the aeronautical tariffs in accordance with the Airport Order and the Airport Guidelines. However, in view of the Appellate Tribunal's Order dated 15.02.2013 (refer Para 1.34 above), the Authority examined the submissions of HIAL - both under Single till and Dual Till, with reference to various Regulatory Building Blocks. The Authority also presented the calculation of the different Regulatory Building Blocks in both Single Till and Dual Till along with the financial implications including the tentative estimation of YPP in the Consultation Paper No 09/2013-14 dated 21.05.2013. Thereafter it carefully analysed the various submissions made by HIAL in support of Dual Till as well as those of the other stakeholders. These discussions are presented in Para 4 below. As presented there, the Authority decides to determine the aeronautical tariff for RGI Airport, Hyderabad for the current Control Period under single till.

HIAL as a Standalone entity

- 3.4.** The Authority has considered HIAL as a stand-alone entity based on the accounts of HIAL without any consolidation with its subsidiaries or taking into account the balance sheets and income statements of other subsidiaries. Hence the equity of HIAL at Rs. 378 crore as on 01.04.2011, as a standalone entity, is taken into account for further consideration.
- 3.5.** In calculations of tariffs, therefore, the revenue from aeronautical services as well as non-aeronautical services (without considering the two subsidiaries of Hotel and SEZ) are taken into account, along with the expenses. The calculations are made with respect to the RAB Boundary (Para 3.7 below). These are summarized in Table 5 and are discussed in the relevant paragraphs below.

Table 5: Various factors under Single Till – As per the Authority

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

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

Taxation

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

RAB Boundary

- 3.7.** 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 3.10 below) and after stakeholders’ consultation, decided on the RAB boundary that it would generally follow in its tariff determination of aeronautical services.
- 3.8.** Regarding delineation of RAB boundary for the purposes of determination of charges for aeronautical services, the Authority has considered HIAL as a stand-alone entity. It has, therefore, considered both aeronautical and non-aeronautical services that such stand-alone entity would be providing at HIAL. As an illustrative list, the non-aeronautical services and activities would include duty free shopping, food and beverages, retail outlets, public admission fee for entry into the terminal, hotel, if any provided inside the terminal 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.

- 3.9.** 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 users. 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 Airports Authority of India 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 HIAL has been discussed in Paras 10.2 to 10.8 below, which talks about the Authority's approach in this regard.
- 3.10.** The Authority, in its Airport Order, has outlined the principles for inclusion / exclusion of assets from the aeronautical RAB to be considered for tariff determination. The principles for exclusion of assets from RAB Boundary are presented below:

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

Considerations specific to Building Blocks in HIAL's tariff determination

- 3.11. Apart from the above, Authority's approach regarding specific building blocks in HIAL's determination has been indicated in the relevant paragraphs.

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

- 3.12. 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. In normal course, the Authority's approach towards recognition of revenue accruing to the airport operator in respect of the CGF services has been that if the service is being provided by the airport operator himself, the revenue accruing to it on account of the provision of the service would be considered as aeronautical service and if the service is outsourced by the airport operator to a third party concessionaire and the revenue accruing in the hands of the airport operator through revenue share / rental etc. from such third party concessionaire would be considered as non-aeronautical revenue.
- 3.13. In respect of HIAL, while the cargo service is being provided by the third party concessionaire, certain assets being utilized for the provision of this service are in the books of the airport operator namely, HIAL. As HIAL is not providing the cargo service itself, it has classified the assets pertaining to cargo facility service in its

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

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

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

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

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

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

3.19. In addition to the above, the Authority also notes a letter issued by the Ministry of Civil Aviation to the Authority in respect of “Determination of Multi-year Tariff for Bangalore International Airport Limited (BIAL) -Consultation Paper No. 14/2013-14”, where the Ministry has informed its views to the Authority as under,

“.....

4. Furthermore, in view of the various provision of AERA Act, 2008 with respect to the Aeronautical Services, the Fuel Throughput Charge that is levied by Airport Operator may be 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.

This issues with the approval of the Minister of Civil Aviation.”

- 3.20.** The Authority thus notes the Government’s view that revenues from cargo, ground handling services and fuel supply which are defined as Aeronautical Services in the AERA Act, 2008 may be reckoned as Aeronautical Revenues and considered accordingly irrespective of the providers of such Aeronautical Services.
- 3.21.** As regards the revenue accruing to HIAL on account of aeronautical services provided at RGI Airport, Hyderabad, the Authority has indicated in its Consultation Paper No 14/2013-14 dated 26.06.2013 in respect of Kempegowda International Airport at Bengaluru (Para 4.20.1) 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 ...”*. Similarly in Para 18.64 of the same Consultation Paper, the Authority had stated that *“...if these three services (CGF) are provided by the airport operator through third party concessionaire, a view could be taken that still it is the airport operator who has caused these three services to be provided by such appointed third-party concessionaire...”*.
- 3.22.** The Authority had reiterated the above views in the minutes of the Stakeholders’ meeting held on 22.07.2013 in respect of Consultation Paper No 14 for Kempegowda International Airport at Bengaluru. The Authority had clarified that *“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)”*. It was also indicated in the said minutes that *“there may be a need to revisit this issue in the next Control Period”*.

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

Treatment of dividend received by HIAL on investment made by it in Joint-ventures / Subsidiaries

- 3.24.** As indicated in Para 2.1 above, HIAL has invested in a large number of its subsidiaries. The Authority has noted that each of the subsidiaries has its own financial statements including relevant Assets. As also indicated in Para 3.4 above, the Authority has considered HIAL as a standalone entity for the purposes of aeronautical tariff determination. Hence the assets of the subsidiaries are not considered towards RAB of HIAL.
- 3.25.** The Authority has noted from the audited financial statements of HIAL that except Hyderabad Menzies Air Cargo Private Ltd (HMACPL) it has not received dividend from any of the other subsidiaries as can be gleaned from Sl. No. (x) of point 'B' (Summary of Transactions with related parties) of Note 29 to the Financial statements of HIAL for FY 2011-12 and Sl. No. (ix) of point 'B' (Summary of Transactions with related parties) of Note 29 to the Financial statements of HIAL for FY 2012-13. However it has received dividend income of Rs 1.04 crore in 2011-12 and Rs 5.98 crore in 2012-13 from its subsidiary company namely, Hyderabad Menzies Air Cargo Private Ltd on HIAL's investment in this subsidiary.
- 3.26.** For the purposes of calculation of ARR, the Authority has taken into consideration only the RAB in the books of accounts of HIAL and has accordingly not reckoned the assets of Hyderabad Menzies Air Cargo Private Ltd. in RAB for the purposes of tariff determination. The dividend received by HIAL from HMACPL is likewise not included in the ARR calculations for HIAL.

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

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

determination of aeronautical tariff in its Consultation Paper No 09/2013-14 dated 21.05.2013. Stakeholders have also commented on the guiding principles of the Authority. These comments are presented below:

- 3.28.** FIA stated that *“Levy of User Development Fee at RGI Airport is legally untenable”*. In support of the argument, FIA stated that UDF has been conceptualised as means of not only as a revenue enhancing measure but also to meet the capital expenditure incurred in developing and expansion of the airport which is not in consonance with the AERA Guidelines.

“Authority has proposed to allow UDF on embarking passengers based on the Clause 10.2 read with Clause (iii) of Schedule 6 of the Concession Agreement.

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

It is to be noted that Clause 6.8.5 of AERA Guidelines in no uncertain terms provides that UDF is a revenue enhancing measure to allow Fair Rate of Return to the Airport Operator. It is not clear as on what basis the Authority has proposed to levy UDF at RGI Airport for the purpose of development and expansion work undertaken in the past. The Concession Agreement cannot be relied upon to allow levy of UDF (a revenue enhancing measure) in view of the expressed provisions of AERA Guidelines. It is settled position of law that regulations override the prior contractual arrangements.”

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

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

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

*It is noteworthy that 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 up-gradation, expansion or development of the airport which is to be funded or financed by UDF. Those passengers who embark at the airport after the airport is upgraded, expanded or developed will only avail the facilities and services of the upgraded, expanded and developed airport. Similarly, there can be no contractual relationship between the airport operator and passengers embarking at an airport for establishment of a new airport in lieu of the existing airport or establishment of a private airport in lieu of the existing airport. Thus, it is submitted that in the absence of such contractual relationship, the liability of the embarking passengers to pay UDF has to be based on a statutory provision. At this juncture, it is to be noted that UDF has no statutory foundation and at RGI Airport has been levied and further proposed to be levied on the basis of Concession Agreement.*

In fact, the UDF which is being levied at the RGI Airport towards development and expansion of the airport facilities is in the nature of cess or tax. It is settled position of law that any levy or compulsory exaction which is in the nature of tax/cess cannot be levied without a statutory foundation/charging section, as laid down in a catena of

judgements by the Hon'ble Supreme Court. Further, 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."

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

"In view of the foregoing, it is submitted that:-

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

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

- 3.31.** FIA further stated that any increase in UDF ultimately affects the interests of airlines as passenger is concerned with the total cost of his travelling and not with the specific break-up of charges and such enhancements in costs 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.

"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 (HIAL 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 traveler but also reduces the ability of the airlines to recover its costs and thus affecting the business interests inter alia of airlines and aviation industry."

3.32. FIA further stated that

“HIAL’s monopolistic approach and ‘Doctrine of Essential Facilities’

It is submitted that under the competition law, an enterprise is under an obligation to extend its essential infrastructural facility at a reasonable cost. HIAL’s control over RGI Airport renders it a monopolist having control over ‘essential infrastructural facility’ of the airport in the city Hyderabad. The requirement of access to essential facility was first articulated by the Supreme Court of United States of America in United States vs. Terminal Railroad Assn, reported as 224 U.S. 383 (1912). Under the principles of access to essential facility, the following four factors must be proven:-

- (a) Control of the essential facility by a monopolist;*
- (b) A competitor’s inability practically or reasonably to duplicate the essential facility;*
- (c) The denial of the use of the essential facility to a competitor; and*
- (d) The feasibility of providing the essential facility to competitors.*

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

It is submitted that such enormous hike in tariff by a monopolist HIAL may be viewed as ‘abuse of its dominance’ and accordingly liable under section 4 of the Competition Act, 2002 (“Competition Act”).

Further, the Competition Act promulgates the “economic development of the country” by establishment of a Commission to, amongst other things, protect the interests of the consumers. Levy of such exponential charges by a monopolist is clearly against consumer interests, and thus, is against the basic premise of competition law in India.”

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

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

- 3.34.** Additionally APAO stated that

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

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

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

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

“Any change in interpretation of the concession document post facto will send wrong signal to the investor community and will be impediment in growth in the aviation sector. Therefore, Concession Agreements should be complied in totality.

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

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

b) Creating doubts in the minds of Indian and International equity investors and debt providers over the sovereign risks associated with future private public partnerships leading to reluctance to invest and/or higher costs”

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

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

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

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

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

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

b) Creating doubts in the minds of Indian and International equity investors and debt providers over the sovereign risks associated with future private public partnerships leading to reluctance to invest and/or higher costs”

3.37. ASSOCHAM further stated that

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

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

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

b HIAL's response to Stakeholder Comments on Issues pertaining to Guiding Principles for the Authority

3.39. Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 09/2013-14 dated 21.05.2013, the Authority forwarded these comments to HIAL seeking its response to these comments. HIAL has provided responses to the Stakeholders' comments, which are presented below:

3.40. In response to APAO's comments that "concession does not envisage cross subsidy from non-aeronautical revenues to defray aeronautical charges", HIAL has stated as under:

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

The Concession Agreement defines and differentiates between mandatory 'Airport Activities' consisting of aeronautical as well as non-aeronautical activities at the Airport and non-mandatory 'Non-Airport Activities' which the GHIAL is entitled to undertake at the Land (as defined under the Land Lease Agreement).

Thus, in addition to the rights granted to the GHIAL for setting up and operating the RGIA, certain additional rights have been granted for the purpose of development of the additional land In this regard, the Concession Agreement also makes a distinction between "Airport Activities" and Non-Airport Activities". While Airport Activities has been defined under Article 1.1 of the Concession Agreement to mean "the provision, at or in relation to the Airport, of the activities set out at Schedule 3, Part 1 as amended from time to time, pursuant to ICAO guidelines, provided that any activities that are not materially similar to those contemplated in Schedule 3, Part 1 shall require the mutual agreement of the Parties", Non-Airport Activities means "the provision, at or in relation to the Airport, of the services set out at Schedule 3,

Part 2". Schedule 3, Part 2 of the Concession Agreement provides for the Non-Airport activities which consist of real estate activities.

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

- 3.41.** In response to ASSOCHAM's comments on consideration of the Concession Agreement for tariff determination, HIAL has stated as under:

"The concession agreement laid down certain incentives and assurances based on which the investment was made into the sector.

The said promises need to be adhered.

Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement. As such Authority is not mandated to regulate any Other Charges in respect of the facilities and services provided at the Airport.

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

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

Section 13 of the AERA Act states as under: "13. Functions of authority- (1) The Authority shall perform the following functions in respect of major airports, namely:- (a) to determine the tariff for the aeronautical services taking into consideration- (i) the capital expenditure incurred and timely investment in improvement of airport facilities; (ii) the service provided, its quality and other relevant factors; (iii) the cost for improving efficiency; (iv) economic and viable operation of major

airports; (v) revenue received from services other than aeronautical services (v) revenue received from services other than the aeronautical services;(vi) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise; (vii) any other factor which may be relevant for the purposes of this Act: Provided that different tariff structures may be determined for different airports having regard to all or any of the above considerations specified at sub-clauses (i) to (vii)” (...emphasis added) A perusal of Section 13 of the AERA Act makes it clear that while determining tariff for aeronautical services, AERA is statutorily obligated to consider the concession offered to the Airport Operators by the Central Government and the other agreements which form an integral and inalienable part of such concession. Reading of Section 13(1)(a)(vi) indicates that the concession granted by the Central Government has to be read into the AERA Act and all its provisions as well as limitations contained therein have to be considered by AERA while determining tariff including while deciding which services in a particular case and in terms of the relevant Concession, can be regulated by AERA. This is further confirmed by a reading of the proviso to Section 13(1)(a) of the AERA Act which 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 the said section. In other words, the AERA Act recognizes that a straightjacket applicability of its provisions to all major airports is not intended and grants flexibility to AERA to determine tariff structures to different airports having regard to various considerations including the concession granted by the Central Government. Thus, even though the AERA Act empowers AERA to regulate tariff for Aeronautical Service as defined in Section 2(a) of the AERA Act, in case any concession has already been granted by the Central Government, AERA is statutorily mandated to consider such concession. In the case of RGIA, since one of the concession granted by the Central Government is that save for

the 'Regulated Charges', the GHIAL shall be free without any restriction to determine all Other Charges. Thus, on a reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement, AERA is only empowered to regulate the Regulated Charges as defined in the Concession Agreement (as an exception to the mandate of the Act which is recognized and allowed by the Act itself) and cannot regulate any Other Charges in respect of the facilities and services provided at the Airport including the other Aeronautical Services as defined in Section 2(a) of the AERA Act.

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

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

GoAP:

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

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

- 3.42.** In response to CII's comments on the Guiding Principles for the Authority, HIAL has stated as under:

"We appreciate that CII has highlighted an important aspect.

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

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

This can at best be termed as trapping of the investor.

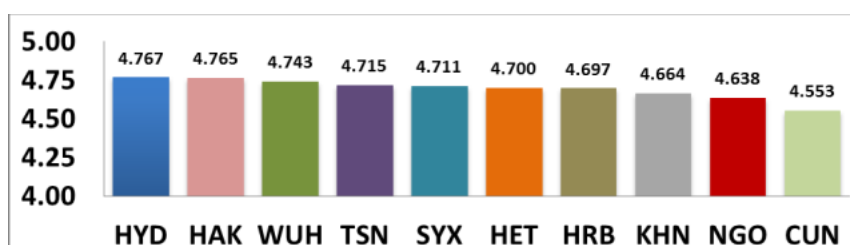
This is against the healthy growth of sector and this will result in a poor infrastructure and inefficient operations.”

- 3.43.** In response to FICCI’s comments on issues pertaining to Guiding Principles of the Authority, HIAL has stated as under:

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

This is critical in attracting the investment.

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



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

INTERNATIONAL AIRPORT		
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- 3.44.** In response to FIA’s comments that levy of UDF at RGI Airport is legally untenable, HIAL stated as under:

“The direction 5 of AERA has clearly laid down that :

6.8.4.

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

6.8.5.

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

A5.9.2

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

A5.9.4.

Where the Airport Operator considers that a UDF charge is required, it shall specify the proposed UDF levy for each Tariff Year of the Control Period as part of the overall yield per passenger...”

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

- 3.45.** Further, in response to FIA's comment that that it is up to HIAL to bear the brunt of investment for improvement of system or expansion to meet the demand including upgradation and maintenance and it cannot pass it on to consumers, HIAL has stated as under:

"In a PPP project the basic premise is that the project is entitled to be fairly remunerated for the investment to ensure the project operates on a profitable and viable basis. Non – adhering to this basic philosophy will negate the approach to PPPs.

The other points discussed herein are not comprehensible."

- 3.46.** In response to FIA's comment on use of UDF for development and expansion of RGI Airport, Hyderabad, HIAL has stated as under,

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

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

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

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

- 3.47.** Further in response to FIA's conclusive statement that the Authority has not deliberated upon the rationale for levying UDF, HIAL has stated as under:

"This statement is not correct that UDF is not allowed by AAI Act, Aircraft Act, 1934 or AERA Act.

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

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

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

[Substituted by – GSR No. 732(E) dated 02-11-2004 Amended by GSR No. 757 dated 14-10-2009]

- 3.48.** Further in response to FIA's comments on HIAL's monopolistic approach and 'Doctrine of Essential Facilities', HIAL has stated as under:

"These are baseless allegations.

There is nothing to show abuse of monopolistic power being abused.

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

c HIAL's own comments on Issues pertaining to Guiding Principles for the Authority

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

d Authority's Examination of Stakeholder Comments on Issues pertaining to Guiding Principles for the Authority

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

- 3.51.** The Authority notes FIA's comments that *"Levy of User Development Fee at RGI Airport is legally untenable"*. The Authority in its Order No 32 / 2012-13 in the matter of Determination of Aeronautical Tariffs in respect of Chhatrapati Shivaji International Airport, Mumbai had detailed its view on "Development Fee" as referred to in the AERA Act and "User Development Fee" as referred to in the Aircraft Rules in Paras 33.20 to 33.36 of the referred Order.

- 3.52.** The expression "Development Fee" has been used under section-13(1)(b) of the AERA Act which reads as under;

"(b) to determine the amount of the development fees in respect of major airports;"

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

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

- 3.54.** The expression “User Development Fee” is mentioned in the Aircraft Rules, 1937 which reads as under

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

- 3.55.** Upon glance of the aforesaid provision it is apparent that the “User Development Fee” has reference to determination under Section-13(1)(b) of the AERA Act, whereas the Section-13(1)(b) of the AERA Act uses the expression “Development Fees” only. Thus, the expression “Development Fees”, mentioned in the AERA Act has been qualified by the word “User” in the said Aircraft Rules and the power to collect and levy has been given to “licensee” under the said Rule 89 of the Aircraft Rules 1937.
- 3.56.** In view of the above, the Authority has been mandated to determine “User Development Fee” under Section 13(1)(b) of the AERA Act read with Rule 89 of the Aircraft Rules 1937.
- 3.57.** Further, as per Section 13(1)(a) of the AERA Act, the Authority has been given powers and jurisdiction to determine the tariffs for aeronautical services for major airports. Under Section 13(1)(b) of the AERA Act read with Rule 89 of the Aircraft Rules 1937, the Authority, therefore, has the legal mandate to determine the development fees in respect of major airports (including RGI Airport, Hyderabad – being a major airport) namely - the User Development Fee. The Authority further notes that FIA has not elaborated as to how UDF is being levied for development / expansion in case of RGI Airport, Hyderabad.
- 3.58.** As regards FIA’s comment on HIAL’s monopolistic approach and the Doctrine of Essential Facilities, the Authority has recognized the monopoly granted to RGI Airport, Hyderabad by the Government of India through the exclusivity granted

under the Concession Agreement for an aerial distance of 150 kms. Such exclusivity has been considered by the Authority as one of the risk mitigation measures towards determination of cost of equity. As regards FIA's comment "*the monopolist should not be allowed to charge an exorbitant price for accessing its facility*", the Authority's determination of aeronautical tariff is based on its consideration of various Regulatory Building Blocks (presented under Para 7 below) in respect of RGI Airport, Hyderabad while keeping focus on lowering the burden on passengers and at the same time ensuring a fair rate of return on its investments.

- 3.59.** The Authority has noted APAO's comment stating that "*Regulator needs to consider strongly whether the approach to airport charges as proposed is likely to achieve this National objective*". The Authority has followed the legislative guidance provided to it under the AERA Act in conducting the tariff determination exercise for RGIA, Hyderabad. It therefore believes that its approach is in consonance with the legislative guidance and also in furtherance of attracting private investment consistent with the legislative guidance.
- 3.60.** The Authority further notes APAO's comment stating that "*It is evident from Articles 10.2 and 10.3 that the Concession Agreement has clearly defined as to which charges would be regulated and which charges would be free from regulation.*" The Authority reiterates 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". The Agreement 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. Schedule-3, Part-1 mentions the airport activities to include services, facilities and equipment in relation to – (i) Airside facilities, (ii) Air side/Land Side/Terminal facilities (iii) Infrastructure and utilities for the airport complex (mainly land side). Airside facilities include, inter alia, all the three airport facilities listed in the Concession Agreement namely cargo, ground handling and fuel supply. Upon examining the provisions of the Concession Agreement, the Authority observes that the Schedule-3, Part-2 delineates Non-airport activities and, inter alia, includes airport hotels, restaurants, etc. Upon examining the provisions of the Concession Agreement, the

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

- 3.61.** With respect to the charges that the parties have right to impose, the substantive provision is embodied in Clause-10 of that agreement. This Agreement states that *“subject to applicable law, no person (other than HIAL, any service provider and the holder granted a relevant service provider right or the AAI) may impose any charge or fee (a) in respect of the provision at the airport 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.”*
- 3.62.** It is noteworthy that the stated right of HIAL et al is specifically subject to applicable law. The applicable law is also defined in the Concession Agreement meaning as *“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.”* The Airport Regulatory Authority Act is clearly 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.
- 3.63.** The above is quite apart from the fact that provisions of an Act passed by the Parliament take primacy over covenants of an agreement (even if entered into by the government) and that the Sovereign has no estoppel. After passing of the AERA Act, services like Cargo, Ground Handling and Fuel Supply are defined as Aeronautical Services for which charges are required to be determined by the Authority. Hence in the Authority’s understanding, Cargo, Ground Handling and Fuel Supply are aeronautical services and are required to be regulated in terms of fixation of tariffs thereof.
- 3.64.** Further, the Authority notes concerns of CII, FICCI and ASSOCHAM to the effect that Concession Agreement is a prime agreement and was the basis of a business decision made by the airport operator while making the investment in the airport project and should be adhered to by the Authority. CII and ASSOCHAM stated that *“Any change in interpretation of the concession document post facto will send*

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

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

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

4. Consideration of Regulatory Till in respect of RGI Airport, Hyderabad

a HIAL Submission on Consideration of dual till in respect of RGI Airport, Hyderabad

4.1. The Authority had presented its discussion on various submission made by HIAL in support of consideration of dual till towards determination of aeronautical tariff in respect of RGI Airport, Hyderabad in the Consultation Paper No 09/2013-14 dated 21.05.2013. The Authority examined the submissions of HIAL - both under Single till and Dual Till, with reference to various Regulatory Building Blocks. The Authority also presented the calculation of the different Regulatory Building Blocks in both Single Till and Dual Till along with the financial implications including the tentative estimation of YPP in the Consultation Paper No 09/2013-14 dated 21.05.2013. Post the stakeholder consultation, the Authority has received comments from various stakeholders on this issue. The Authority's examination of these comments are presented below:

4.2. The grounds, considered by HIAL for supporting the dual till regime, include the following:

- 4.2.1. Concession agreement contemplated dual till
- 4.2.2. ICAO policies on economic regulation
- 4.2.3. Provisions of the AERA Act, 2008
- 4.2.4. Ministry of Civil Aviation's stand on choice of till
- 4.2.5. Govt. of Andhra Pradesh (GoAP) view on till
- 4.2.6. Planning Commission on till
- 4.2.7. ACI view on choice of till
- 4.2.8. UK competition commission on till
- 4.2.9. European Union on till
- 4.2.10. International examples and research studies of airports moving to dual till

b Authority's Examination of HIAL Submissions on Consideration of dual till in respect of RGI Airport, Hyderabad

- 4.3.** All the grounds, considered by HIAL and presented above, were duly examined by the Authority in its Consultation Paper No 09/2013-14 dated 21.05.2013 and are presented in the Paras below.

Concession agreement contemplated dual till

- 4.4.** HIAL had emphasized that (a) "Concession Agreement should be adhered to" and (b) Concession Agreement means Dual Till (refer Para 1.37 above). As regards (a), the Authority had noted that the GMR Group had not wanted the provisions of the agreements like OMDA in respect of IGI Airport, Delhi to be strictly followed wherein OMDA had stipulated that all finances of IGI Airport, Delhi must be brought by the joint venture company namely DIAL through equity and debt. Even so DIAL submitted application for grant of development fee first to the Government and thereafter to the Authority. The Government as 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 over contractual agreements. In this case, however, HIAL wanted to go by what was its interpretation of the Concession Agreement both in respect of regulatory till (it had stated in its letter to the Hon'ble Minister for Civil Aviation that Concession Agreement meant 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). This appeared to be selective approach.
- 4.5.** Apart from the above, the Authority had also noted that in its submission of tariff card, HIAL suggested charging of UDF for both embarking as well as arriving passengers. Even here HIAL did not seem to have conformed to the Concession Agreement wherein it is clearly stipulated that *"HIAL will be allowed to levy UDF with effect from Airport opening date, duly increased in the subsequent years with inflation index as set out hereunder, from **embarking** (emphasis added) domestic*

and international passengers.....". In its submission of the rate card, HIAL had given reason for charging UDF on both embarking and arriving passengers as "to ease the burden on passengers". By splitting the UDF between embarking and arriving passengers and giving the reason thereof that this was done "to ease the burden on passengers", HIAL seemed to have implicitly assumed that the set of departing passengers was different from the set of arriving passengers. This assumption might or might not hold true in practice (and most probably won't). At any rate, it appeared that HIAL kept the interest of the passengers over the provisions of the Concession Agreement. The Government of India as well as the Authority have consistently maintained that the burden on passengers should be kept in view in economic regulation of the airports.

- 4.6.** As far as ad-hoc UDF of Hyderabad airport is concerned, the Authority had determined this quantum in October, 2010 under single till. This Order was not challenged by any stakeholder (including HIAL) before any Appellate or judicial forum. It would thus appear that at that time HIAL did not think that the Concession Agreement means dual till.
- 4.7.** HIAL had referred to the provisions of the Concession Agreement and had submitted that the Concession Agreement implied dual till. HIAL's arguments supporting its views were as follows:
- 4.7.1.** During the presentation made to the Authority on 01.04.2013, HIAL submitted that adoption of single till goes against the provisions of the Concession Agreement as it indirectly restricts the return on non-aeronautical and real estate activities, which are against the prudent commercial principles. HIAL requested the Authority to approve dual till for HIAL. The provisions of concession agreement, referred to by HIAL, were as follows:
- 4.7.2.** Referring to Clause 10.2.4 under Airport Charges, HIAL submitted that "The Concession Agreement contemplate the regulation of only Regulated Charges mentioned in the Schedule 6 of Concession Agreement. By adopting a Single Till, indirectly the non-aeronautical yield is also being regulated which is against the provisions of the concession agreement." HIAL presented the extract of the Clause 10.2.4, which is reproduced hereunder,

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

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

“HIAL 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.”

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

- 4.7.5. HIAL presented the extract of Para 13.5.2 of the Concession Agreement and inferred from this Para that “This clearly goes on to show that the concession agreement contemplates a dual till. If a single till was envisaged the GOI would have opted to take over the entire gamut of business including Non Aeronautical and Real Estate”. The extract of Para 13.5.2 is reproduced below:

“Prior to transfer of The Airport GOI shall have the right to conduct a due diligence of the contracts and the agreements pertaining to Non-airport Activities, the rights and obligations of which it is assuming and shall not be bound to assume the rights and obligations of the contracts ...”

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

“HIAL shall...manage and operate the Airport in a competitive, efficient and economic manner as a commercial undertaking”

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

“Under Single Till, the “Total Return”, considering Aeronautical and Non Aeronautical revenues together, is capped. Single Till scenario leaves no incentive for the operator to maximize its non-aeronautical revenue since any increase in the non-aeronautical income will be offset by an equivalent reduction in the aeronautical tariffs. Providing aeronautical services at artificially lower tariffs provides a distorted economic picture. Charges to passengers should be reflective of actual cost.”

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

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

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

- 4.8.2. In view of the Authority, such inference was unwarranted even within the 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. Such a meaning cannot be imported into the Concession Agreement. Furthermore, as was pointed out in Para 3.2 above), the AERA Act requires the Authority to take into consideration “revenue received from services other than the aeronautical services” that can include revenue from even those services 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. (See Para 3.7 above). As indicated, the Authority has delimited RAB boundary so as not to normally include in it those services outside the airport terminal while determining aeronautical tariffs should the Authority finally come to the tentative conclusion to adopt single till during the current Control Period.
- 4.8.3. The Authority had issued the Airport Order i.e. Order No. 13 of 2010-2011 (dated 12th January, 2011) and Airport Guidelines i.e. Direction No. 5 of 2010-2011 (dated 28th February, 2011). The Airport Order gives in detail the rationale of adoption of single till by the Authority (as is well known, Single till takes a holistic view of the airport business, taking into account the revenues from Non-aeronautical services’ together with those from aeronautical services to arrive at the tariffs for aeronautical services. Dual till, on the other hand, takes into account revenues only from the aeronautical services to determine tariffs for such aeronautical services).
- 4.8.4. The Authority, therefore, had not, in the Consultation Paper No 09/2013-14, gone into the details and reasoning as to why it adopted the Single till framework for aeronautical tariff determination in its Airport Order and had limited its analysis to the points and submissions brought before it by HIAL in support of dual till.

- 4.8.5. Apart from classifying the charges into regulated charges and other charges, Concession Agreement does not have any other covenants with regard to the methodology for the determination of the regulated charges. The Concession Agreement nowhere mentions, for example, that the revenues from the ‘other charges’ should not be reckoned during the determination of aeronautical tariff. The Authority also noted that the Non-aeronautical services were outsourced to third party concessionaires. The charges of such third parties (with the exception of those providing the aeronautical services of Cargo, Ground Handling, and Fuel Supply) are not determined by the Authority. This was also consistent with the provisions of the Concession Agreement.
- 4.8.6. Section 13(1)(a) of the AERA Act contains detailed legislative policy guidance as to the factors that the Authority needed to take into consideration while determining the tariffs for aeronautical services. The concession offered by the Central Government was one such factor. The Authority had thus taken into consideration the Concession Agreement dated 20th December, 2004 signed between the Central Government and HIAL. After analysing the covenants of the Agreement, the provisions of the AERA Act, the Authority came to the conclusion that the dual till was not implied in the Concession Agreement and the inference of HIAL that the Concession Agreement implies dual till was unfounded.
- 4.9. As regards HIAL’s argument regarding its interpretation of Para 13.5.2 of the Concession Agreement that “If a single till was envisaged the GOI would have opted to take over the entire gamut of business including Non Aeronautical and Real Estate”, the Authority had noted that the wording of the paragraph referred to “non-airport activities”. These activities were defined in Schedule 3 Part 2 of the Concession Agreement as Landside Non-Airport Activities that was seen to generally pertain to the real estate development. Some of the activities mentioned in Schedule 2 also found mention in Part 1 of Schedule 3 listing the “Airport Activities”; for example, Business centre, Restaurants, bars, retail shops, conference centre. As indicated by the Authority, in normal course, the real estate development would be outside the RAB Boundary (See Para 3.7 above) and the

Authority would not normally be taking these into account while determining tariffs under single till. Its proposed treatment of commercial exploitation of land in excess of airport requirements is separately given in Paras 10.2 to 10.8 below.

- 4.10.** That apart, HIAL seemed to have selectively quoted the paragraph from the Concession Agreement because just after the wordings *“shall not be bound to assume the rights and obligations of the contracts”*, the following wordings appeared:

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

- 4.11.** The clear wordings of clause 13.5.2 of the Concession Agreement indicated that Gol has the right to examine the contracts pertaining to non-airport activities. The same paragraph also indicates that **if satisfied, the Gol may take over such non-airport activities** (Emphasis added). Thus it can, in no way, be inferred that this paragraph lends any support to HIAL’s averment that Concession Agreement contemplates dual till. On the contrary, the Gol’s express intention of “to the extent Gol opts to take over Non-Airport Activities” would go to show, if the reasoning of HIAL was to be followed, that the Concession Agreement, in fact, did **not** contemplate dual till. Going further, if the Gol opted to take over entire non-airport activities, again going by HIAL’s logic, the Concession Agreement would be interpreted to contemplate single till.

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

ICAO policies on economic regulation

- 4.13.** HIAL, in its presentation dated 01.04.2013, to the Authority referred to the revised ICAO guidelines and stated that “ICAO has in its current edition of economic policies in Doc 9082 9th edition removed the ambiguity related to the choice of till. ICAO has clarified that it does not endorse Single Till regulation as the most preferred form of regulation. ICAO leaves it to respective member states to adopt their choice of till based on suitability to local condition.” The clauses of ICAO 9082 presented by HIAL are reproduced below:

“ICAO 9082 8th Edition

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

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

ICAO 9082 9th Edition

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

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

- 4.14.** The Authority had noted the provision of the Concession Agreement for RGI Airport, Hyderabad which states that “*The Airport Charges specified in Schedule 6 (“Regulated Charges) shall be consistent with ICAO Policies.”* Further the Concession Agreement defines the ICAO Policies as follows:

““ICAO Policies” means the first statement of the ICAC Council contained in the “ICAO Policies on Charges for Airports and Air

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

4.15. As far as the issue of regulatory till was concerned, the Authority had, in detail, considered the ICAO position from ICAO documents based on the opinions of aviation experts and academicians. The Authority’s consideration of these documents and positions was presented in the documents issued by the Authority namely, White Paper No. 01/2009-10 on Regulatory Objectives and Philosophy in Economic Regulation of Airports and Air Navigation Services and Consultation Paper No.3/2009-10 on Regulatory Philosophy and Approach in Economic Regulation of Airports and Air Navigation Services.

4.16. The Authority had had reference to ICAO Policies in terms of its prescription for any form of regulatory approach. The Authority noted the guidance provided in paragraph 20 of ICAO’s Policies on Charges for Airports and Air Navigation Services which recommended the following:

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

4.17. While the above guidance was regarding the selection of an appropriate form for economic oversight, the Authority had also had references to other provisions of ICAO documents to establish its preference, if any, for any specific regulatory till. While doing so it considered the opinions of aviation experts and academicians, and had come to a conclusion that the single till was recommended or supported by ICAO and presented these views in the White Paper 01/2009-10 and Consultation Paper 03/2009-10, which were put forth for stakeholder consultation.

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

Provisions of the AERA Act, 2008

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

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

- 4.21.1. Based on the above reference to the preamble, HIAL inferred that "As such it is contemplated that Aeronautical Charges will be regulated and the performance standards will be monitored."
- 4.21.2. HIAL also referred to the Section 13 (1)(a) of the AERA Act, which provided the factors to be considered by the Authority in its determination of tariff for

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

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

the current Control Period. On a very rough calculation this would mean that its impact on the passenger charges would be to lower the UDF by Rs. 72 (Rs. 155.88 crore as income for the current Control Period divided by approximately 2.16 crore as the number of departing passengers for the current Control Period). The Authority, on balance and for the time being, did not propose to resort to this possible and plausible literal interpretation though it flowed from HIAL's submissions.

Legislative background and intent

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

“An Act to provide for the establishment of an Airports Economic Regulatory Authority to regulate tariff and other charges for the aeronautical services rendered at airports and to monitor performance standards of airports and also to establish Appellate Tribunal to adjudicate disputes and dispose of appeals and for matter connected therewith or incidental thereto.”

4.25. Based on the above, HIAL had inferred that *“As such it is contemplated that Aeronautical Charges will be regulated and the performance standards will be monitored”*. The Authority proposed to determine only the tariffs for aeronautical charges in accordance with Section 13 of the AERA Act. It also noted, however, that whereas the preamble stated that the Authority should regulate tariffs and other charges for the aeronautical services, Section 13 (a)(1) of the AERA Act provided detailed legislative policy guidance to the elements that the Authority ought to consider while making such determination. Taking into account *“revenue from services other than aeronautical”* was clearly specified as one such element. Regulating only aeronautical charges in no way conflicted with taking into account revenue from non-aeronautical services whose charges were not regulated by the Authority.

4.26. *Legislative history:* The Authority had also noted the legislative history as to how the clause *“revenue from services other than aeronautical”* came to be included as one of the factors that the Authority should take into consideration while determining aeronautical tariffs [vide Section 13 (1) (a) (v)]. The Authority had been

pointing out time and again 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*”. The wordings of the response to government to this recommendation were important and worth noting. The Government said 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”

- 4.27.** The intention of the legislature clearly was not only to regulate the non-aeronautical services but express recognition that *the economies of airport operation depend on both revenue streams i.e., aeronautical revenue and non-aeronautical revenue*. The Government’s response also clearly stated that in order that the airport users did 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.***” 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.

- 4.28.** The Government through its various pronouncements have put passengers and cargo users as its main focus for economic regulation of airports and minimising passenger charges as its objective. The Planning Commission 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, vide its letter dated 12.03.2010, furnished its comments on the observations made by the Government. The Authority, therefore believes that its approach of lowering burden on the passengers while determining aeronautical tariffs of the major airports had MoCA’s broad acceptance.
- 4.29.** To minimize the burden of airport charges on the passengers had, therefore, been the focus of the economic regulation of major airports (albeit consistent with giving a fair rate of return to the airport operator). To minimize the burden on the 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. Similarly, it also asked AAI not to ask for DF in the matter of tariff determination in respect of Kolkata and Chennai airports. This unwavering focus of the Govt. on minimizing passenger charges has important implication in the regulatory till.
- 4.30.** The Government had thus put the passengers’ interest firmly in focus while moving the official amendment accordingly. Dual/Hybrid or shared revenue till was thus not in consonance with that avowed focus repeatedly adopted by the Government and also followed by the Authority as its primary anchor of economic regulation of airports (after the interests of the airport operator are fully addressed in terms of fair rate of return on his investments consistent with the risk profile and any risk mitigating measures).

Ministry of Civil Aviation’s stand on choice of till

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

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

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

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

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

4.32. The Authority had carefully examined this submission of HIAL. At the outset, the Authority noted that the Government had not fixed any UDF for Ahmedabad and that the ad-hoc determination of UDF for Ahmedabad Airport was made by the Authority under single till. However, the submission of HIAL mentioned Ahmedabad under shared till, which was not the case. Secondly, the ad-hoc determination in respect of Hyderabad made by the Authority under single till (and reckoning a period of 5 years) vide its Order No 06/2010-11 dated 26.10.2010, was not appealed either by the airport operator (HIAL) or by any of the stakeholders. It

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

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

- 4.33.1. DIAL and MIAL are required to pay 45.99% and 38.7% of their gross revenue, respectively, as revenue share to AAI (termed as Annual Fee). As per Article 3.1.1 of the State Support Agreement (SSA) in respect of Delhi and Mumbai airports, Annual Fee paid/payable by the DIAL or MIAL, as the case may be, shall not be included as part of costs for provision of Aeronautical Services and no pass-through would be available in relation to the same. On the other hand, the concession fee in respect of Hyderabad and Bengaluru airports was 4% only which was a cost pass through, and the payment of this Fee had also been deferred for the first 10 years.
- 4.33.2. The SSAs in respect of Delhi and Mumbai airports provided that 30% of revenue from services other than aeronautical services to be taken into account, i.e., shared while calculating aeronautical tariffs. However, it was specifically mentioned that the costs associated in obtaining such non-aeronautical revenues shall not be treated as a pass through. There are no provisions to this effect in the agreements in respect of Hyderabad and Bengaluru airports.
- 4.33.3. In Delhi and Mumbai airports, the issue of Hypothetical Regulatory Asset Base (RAB) was clearly mentioned as an amount to be added to the Regulatory Asset Base at the beginning of the first regulatory period. There was no mention of any such Hypothetical RAB in case of Hyderabad and Bengaluru airports.

- 4.33.4. The agreements in respect of Delhi and Mumbai Airports have clauses dealing with “Non Transfer Assets” and mode of treatment thereof. No such concept existed in the agreements in respect of Bengaluru and Hyderabad Airports.
- 4.33.5. The agreements of Hyderabad and Bengaluru Airports were signed in 2004 while those of Delhi and Mumbai were signed in 2006. The agreements of Hyderabad and Bengaluru Airports, therefore, predate those of Delhi and Mumbai Airports. The Government’s Greenfield Airport Policy was announced in 2008. This policy, though, specifically mentions the Government’s intention of formulating an independent economic regulator; it did not make any mention of Concession agreements signed in respect of the Bengaluru or Hyderabad Airports – whether provisions of these agreements were to be the guiding principles even for Greenfield airports.
- 4.33.6. The Agreements of Delhi and Mumbai airports contained details of methodology of tariff calculations. Agreements in respect of Bengaluru and Hyderabad airports did not contain any such details.
- 4.34.** In view of the above, it was noted that there was no parity whatsoever between the provisions of the agreements in respect of Delhi and Mumbai airports on one hand and the agreements in respect of Hyderabad and Bengaluru airports on the other. Moreover, even the agreements of Delhi and Mumbai materially differed from each other in respect of percentage of revenue share. (Delhi has 45.99% and Mumbai has 38.7%).
- 4.35.** HIAL had selectively taken only one element namely, 30% shared till in support of its submissions. The Authority also noted that according to the submissions made by HIAL before the Appellate Tribunal, it had been stressing that the Concession Agreement implied dual till. Its letter to the government also stated as such (Para 1.37 above). It thus appeared that HIAL had been taking different positions in different fora in support of its contentions.
- 4.36.** As regards the HIAL’s statement on riskiness of the Airport, the Authority was of the view that the riskiness is a factor to be considered in determination of cost of equity for the concerned airport. Accordingly the Authority had duly considered the

riskiness of RGI Airport, Hyderabad in determination of cost of equity for HIAL and had presented its views in Para 13 below.

- 4.37.** As far as the calculation of ad-hoc UDF by the Government for certain airports was concerned, the Authority also understood that the Government took into account the effective cost of equity for AAI at 12% (in the absence of any debt component). On the other hand the Authority has determined fair rate of return on equity for HIAL at 16%. It has also determined similarly the cost of equity for Delhi and Mumbai at 16%. The characteristics of reckoning 30% of non-aeronautical revenue in calculation of aeronautical tariffs as obtained in Delhi and Mumbai are radically different from those of AAI Airports. In Delhi and Mumbai apart from 30%, the airports of Delhi and Mumbai were required to give, in addition, revenue share to AAI of 45.8% in Delhi and 38.6% in Mumbai that were not cost pass-through in the regulatory determination of aeronautical tariffs. It was thus not proper to take only the percentage of 30% without other attendant characteristics as were required for determination of UDF (which constituted very significant percentage of revenue receipts for the airport - over two thirds in case of HIAL.)
- 4.38.** The Authority had also recently determined aeronautical tariffs (including the User Development Fee) at Chennai and Kolkata Airports under single till. It had also determined ad-hoc UDF for Ahmedabad and Trivandrum under single till. The Government of Kerala thought the UDF rate as very high and had preferred an appeal before the Appellate Tribunal on this ground. This was despite the fact that the UDF under single till was found to be the lowest and these Orders have **not** been challenged on the ground of regulatory till. If hybrid or dual till to be followed, the UDF rate would have been much higher.
- 4.39.** Furthermore the Authority had noted that the Government had determined ad-hoc UDF for private Greenfield airports of Bengaluru and Hyderabad in 2008. For Hyderabad it determined UDF for domestic passengers at Rs. 375 per embarking passenger and Rs. 1,000 per embarking international passenger. For Bengaluru, the corresponding figures are Rs. 260 per embarking domestic passenger and Rs. 1,070 per embarking international passenger. If the Government's decision on UDF for AAI airports mentioned by HIAL above, was compared to the figures of UDF for

Bengaluru and Hyderabad, it would be seen that the UDF for domestic passengers for Bengaluru and Hyderabad are substantially higher than those for all the AAI Airports referred to by HIAL. It thus appeared that the Government's decision incorporated various factors like airport characteristics, capital requirements, financing arrangements etc. HIAL had also made similar point as indicated in Para 4.94 below. The Authority had also been consistently stating that a comprehensive approach needed to be taken in the matter of economic regulation of airports. It would be erroneous to "cherry-pick" only on one element like dual till.

4.40. As far as the quantum of UDF required giving the airport operator fair rate of return was concerned, the Authority's analysis of Ahmedabad and Trivandrum Airports indicated the following:

Table 6: UDF determined in respect of AAI Airports

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

- 4.41.** As far as the Authority's determination of ad-hoc UDF for Hyderabad was concerned, it has done so under single till (Rs. 430 per embarking domestic passenger and Rs. 1,700 per embarking international passenger). HIAL's initial proposal (not under single till) for ad-hoc UDF was at Rs. 450 per embarking domestic passenger and Rs. 2,918 per embarking international passenger. Clearly the level of UDF under single till was seen to be the lowest after taking into account the reasonable expectations of the airport operator.
- 4.42.** The Authority has had reference to the Aeronautical Information Circulars (AICs) issued by the Director General of Civil Aviation (DGCA) viz. AIC SL. No. 7/2010 and AIC SL. No. 5/2010. The Authority has noted the following aspects from these circulars:
- 4.42.1. The UDF to be levied on domestic passengers had been fixed uniformly at Rs. 150/- in respect of the airports at Amritsar, Udaipur, Varanasi, Mangalore, Trichy and Visakhapatnam and the UDF to be levied on international passengers was different for different airports including zero for those airports, where there was no international passenger traffic.
- 4.42.2. The Authority had further observed that the UDF approved for Varanasi Airport was an ad-hoc UDF, which indicated that a detailed assessment of requirement of UDF might not have been done at that stage.
- 4.42.3. The ad-hoc UDF at Varanasi Airport had been approved for a period of 20 years while the period of levy of UDF for the other five airports namely, Amritsar, Udaipur, Mangalore, Trichy and Visakhapatnam had not been mentioned in the AIC. The period of 20 years was mentioned in the AIC dated 16.11.2010 in respect of Varanasi Airport. The Authority had not found similar mention of period in the AIC for other five airports. The AIC did mention the date of commencement of levy of UDF but not the duration / period thereof. Since the calculation of UDF was understood to be a revenue enhancing mechanism, this meant that the levels of UDF so determined would continue till the issue of any fresh AIC upon a possible future redetermination of these charges. The Authority noted that a period of 20 years was a long horizon, which helped in keeping the UDF numbers at a lower level.

- 4.42.4. While the Authority was not cognizant of the calculations behind the UDF numbers for the airports for which the Government had determined it, it inferred from the available numbers that the approach for determination of UDF might have been to vary the period of levy and amount of levy on international passengers such as to keep the UDF number for domestic passengers fixed at Rs. 150. The Authority however understood that the period reckoned for calculation of domestic and international UDF in the calculations made by the Government go much beyond 5 years and were in the range of 10-15 years or so. This enabled the Government to keep the UDF at a lower number. Furthermore Authority understood that if the UDF for AAI Airports were to be calculated by the Government not for 10-20 years at 30% non-aeronautical revenue taken into account, but only for five years, then even taking the entire non-aeronautical revenue may not prove sufficient to arrive at similar levels of UDF. Such a determination would then tantamount to a single till approach and not 30% shared till approach.
- 4.42.5. Under the Government's ad-hoc UDF determination of AAI Airports (with 30% shared till), the remaining 70% of non-aeronautical revenue remained in the hands of the airport operator i.e. a public authority namely AAI. The purpose of such additional monies with AAI is ex-ante clear in that it would be used for development of other airports in the country. If similar treatment were to be given to HIAL, this would mean that 70% of non-aeronautical revenue was left in the hands of a private party. This would result in higher UDF charge on the passengers. This meant that if 30% principle were to be adopted for HIAL, the passengers would be paying additional UDF only to enable the private party earn higher than fair rate of return. This could be construed as unjust enrichment through operation of regulatory framework and extracting higher UDF from the passengers under the provisions of UDF that are enshrined in Aircraft Rules, 1937 (this Rules alone gives the power to the Authority to determine the level of UDF). Hence if UDF were to be determined (under dual till or for that matter under 30% principle) at a level higher than what was required to give airport operators a fair rate of return under single till, this

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

- 4.43.** The Authority noted that it needed to determine the level of UDF taking into account the regulatory period of 5 years. It also noted that it needed to calculate the return on equity based on its approach of calculation of equity beta, risk-free rate, equity risk premium etc. Furthermore it had determined ad-hoc UDF rates at Ahmedabad and Trivandrum (AAI Airports) based on single till as indicated in the 4.38 above and Table 6. Similarly it had also determined the ad-hoc UDF for Hyderabad Airport vide its Order 06 / 2010-11 at Rs. 430/- per domestic departing passenger and Rs. 1,700 per departing international passenger based on Single till. The Authority had noted that none of these ad-hoc UDF determinations had been challenged on the ground of application of single till. The Govt of Kerala appealed against the Authority's Order on the ground of UDF for international passengers being too high (it is to be noted that the level of UDF would have been higher had it been computed on the basis of dual or hybrid till).
- 4.44.** Apart from the above determination of ad-hoc UDFs, the Authority had recently made final tariff determinations in respect of Kolkata and Chennai Airports on the basis of single till.
- 4.45.** As indicated in the Tariff Order for Kolkata, realizing the very high levels of UDF, the Authority had finally determined UDF at a substantially lower level of Rs. 400/- for domestic and Rs. 1,000/- for international passengers consciously leaving a shortfall of Rs. 800 crore which needed to be carried forward during the next Control Period. Under 30% hybrid till or dual till, the levels of UDF would have been much higher, though the Authority had no occasion to go into this exercise. The Authority's Orders in respect of Kolkata and Chennai had also not been challenged before the Appellate Tribunal on the ground of regulatory till.

- 4.46.** The Authority observed from the above that the Government had determined the UDF for domestic passengers at Rs. 150 uniformly across different airports. The Authority also noted that these airports varied in their physical characteristics in terms of capital cost, passenger throughput, percentage of non-aeronautical revenue, passenger mix (international / domestic) and types of aircrafts landing at these airports etc. Yet the Government had kept UDF for domestic passengers constant at Rs. 150/-. It appeared that keeping UDF for domestic passengers low as well as uniform may have been a key concern for the Government. This was in consonance with the Government's declared objective of minimizing the burden on the passengers. Further the UDF numbers for international passengers had also been kept at a lower level by increasing the period of levy to as much as 20 years in case of Varanasi Airport. Comparatively in respect of RGI Airport, Hyderabad, HIAL had approached the Government to determine UDF at Rs. 450 per embarking domestic passenger and of Rs. 2,918 per embarking international passenger for a period of 5 years. The Government forwarded HIAL's proposal to the Authority. After detailed examination, the Authority finally determined the ad-hoc UDF for Hyderabad at figures mentioned above in Para 1.24 above
- 4.47.** In the above background, HIAL's request for consideration of hybrid / shared till in respect of RGI Airport, Hyderabad purely based on MoCA's consideration of only one single element namely, hybrid / shared till for the above mentioned six airports did not appear to be appropriate and tantamount to selective approach only to enable HIAL get more than fair rate of return for itself at the cost of passengers through UDF. This was because the Authority was of the view that it would not be pertinent to consider only one aspect of an exercise, which essentially is dependent upon several factors and all the factors responsible for the final outcome of the exercise should be considered together. Thus basing the consideration of hybrid / shared till on MoCA's approach for the above six airports meant consideration of other factors such as restricting the UDF on domestic passengers to Rs. 150/- and extending the period of levy to as high as period as required to keep the overall UDF at lower levels. However the Authority had not resorted to consideration of these factors as it would not be in consonance with its legal mandate.

- 4.48. Based on the above, the Authority considered it appropriate to take a comprehensive view including the detailed legislative policy guidance contained in Section 13 of the AERA Act while considering the determination of aeronautical tariff in respect of RGI Airport, Hyderabad. Apart from that, the Authority noted that MoCA's affidavit did not support HIAL's contention of adopting dual till in their submission before AERAAT.

Govt. of Andhra Pradesh (GoAP) view on till

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

- 4.49.1. Presenting and referring to an extract of the Letter of Award by Government of Andhra Pradesh (reproduced below), HIAL had submitted that "GoAP envisaged uncapped returns".

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

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

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

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

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

- 4.49.3. HIAL had also referred to a letter from Government of Andhra Pradesh, which, in HIAL's understanding, had been written by GoAP to the Authority clarifying GoAP's position on the Equity IRR and utilization of land. HIAL's understanding, as presented to the Authority, from the said letter is reproduced below:

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

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

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

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

- 4.50. The Authority had carefully examined the HIAL submission on this ground. As far as the three services of cargo, ground handling and fuel supply are concerned, these have been defined as "aeronautical services" (Section 2 of AERA Act, 2008). Under Section 13(1) of the AERA Act, 2008, the legislature has mandated the Authority to determine tariffs for these services. Hence the contention that these services should not be regulated on account of the Concession Agreement is at variance with statutory requirement. The Authority therefore is required to determine tariffs for these 3 services that are clearly defined as aeronautical services. The Concession Agreement has no provisions about the determination of tariffs for aeronautical services except that they should be fixed in accordance with ICAO policies (Article 10.2.1 of the Concession Agreement). HIAL had also pointed that

ICAO is neutral with regard to the regulatory till. Hence the Authority was unable to appreciate the argument that the concession agreement did not envisage cross-subsidy of non-aeronautical revenues to defray aeronautical charges.

4.51. As far as the return on equity is concerned, the Authority had determined the same with reference to well-established principles. While doing so, it had taken into account the risk profile of the airport. It had also introduced substantial risk mitigating measures like truing-up of passenger traffic, non-aeronautical revenue, interest cost at actuals (subject to reasonability). Even thereafter the Concession Agreement also provides for grant of user Development Fee. UDF is generally understood as a revenue enhancing measure to enable the Airport Operator to obtain a fair rate of return. However the Concession Agreement also admits of the possibility of UDF being used for capital financing. Hence not only the commercial risk is mitigated, even the financing risk for new investments as and when required is taken care of. The Authority had also noted that the Central Government closed down a functioning airport at Begumpet so that the new airport was assured of traffic from the day it commenced its commercial operation. The Government of Andhra Pradesh also made available financial assistance in form of subsidy of Rs. 107 crore and IFL of Rs. 315 crore to help finance the project. It also lent substantial infrastructure support in terms of elevated approach road at the cost of state exchequer. Based on all these parameters, the Authority had considered a rate of return of 16% as fair.

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

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

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

- 4.53.** The Authority had noted that this agreement is between GoAP and HIAL in which the GoAP through Transport, Road and Buildings (Ports) Dept. holds 13% shares. The Authority, based on well-established financial principles and on the basis of a report of a reputed consultant like National Institute of Public Finance and Policy (NIPFP), had arrived at a fair rate of return on equity of 16%. The Authority had noted the submission of HIAL with respect to Letter of Award. The tariff determination is required to be made on the basis of fair rate of return, which in Authority's view, is not 18.33% but 16%. The financial and commercial arrangements between GoAP (that is one of the shareholders in HIAL) and HIAL should thus not require the passengers to bear the extra burden of grant of rate of return on equity that is in excess of the fair rate of return, namely 16%.
- 4.54.** The Authority's Order No. 13 of 2011 dated 12th January, 2011 has given detailed reasoning for ring fencing of land and the circumstances under which its market value is reduced from the RAB. The Authority had noted the relevant contents of the Letter dated 1st March, 2011 from the Govt. of Andhra Pradesh to the Authority in which it is mentioned that *“as already mentioned in Recital ‘C’ of the Land Lease Agreement dated 30.09.2003, 5500 acres of land was leased by the GoAP for the general economic and social development of the State of Andhra Pradesh.”*
- 4.55.** According to Authority's reading, Recital 'B' refers to the "Airport" as defined hereafter on a build, own and operate basis (Project)". The 'Project' has been defined to have meaning assigned to it in Recital 'B'. Recital 'C' refers to the project being of prime importance to the State of Andhra Pradesh and refers to the policy of the lessor (State of Andhra Pradesh) to encourage and provide industrial development, tourism, passengers, cargo movement and general economic and social development of the State of Andhra Pradesh. The same Recital also speaks about the provision of financial support to assist the project. Recital 'E' explicitly states that "the project is feasible only with State Support of the lessor"

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

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

- 4.59.** The Authority had noted from the extract of the Letter of Award submitted by HIAL that it spoke about the circumstances if the return on equity is over and above 18.33% (that is to be shared equally over the life of the project in proportion to the equity holding between the developer and the GoAP). It was thus unable to appreciate the argument that this provision tantamount to making a regulatory regime such that the developer ought to get a return on equity over and above 18.33%. HIAL had also inferred that “GoAP envisaged uncapped returns”. From reading of its provisions, it was clear that what is contemplated is a mechanism of sharing returns over and above 18.33% and that the regulatory framework cannot be tailored so as to always give an equity return over and above this figure.
- 4.60.** As far as the issue of land is concerned, the Authority had noted from the State Support Agreement that 5450 acres of land is leased out at what appeared to be a concessional rental of 2% per annum of the cost of land (Rs. 155 crore). Part of the land can be used for commercial exploitation. Both the concessional rental as well as the commercial exploitation appeared to have been stipulated to make the Project feasible. The project, as defined in the State Support Agreement is the development of the Airport. The Recital E of the State Support Agreement in this respect is reproduced below:

“The Project is feasible only with State Support of the Lessor, and as part of the State Support to be made available by the Lessor to the Lessee, pursuant to the State Support Agreement, the Lessor has agreed to provide on lease to the Lessee contiguous unobstructed, unencumbered and freehold land owned and possessed by the Lessor measuring about 5,000 (Five Thousand acres) at Shamshabad, near Hyderabad, as described in Schedule 1 to this Agreement and shown on the site plan attached hereto as Schedule 2 (the “Land”), and the

Lessee has agreed to accept the Land on lease subject to and on the terms and conditions contained in this Agreement.”

- 4.61.** The Authority further noted from Recital C that the Project (development of the Airport) is of prime importance to the State and is expected to induce benefits for the State, however this induced benefit is not directly part of the Project. Thus the Authority was of the view that the revenue from monetization of land would not have been envisaged to have been left with the Airport Operator but to be invested in the project to make the project feasible. The Authority had no intention of taking this incentive away from HIAL, however the money so raised should be utilized for the project. The Authority had noted that around 5,000 acres of land has been leased to HIAL out of which the Airport requires 3,000 acres. Out of the remaining 2,000 acres, around 900 acres of land will be available for monetization by HIAL.
- 4.62.** The conclusion as the Authority understood was inescapable. Land is acquired for a public purpose viz. the airport. The airport will not be feasible unless the commercial exploitation of land in excess of the airport requirements is permitted. It would follow that the revenues from such commercial exploitation should benefit the passengers of the airport in question. This is quite apart from the fact that under the Authority’s regulatory remit, it will have to determine aeronautical tariffs to make the airport feasible even without, if need be, addressing the land receipts. Receipts from commercial exploitation of excess land would then be monies in the hands of the private airport operator without any nexus with public purpose for which the land could be acquired by the Government of Andhra Pradesh in the first place.

Planning Commission on till

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

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

- *We understand that PC has advocated need for a Hybrid Till regulation. This has been also in light of the fact that India required a huge private sector investment into the Airport sector under the 12th plan.*
- *PC has underscored the importance of the choice of economic regulation especially a Hybrid Till approach in achieving the investment goals.*

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

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

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

- 4.66.** The Authority concurred with the views of the Planning Commission that choice of economic regulation is an important factor in attracting private sector investment. The Authority had followed the principles of transparency and consistency in preparing its approach for determination of aeronautical tariff for major airports. To ensure the same the Authority had involved the stakeholders at various stages and considered the views expressed by them in developing its approach.
- 4.67.** The Authority however noted that in this context, the term private sector investment needs to be understood. Incentivizing or attracting private sector investment of an amount may be assigned a meaning that either the private parties should be investing the target amount of money as equity or should arrange for finances from banks and financial institutions in private sector as well as FDI, if any, for this amount.
- 4.68.** In context of HIAL, it was observed that out of the said project cost of Rs. 2,920 crore, HIAL had brought in the equity of Rs. 378 crore, which is about 13% of the said project cost. In comparison to this, the State Government had supported through funding of Rs. 422 crore (Interest Free Loan of Rs. 315 crore and Advanced Development Fund Grant of Rs. 107 crore). Thus it can be seen that while private sector investment is around 13% of the said project cost, the State Government has supported the project through its funding of around 14.5% of the project cost.

ACI view on choice of till

- 4.69.** HIAL had referred to Airports Council International (ACI) communication to the Authority, wherein ACI stated that the conclusions with regard to ICAO Doc 9082 as well as ICAO Doc 9562 in Paras 5.17 -5.32 of the Authority's Order 13/2010-11, are not tenable and require rectification. HIAL stated as under,

"Airports Council International (ACI), Montreal while referring to the AERA Order 13/2010-11, has brought to the notice of AERA about the amendment done to the para 30(i) of Doc 9082 and clarified about the neutral position of ICAO on the matter of regulatory till and stated that the conclusions with regard to ICAO Doc 9082 as well as ICAO Doc 9562

in paras 5.17 -5.32 of the AERA Order 13/2010-11, are therefore not tenable and require rectification.”

- 4.70.** The Authority had noted HIAL submission on the above aspect. The Authority was aware that Airports Council International had in its deliberations taken a view on the Authority’s conclusion on the matter of regulatory till in its Order no 13/ 2010-11. The Authority was also aware that the wordings in the ICAO clauses had been revised in its 9th edition of ICAO 9082 and accordingly ICAO had taken a neutral stand on the issue of regulatory till to be adopted.

UK competition commission on till

- 4.71.** HIAL had referred to UK’s Competition Commission’s conclusion that ICAO neither suggested nor precluded a single till or a dual till approach. HIAL’s view on this issue, as presented to the Authority, is reproduced under,

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

The Competition Commission (CC), in drawing its conclusions on this issue, has assessed whether “the dual till approach could be regarded as consistent with international obligations, guidelines and practice”.

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

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

“The ICAO has said that there should be flexibility in applying either the single till or dual till approach.

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

- 4.72.** The Authority had carefully examined the material furnished by HIAL with regard to the Competition Commission’s observation mentioned above. HIAL had pointed out that the Competition Commission has assessed whether “the dual till approach

could be regarded as consistent with international obligations, guidelines and practice". The Authority concluded that Competition Commission had mentioned the flexibility in applying either the single till or dual till as per ICAO. It however also noted that HIAL had refrained from pointing out the recommendation of Competition Commission to the Civil Aviation Authority with respect to adoption of single till in economic regulation of UK airports like Heathrow, Gatwick and Stansted. After analysis, the Competition Commission did not accept the proposal of CAA for dual till and recommended single till. The reasons for rejecting CAA's proposal of dual till and recommending single till were summarized by Competition Commission UK as under¹:

"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).

¹ "REPORT BY THE COMPETITION COMMISSION - NOVEMBER 2002", BAA plc: a report on the economic regulation of the London airports companies (Heathrow Airport Ltd, Gatwick Airport Ltd and Stansted Airport Ltd) CC UK ((see Para 2.223 of Chapter 2 "Conclusions") at url: <http://www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=1322>

(c) The dual till could improve the efficient utilization of capacity, but the benefits are unlikely to be more than marginal even at Heathrow, where they would not occur 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).²

(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).”

4.73. The CAA accepted this recommendation and proceeded to determine the relevant price cap under single till. Thereafter in the subsequent control period Q5, CAA did not reopen this issue and continued 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

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

*discussion and analysis of the issue at the last (Q4) review and the resulting conclusions, mitigated against re-opening 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)."*

- 4.74. The Authority further noted 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) decided to continue with single till.
- 4.75. It would thus be clear that the Competition Commission, UK as well as the CAA UK found single till approach as consistent with its regulatory objectives. The reasons advanced by the Competition Commission UK are, 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 HIAL was estimated at approximately Rs. 968 crore (calculated as the sum of revenue to be recovered from UDF for the balance years in the current Control Period)
- 4.76. The Government of India had consistently maintained that the ultimate objective of economic regulation of airports should be anchored to the passengers and cargo facility users. For e.g. in its affidavit before AERAT, it had clearly mentioned that *"The ultimate objective should be to reduce burden on end users (passengers). The*

Government also referred to its reaction to AERA's White Paper on 22.12.2009 namely that the adoption of a specific "till" methodology should be airport specific, keeping in mind the contractual obligations (if any), socio-economic objectives of the Government as in the case of the airports in the north-eastern states and in remote locations (if covered under the ambit of AERA) and other such conditions". While passing its Airport Order of 12.01.2011, the Authority had considered these views of the government appropriately.

- 4.77.** Having regard to the focus on the interest of the passengers and cargo facility users, the Authority considered it appropriate to balance the interests of the airport operator with passengers in such a manner that 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 capital requirements for expansion etc. having been addressed, the charges on the passengers would need to be minimized.

European Union on till

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

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

*"It is necessary to establish a common framework regulating the essential features of airport charges and the way they are set [...]. **Such a framework should be without prejudice to the possibility for a Member State to determine if and to what extent revenues from an airport's commercial activities may be taken into account in establishing airport charges.**" (Emphasis added) .*

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

The above quotation provide evidence that the EU Directive, in coherence with ICAO policies, “does not prescribe the basis on which airport charges should be set, and explicitly leaves open key issues such as the regulatory till”

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

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

International examples and research studies of airports moving to dual till

- 4.80.** HIAL in its presentation had referred to a case study on Aéroports De Paris (ADP). Presenting the findings of the case study, HIAL had submitted that *“World over the fact that single till regulations are not economically efficient, are not cost reflective, provide limited incentive to the operator to increase traffic and does not enable airports to create value over long term and build capacities.”* Findings from the case study, as presented by HIAL to the Authority, are reproduced below:

For the period 2006-10, Single Till principle was used, but for 2011-15 the French Government has allowed “Adjusted Till” principle for tariff regulation with the withdrawal of commercial and real estate diversification activities from regulated scope •Some of the arguments put forward by the authority in its Consultation paper included:

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

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

4.81. The Authority had analysed the points with respect to the ADP experience given by HIAL mentioned above. As a preliminary observation the Authority had noted that ADP has majority holdings of public entities that is not the case at HIAL. According to an article³, quoting the study of Morgan Stanley (2006)⁴, *“the French regulator did not disclose key figures such as the value of the RAB in its 2006 regulatory decision.”* The Competition Commission of UK had also observed that it remains unimpressed by the examples of other dual till airports since according to Competition Commission they cannot be said to be comparable to Heathrow, Gatwick and Stansted. It had stated that it could not find any private airport comparable to Heathrow etc. under dual till. The Authority has also come across an observation in a paper titled “REGULATION OF LARGE AIRPORTS – STATUS QUO AND OPTIONS FOR REFORM” by Hans-Martin NIEMEIER, in a workshop on Airport Regulation Investment & Development of Aviation, Discussion Paper No. 2009-10, May 2009 of OECD and International Transport Forum (ITC), wherein Prof Niemeier has referred to the same study made by Morgan Stanley (2006)⁵ who *“values the ADP in different scenarios between EUR 38.1 and EUR 127.1 per share. The differences are mainly due to different degrees of non-aviation business left out in the till. These differences give a rough idea of the magnitude of the distortions caused by the single till principle.”*

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

⁴ “Aéroports de Paris Attractive Catalysts...But in 2010,” July 31, 2006 London

⁵ “Aéroports de Paris Attractive Catalysts...But in 2010,” July 31, 2006 London

- 4.82.** The Authority does not believe that a move from single till towards dual till should be supported on the ground that this results in higher valuations of the airport. Inasmuch as higher valuations thus obtained have higher passenger charges (in the form of UDF) in the Indian context, the Authority does not find any reason to levy higher charges on the passengers (as would happen as one departs from single till) merely to enhance the valuation of the airport in question. The Authority has also noted the arguments from private airport operators including HIAL that privatization goes hand in hand with adoption of dual till. The Authority remains unpersuaded by this approach. This is because privatization is meant to increase competitiveness and lower costs. To the extent dual till increases the costs directly impinging on the passengers (in the form of higher UDF as compared to Single Till), the argument of private airport operators tantamount to privatization being regarded as a goal in itself. The Authority thus continues to regard focus on the passengers as paramount subject however to grant of fair rate of return to the airport operator. Single Till, in view of the Authority, strikes this balance.
- 4.83.** That apart, the Authority also noted that HIAL had in its appeal before the Appellate Tribunal made a submission for dual till and not “adjusted till”. Its submission before the Authority was also for both single till as well as dual till. The ADP experience mentioned above speaks of “adjusted single till” and not dual till. In dual till, the entire non-aeronautical revenue would remain in the hands of the airport operator that would augment its overall rate of return. Consequently the aeronautical charges (particularly impinging directly on the passengers in the form of UDF) would be higher than what they would be under single till. For example, the Authority had analysed in case of HIAL that the average UDF per passenger under single till with 16% return on equity would be Rs. 558.05/- (which is weighted average of domestic UDF of Rs. 330.49 and international UDF of Rs. 1,306.60 – assuming the existing domestic / international UDF ratio), but under dual till it would be Rs. 1,453.70/- (which is weighted average of domestic UDF of Rs. 845.77 and international UDF of Rs. 3,343.73 –assuming the existing domestic / international UDF ratio) further assuming that both under single till and dual till, the UDF is charged only on embarking passengers as per the provisions of the

Concession Agreement - Schedule 6. The approach of HIAL in proposing UDF on both embarking and dis-embarking passengers as not being in consonance with the provisions of the Concession Agreement is discussed in Para 24.4 below).

4.84. Professor Czerny (2006)⁶, analysed whether price-cap regulation of airports should take the form of single-till or dual-till regulation. The contribution of the paper is to model single- and dual-till regulation, evaluate their welfare implications, and compare them to Ramsey charges. Prof. Czerny concludes that “single-till regulation dominates dual-till regulation at non-congested airports with regard to welfare maximization. However, none of them provides an airport with incentives to implement Ramsey charges”. The abstract of the paper titled “Analysis on Price-cap Regulation of Congested Airports” by Hangjun (Gavin) Yang and Anming Zhang, July 2010 states that *“This paper investigates price-cap regulation of an airport where airport facility (e.g. runway) is congestible and air carriers may be non-atomistic. We show that when the level of airport congestion is low, the single-till price-cap regulation dominates the dual-till price-cap regulation with respect to social welfare maximization. On the other hand, the dual-till regulation performs better than the single-till regulation when airport congestion is significant”*. The Authors note that “As the ownership of airports changes from public to private, the objective of airports will likely become profit maximization instead of social welfare maximization. Price regulations may thus be called upon so as to contain potential market power of an airport, which is a “local monopoly” candidate (e.g. Fu et al. 2006; Basso 2008).⁷

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

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

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

considerable judgment, the congestion can start showing up in-between the Control Period. Once the airport is determined to be congested (and hence regulated as per dual till), it should make necessary investments in airport facilities (presumably from the extra income retained by it through non-aeronautical services that have been kept out of the regulatory till⁸) and would become over time, non-congested airport. Then it will switch back to single till. The Authority does not regard as practicable, such regulatory pendulum from single to dual till and then back to single till for the purposes of welfare maximization.

- 4.86.** This is quite apart from a viewpoint expressed in a submission made by Prof Darryl Biggar, Consulting Economist, ACCC (27th Jan 2011) to the Productivity Commission Australia questioning whether welfare maximization (or minimizing of the dead weight loss) is indeed the sole rationale of economic regulation of airports in various regulatory regimes⁹. Prof. Biggar states;

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

He further argues:

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

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

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

⁹ “WHY REGULATE AIRPORTS? A RE-EXAMINATION OF THE RATIONALE FOR AIRPORT REGULATION”, by Darryl Biggar, Jan 27, 2011.

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

4.87. Whether a congested airport (and assuming that it is regulated on the basis of dual till following the welfare maximizing objective advocated in academic literature) will actually invest in expanding airport facilities has also been questioned in academic literature. For example, Basso (2008)¹⁰ presents a theoretical model in which he shows that deregulation can lead to congested private airports fixing higher prices, while it is unclear as to whether they have greater incentives than a regulated airport to invest in their capacity to alleviate this congestion.¹¹ In this connection, the Authority noted the observations made in a paper (Sept 2008), *“Impacts of Airports on Airline Competition: Focus on Airport Performance and Airport- Airline Vertical Relations”*, by Tae H. OUM, The Air Transport Research Society (ATRS) & Xiaowen FU, Hong Kong Polytechnic University. The authors gave a comprehensive summary of the different strands in academic literature. Their conclusion, however, were interesting. They stated: *“In principle, under the dual-till system, the possible (excess) profits earned by airports from non-aeronautical services can be utilized to expand capacity and improve service quality”*¹². **However, there is no easy answer to how to provide incentives for airports to do so.** (Emphasis added).

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

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

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

¹² This then effectively becomes single till.

concluded (see Para 2.223 of Chapter 2 “Conclusions”) that ¹³ “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).”

4.89. In USA there is a legal framework that mandates that the revenues generated in an airport must be invested in the airport itself and cannot be diverted elsewhere (prohibition on revenue diversion). The Authority understands that similar is the situation in Canada where the airport are managed by *“not for profit, non-share-capital corporate entities”*, that do not pay income tax¹⁴ and are required to invest airport revenues in airport itself (See for example Prof Gillen ¹⁵ *“In the case of larger “national” airports as for example in the Canadian system, the airport authorities are formally treated as “not-for-profit” entities under the corporation act, so that any profits must be reinvested”*). Prof Gillen further observes in the same paper that, *“airport authorities among the Tier One airports levy an airport improvement fee (AIF) as a source of funds for capital investments. The nature of the Canadian model led to a lack of price regulation; first, the not-for-profit model meant all monies must be reinvested and secondly the lack of access to the broader capital market to fund needed investments means there is a need for the AIF”*

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

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

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

¹⁵ “The Regulation of Airports”, by Prof. David Gillen, Working Paper 2007-5, Centre for Transportation Studies (CTS), 2007

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

- 4.91.** The Authority had calculated that the total non-aeronautical revenue accruing to HIAL during the current Control Period was approximately Rs. 912 crore (excluding the Hotel and MRO that have been ring-fenced and hence not taken into account in the exercise of tariff determination but including the duty free revenue share accruing to HIAL as non-aeronautical revenue, duty free shopping being within the terminal building). The non-aeronautical services of duty free shopping were provided by a 100% subsidiary of HIAL. The non-aeronautical service of parking was provided directly by HIAL (through appointment of what can be called an agent (that however is termed as O&M contractor by HIAL) to whom HIAL reimbursed a pre-determined operation and maintenance costs. However the entire revenue from the car parking activity is booked in the accounts of HIAL). All other non-aeronautical services were outsourced to third party concessionaires. The net income (surplus) from non-aeronautical services accruing to HIAL (after accounting for the expenses, depreciation, interest expenses and taxes attributable to non-aeronautical activities) had been worked out at approximately Rs. 430 crore for five years or roughly Rs. 86 crore per year (calculated by broadly assuming a tax paid @ MAT of 20.96% from FY 2012-13 onwards and historical tax paid for FY 2011-12 separately on the non-aeronautical income). Taking the equity base of HIAL at Rs. 378 crore (excluding the contribution of HIAL equity to Hotel and MRO), this was apportioned at 83% equity for aeronautical (approximately Rs. 314 crore) and at 17% equity apportioned for non-aeronautical (approximately Rs. 64 crore). The Authority, under dual till would determine the aeronautical tariffs (including UDF from the passengers) so that the airport operator gets fair rate of return at 16% of his aeronautical equity. Hence the airport operators return on equity from non-aeronautical net income would come to 134% ($=86 \text{ crore} / 64 \text{ crore}$). Hence for HIAL as a standalone entity (refer Para 3.4 above) the return on total equity (under dual till) would be 36.06% ($=16\% * 83\% + 134\% * 17\%$). If HIAL's estimate of fair rate of return on equity of 24% was held admissible, what HIAL was asking, under dual till a total effective rate of return on equity would come at 42.70% ($=24\% *$

83% + 134% * 17%). Whichever way one looked at it, this meant that under dual till the extra amount of Rs. 895/- per passenger (see Para 4.81 above) would be extracted from the passengers only to give the airport operator an **incremental (additional) return on equity** of 20.06% (assuming fair rate of return on equity at 16%) or 18.70% (assuming fair rate of return on equity of 24% as indicated by HIAL). The Authority did not feel that this would be the objective of public policy and in public interest.

- 4.92.** The Authority had been consistently saying that the purpose of extra revenue (over and above what are required to give the airport operator a fair rate of return) must be a priori clear and transparent to all stakeholders, and especially to the passengers on whom will fall the burden of giving the airport operator additional revenue. If it is a public purpose (like capital requirement for airport expansion or improvement of passenger conveniences or service quality), such additional burden may be held justifiable after appropriate stakeholder consultations. This consideration was also in consonance with what had been indicated by HIAL when it said that the airport should have financial robustness for its investment capacity.
- 4.93.** In the Indian context the generation of non-aeronautical revenue was primarily passenger related. The UDF impinged directly on the passengers the Authority considered it as fair that the passengers would be able to derive full benefit of the non-aeronautical revenue subject to fair rate of return to the airport operator as well as requirements of additional investments as mentioned above.
- 4.94.** HIAL submission regarding single till not necessarily leading to lower tariffs stated as under,

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

- 4.95.** HIAL had given some elements that, according to it, influence the prices at the airport. The statement, “one should not conclude that single till leads to lower tariffs”, if put in a logical construct, would mean that “some of the dual till airports have lower tariffs than some single till airports”. This however was not the

hypothesis to be tested. What was to be tested was whether for a **given airport** single till would yield lower charges than dual till. The Authority's calculations in respect of its ad-hoc UDF determination in respect of Ahmedabad and Trivandrum airports indicated that this was so. In the current determination this aspect had also come out very clearly that UDF under dual till was around 80% higher than in single till. Hence to say that for a given airport single till may not lead to lower tariffs did not appear to be borne by facts.

4.96. The Authority had carefully noted the contents of the letter No GHIAL/MOCA/regulatory/2012-13/001 dated 20.04.2013 from Mr. Siddharth Kapoor, CFO and President - Airports. HIAL had stated that *"adoption of till should be based and in consonance with Concession Agreement signed by HIAL with Ministry of Civil Aviation"* and further that *"AERA should 'adopt' dual till in compliance with provisions of Concession Agreement"*. HIAL had also stated that the Authority should *"not deduct the value of land meant for non-aeronautical activities from RAB and also not to consider the revenues generated therefrom while fixing the regulated charges as per Concession Agreement at RGIA, Hyderabad."* The letter had also reproduced various provisions of Concession Agreement as well as other relevant documents and facts in support of HIAL's contention. This had been reiterated by HIAL in its letter date 03.05.2013 (Page 7) wherein HIAL had indicated in its conclusion on till that *"The reading of various provisions of the concession agreement. It can be concluded that a dual till is envisaged in the concession agreement"*.

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

4.97.1. Dual till should be adopted and

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

- 4.98.** The other points mentioned in the letter were substantially similar to those made by HIAL in its presentation and were addressed in the respective building blocks. The Authority had also given financial calculations under both single and dual till.
- 4.99.** The letter from GMR also included a report from NERA Economic Consulting on two issues, namely, (a) ICAO principles of Regulatory Till and (b) land treatment.
- 4.100.** As far as the ICAO Principles of Regulatory Till is concerned, the report of NERA included a table giving different regulatory tills in different countries. Based on this table, NERA had concluded that

“the fact that each state thought having ratified to Chicago Convention have decided to adopt different regulatory regimes conforms the absence of international obligation to preclude or encourage the single till approach rather than the dual till approach or hybrid approach.”

- 4.101.** The Authority had also maintained that ICAO’s position is neutral in so far as regulatory till is concerned. It appeared that NERA had not fully appreciated the Authority’s Order No. 13 of 2010-11 dated 12th January, 2011 regarding its reasoning for adoption of single till. NERA mentioned (in Conclusions- Para 5)

“on the contrary, the AERA’s order of 12th January, 2011 prescribes that the regulatory approach in the major airports in India has to be of single till price cap regulation since according to AERA a single till regime is the solely approach that may be regarded as consistent with ICAO policies and guidelines.”

- 4.102.** NERA had further stated

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

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

respect of single till was only one of the considerations. Finally, the Authority had, in Para 5.26 of its order under reference, referred to the writings of experts in aviation economics and regulation in academic literature in so far as their interpretation of ICAO guidelines was concerned. The Authority had normally indicated that *“though these authorities do not favour dual till approach on considerations indicated in their writings, they appear to be unanimous in the view that ICAO recommends single till”*.

4.104. In paragraph 5.27, the Authority had given examples of the writings of David Gillen, Hans-Martin Niemeier, Rui Cunha Marques, Ana Brochado as well as review of the new European Airport Charges Directions by Andrew Charlton as well as EU Directive, 2009 itself. In fact, the paper by Rui Cunha specifically stated that *“the single till approach is widely used and its main advantages are to minimize the airport charges and to keep with the international recommendations (e.g. ICAO)”*. Based on these numerous opinions, the Authority then concluded in Para 5.32 that *“single till is recommended or supported by ICAO”*. Apart from ICAO, the Authority had addressed a large number of issues on single till which were raised by various stakeholders in response to its consultation paper (see paras 5.33 to 5.135). Finally, the Authority summarized its position under AERA Act giving brief legislative history (para 5.136). Thereafter, it stated in para 5.137 that *“for the reasons aforesaid, the Authority is of the opinion that single till is most appropriate for economic regulation of major airports in India.”*

4.105. From these discussions, the Authority was unable to appreciate the conclusions drawn by NERA that *“according to AERA the single till regime is the solely approach that may be regarded as consistent with ICAO policies and guidelines.”* The Authority had drawn upon and benefitted from the writings of experts in the field as aforesaid. Its conclusions in para 5.137 did not indicate that its adoption of single till was solely on account of ICAO. It appeared that NERA had selectively read the reasons mentioned by the Authority to adopt single till. Its reading of the Authority’s Order thus appeared to be both selective and misinterpreted. Probably this may be on account of the limited remit of NERA regarding ICAO principles and single till.

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

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

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

“The ICAO has said that there should be flexibility in applying either the single or dual till approach. [...] [DfT] also suggested to us that, where appropriate, different treatment at different airports — for example, dual till at congested airports, single till at uncongested airport — would be more consistent with the ICAO’s principle of flexibility.”
(Emphasis added)”

- 4.109.** The Authority noted two important aspects in this provision given by NERA. The first was that according to the Department for Transport, UK, it appeared that the different regulatory tills are suggested to be made applicable for congested and non-congested airports. It also appeared that the Department for Transport considered this treatment to be more consistent with the ICAO principles of flexibility.
- 4.110.** Purely for argument sake, applying this principle in case of Hyderabad could result in following single till, since Hyderabad is a non-congested airport. Secondly, the Competition Commission in its final decision did not appear to agree with this suggestion of Department for Transport and stated that, International practices neither suggested nor precluded a dual till approach. In its report NERA provided evidence that the regulatory approaches, that enforce ICAO principles, may comprise ex post regulation as well as ex ante regulation.
- 4.111.** The Authority had also considered the fact that as against the capacity of 12 million passengers, RGI Airport, Hyderabad had traffic of around 8.25 million. The Competition Commission (Para 2.71 of Chapter 2) has stated that to apply the single till at uncongested airports and the dual till at congested airports would also, as the CAA pointed out, have adverse effects on incentives, encouraging airports to be congested. The Authority was aware that this view was also advocated by Prof. Czerny in his Article “Price-cap regulation of airports: Single Till versus Dual Till” (J. Regul Econ (2006) 30:85-97). According to Prof. Czerny, *“the contribution is to model single till and dual till regulation, evaluate their welfare implications, and compare them to Ramsey Charges. We show that single till regulation dominates dual till regulation at non-congested airports with regard to welfare maximization. However, none of them provides an airport with incentives to implement Ramsey*

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

4.112. Apart from Prof. Czerny, the Authority had also noted a large number of academic literatures, some in support of single till and the others in support of dual till. For example, the Authority noted the observations made in a paper (Sept 2008), *“Impacts of Airports on Airline Competition: Focus on Airport Performance and Airport- Airline Vertical Relations”*, by Tae H. OUM, The Air Transport Research Society (ATRS) & Xiaowen FU, Hong Kong Polytechnic University. The authors gave a comprehensive summary of the different strands in academic literature. Their conclusion, however, were interesting. They stated: *“In principle, under the dual-till system, the possible (excess) profits earned by airports from non-aeronautical services can be utilized to expand capacity and improve service quality¹⁶. However, there is no easy answer to how to provide incentives for airports to do so.”* (Emphasis added) (also see Para 4.115 below for another observation of Profs Oum and Fu).

4.113. Purpose of additional investments required by an airport in support of dual till that allowed the airport operator to retain with it the non-aeronautical revenues was also highlighted by the Association of Private Airport Operators in India (APAO) that consists of the five private airports of India as its members. For example, their Secretary General Mr. Satyen Nair writing in “Cruising Heights, March 2012) stated that:

¹⁶ This then effectively becomes single till.

“The scale of current and forecast demand at many airports clearly indicates a need for increasing levels of investment to maintain and enhance capacity at an appropriate service quality. Airport charges and non-aeronautical revenues are major sources of funds for investment. Airports should be permitted to retain and invest these revenues to finance future up gradation and modernization. Any action to restrict this use of revenues, or to require all commercial revenues to be used solely to reduce current user charges, could conflict with this objective and inhibit the much needed investment....Even if contribution from non-aero revenue is to be taken it is only for airport operations not from other activities like hotel, real estate etc.”

4.114. Similar were the views of ACI on the need for dual till approach (that the revenues from non-aeronautical services are required by the airport operator to enable much needed investments). APAO had also given the US example regarding more number of airports following residuary approach (that is akin to dual till). However it had omitted to mention the other important conditions of the USA airports that they were owned by public authorities, there was ban on revenue diversion of airport revenues (including those arising from the non-aeronautical sources) to other uses and the airlines had a much stronger say in the investment plans of the airport. Hence APAO had read the position in USA selectively to suit its objective.

4.115. The Authority had also maintained that regulatory till is a mechanism and not the underlying objective in itself and the regulatory regime will need to address the issue of timely investments at the airport. Airports under single till regime like Heathrow, Gatwick and Stansted, those in Ireland and South Africa, as well as Brussels, to name a few, had witnessed large investments both under private as well as public ownership. The Authority is mandated to ensure timely investments in airports under the AERA Act and shall discharge this mandate appropriately. Secondly, the Authority did not include the revenue contributions from outside hotels and real estate in the ambit of regulatory till. In fact it was HIAL that had requested to include the revenues from its hotel subsidiary in the single till regulatory submissions. The Authority had removed these revenues in its analysis of

tariff determination under single till approach. Its treatment of land given by the Government of Andhra Pradesh to HIAL airport was separately discussed extensively in Para 10.2 to 10.8 below.

- 4.116.** Finally, Tae H. OUM, & Xiaowen FU in their article “Impacts of Airports on Airline Competition: Focus on Airport Performance and Airport- Airline Vertical Relations” Sept 2008 (See Para 4.112 above) state that

*“Overall, single till regulation appears to be superior to other regimes in terms of setting appropriate prices. **The notion of regulating only the monopoly services (aviation services) is appealing in theory. However, dual-till regulation ignores the economies of scope for airports in providing aviation and concession services jointly. More importantly, dual till regulation does not internalize the demand complementarity between aviation and commercial services.** (Emphasis added) As airlines that bring passengers to the airport may not benefit directly from the concession sales, they may ignore such positive demand externality in their decisions. On the other hand, under a single till regulation, concession revenue may be used to cross subsidize aeronautical charges.”*

- 4.117.** In fact, even for congested airports, the authors further go on to suggest that *“However, the best remedy for capacity utilization may be peak-load pricing, or some sort of congestion pricing of the facilities such as slots, checking counter and bridges etc. The extra revenue generated from such a pricing may be used for capacity investments. In practice, however, such policy changes may be difficult due to influence of vested interests”*. While it is well recognized that private sector capital will not flow unless there are profits to be made and hence profit motive is but natural and should not be eschewed, what is necessary is to determine a reasonable profit and not a framework that gives profits in excess of this reasonable profits.

- 4.118.** The Competition Commission had also noted in its “REPORT BY THE COMPETITION COMMISSION - NOVEMBER 2002”; BAA plc: a report on the economic regulation of

the London airports companies (Heathrow Airport Ltd, Gatwick Airport Ltd and Stansted Airport Ltd) (Para 2.75 infra – argument for dual till) that

“CAA’s basis for proposing the dual till was largely a theoretical one. In addition, during the enquiry we were shown a number of papers by academic authors submitted either on behalf of parties to the enquiry or by the individuals concerned regarding the choice between the single and dual till of economic regulation. All were largely theoretical in nature though different in their approach and focus.”

4.119. The Competition commission had also analysed in its report of Nov 2002 the examples of other international airports on dual till presented before it. It did not appear to have been persuaded by these comparisons. For example, it had noted that Sydney Airport cannot be regarded as providing guidance. It had noted that US airports were required to retain all revenues— aeronautical and non-aeronautical alike—for reinvestment on the airport (See for example, “THEORY AND LAW OF AIRPORT REVENUE DIVERSION” by Paul Stephen Dempsey, Airport Cooperative Research Program, May 2008.) Finally, it concluded that *“we were not presented with a single example of a comparable type of private sector airport operating a full dual till in the way and for the reasons envisaged by the CAA.”* (See Para 2.72, 2.73 and 2.74 of the CC report)

4.120. The Authority had noted that application of regulatory till on the basis of congestion is also impractical. For example, on this basis Hyderabad would be regulated on the basis of single till. As and when traffic increases and the airport tends to become congested, the regulatory till would be required to be shifted purely on the congestion argument to dual till. Under dual till, the airport operator may start getting substantial non-aeronautical income without any binding mechanism to use it for expansion. Again, theoretically, the airport operator may choose not to expand and lead, what is called “the quiet life of Hicks”. On the other hand, a congested airport under dual till after expansion would become non-congested and the regulatory till would need to shift to single till. It is also theoretically arguable that this would result in the airport operator losing the extra non-aeronautical income that he was enjoying under dual till and this may become

a dis-incentive to undertake capacity expansion and become non-congested and may be a perverse incentive to remain congested. These shifts from single till to dual till and vice versa may as well occur within a particular control period. Such pendulum swinging between single and dual is conducive neither to regulatory certainties nor to stability of regulation.

4.121. The Authority, therefore, was not persuaded to base its regulatory approach purely on such theoretical considerations but to comprehensively take into account the nature of the airport, its requirements, passenger conveniences, etc. It thus needed to balance the interests of the airport operator (fair rate of return consistent with the risk profile as well as capital needs for expansion etc.) with minimizing the charges on the passengers (through UDF). Such a balance, in view of the Authority, would be appropriate in the Indian context. This tended to suggest adoption of single till as long as a mechanism can be found to address any specific needs of airport in terms of capital requirements for expansion etc. In Authority's view, such a mechanism can be found which will be consistent with both the reasonable expectations of the airport operator as well as those of airport users.

4.122. The Authority had noted that HIAL, in its letter dated 20.04.2013 to the Hon'ble Minister for Civil Aviation (copy endorsed to the Authority) as well as letter dated 03.05.2013 to the Authority (received on 10.05.2013) had presented a table (on Page 15 of letter dated 20.04.2013 and Page 10 of letter dated 03.05.2013) indicating the countries having single till and dual till. This table was about 9 countries (of which Belgium/Brussels is still on single till and has been so for quite some time). Furthermore the NERA's report attached by HIAL in its letter to Hon'ble Minister for Civil Aviation (Page 4 of the Section, Land Treatment) stated that the Brussels Airport is under single till regulation that will become dual till regulation by 2025 (Royal Decree 21/6/2004). NERA also stated that South African Airports, which were on single till, also included the real estate activities in the regulatory till. Amsterdam Airport was stated to be under dual till however non-aeronautical activities like car parking, shopping, hotel were included in the regulatory till. For easy reference, this table is reproduced below:

Table 7: List of Privatized Airports and their Tills (Except UK Airports-BAA)

Country	Airport	Private Ownership	Till at Privatisation	Till Now
Belgium	Brussels	Yes	Single till. Dual Till gradually	Single till. Dual Till gradually
Denmark	Copenhagen	Yes	No till	Hybrid
Hungary	Budapest Ferihegy	Yes	No till	No till
Italy	Rome	Yes	No Till	Hybrid
	Naples	Yes	No till	
	Venice	Yes	No till	
Malta	Malta Int'l	Yes	Dual Till	Dual Till
Slovak Republic	Bratislava	Yes	N/a	
Australia	Melbourne	Yes	No Till/Dual Till	Unregulated/Dual
	Perth	Yes	No Till/Dual Till	Unregulated/Dual
	Brisbane	Yes	No Till/Dual Till	Unregulated/Dual
	Adelaide	Yes	No Till/Dual Till	Unregulated/Dual
	Sydney	Yes	Unregulated/Dual	Unregulated/Dual
New Zealand	Auckland	Yes	Unregulated/Dual	Unregulated/Dual
	Wellington	Yes	Unregulated/Dual	Unregulated/Dual
Mexico	Cancun	Yes	Dual Till	Dual Till
	Guadalejara	Yes	Dual Till	Dual Till
	Monterrey	Yes	Dual Till	Dual Till
	Mexico City	Yes	No Till/Dual Till	No Till/Dual Till

4.123. The Authority did not believe that this set represented the entire globe. As was pointed out above, different countries had included different elements of non-aeronautical revenue in the regulatory till though calling it as “dual till” (also see Para 4.133 below). At any rate, the regulation in Australia and New Zealand is what is known as “light handed regulation”. It was thus unclear if the airport operators there followed strictly dual till or used some part of the non-aeronautical revenues

towards defraying aeronautical expenses (some kind of hybrid or adjusted single till). It was, therefore, incorrect to call the regulatory till in Australia and New Zealand as dual till unless actual information was available¹⁷. Regulatory till at Bratislava did not appear to be available. Malta may not be considered as comparable with Indian conditions and airports. Hungary was stated to have “No Till”. Hence effectively, the table represented a set of only three countries which, in the Authority’s opinion, was too small to indicate any definitive global preference in support of a particular regulatory till. Airport economic regulation is to be viewed in its totality without cherry picking only on regulatory till in different countries, carefully selected (that have followed dual till), conditions in which may not be similar to those in India.

4.124. Moreover, there have been tendencies elsewhere of a kind of vertical integration between airports and airlines, not seen yet in India. In Frankfurt, the dominant airline, namely, Lufthansa held around 10% share and had a seat on the board. That apart, the majority shares of the Frankfurt airport were in the hands of public authority. Prof Oum and Fu further observe in their article (See Para 4.112 above) that *“terminal 2 of Munich airport is a joint investment by the airport operating company FMG (60%) and Lufthansa (40%), the dominant airline at the airport. Lufthansa had also invested in Frankfurt airport, and held a 29% share of Shanghai Pudong International Airport Cargo Terminal. By 2006, Thai Airways had invested over US\$400 million at the new Bangkok International Airport”*. This was not the situation in India. Again, the short point was that it would be inappropriate to take only one element viz. regulatory till in the entire aviation ecosystem and graft it onto India where the other elements of the ecosystem were quite dissimilar.

4.125. The Authority had also come across tables similar to Table 7 in the writings of academic experts as well as other regulatory orders in this regard. HIAL itself had given another table in its letter dated 03.05.2013 to the Authority (Page 9 thereof) as well as its letter dated 20.04.2013 to the Hon’ble Minister for Civil Aviation (Page

¹⁷ Even the Australian Competition and Consumer Commission (ACCC) that is tasked with “monitoring” the airports, does not appear to have full information as it is not required under the Australian framework.

13 thereof) giving regulatory approaches in selected countries. This table is reproduced below for ready reference:

Table 8: Regulatory Approaches in Selected Countries

Country	Airport	Regulatory Till
Australia	Adelaide, Brisbane, Melbourne, Perth, Sydney	Ex post regulation
Belgium	Brussels	Single till (moving towards dual till)*
Denmark	Copenhagen	Hybrid till
France	Charles de Gaulle, Orly	Single till**
Germany	Frankfurt, Hamburg	Dual till
Germany	Berlin, Cologne-Bonn, Dusseldorf, Hannover, Munich, Stuttgart	Single till
Greece	Athens	Dual till
Hungary	Budapest, Ferihegy	Dual till
Ireland	Dublin	Single till***
Italy	Rome, Milan, Venice	Dual till
Italy	Other Airports	Hybrid till
Malta	Malta International	Dual till
New Zealand	Auckland, Christchurch, Wellington	Ex post regulation
The Netherlands	Amsterdam	Dual till
Portugal	ANA airports	Single till
South Africa	ACSA airports	Single till
Spain	AENA airports	Administrated tariffs
Sweden	Stockholm-Arlanda, Malmo	Single till
United Kingdom	Heathrow, Gatwick, Stansted	Single till****
<p>* No-airport-related (non-airport) real estate activities are excluded from the regulatory till</p> <p>** Activities such as retail, advertising, no airport-related (non-airport) real estate, ground handling and activities carried on by subsidiaries are excluded from the regulatory till</p>		

Country	Airport	Regulatory Till
<p>*** Activities with non-nexus to the airport (AerRianta International, Cork and Shannon airports, International investments, property related to joint ventures) are excluded from the regulatory till</p> <p>**** Some retail activities and real estate pertaining hotels are excluded from the regulatory till</p> <p>Source: NERA analysis</p>		

4.126. This table gives a list of 18 countries of which New Zealand and Australia are stated to have “Ex-Post Regulation”. Leaving aside the differences in economic regulation of airports in these two countries, the Authority understood that basically both of them follow “Light Handed Regulation”. As indicated in Para 4.122 above, the actual regulatory till adopted by each individual airport in Australia needed to be ascertained. As for New Zealand the Authority understood that the Commerce Commission NZ submitted a report to the government indicating whether the airport in question had earned rate of return in excess of what the commerce Commission had felt as reasonable. The Authority had come across an assessment (08.02.2013) of the Commerce Commission NZ. The Commission was required to report to the Ministers of Commerce and Transport on how well information disclosure regulation was promoting the purpose of regulation for each of the regulated airports. The Commerce Commission NZ made its final report regarding Wellington Airport wherein it found that Wellington airport was likely to recover between \$38 million and \$69 million more from consumers between 2012 and 2017 than it needed to make a reasonable return. According to CC NZ, a reasonable return for Wellington Airport was 7.1% to 8.0% but the Wellington airport’s expected return would be 12.3% to 15.2%.

4.127. From the table presented by HIAL it is seen that 6 airports in Germany followed single till while 2 were on dual till. This meant that different airports had found different approach to regulatory till as appropriate (within the same country). Brussels was still on single till (see Para 4.123 above). Apart from that many of the airports on dual till had majority public ownership (for example Frankfurt, AENA –

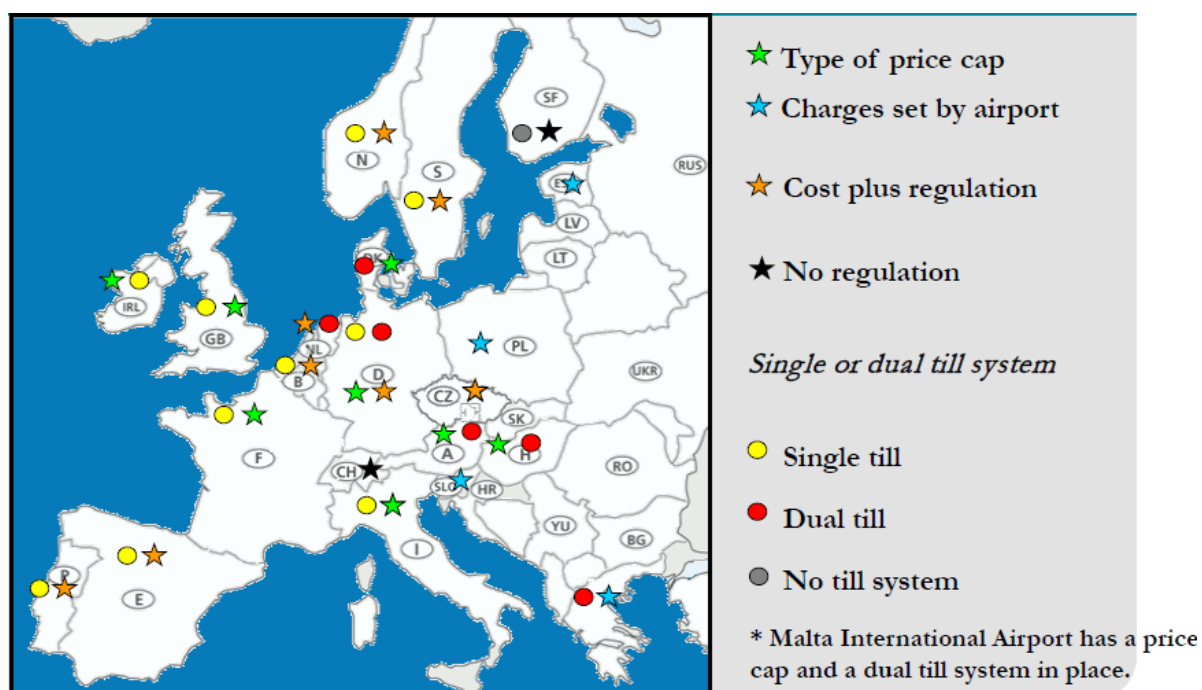
Spain, etc.). From the footnote to this table, it appeared that what HIAL was highlighting was the fact that non-airport related (real estate) activities were excluded from the regulatory till. This was also summarized in another table given by HIAL (Page 15 of its letter dated 20.04.2013 to the Hon'ble Minister for Civil Aviation and Page 14 of its letter dated 03.05.2013), which is reproduced below:

Table 9: Regulatory till and real estate treatment in selected countries

Country	Airport	Regulatory till	Real estate IN/OUT the regulatory till
Australia	Adelaide, Brisbane, Melbourne, Perth, Sydney	Ex-post	OUT
Belgium	Bruxelles	Single till	OUT
Denmark	Copenhagen	Hybrid till	Partially IN*
France	Charles de Gaulle, Orly	Single till	OUT
Germany	Frankfurt, Hamburg	Dual till	OUT
Ireland	Dublin	Single till	IN
Italy	Rome, Milan, Venice	Dual till	OUT
Italy	Other Airports	Hybrid till	Partially IN/OUT**
New Zealand	Auckland, Christchurch, Wellington	Ex-post	OUT
South Africa	ACSA airports	Single till	IN
The Netherlands	Amsterdam	Dual till	OUT(but hotels IN)
United Kingdom	Heathrow, Gatwick, Stansted	Single till	In (but hotels OUT)
<p>(*) A percentage of the difference between revenue and costs related to real estate is included in the regulatory till</p> <p>(**) Real estate with no monopoly condition or locational rent is outside the regulatory till. Otherwise 50% of the commercial margin (difference between revenues and costs) is included in the till</p>			

- 4.128.** The Authority had especially noted that in respect of airports in Italy, *“Real estate with no monopoly condition or locational rent is outside the regulatory till. Otherwise 50% of the commercial margin (difference between revenues and costs) is included in the till”*. This meant that there were instances where 50% of the commercial margin in real estate was taken in the regulatory till. The Authority however generally followed an approach of excluding real estate activity from the regulatory till unless the special circumstances (Lease Agreement or Concession Agreement etc.) warranted otherwise. Its treatment of land in respect to HIAL on account of its understanding of various provisions of the lease deed between HIAL and the GoAP had been discussed separately in Para 10.2 below.
- 4.129.** The Authority provided one graph below as representative of prevalence of different regulatory tills in economic regulation of airports in different regions. The Authority also noted that apart from the regulatory till, the ownership structures of the airports also varied across countries and often enough even within a particular country. The Authority did not believe that taking out only one single element namely the regulatory till was either appropriate or warranted.
- 4.130.** Regarding airport regulation in Europe, Prof Niemeier provided the following graph (Incentive Regulation of Airports – An Economic Assessment Hans-Martin Niemeier, Peter Forsyth, and Jürgen Müller, 5th CRNI conference, 30-11-2012, Brussels)

Figure 1: Type of Regulation at European Airports



4.131. The Authority noted that single till appeared to be prevalent in a large number of countries. For example, the Infrastructure research note by Colonial First State Global Asset Management, April 2010, titled “Flying high: A review of airport regulation in Australia” gives a graph of the regulatory till across the globe¹⁸. It further observed that

“Single-till regulation is still prevalent in Europe – 13 of the top 20 airports in the EU are single-till (accounting for 72% of the combined traffic at these airports).... Airports with dual-till regulation, therefore, are seen as more desirable for airport owners than airports regulated on a single-till basis.

4.132. That the airports and their associations would favour dual till was understandable as the private airport operators’ primary duty is to their shareholders. Hence they would be interested in getting as high a rate of return on equity and if possible, even more than the fair rate. Estimates of what HIAL as a standalone entity would earn on equity were given in Para 4.90 above. However, in the Indian context, this

¹⁸ “Flying High” gives a graph showing the regulatory till approaches across the world. It is seen that a large part of the globe follows single till. Many countries have public ownership of their airports. Canada has “not for profit” companies running Canadian airports.

higher than fair rate of return to the airport operators under dual till was directly at the expense of the passengers through UDF. Looked at differently, dual till approach meant that by the operation of this framework, monies were extracted from the passengers and put in the hands of the airport operator.

4.133. Secondly, care needed to be taken while coming to a definitive conclusion regarding regulatory till in an airport. For example, according to a study by the World Bank (2012) “Airport Economics in Latin America and the Caribbean Benchmarking, Regulation, and Pricing.” By Tomás Serebrisky, most airports in Latin America rely (explicitly in a few cases and implicitly in most) on the single till approach. The Table 1 of this report shows that six countries (viz. Argentina, Bahamas, Bolivia, Brazil, El Salvador, and Guatemala) reported setting tariffs following a single till model. However, the report also notes that the answers provided by regulatory agencies regarding this issue are contradictory. For instance in Argentina, Brazil, El Salvador, and Guatemala, regulatory agencies claim that their tariff-setting mechanism responds to the single till model. However, in a separate question, these four regulatory agencies claim that the costs associated with the provision of aeronautical services are fully recovered through aeronautical tariffs.

4.134. Adoption of dual till either because there are some international examples thereof (where the other attendant conditions and circumstances may be quite dissimilar from the Indian conditions) or on the basis of some theoretical considerations that may also not be practical in the Indian context was in the opinion of the Authority unwarranted especially when it increased the incidence of charges directly on the passengers (through UDF).

4.135. The Authority had carefully considered the submissions made by HIAL in its letter dated 03.05.2013. It noted that many of these submissions had already been made by HIAL in its letter to the Hon’ble Minister for Civil Aviation dated 20.02.2013. The letter from HIAL also concluded that *“the bifurcation of the charges into two categories, namely, (a) airport charges, that is to say, the regulated charges and (b) other charges; clearly shows that Concession Agreement envisaged a dual till and not a single till.”* In the same vein, the letter also stated that *“since the Concession*

Agreement contemplated a dual till and ICAO left the choice of till to the member states, the provisions of Concession Agreement, which has been signed by the State does not envisage single till, should be adhered to.”

4.136. The Authority was unable to be persuaded to agree with the interpretation put by HIAL as above. It appeared that HIAL had juxtaposed the provision in Concession Agreement regarding what charges were regulated, what charges were not regulated (other charges) and ICAO principles. As had been mentioned in its analysis elsewhere, as far as non-regulation of other charges was concerned, to that extent any provision in the Concession Agreement which is directly repugnant to the provisions of the AERA Act cannot be implemented. At any rate, the Concession Agreement also clearly mentioned the intention of the Govt. to establish an Independent Regulatory Authority (IRA) to regulate certain aspects, as may be determined. Services like Cargo, Ground Handling and Fuel Supply are aeronautical services and thus need to be regulated as required by the AERA Act. Furthermore, mere bifurcation of charges into two categories, namely, regulated charges and other charges, did not imply that Concession Agreement envisaged a dual till. Concession Agreement does not mention anywhere that the revenues arising from such other charges should not be taken into account while determining aeronautical tariffs. Apart from that, the provision in the AERA Act that the Authority shall take into consideration “revenue from services other than aeronautical” clearly gives to the Authority, the legislative policy guidance that it would need to take into account the revenue from non-aeronautical services. As far as ICAO’s position on regulatory till is concerned, it was clear that ICAO left the choice of the till to the member states. The Authority would, therefore, needed to adopt a particular form of regulatory till that according to it best serviced the interests of both the airport operator as well as those of the passengers.

4.137. The letter under reference also indicated some of the alleged advantages of dual till. These alleged advantages, in view of the Authority, were largely illusory. In the Authority’s view, the alleged advantages of dual till appeared to pertain more to the aspects of commercial exploitation of land under real estate development (outside the terminal building), as can be seen from the argument made by HIAL

that initiatives of long-term benefits in non-aeronautical were safeguarded in dual till and it improved economic growth. As indicated above, in the guiding principles, the Authority would not normally bring the real estate in the regulatory ambit unless there were other specific reasons to do so. Comments of the Authority on these points are given below:

4.137.1. Dual Till promotes investment and Dual Till incentivised investment in aero assets as that will mean more passengers: HIAL had itself stated that airports “retain the extra profits on commercial activities generated by additional passengers.” This was precisely the point that had been made by the Authority. As had been calculated by the Authority, under dual till the charges directly impinging on the embarking passenger through UDF were around 156% higher than single till for domestic passengers and also around 156% higher for international passengers (see Table 81). The passengers had paid for the non-aeronautical facilities or services and yet the extra income arising therefrom would go entirely to the airport operator without any express public purpose (like need for expansion) that was known ex-ante and had been put to stakeholders’ consultation. The Authority considered these arrangement iniquitous and not sub-serving interests of the passengers. Once the airport operator is assured of a fair rate of return (that the passengers are ensuring through the revenue top-up charge of UDF), minimising the passenger charges should be the reasonable objective. Secondly, the Authority had also noted that airports under single till - Heathrow, Gatwick, Stansted, South African airports, Brazil, to name only a few, had made significant investments under single till regime.

4.137.2. *Dual till safeguards passenger from developments in Non-Aero:* As has been seen, the dual till implies substantial increase in UDF as compared with single till. Secondly, most of the non-aeronautical activities in the terminal building at HIAL were outsourced and it should also be the concern of the third party concessionaires to generate more non-aero revenue.

4.137.3. *Initiatives of long term benefits in Non-Aero are safeguarded in dual till and it promotes economic growth:* HIAL was free to develop land in excess of the

requirements of the airport to stimulate economic growth. The Authority, in normal course, would not bring such revenues from real estate development into regulatory ambit. Its treatment of revenues/capital receipts to HIAL on account of exploitation of land in excess of airport requirements was on account of the provisions of the Lease Deed signed between the GoAP and HIAL that the land was given to make the airport feasible.

4.137.4. Burden of non-aero costs not there in dual till: The requirement of asset allocation as well as bifurcation of operation and maintenance expenditure between aeronautical and non-aeronautical activities in dual till, taxes to be attributed to aero and non-aero income, in the experience of the Authority, called for a significantly higher regulatory burden as compared to single till approach. Such a bifurcation essentially involved judgement calls that could lead to avoidable litigation, an issue that had also been stressed by the Competition Commission UK in 2002 as well as its proposals (30th April 2013) for Q6. The Authority therefore was unable to agree with HIAL on this account.

4.138. The Authority's approach to economic regulation of airport was that a comprehensive view of economic needs of the airport was to be taken in to account. The Authority had also stressed on the Government's objective of minimizing the charges on passengers (which in the airport tariff determination are the User Development Fee). The Authority had also been of the view that the purpose of retaining non-aeronautical revenue in the hands of the airport operator (which would happen in a dual till scenario and which would enhance the rate of return accruing to the airport operators beyond what can be determined as fair) like airport capacity expansion or improving passenger conveniences should be clearly known ex-ante. This aspect was also highlighted in the academic paper of Oum and Fu referred to in Para 4.124 above wherein they stated *"In principle, under the dual-till system, the possible (excess) profits earned by airports from non-aeronautical services can be utilized to expand capacity and improve service quality"*¹⁹. However, there was no easy answer to how to provide incentives for airports to do so." If this indeed was the purpose (i.e. to make money available for

¹⁹ This then effectively becomes single till.

expansion), then the most appropriate approach to achieve this objective balancing the interests of the airport operator with those of the passengers could be worked out.

4.139. The Authority had also been emphasizing that regulatory till in itself cannot be an objective or an end in itself. In the Authority's view, the regulatory till is only a mechanism or means to achieve given objectives like, capital for expansion, amounts to be spent for passenger conveniences, etc. Moreover, in all the discussions on dual till, the Authority had invariably noticed the advocacy of dual till through arguments with reference to some purpose like, capital needs, strengthening financiability, increasing eligibility for obtaining debt at reasonable terms etc.

4.140. The regulatory approach in other regimes did not mitigate the risks associated with the Airports' commercial operations or Traffic. With the instrumentality of UDF, truing up the elements of Traffic and Non-aeronautical revenue; Cost pass-through of statutory and mandated costs considered by the Authority in its tariff determination as also the concessions given by both the Government of India and Government of Andhra Pradesh, **the risk of the airport has been transferred to the passengers**, who are required to make the airport economically viable, especially through user charges.

4.141. In the concession agreement of Hyderabad Airport, express provision was made for use of UDF for capital expansion. There did not, therefore on this ground, appear any further need to allow non-aeronautical income to remain in the hands of the airport operators (as would happen in dual till) without any attendant purpose attached to it. 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. Successive Government

pronouncements on protecting the interest of passengers and reducing the burden on them are also not in conformity with this.

4.142. The Authority had given its detailed analysis on the various submissions made by HIAL 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 had come to the tentative conclusion that single till did 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 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.

4.143. The Authority, however, noted that the LPH etc. charges had remained the same for the last 12 years (since about 2001) except for a 10% increase granted by the Government in 2009. Hence the Authority felt that the proposal of HIAL to increase the LPH etc. charges was reasonable and therefore it had tentatively proposed in the Consultation Paper No 09/2013-14 to determine the UDF accordingly.

4.144. The Authority had summarised its analysis regards both single and dual till in the Consultation Paper No 09/2013-14 as under:

4.144.1. The Authority's single till approach took 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 was generated by passengers whose contribution through direct charges in the form of UDF to give the airport operator fair rate of return was substantial (over two thirds in HIAL even in single till). The Authority generally did not take into account real estate income in regulatory ambit of single till. Its treatment of real estate income to HIAL was a consequence of the Land Lease Agreement that stated that the land was given to the airport operator to make the project (airport) feasible. As indicated in Para 10.13 below, the Authority had not subtracted from RAB the valuation of land (outside the terminal building) that

HAL had developed (as commercial exploitation of part of land in excess of airport requirements) for the purposes of calculation of RAB in the Consultation Paper No 09/2013-14 dated 21.05.2013.

- 4.144.2. For the given airport, single till resulted in lowest passenger charge. This was much higher in Dual till.
- 4.144.3. As long as fair rate of return was given to the airport operator, he should be indifferent to the regulatory till. In dual till, the airport operator got more than fair rate of return directly at the expense of the passengers. To put it differently, passengers were required to pay higher charges only to enable the airport operator get more than fair rate of return.
- 4.144.4. The Government's declared policy was to minimize passenger charges. This had been made very clear in the Government's Press Release of 16th October, 2012 whereby it proposed to discontinue ADF with effect from 01-01-2013. 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) Mention was also made (Para 4.28 above) wherein the Government had emphasized the ultimate objective to be to reduce the burden on the end user (passengers). Airport Development Fee, at least, was 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 was higher in dual till was an on-going charge without time limit as mentioned above. Single till, therefore was fully in consonance with the Government's publicly declared policy of minimizing the passenger charges. On the other hand, dual till went against the declared policy as above.
- 4.144.5. ICAO is neutral on the regulatory till. European Union also in its recent Directive (2009) is also neutral on the regulatory till to be adopted by its member states.

4.144.6. Different countries in the world present different regulatory tills. Hence different countries 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.

4.144.7. 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 and intent in introducing this clause clearly shows that both the Government 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 was also consistent with the professed Government objective of minimizing the passenger charges.

4.144.8. The Legislature has also given the policy guidance to the Authority that it should also take into consideration, *“the capital expenditure incurred and timely investment in improvement of airport facilities”*, while determining the tariffs of the aeronautical services. The Authority was, therefore, conscious of this legislative requirement. The Authority, therefore, for the express purpose of making funds available for capital expenditure or timely investment, may require non-aeronautical revenues to remain in the hands of the airport operator so that the extra amount available with the airport operator can be utilized for capital expenditure. While doing so, the Authority needed to keep in view that the passengers were required to pay for the timely investments in such a determination and that this gave the airport operator more than fair rate of return. As and when such a situation develops, the Authority would put for stakeholders’ consultation appropriate treatment of the non-aeronautical revenues retained by the airport operator for capital needs for expansion, passenger conveniences etc.

4.145. The Authority thus had proposed in the Consultation Paper No 09/2013-14 dated 21.05.2013 to adopt single till for RGI Airport, Hyderabad on account of these considerations.

c Stakeholder Comments on Consideration of dual till in respect of RGI Airport, Hyderabad

4.146. Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the tentative proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its Consultation Paper No 09/2013-14 dated 21.05.2013. Stakeholders have also commented on Consideration of dual till in respect of RGI Airport, Hyderabad. These comments are presented below:

4.147. IATA has stated as under,

“IATA is fully supportive of AERA’s proposal to determine aeronautical tariffs at RGI Airport, Hyderabad under single till. AERA had arrived at its conclusion after having gone through a comprehensive study and extensive consultation that the most appropriate approach in the context of India that best protects the interests of passengers is the single till approach and this should be used for regulation of tariffs at HYD.”

4.148. 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

“FIA welcomes Authority’s proposal to determine the tariff on Single Till model. However, in order to fully appreciate the merits of Single Till model, it is imperative that HIAL’s income from all the sources including its dividend from its subsidiaries is included to cross-subsidize the aeronautical tariff. This is in line with Guideline No. 5-6.2 of the AERA’s Guidelines. It is to be noted that TDSAT’s Judgment dated 30.08.2007 on which HIAL has been placing reliance from time to time to contend that dividend receivable by an utility should not be included, has been set aside by Hon’ble Supreme Court in the case of Union of India vs. Association of Unified Telecom Service Operators reported as (2011) 10 SCC 543.

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) Para 4.2 of AERA Guidelines recognizes Single Till approach which sets out the following components on the basis of which Aggregate Revenue Requirement ("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 (issued in January 2011) has held that "Single Till is most appropriate for the economic regulation of major airports in India".

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. HIAL's approach of Dual Till deserves to be discarded."

4.149. FIA further stated that Authority has strongly made a case in favor of the determination of tariff on the basis of Single Till.

"In the Single Till Order, Authority has strongly made a case in favor of the determination of tariff on the basis of 'Single Till'. Under the Single Till basis, airport charges/aeronautical tariff are set with reference to the net costs of running the airport, taking into account other revenues arising at the airport i.e. non-aeronautical revenues.

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.

The Authority in its AERA Guidelines (para 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) SCC 603 (Annexure F-6: PTC vs. CERC reported as (2010) 4 SCC 603(Paragraph 58 to 64 at page 639 to 641)) wherein it is specifically stated that regulation under an Act, as a part of regulatory framework, intervenes and even overrides the existing contracts between the regulated entities inasmuch as it casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulations."

4.150. FIA further stated that

"The fundamental reasoning behind 'Single Till' approach is that if the consumers/passengers are offered cheaper air-fares, the volume of passengers is bound to increase leading to more foot-fall and probability of higher non-aeronautical revenue. The benefit of such non aeronautical revenue should be passed on to consumers and that can be assured only by way of lower aeronautical charges. It is a productive chain reaction which needs to be taken into account by the Authority.

FIA therefore submits as under:

(a) Single Till Model ought to be applied to ALL airports regulated by the Authority regardless of whether it is a public or private airport or

works under the PPP model and in spite of the 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."

4.151. Further, ACI stated that it believes that the dual till principle is the most economically sound argument in the regulatory till debate. The main arguments put forward by ACI in support of dual till are:

“

- *Regulation should be applied only to those areas of airport activity where there is the potential for excess market power. This is not the case in regards to non-aeronautical revenues, where airport can face competition from a wide of alternative providers (e.g., “high street” shops and restaurants for retail and food & beverage, third party parking providers near airports, etc.)*
- *Niemeier (2009) argues that it is passenger spending and not airlines that create non-aeronautical revenues and therefore the airlines have no automatic entitlement to benefit from these revenues.¹ Furthermore, while dual till may result in higher aeronautical charges, regulation should not try to regulate profits directly as this reduces incentives for cost savings from which the airlines also gain, especially in the long run.*
- *Starkie (2001) argues that dual till significantly reduces the likelihood that airports will exploit any market power they may have, as airports will be incentivised to keep aeronautical charges lower in order to maximise unregulated commercial revenues*
- *Dual till pricing increases incentives to invest in airport facilities, thereby encouraging investment and increasing capacity. Under single till, any gains in non-aeronautical revenues flow through to reductions in aeronautical charges. Therefore, airports have little*

incentive to invest in capacity either to increase traffic (as aeronautical investment would do) or increase non-aeronautical revenues (through investment in commercial capacity). Dual till avoids this distortion. However, the UK Competition Commission considered the application of dual till for regulated London airports (Heathrow, Gatwick and Stansted), and determined that there was no evidence of under-investment that resulted due to the single till method applied to the London airports. The Commission also stated that it was unclear whether dual till would lead to better aeronautical investment in the future. In their view, dual till could be inferior to single till, unduly favouring commercial investment where financial constraints exist. Starkie (2002) criticised the logic of the Competition Commission decision, as well as its failure to fully consider congestion issues at the London airports

- *Another limitation of the single till approach is that aeronautical charges are not set according to economic principles when there are congested conditions. This can increase congestion at an airport that is nearing capacity. Since aeronautical fees are reduced by net non-aeronautical revenues, the prices charged to airline users for landing and the use of the terminal are lower than their economic and social costs. Starkie and Yarrow (2001) argue that single till exacerbates this problem of stimulating more congestion - as greater numbers of passengers are squeezed into congested facilities, commercial revenues will rise, resulting in further declines in aeronautical fees (all else being equal), which encourages more airline service to the now lower priced airport. So under conditions whereby rising charges should be required in order to ration capacity and incentivise investment, the exact opposite occurs. Thus, dual till is preferable at airports under conditions of congestion. Yang and Zhang (2011) also argues that*

dual till regulation yields higher welfare at significantly congested airports.

- *The additional income from non-aeronautical revenue is essential for favourable credit ratings and the airport's ability to attract investors, private or public (and the associated financing of large infrastructure projects). Without control over these revenues, airports would be considered less attractive investments, reducing their ability to obtain low cost financing. Ultimately, this benefits airlines, as it reduces the costs of capital improvements.*
- *While single till may seem simpler to apply, this is not always the case. Many airports now engage in auxiliary activities not generally used by their air passengers – e.g., the development of office facilities on airport land, or providing services to or making investments in other airports (such as airport management). In these cases there is greater difficulty justifying a benefit to airlines.”*

4.152. ACI also stated as under

“There is no doubt that in terms of overall economic efficiency, dual till regulation has a more positive impact than single till. It is a well-known economic principle that subsidies distort markets and consequently distort investment decisions.

Including non-aeronautical revenues in the cost basis for the calculation of airport charges can constitute an unwarranted subsidy to air carriers from the airport operator. This practice, the “single till,” shifts rents without increasing efficiency; acts like a tax on the supply of airport services and reduces the incentives to develop the non-aeronautical business.

Single till can be contrary to the objectives of cost-relatedness and the “user pays” principle which would require airport charges to cover all of the costs (including quantified and agreed external costs) of the services provided to users.

Non-aeronautical revenues thus can be considered among other sources of funding by the airport operator to finance new investment, to pursue new business opportunities or to remunerate airport stakeholders at the sole discretion of the airport operator.

There should be no requirement to use non-aeronautical revenues to reduce airport user charges although some airports may deem a full or partial use of non-aeronautical revenues to defray aeronautical charges as appropriate or necessary to increase their competitiveness.

Overall the arguments for a dual till carry more weight and seem to prove the principle that regulation should not intervene in workable competitive markets and should be restricted to the monopolistic bottleneck.

ACI's views are shared by highly respected airport economists whose views are unequivocal on the matter: the dual till approach ensures both diligent cost allocation and transparency of costs of the aviation related infrastructure. It therefore encourages cost control while not discouraging the delay or avoidance of investment in new infrastructure.

Single till is more likely to lead to over investment than dual till. Under single till, the artificially stimulated demand resulting from lower charges, leads to more and earlier aeronautical investment. In addition, the distortions implicit in under charging may lead to less efficient types of investment.

Dual till leads to better aeronautical investments because it forces management to look more closely at its airport investment policy and operations to ensure it delivers good performance. Indeed, it cannot assume that any aeronautical problems can be overcome by more effort or investment on the commercial side.

The dual till would enable the airport's allowed cost of capital to relate to its aeronautical activities rather than be a mixture of aeronautical and commercial, and this should make for more accurate assessments.

Also, according to the OECD, the traditional system for setting charges (i.e. the single till), does not really offer many incentives for efficient resource management, as regards either the use of existing infrastructure and capital investment decisions for new infrastructure.

According to Australia's Productivity Commission, the single till is likely to discourage development by the airport of both aeronautical and non-aeronautical services, generating large efficiency losses in the long run. The Productivity Commission goes on to suggest that reversion to a regulated single till in Australia, even on a partial basis, could stifle the risk-taking, innovation and development of the airport site that are regarded as major benefits of privatization."

4.153. ACI also provided empirical evidence in support of dual till presented as under

"Some empirical research has examined the issue of single vs. dual till regulation with following results:

- Bel and Fageda (2010), based on airport charges at 100 airports in Europe, found no statistical difference between the single till and dual till on the overall level of charges.*
- Adler and Liebert (2012) examined the cost efficiency and charges of European and Australian airports over a 10 year period. The analysis found that dual till produced greater cost efficiencies than single till and that dual till results in higher charges at congested airport (than single till) but lower charges at uncongested airports, the latter result supporting the arguments of Starkie (2001) regarding dual till restraining market power.*

The issue of single till vs. dual till continues to generate considerable debate However the empirical evidence suggests that the conception that single till airports are cheaper do not entirely hold true."

4.154. In addition to this, ACI further stated that the state had contemplated a Dual Till regulation of Hyderabad in the concession agreement and stated that *"As such the regulator must respect the concession agreement and adopt a Dual Till form of regulation rather than a single till regulation"*

4.155. ACI also emphasized on ICAO's stance on the till.

"The International Civil Aviation Organization (ICAO) is a United Nations agency responsible for promoting the safe and orderly development of international civil aviation throughout the world. It sets standards and regulations necessary for aviation safety, security, efficiency and regularity, as well as for aviation environmental protection.

ICAO's recommended policies for airport pricing are set out in "ICAO's Policies on Charges for Airports and Air Navigation Services", Document 9082, Ninth Edition, 2012. The document does not recommend that economic regulation of airports be always applied nor does it specify a particular format of regulation. It does state that any such economic regulation (referred to as economic oversight) should match the specific circumstances in each country state, including degree of competition, balance of cost and benefits of oversight and institutional framework, and should be clearly separated from the operation and provision of airport (and air navigation) services. This economic oversight should seek to minimise the risk of market power abuses, ensure transparent and non-discriminatory pricing, encourage cost-effective investment, and balance the interests of passengers and other users with those of the airport (or air navigation provider).

In regards to the setting of airport charges, Document 9082 encourages States to incorporate in their national legislation the four key charging principles of: non-discrimination, cost-relatedness, transparency, and consultation. However, it is neutral as to whether non-aeronautical revenues should subsidize aeronautical charges:

"The cost to be allocated is the full cost of providing the airport and its essential ancillary services, including appropriate amounts for cost of capital and depreciation of assets, as well as the costs of maintenance, operation, management and administration. Consistent with the form

of economic oversight adopted, these costs may be offset by non-aeronautical revenues.” (Page II-1; emphasis added).

In other words, ICAO does not provide a recommendation for the application of single or dual till pricing.”

4.156. ACI concluded the issue of till by stating that *“In case of Hyderabad since the agreement signed with state stipulate a Dual till and the act puts responsibility on the regulator to abide by the concession a Dual Till need to be adopted.”*

4.157. On the issue of regulatory till, APAO stated that the Authority needs to reconsider whether Single till is the most appropriate system for the regulation of RGIA Hyderabad. APAO further 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 RGIA. As identified above, Single Till is neither the system most commonly applied to major private international airports, nor that which is most likely to generate the investment that the Indian aviation sector requires.”

4.158. Further, APAO stated that ICAO policy does not specifically endorse Single Till and leaves the choice of till to the member states based on their local conditions and circumstances. Further, APAO’s view was that it essential for the Authority to ensure that the till applicable to RGIA Hyderabad should be in line with the Concession Agreement which does not seek to regulate the 'Other Charges' nor contemplate any cross subsidization and thus APAO humbly submits that *“Authority's proposition Lo undertake such cross subsidization is not acceptable”*. APAO further stated that

“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 RGIA 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 humbly submits that the Authority's proposition Lo undertake such cross subsidization is not acceptable."

4.159. APAO also commented on the applicability of AERA Act for RGIA Hyderabad and stated that the Act requires the Authority to consider the concession granted by the Central Government while determining the tariffs and that the Act requires the Authority to determine tariff structures for different airports having regard to various considerations including the concession granted by the Central Government. APAO further stated that

"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 RGIA, 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."

- 4.160.** APAO also stated that the Authority is required to take into consideration all the project related agreements as in the case of tariff determination of Delhi and Mumbai Airports. APAO further stated that

"The Authority's contention that, as per the Act, it is required to take into consideration agreements only with the Central Government is contrary to the MoCA's approach which does take into account the provisions of all associated agreements. The Authority also considered all associated agreements in the course of the tariff fixation of Delhi and Mumbai airports.

APAO is of the view that all agreements associated with the concession should be taken into consideration by the Authority for RGIA too."

- 4.161.** APAO also stated that the Authority's interpretation of Planning Commission's view of Choice of till seems a wholly unreasonable and unrealistic assumption and one that APAO believes should be reconsidered. Further, APAO stated as under

"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 and at the same time affords the user, better air connectivity at an affordable price.

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 Chairman both announcing over Rs. 20,000 Crore investment in airports through PPP mechanisms in June 2013.

In addition, given the 'lumpy' nature of Airport CapEx and investment, it is unusual that the Authority has taken the opaque view in the Consultation Paper as stated in 4.6.1.1 that the meaning implied is that the target amount of money is 'invested as equity'. Globally, airport infrastructure investment has been historically based on funding through debt and equity and the policies followed by Indian operators including HIAL, is no different. There is little to no chance that investors will fund airport investments through a majority equity infusion given typical size of investments, especially of the quantum required in India and particularly on greenfield airport projects. This to us seems a wholly unreasonable and unrealistic assumption by the Authority and one that we believe should be reconsidered."

- 4.162.** In addition, APAO also commented on Authority's interpretation of "UK Competition Commission (CC) View on Choice of Till". APAO stated that it may not be appropriate to compare the facts and circumstances in respect of India which is an emerging market, to those of the UK which is in a mature market, in deciding the applicable regulatory approach. APAO further stated that

“Similar to the CC’s observation in 4.7.1.1 above, the circumstances in respect of RGIA would be completely different from the three London airports. The setting up of RGIA in particular was unique because it was the first Greenfield airport which was developed using the PPP model. Accordingly, it may not be appropriate to compare the facts and circumstances in respect of India, which belongs to an emerging market, to those of the UK which is in a mature market, in deciding the applicable regulatory approach. For example, the requirements of India for investment are likely to be greater and the risks for investors greater -both factors which should influence the choice of till. It is also notable, as identified above, that the regulatory arrangements in the UK are under review in ways which may place less emphasis on cost based regulation.”

- 4.163.** APAO was of the strong view that Dual Till approach has found acceptance and applicability globally amongst regulators and thus should be made applicable in case of HIAL also.

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

- 4.164.** On the issue of determination of regulatory till for Hyderabad Airport, AAI stated the factors that should be taken into consideration while determining the till for an airport.

“It is felt that the till method should be determined taking the following factors into consideration:

- i) Economy of the aviation sector.*
- ii) The load/burden on Air passengers.*
- iii) The return to be provided to the operator.*
- iv) Any agreement between G.O.I and the Airport Operator, if methodology is specified in the agreement.*
- v) Exclusivity provision reduces risk in operation/revenue generation.*

vi) Existing Airport closed for Commercial operation in public interest and benefit must accrue to public at large by lowering charges.”

4.165. Further, AAI stated the factors considered by AAI for adoption of single till at AAI airports. These are stated as under

“AAI has been following the principles of Single Till due to following factors:

i) Difficulty in allocation of asset between aero and non aero activity. It is also difficult to classify some assets between ANS and aero activities.

ii) Single till is more simplified and transparent.

iii) It harmonizes the Revenue & Expenditure of Aero and non aero activities avoiding confusion and avoid various assumptions.

iv) It helps to keep the aero and non aero charges lower and thereby helping the passenger and Airlines in the present socio-economic condition of India.

v) It also follows the principles of cross subsidizing the aero charges and development of Airport through non-aero activities.

vi) The rate fixed for aero charges are on cost plus basis.

Previously there was no fixed policy/formulae for determining the Aeronautical charges. The charges were low and stress/incentive was given on non-aeronautical Revenue to make the Airport viable.”

4.166. In the matter of regulatory till, Blue Dart Aviation Ltd. stated that

“As AERA rightly pointed out in the Consultation Paper, as long as fair rate of return is given to Airport Operator, he should be indifferent to regulatory till. Hence as an Airport user, we recommend AERA to determine the aeronautical tariffs under single till to avoid substantial increase in the aeronautical charges. Any increase in aeronautical charges will substantially affect the bottom line of already beleaguered airline companies operating out of HIAL.”

d HIAL's response to Stakeholder Comments on Consideration of dual till in respect of RGI Airport, Hyderabad

4.167. Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 09/2013-14 dated 21.05.2013, the Authority forwarded these comments to HIAL seeking its response to these comments. HIAL has provided responses to the Stakeholders' comments, which are presented below:

4.168. In response to AAI's comments on the Till, HIAL has stated as under:

"The concession agreement is the most sacrosanct based on which all the developments and investments were made.

Concession also predates the AERA Act.

The Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement and not regulates any Other Charges in respect of the facilities and services provided at the Airport nor using the revenue therefrom to subsidize the Aero Charges.

So, Till envisaged in the Concession Agreement is Dual Till and we earnestly request the Authority to abide by the Concession Agreement"

4.169. Further, in response to AAI's comments on the factors due to which it has been following the Principles of Single Till, HIAL has stated as under:

"The provisions of the Concession Agreement cannot be denied on the grounds that it is difficult to allocate capital expenditure and operating expenditure.

We had presented to Authority at various forums the fact that the privatization and single till do not go hand in hand

Various examples in this regard have also been submitted to Authority."

4.170. In response to ACI's comments on the Form of Regulation, HIAL has stated as under:

"We appreciate the detailed analysis carried by ACI and shall request the Authority to adopt a Dual Till Regulation for GHIAL based on the principles contemplated in concession agreement."

4.171. Further in response to ACI's comments on ICAO's stance, HIAL has stated as under:

"We appreciate the detailed analysis carried by ACI and shall request the Authority to adopt a Dual Till Regulation for GHIAL. This is based on the principles contemplated in concession agreement."

4.172. In response to APAO's comments on Till, HIAL has stated as under:

"We appreciate the views of APAO.

The concession agreements of GHIAL clearly mandates an implied dual Till and the same needs to be adopted for GHIAL."

4.173. Further in response to APAO's comments on ICAO's policy regarding single till regulation, HIAL has stated as under:

"The Authority's earlier adoption of Single Till was based on the inference of ICAO principles supporting a Single Till.

Since the above no more hold true it is earnestly requested that Authority does a rethink on the adoption of Single Till"

4.174. In response to APAO's comments on the Section 13 of the AERA Act, HIAL has stated as under:

"It's earnestly requested that Cargo, ground handling and Fuel should not be regulated by Authority.

The rationale of the same is as under:

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

Section 13 of the AERA Act states as under: "13. Functions of authority- (1) The Authority shall perform the following functions in respect of major airports, namely:-

(a) to determine the tariff for the aeronautical services taking into consideration-

(i) the capital expenditure incurred and timely investment in improvement of airport facilities;

(ii) the service provided, its quality and other relevant factors;

- (iii) the cost for improving efficiency;*
- (iv) economic and viable operation of major airports;*
- (v) revenue received from services other than aeronautical services*
- (vi) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise;*
- (vii) any other factor which may be relevant for the purposes of this Act: Provided that different tariff structures may be determined for different airports having regard to all or any of the above considerations specified at sub-clauses (i) to (vii)” (...emphasis added)*

A perusal of Section 13 of the AERA Act makes it clear that while determining tariff for aeronautical services, AERA is statutorily obligated to consider the concession offered to the Airport Operators by the Central Government and the other agreements which form an integral and inalienable part of such concession.

Reading of Section 13(1)(a)(vi) indicates that the concession granted by the Central Government has to be read into the AERA Act and all its provisions as well as limitations contained therein have to be considered by AERA while determining tariff including while deciding which services in a particular case and in terms of the relevant Concession, can be regulated by AERA.

This is further confirmed by a reading of the proviso to Section 13(1)(a) of the AERA Act which 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 the said section. In other words, the AERA Act recognizes that a straightjacket applicability of its provisions to all major airports is not intended and grants flexibility to AERA to determine tariff structures to different airports having regard to various considerations including the concession granted by the Central Government.

Thus, even though the AERA Act empowers AERA to regulate tariff for Aeronautical Service as defined in Section 2(a) of the AERA Act, in case

any concession has already been granted by the Central Government, AERA is statutorily mandated to consider such concession.

In the case of RGIA, since one of the concession granted by the Central Government is that save for the 'Regulated Charges', the GHIAL shall be free without any restriction to determine all Other Charges. Thus, on a reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement, AERA is only empowered to regulate the Regulated Charges as defined in the Concession Agreement (as an exception to the mandate of the Act which is recognized and allowed by the Act itself) and cannot regulate any Other Charges in respect of the facilities and services provided at the Airport including the other Aeronautical Services as defined in Section 2(a) of the AERA Act.

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

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

GoAP:

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

4.175. Further in response to APAO's comments on the Single till approach, HIAL stated that:

"Even the Planning Commission is not in favor of Single Till. We request the Authority to reconsider its stand taken for regulatory till."

4.176. In response to APAO's comments on GMR Hyderabad Airport being a unique project, HIAL has stated as under:

"We appreciate APAO for highlighting the fact that setting up of GHIAL was unique because it was the first Greenfield airport developed under PPP model."

4.177. Further HIAL stated that they are appreciative of APAO's view of Dual till being applicable in the GMR Hyderabad Airport.

4.178. In response to ASSOCHOM's comments on the Investments envisaged by Planning Commission, HIAL has stated as under:

"The investment envisaged by Planning commission could be met only with right kind of incentive to the sector.

Its earnestly requested that the Authority must:

- 1. Allow a Dual Till*
- 2. Allow a return on Equity of 24%*
- 3. Keep Regulating charges as contemplated in concession*
- 4. Keep the incentives given in the concession intact including treatment of land."*

4.179. In response to Blue Dart's comments on issues pertaining to Regulatory Till, HIAL has stated as under:

"A conjoint reading of the following documents i.e. Concession Agreement, State Support Agreement and The Land lease Agreement indicates that the following concessions and assurances (relevant for the present queries) have been granted at the time of the grant of the right/concession to develop the Airport, namely:

(i) Under Clause 10.2 read with Schedule 6 of the Concession Agreement, only Airport Charges defined as the 'Regulated Charges' are to be regulated by the IRA (i.e. AERA).

(ii) Under Clause 10.2.4 of the Concession Agreement, the Regulated Charges shall be approved in consonance with ICAO Policies until the earlier of (a) the date that outstanding Debt in respect of the Initial Phase has been repaid and (b) fifteen (15) years from the Airport Opening Date.

(iii) In view of Clause 10.3 of the Concession Agreement, the GHIAL shall “be free without any restriction” to determine all Other Charges which are levied in respect of all other facilities and services at the Airport.

(iv) The Concession Agreement defines and differentiates between mandatory ‘Airport Activities’ consisting of aeronautical as well as non-aeronautical activities at the Airport and non-mandatory ‘Non-Airport Activities’ which GHIAL is entitled to undertake at the Land (as defined under the Land Lease Agreement). The Concession Agreement (in terms of Article 10.2 and 10.3) has classified only two types of charges at RGIA i.e. Regulated Charges and Other Charges for the Airport Activities carried out at the Airport by the GHIAL consisting of both aeronautical as well as non-aeronautical activities. The Concession Agreement also defines “Regulated Charges” under Article 10.2.1 to mean only such Airport Charges as specified in Schedule 6 of the Concession Agreement and thus in terms of Schedule 6, Regulated Charges means the following charges i.e.

(i) Landing Housing and Parking charges,

(ii) Passenger Service Fee and

(iii) User Development Fee.

While Article 10.2 read with Schedule 6 of the Concession Agreement mandates that the IRA i.e. AERA (pursuant to being empowered for the purpose) shall approve/determine the Regulated Charges, Article 10.3 states unequivocally that except the Regulated Charges mentioned in Schedule 6, the GHIAL shall “be free without any restriction” to determine all Other Charges which are levied in respect of the activities defined as the Airport Activities at the Airport. Other Charges have been defined in Article 10.3 to include all facilities and services provided at the Airport except facilities and services in respect of which Regulated Charges are levied. In other words, the Concession

Agreement provides that while AERA shall be empowered to regulate all Regulated Charges mentioned in Schedule 6.”

4.180. In response to FIA’s comments on the issues pertaining to Dual Till, HIAL has stated as under:

“The concession agreement of GHIAL based on which the investment was made allows an implied Dual Till.

A conjoint reading of the following documents i.e. Concession Agreement, State Support Agreement and The Land lease Agreement indicates that the following concessions and assurances (relevant for the present queries) have been granted at the time of the grant of the right/concession to develop the Airport, namely:

(i) Under Clause 10.2 read with Schedule 6 of the Concession Agreement, only Airport Charges defined as the ‘Regulated Charges’ are to be regulated by the IRA (i.e. AERA).

(ii) Under Clause 10.2.4 of the Concession Agreement, the Regulated Charges shall be approved in consonance with ICAO Policies until the earlier of

(a) the date that outstanding Debt in respect of the Initial Phase has been repaid and

(b) fifteen (15) years from the Airport Opening Date.

(iii) In view of Clause 10.3 of the Concession Agreement, the GHIAL shall “be free without any restriction” to determine all Other Charges which are levied in respect of all other facilities and services at the Airport.

(iv) The Concession Agreement defines and differentiates between mandatory ‘Airport Activities’ consisting of aeronautical as well as non-aeronautical activities at the Airport and non-mandatory ‘Non-Airport Activities’ which GHAIL is entitled to undertake at the Land (as defined under the Land Lease Agreement).

The Concession Agreement (in terms of Article 10.2 and 10.3) has classified only two types of charges at RGIA i.e. Regulated Charges and Other Charges for the Airport Activities carried out at the Airport by the GHIAL consisting of both aeronautical as well as non-aeronautical activities. The Concession Agreement also defines “Regulated Charges” under Article 10.2.1 to mean only such Airport Charges as specified in Schedule 6 of the Concession Agreement and thus in terms of Schedule 6, Regulated Charges means the following charges i.e.

- (i) Landing Housing and Parking charges,*
- (ii) Passenger Service Fee and*
- (iii) User Development Fee.*

While Article 10.2 read with Schedule 6 of the Concession Agreement mandates that the IRA i.e. AERA (pursuant to being empowered for the purpose) shall approve/determine the Regulated Charges, Article 10.3 states unequivocally that except the Regulated Charges mentioned in Schedule 6, the GHIAL shall “be free without any restriction” to determine all Other Charges which are levied in respect of the activities defined as the Airport Activities at the Airport. Other Charges have been defined in Article 10.3 to include all facilities and services provided at the Airport except facilities and services in respect of which Regulated Charges are levied. In other words, the Concession Agreement provides that while AERA shall be empowered to regulate all Regulated Charges mentioned in Schedule 6, the power to determine all charges other than Regulated Charges rests with the GHIAL.

Thus, the Concession Agreement makes a clear distinction between charges which require determination by AERA [i.e. Airport Charges (which are Regulated Charges) and those which can be fixed by the GHIAL itself i.e. Other Charges (which are also Airport Charges but are not subject to regulation by AERA). It is pertinent to note that Section

13 of the AERA Act which empowers AERA to determine the tariff of “aeronautical services” in respect of major airports mandates AERA to take various factors into consideration for determining the tariff.

Section 13 of the AERA Act states as under: “13. Functions of authority-

(1) The Authority shall perform the following functions in respect of major airports, namely:-

(a) to determine the tariff for the aeronautical services taking into consideration-

(i) the capital expenditure incurred and timely investment in improvement of airport facilities;

(ii) the service provided, its quality and other relevant factors;

(iii) the cost for improving efficiency;

(iv) economic and viable operation of major airports;

(v) revenue received from services other than aeronautical services

(v) revenue received from services other than the aeronautical services;

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

(vii) any other factor which may be relevant for the purposes of this Act: Provided that different tariff structures may be determined for different airports having regard to all or any of the above considerations specified at sub-clauses (i) to (vii)” (...emphasis added)

A perusal of Section 13 of the AERA Act makes it clear that while determining tariff for aeronautical services, AERA is statutorily obligated to consider the concession offered to the Airport Operators by the Central Government and the other agreements which form an integral and inalienable part of such concession.

Reading of Section 13(1)(a)(vi) indicates that the concession granted by the Central Government has to be read into the AERA Act and all its provisions as well as limitations contained therein have to be considered by AERA while determining tariff including while deciding

which services in a particular case and in terms of the relevant Concession, can be regulated by AERA.

This is further confirmed by a reading of the proviso to Section 13(1)(a) of the AERA Act which 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 the said section. In other words, the AERA Act recognizes that a straightjacket applicability of its provisions to all major airports is not intended and grants flexibility to AERA to determine tariff structures to different airports having regard to various considerations including the concession granted by the Central Government.

Thus, even though the AERA Act empowers AERA to regulate tariff for Aeronautical Service as defined in Section 2(a) of the AERA Act, in case any concession has already been granted by the Central Government, AERA is statutorily mandated to consider such concession.

In the case of RGIA, since one of the concession granted by the Central Government is that save for the ‘Regulated Charges’, the GHIAL shall be free without any restriction to determine all Other Charges. Thus, on a reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement, AERA is only empowered to regulate the Regulated Charges as defined in the Concession Agreement (as an exception to the mandate of the Act which is recognized and allowed by the Act itself) and cannot regulate any Other Charges in respect of the facilities and services provided at the Airport including the other Aeronautical Services as defined in Section 2(a) of the AERA Act.

By adopting a single till AERA is limiting the return which can accrue to airport operator on Non Aeronautical part or on unregulated charges. This is an indirect regulation of activities not mandated under AERA act or concession agreement.”

4.181. In response to FIA's comments on Dual Till, HIAL has stated as under:

GHIAL is allowed a fixed entitlement irrespective of traffic.

GHIAL is mandated to be regulated under DUAL till both under concession as well as under AERA act. The detailed rationale of the same is given below.

However we will also like to reiterate that Single Till leaves no incentive with airport operator to improve its Non Aeronautical revenues. .

Rationale for Adoption of Dual till:

A conjoint reading of the concession documents, indicates that the following concessions and assurances (relevant for the present queries) have been granted at the time of the grant of the right/concession to develop the Airport, namely:

(i) Under Clause 10.2 read with Schedule 6 of the Concession Agreement, only Airport Charges defined as the 'Regulated Charges' are to be regulated by the IRA (i.e. AERA).

(ii) Under Clause 10.2.4 of the Concession Agreement, the Regulated Charges shall be approved in consonance with ICAO Policies until the earlier of (i) the date that outstanding Debt in respect of the Initial Phase has been repaid and (ii) fifteen (15) years from the Airport Opening Date.

(iii) In view of Clause 10.3 of the Concession Agreement, the GHIAL shall "be free without any restriction" to determine all Other Charges which are levied in respect of all other facilities and services at the Airport.

(iv) The Concession Agreement defines and differentiates between mandatory 'Airport Activities' consisting of aeronautical as well as non-aeronautical activities at the Airport and non-mandatory 'Non-Airport Activities' which GHAIL is entitled to undertake at the Land (as defined under the Land Lease Agreement).

1. The Concession Agreement (in terms of Article 10.2 and 10.3) has classified only two types of charges at RGIA i.e. Regulated Charges and

Other Charges for the Airport Activities carried out at the Airport by the GHIAL consisting of both aeronautical as well as non-aeronautical activities. The Concession Agreement also defines “Regulated Charges” under Article 10.2.1 to mean only such Airport Charges as specified in Schedule 6 of the Concession Agreement and thus in terms of Schedule 6, Regulated Charges means the following charges i.e.

(i) Landing Housing and Parking charges,

(ii) Passenger Service Fee and

(iii) User Development Fee. 2. While Article 10.

2 read with Schedule 6 of the Concession Agreement mandates that the IRA i.e. AERA (pursuant to being empowered for the purpose) shall approve/determine the Regulated Charges, Article 10.3 states unequivocally that except the Regulated Charges mentioned in Schedule 6, the GHIAL shall “be free without any restriction” to determine all Other Charges which are levied in respect of the activities defined as the Airport Activities at the Airport. Other Charges have been defined in Article 10.3 to include all facilities and services provided at the Airport except facilities and services in respect of which Regulated Charges are levied. In other words, the Concession Agreement provides that while AERA shall be empowered to regulate all Regulated Charges mentioned in Schedule 6, the power to determine all charges other than Regulated Charges rests with the GHIAL.

3. Thus, the Concession Agreement makes a clear distinction between charges which require determination by AERA [i.e. Airport Charges (which are Regulated Charges) and those which can be fixed by the GHIAL itself i.e. Other Charges (which are also Airport Charges but are not subject to regulation by AERA).

4. It is pertinent to note that Section 13 of the AERA Act which empowers AERA to determine the tariff of “aeronautical services” in respect of major airports mandates AERA to take various factors into

consideration for determining the tariff. A perusal of Section 13 of the AERA Act makes it clear that while determining tariff for aeronautical services, AERA is statutorily obligated to consider the concession offered to the Airport Operators by the Central Government and the other agreements which form an integral and inalienable part of such concession.

Reading of Section 13(1)(a)(vi) indicates that the concession granted by the Central Government has to be read into the AERA Act and all its provisions as well as limitations contained therein have to be considered by AERA while determining tariff including while deciding which services in a particular case and in terms of the relevant Concession, can be regulated by AERA.

This is further confirmed by a reading of the proviso to Section 13(1)(a) of the AERA Act which 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 the said section. In other words, the AERA Act recognizes that a straightjacket applicability of its provisions to all major airports is not intended and grants flexibility to AERA to determine tariff structures to different airports having regard to various considerations including the concession granted by the Central Government.

5. Thus, even though the AERA Act empowers AERA to regulate tariff for Aeronautical Service as defined in Section 2(a) of the AERA Act, in case any concession has already been granted by the Central Government, AERA is statutorily mandated to consider such concession.

In the case of RGIA, since one of the concession granted by the Central Government is that save for the ‘Regulated Charges’, the GHIAL shall be free without any restriction to determine all Other Charges. Thus, on a reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement, AERA is only empowered to

regulate the Regulated Charges as defined in the Concession Agreement (as an exception to the mandate of the Act which is recognized and allowed by the Act itself) and cannot regulate any Other Charges in respect of the facilities and services provided at the Airport including the other Aeronautical Services as defined in Section 2(a) of the AERA Act.

By adopting a single till AERA is limiting the return which can accrue to airport operator on Non Aeronautical part or on unregulated charges. This is an indirect regulation of activities not mandated under AERA act or concession agreement.”

4.182. In response to IATA’s comments on the issues pertaining to Dual Till, HIAL has stated as under:

“The concession agreement as well as the AERA act supports the Dual Till at GHIAL. Following is the basis of the same:

A conjoint reading of the concession documents, indicates that the following concessions and assurances (relevant for the present queries) have been granted at the time of the grant of the right/concession to develop the Airport, namely:

(i) Under Clause 10.2 read with Schedule 6 of the Concession Agreement, only Airport Charges defined as the ‘Regulated Charges’ are to be regulated by the IRA (i.e. AERA).

(ii) Under Clause 10.2.4 of the Concession Agreement, the Regulated Charges shall be approved in consonance with ICAO Policies until the earlier of (i) the date that outstanding Debt in respect of the Initial Phase has been repaid and (ii) fifteen (15) years from the Airport Opening Date.

(iii) In view of Clause 10.3 of the Concession Agreement, the GHIAL shall “be free without any restriction” to determine all Other Charges which are levied in respect of all other facilities and services at the Airport.

(iv) The Concession Agreement defines and differentiates between mandatory 'Airport Activities' consisting of aeronautical as well as non-aeronautical activities at the Airport and non-mandatory 'Non-Airport Activities' which GHAIL is entitled to undertake at the Land (as defined under the Land Lease Agreement).

1. The Concession Agreement (in terms of Article 10.2 and 10.3) has classified only two types of charges at RGIA i.e. Regulated Charges and Other Charges for the Airport Activities carried out at the Airport by the GHIAL consisting of both aeronautical as well as non-aeronautical activities. The Concession Agreement also defines "Regulated Charges" under Article 10.2.1 to mean only such Airport Charges as specified in Schedule 6 of the Concession Agreement and thus in terms of Schedule 6, Regulated Charges means the following charges i.e. (i) Landing Housing and Parking charges, (ii) Passenger Service Fee and (iii) User Development Fee.

2. While Article 10.2 read with Schedule 6 of the Concession Agreement mandates that the IRA i.e. AERA (pursuant to being empowered for the purpose) shall approve/determine the Regulated Charges, Article 10.3 states unequivocally that except the Regulated Charges mentioned in Schedule 6, the GHIAL shall "be free without any restriction" to determine all Other Charges which are levied in respect of the activities defined as the Airport Activities at the Airport. Other Charges have been defined in Article 10.3 to include all facilities and services provided at the Airport except facilities and services in respect of which Regulated Charges are levied. In other words, the Concession Agreement provides that while AERA shall be empowered to regulate all Regulated Charges mentioned in Schedule 6, the power to determine all charges other than Regulated Charges rests with the GHIAL.

3. Thus, the Concession Agreement makes a clear distinction between charges which require determination by AERA [i.e. Airport Charges

(which are Regulated Charges) and those which can be fixed by the GHIAL itself i.e. Other Charges (which are also Airport Charges but are not subject to regulation by AERA).

4. It is pertinent to note that Section 13 of the AERA Act which empowers AERA to determine the tariff of “aeronautical services” in respect of major airports mandates AERA to take various factors into consideration for determining the tariff. A perusal of Section 13 of the AERA Act makes it clear that while determining tariff for aeronautical services, AERA is statutorily obligated to consider the concession offered to the Airport Operators by the Central Government and the other agreements which form an integral and inalienable part of such concession. Reading of Section 13(1)(a)(vi) indicates that the concession granted by the Central Government has to be read into the AERA Act and all its provisions as well as limitations contained therein have to be considered by AERA while determining tariff including while deciding which services in a particular case and in terms of the relevant Concession, can be regulated by AERA.

This is further confirmed by a reading of the proviso to Section 13(1)(a) of the AERA Act which 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 the said section. In other words, the AERA Act recognizes that a straightjacket applicability of its provisions to all major airports is not intended and grants flexibility to AERA to determine tariff structures to different airports having regard to various considerations including the concession granted by the Central Government.

5. Thus, even though the AERA Act empowers AERA to regulate tariff for Aeronautical Service as defined in Section 2(a) of the AERA Act, in case any concession has already been granted by the Central Government, AERA is statutorily mandated to consider such concession.

In the case of RGIA, since one of the concession granted by the Central Government is that save for the 'Regulated Charges', the GHIAL shall be free without any restriction to determine all Other Charges. Thus, on a reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement, AERA is only empowered to regulate the Regulated Charges as defined in the Concession Agreement (as an exception to the mandate of the Act which is recognized and allowed by the Act itself) and cannot regulate any Other Charges in respect of the facilities and services provided at the Airport including the other Aeronautical Services as defined in Section 2(a) of the AERA Act.

By adopting a single till AERA is limiting the return which can accrue to airport operator on Non Aeronautical part or on unregulated charges. This is an indirect regulation of activities not mandated under AERA act or concession agreement."

e HIAL's own comments on Consideration of dual till in respect of RGI Airport, Hyderabad

4.183. HIAL referred to the project documents namely Concession Agreement, State Support Agreement and Land Lease Agreement and stated that a conjoint reading of these agreements indicate that the same jointly and severally constitute the 'Concession' granted and has to be read together as one cannot have an existence independent of the other. HIAL stated as under

"A conjoint reading of the above documents, indicates that the following concessions and assurances (relevant for the present queries) have been granted at the time of the grant of the right/concession to develop the Airport, namely

(i) Under Clause 10.2 read with Schedule 6 of the Concession Agreement, only Airport Charges defined as the 'Regulated Charges' are to be regulated by the IRA (i.e. AERA).

(ii) *Under Clause 10.2.4 of the Concession Agreement, the Regulated Charges shall be approved in consonance with ICAO Policies until the earlier of (i) the date that outstanding Debt in respect of the Initial Phase has been repaid and (ii) fifteen (15) years from the Airport Opening Date.*

(iii) *In view of Clause 10.3 of the Concession Agreement, the GHIAL shall “be free without any restriction” to determine all Other Charges which are levied in respect of all other facilities and services at the Airport.*

(iv) *The Concession Agreement defines and differentiates between mandatory ‘Airport Activities’ consisting of aeronautical as well as non-aeronautical activities at the Airport and non-mandatory ‘Non-Airport Activities’ which GHAIL is entitled to undertake at the Land (as defined under the Land Lease Agreement).”*

4.184. HIAL further stated that Concession Agreement has classified only two types of charges namely Regulated Charges and Other Charges. HIAL stated that

“The Concession Agreement (in terms of Article 10.2 and 10.3) has classified only two types of charges at RGIA i.e. Regulated Charges and Other Charges for the Airport Activities carried out at the Airport by the GHIAL consisting of both aeronautical as well as non-aeronautical activities. The Concession Agreement also defines “Regulated Charges” under Article 10.2.1 to mean only such Airport Charges as specified in Schedule 6 of the Concession Agreement and thus in terms of Schedule 6, Regulated Charges means the following charges i.e.

- (i) Landing Housing and Parking charges,*
- (ii) Passenger Service Fee and*
- (iii) User Development Fee.”*

4.185. HIAL further stated that

“While Article 10.2 read with Schedule 6 of the Concession Agreement mandates that the IRA i.e. AERA (pursuant to being empowered for the purpose) shall approve/determine the Regulated Charges, Article 10.3 states unequivocally that except the Regulated Charges mentioned in Schedule 6, the GHIAL shall “be free without any restriction” to determine all Other Charges which are levied in respect of the activities defined as the Airport Activities at the Airport. Other Charges have been defined in Article 10.3 to include all facilities and services provided at the Airport except facilities and services in respect of which Regulated Charges are levied. In other words, the Concession Agreement provides that while AERA shall be empowered to regulate all Regulated Charges mentioned in Schedule 6, the power to determine all charges other than Regulated Charges rests with the GHIAL.

Thus, the Concession Agreement makes a clear distinction between charges which require determination by AERA [i.e. Airport Charges (which are Regulated Charges) and those which can be fixed by the GHIAL itself i.e. Other Charges (which are also Airport Charges but are not subject to regulation by AERA).”

4.186. Further, HIAL made reference to the AERA Act and stated that

“It is pertinent to note that Section 13 of the AERA Act which empowers AERA to determine the tariff of “aeronautical services” in respect of major airports mandates AERA to take various factors into consideration for determining the tariff.

A perusal of Section 13 of the AERA Act makes it clear that while determining tariff for aeronautical services, AERA is statutorily obligated to consider the concession offered to the Airport Operators by the Central Government and the other agreements which form an integral and inalienable part of such concession.

Reading of Section 13(1)(a)(vi) indicates that the concession granted by the Central Government has to be read into the AERA Act and all its

provisions as well as limitations contained therein have to be considered by AERA while determining tariff including while deciding which services in a particular case and in terms of the relevant Concession, can be regulated by AERA.

This is further confirmed by a reading of the proviso to Section 13(1)(a) of the AERA Act which 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 the said section. In other words, the AERA Act recognizes that a straightjacket applicability of its provisions to all major airports is not intended and grants flexibility to AERA to determine tariff structures to different airports having regard to various considerations including the concession granted by the Central Government.

Thus, even though the AERA Act empowers AERA to regulate tariff for Aeronautical Service as defined in Section 2(a) of the AERA Act, in case any concession has already been granted by the Central Government, AERA is statutorily mandated to consider such concession.

In the case of RGIA, since one of the concession granted by the Central Government is that save for the ‘Regulated Charges’, the GHIAL shall be free without any restriction to determine all Other Charges. Thus, on a reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement, AERA is only empowered to regulate the Regulated Charges as defined in the Concession Agreement (as an exception to the mandate of the Act which is recognized and allowed by the Act itself) and cannot regulate any Other Charges in respect of the facilities and services provided at the Airport including the other Aeronautical Services as defined in Section 2(a) of the AERA Act.

By adopting a single till AERA is limiting the return which can accrue to airport operator on Non Aeronautical part or on unregulated charges.

This is an indirect regulation of activities not mandated under AERA act or concession agreement.”

4.187. HIAL concluded by stating that

“1) Conjoint reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement, it is clear that AERA is only empowered/ mandated to regulate the Regulated Charges as defined in the Concession Agreement and cannot regulate any Other Charges in respect of the facilities and services provided at the Airport.

2) There is a categorical differentiation carved out under the Concession Agreement wherein revenue from Other Charges and Non-Airport Activities, cannot be considered by AERA to offset cost for the purpose of determining the tariff for Regulated Charges.

3) By adopting a single till AERA is limiting the return which can accrue to airport operator on Non Aeronautical part or on unregulated charges. This is an indirect regulation of activities not mandated under AERA act or concession agreement.”

4.188. In response to Para 23.18 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“We had submitted as under in our tariff filing letter dated 18.08.2010:

"It may be noted that our submissions herewith may not be construed as our stated position on the broad regulatory framework and the submissions may be subject to final tariff guidelines notified by AERA."

Since the final guidelines issued by the Authority were not in consonance with the concessions granted to GHIAL under the Concession Agreement, State Support Agreement and Land Lease Agreement, the same were contested before the Hon'ble AERA Appellate Tribunal.

Since, the approval admittedly is on ad-hoc basis, the question of challenging the same did not arise.

It is not out of place to mention that, the Counsel appearing on behalf of the AERA categorically stated that though these guidelines (Direction 5/2010-11) are binding yet it would still be possible to the contesting parties to canvass their views regarding the principles to be applied in determination of the tariff and that the Authority had only indicated its mind prima facie.

Hence, when the guidelines for determination of tariff, are not itself final, the Authority's observation that determination done on adhoc basis is not challenged, will not hold any ground."

4.189. In response to Para 23.20.1 and Para 23.20.2 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

"Many a time, an agreement has to be viewed in letter as well as spirit. The implicit nature of a document also needs to be considered especially in a critical case like this where the concession was the basis of a significant privatization. The agreement does not state that non-aero revenues are to be used to cross subsidize aeronautical revenues. There is a clear mention in concession agreement that only regulated charges were contemplated to be regulated in view of the contemplated monopoly in that segment. The airport operator has freedom to fix other charges and to keep the upsides thereof. Adoption of Single Till means that those upsides are being taken away. This goes against the spirit of concession. We thus request the Authority to consider the concession in totality of its letter and spirit.

The above facts have been confirmed by GoAP who had driven the entire concession process."

4.190. In response to Para 23.20.5 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

"By adopting a single till Authority is restricting the revenue that can accrue to airport operator. This was not envisaged in concession. This indirectly means that Authority is regulating all charges. The

concession Agreement on the contrary contemplates regulation of only Regulated Charges.”

4.191. In response to Para 23.20.6 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“In view of a categorical differentiation craved out under the Concession Agreement between Non-Airport Activities and Airport Activities, in the first place the revenues generated from the Non-Airport Activities as defined under the Concession Agreement cannot be considered by AERA for the purpose of determining the Regulated Charges/ tariff at the RGIA and secondly the Authority can regulate only the Regulated Charges as per the Concession Agreement and cannot take into consideration the revenues generated from other services.

The above is supported by clarification from the GoAP for grant of lease of Land admeasuring 5500 acres to GHIAL as is further clarified by the letters of GoAP dated March 3, 2011 issued to AERA wherein GoAP clearly stated as under:

“Setting up the airport in the Greenfield location of Shamshabad was with the intention of socio-economic development of the region and also overall development of tourism and industrial development of the State. Considering these objectives, the land of 5500 acres was leased to the GHIAL for development of airport as well as non-airport activities to suitably incentivize the airport operator without any reference to target equity IRR.”

It is worthwhile to mention that the concessions granted to GHIAL for the construction, development, operation and maintenance of RGIA include the following:

- a) Concession granted under the Concession Agreement;*
- b) Concession granted under the State Support Agreement dated September 30, 2003;*

c)Concession granted under the Land Lease Agreement dated September 30, 2003.

Further, in absence of any of the above concessions, it would not be possible for GHIAL to fulfil its obligations under the Concession Agreement. Thus, the concession granted to GHIAL includes not only the Concession Agreement but also the State Support Agreement and the Land Lease Agreement executed by the GoAP in favour of GHIAL.

The agreement does not state that non-aero revenues are to be used to cross subsidize aeronautical revenues. There is a clear mention in concession agreement that only regulated charges were contemplated to be regulated, in view of the contemplated monopoly in that segment. The airport operator has freedom to fix other charges and to keep the upsides thereof. Adoption of Single Till means that those upsides are being taken away. This goes against the spirit of concession.

In view of the concession granted and as there is a mandate in the Act to consider the concession granted, the Authority might not adopt single till methodology but need to consider dual till. The concession granted is undoubtedly on dual till and any conclusion contrary to the same will be without any basis.”

4.192. In response to Para 23.20.2 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“We reiterate our submissions made above and rely on the concession granted by the government which concession has to be mandatorily considered by the Authority as per the provisions of the Act.

The Non-Airport Activities as defined in the Concession Agreement are outside the purview of the Airport and hence outside the Regulatory purview as per the provisions of the AERA Act. It is not prudent on the Regulator to mix the two paradigms of entity and role/project. Though GHIAL is one entity through which the two distinct project components of Airport Activities and Non-Airport Activities are being taken up. It is

important that the regulator should not regulate GHIAL on an entity basis but rather separately regulate the Airport component of project only. Secondly the Authority can regulate only the Regulated Charges as per the Concession Agreement and cannot take into consideration the revenues generated from other services”

4.193. Further, it stated that

“We reiterate our submissions made above and further submit that, in view of a categorical differentiation craved out under the Concession Agreement wherein Non-Airport Activities which are being or may be carried out on the excess land, are completely different and unconnected to the Airport business, the revenues generated through the Non-Airport Activities including commercial and real estate activities under the Concession Agreement and Land Lease Agreement, cannot be considered by AERA to offset cost for the purpose of determining the tariff for Regulated Charges.”

4.194. In response to Para 23.20.5 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“We reiterate our submissions made above and further submit that, the bifurcation of the charges into two categories viz.,[a] Airport Charges i.e. the Regulated Charges and [b] Other Charges, clearly shows that the CA envisaged a DUAL till and not a Single Till.

Though there is no explicit methodology provided for determination of the Regulated Charges, the same has to be done by the Authority by adopting a methodology without jeopardising the concession granted to GHIAL. In the interest of and in order to give due consideration of the concessions granted to GHIAL by the Central Government, the Authority may determine the Regulated Charges as mentioned in the schedule 6 of the Concession Agreement by considering Capex, Opex, Depreciation and Tax incurred in respect of activities falling under Regulated Charges as per the Concession Agreement. The Authority

will appreciate that the above methodology will meet the ends of justice.”

4.195. In response to Para 23.23 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“The relevant paragraph from the Concession Agreement was reproduced by GHIAL in order to substantiate the intention of the Government. In case the Government of India had intended to adopt a single till approach, it would not have differentiated between Airport and Non Airport activities. The bifurcation and categorization itself demonstrates that since the Non Airport activities was a prerogative of the airport operator these Non-Airport contracts will be revisited by Government in case it intend to take over such contracts. No such clause was provided in the Concession Agreement in respect of the Airport activities.

This clearly shows the intent of Central Government and substantiates that a free hand is given to GHIAL in respect of Non Airport activities. This also substantiates the fact that a Dual Till was contemplated by the Govt.”

4.196. In response to Para 23.29 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“The Authority had based their approach to single till in their order no. 13 (of 2010-11 dated 12th January 2011) on the basis of ICAO endorsing single till. This is evident from the wording of the order:

5.21. Authority thus notes that ICAO's guidelines speak of "contributions from non-aeronautical revenues accruing from the operation of the airport to its operators". Common reading of these words would indicate that whatever contributions from non-aeronautical revenues accrue to the Airport Operators should be taken into account for determination of aeronautical charges.

5.32. In sum, the Authority has found that single till is recommended or supported by ICAO; that no definitive position for or against any

form of regulatory till is available on this issue in the EU directives; and that expert panel in UK has felt that the choice of regulatory till is best left to the regulator to decide.

However ICAO has brought clarity in their view through amended document 9082

.....

Now contrary to earlier interpretation of Authority, ICAO does not endorse the Single Till regulation as most preferred form of regulation and instead has taken a neutral position. ICAO left till issue to the respective member states to adopt their choice of till based on suitability to local condition. The Authority's earlier adoption of Single Till was based on the inference of ICAO principles supporting a Single Till. Since the above no more hold true it is earnestly requested that Authority does a rethink on the adoption of Single Till

Conclusion:

The Authority's earlier adoption of Single Till was based on the inference of ICAO principles supporting a Single Till. Since the above no more hold true it is earnestly requested that Authority does a rethink on the adoption of Single Till “

4.197. In response to Para 23.34 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“A perusal of Section 13 of the AERA Act makes it clear that while determining tariff for aeronautical services, AERA is required to consider the concession offered to the Airport Operators like the GHIAL by the Central Government and the other agreements which form an integral and inalienable part of such concession.

Reading of Section 13(1)(a)(vi) indicates that the concession granted by the Central Government has to be read into the AERA Act and all its provisions as well as limitations contained therein have to be considered by AERA

This is further confirmed by a reading of the proviso to Section 13(1)(a) of the AERA Act which 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 the said section. In other words, the AERA Act recognizes that a straightjacket applicability of its provisions to all major airports is not intended and grants flexibility to AERA to determine tariff structures to different airports having regard to various considerations including the concession granted by the Central Government.

In fact, while determining the tariff for aeronautical services in respect of Delhi and Mumbai airports respectively, AERA has given due consideration to the concessions granted to the respective airport operators at the said Airports.

Thus, even though the AERA Act empowers AERA to regulate tariff for Aeronautical Service as defined in Section 2(a) of the AERA Act, in case any concession has already been granted by the Central Government, AERA is statutorily mandated to consider such concession.

In the case of RGIA, since one of the concession granted to the GHIAL by the Central Government is that save for the ‘Regulated Charges’, the GHIAL shall be free without any restriction to determine all Other Charges. Thus, on a reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement, AERA is only empowered to regulate the Regulated Charges as defined in the Concession Agreement (as an exception to the mandate of the Act which is recognized and allowed by the Act itself) and cannot regulate any Other Charges nor the revenue from same can be used for cross subsidization of aero charges in respect of the facilities and services provided at the Airport including the other Aeronautical Services as defined in Section 2(a) of the AERA Act.”

4.198. In response to Para 23.35 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“We shall earnestly request Authority to read into the letter and spirit of concession agreement. The scheme of things under AERA act as well as concession clearly goes on to show that a single till was not contemplated.”

4.199. In response to Para 23.37 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“As already explained above even though the AERA Act empowers AERA to regulate tariff for Aeronautical Service as defined in Section 2(a) of the AERA Act, in case any concession has already been granted by the Central Government, AERA is required statutorily mandated to consider such concession. In the case of RGIA, since one of the concession granted to the GHIAL by the Central Government is that save for the ‘Regulated Charges’, the GHIAL shall be free without any restriction to determine all Other Charges.

Reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement, AERA is only empowered to regulate the Regulated Charges as defined in the Concession Agreement (as an exception to the mandate of the Act which is recognized and allowed by the Act itself) and cannot regulate any Other Charges in respect of the facilities and services provided at the Airport including the other Aeronautical Services as defined in Section 2(a) of the AERA Act. Under single till authority is restricting the return on non-aeronautical and thereby indirectly regulating it.”

4.200. Further, in response to Para 23.41 and Para 23.42 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“Any regulatory action has to strike a balance between passenger interest (lowering charges) and the private airport operator interest. The concession agreement was the basis of privatization and taking of investment decisions by the private airport operator. Undermining this will not be conducive to the long term interests of privatization and

aviation sector. We shall earnestly request Authority to ensure that concessions are adhered in the fixation of tariff in letter and spirit.”

4.201. In response to Para 23.40 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“Authority’s current stand will lead to a scenario where investor will be deterred from investing in the airport sector as the concession signed with the sovereign i.e. GOI has not being adhered. Privatization policy of the sovereign government and the current stand of Authority will not go hand in hand. If single till was to be followed no privatization initiative should have been initiated as privatization and single till do not go hand in hand.”

4.202. In response to Para 23.41 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“The actions of MoCA as being referred were within the provisions of concession agreements and none of these actions impacted the return available to airport operator. We shall earnestly request Authority to ensure that concessions are adhered in the fixation of tariff.

The Authority has been mandated to fix charges based on the principles laid down in concession. The provisions of concession or AERA act do not mandate lowering of charges. On the contrary they have contemplated to safeguard the interest of airport operator. The act mandated the Authority to ensure viable operations of airport.”

4.203. In response to Para 23.45, Para 23.45.1 and Para 23.45.2 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“The Authority’s contention raises few critical issues. Authority’s stand suggests that Authority wants the charges to be lower and to achieve this Authority has ignored the obligation cast on it i.e. to ensure economic and viable operation of major airports.

The Revenue share payable by DIAL and MIAL to AAI may not be relevant to the present issue of GHIAL since the Concession

Agreement was signed by MoCA much before the OMDA was signed by AAI with DIAL and MIAL respectively.

As submitted earlier, the Authority is requested to regulate the Regulated Charges at each airport independently by taking into consideration of concessions granted by the government. These concessions can neither be denied nor ignored by the Authority by comparing with other airport concessions. Since, the charges are to be regulated at each major airport by independent assessment of respective airport and by considering the concessions granted to it, any comparison by the Authority with other airports is beyond the mandate of the Act and is unjustified. Making any comparison with a view to deny the benefits under concessions is unjustified.

The Authority may appreciate that the concession granted to GHIAL was the first Greenfield project in India. Revisiting the terms of the concession which were finalized, awarded and executed following an international competitive bidding process, is not justified.”

4.204. In response to Para 23.48 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“The risk profile of AAI airports and GHIAL are different and will have different level of Cost Of equity. AAI airports are govt. owned and will have lower risk. Despite a higher risk associated with GHIAL the Authority has allowed a higher WACC to AAI airports compared to GHIAL. The Authority may also like to consider this in the overall scheme of things.”

4.205. In response to Para 23.50 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“It is earnestly requested that the Authority must determine charges based on principles laid down in concession. Comparison of charges and thereafter deciding the principles violates the concession agreement. The level of service of AAI airports and GHIAL are different and not comparable.”

4.206. In response to Para 23.53.5 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“The concessions granted to GHIAL, is pursuant to an international competitive bidding process. The terms relating to revenue share, the allocation of land , the state support, regulation of only regulated charges with no cross subsidy, 18.33% minimum equity IRR, were all approved through a competitive bidding process and thus attained finality.

Hence, it will not be appropriate to attribute the concessions granted to GHIAL as unjustified. There is no undue enrichment as all of the above is as per the terms of concession.”

4.207. In response to Para 23.58 and Para 23.59 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“MoCA has referred to this methodology in the affidavit filed by it before the Hon’ble Appellate Tribunal. As such this clearly shows the intent of Govt, that single till is not mandated.”

4.208. In response to Para 23.61 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“We appreciate that the Authority has recognised that the ICAO stand of preferring Single Till no more hold true.

Contrary to earlier interpretation of Authority, ICAO does not endorse the Single Till regulation as most preferred form of regulation and instead has taken a neutral position. ICAO left till issue to the respective member states to adopt their choice of till based on suitability to local condition.

The Authority’s earlier adoption of Single Till was based on the inference of ICAO principles supporting a Single Till. Since the above no more hold true it is earnestly requested that Authority may reconsider the adoption of Single Till”

4.209. In response to Para 23.50 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“We have taken a consistent and legitimate stand that the concessions granted to GHIAL should be adhered to by the Authority while determining the Regulated Charges at RGIA. The Authority’s contentions for non-adherence to concession and interpreting the provisions of the concession in a different manner despite a categorical clarification submitted by the GoAP who was the main body in the privatization of the consultation process, is unjustified. It is earnestly requested that the Authority fixed tariff based on provisions of concession agreement”

4.210. In response to Para 23.53.4 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“The privatization of airports was done with an objective of increasing the efficiency of airports. The private players have worked hard to increase the efficiency and revenues at airports. Hence justifying the single till approach due to paucity of non-aero revenues will not be fair to private operators.

Private entrepreneur will work hard only if he has an incentive to keep the upsides generated because of his hard work. The Single till approach does not incentivize development of non-aero revenues.”

4.211. In response to Para 23.63 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“The ‘concession’ granted to GHIAL under the State Support Agreement being inherent to the Concession Agreement is clear from the fact that not only the State Support Agreement predates the Concession Agreement but the same is also recognised under Article 1.1 of the Concession Agreement.

In terms of Clause 7.5 of the Concession Agreement, non-performance by GoAP either under the State Support Agreement or the Land Lease

Agreement has the effect of relieving GHIAL from its obligations under the Concession Agreement.

A perusal of the Recital Clause E of the State Support Agreement which provides that “the Project is feasible only with State Support (as defined hereinafter) of GoAP, and both GoI and GoAP have agreed and accepted that the implementation of the Project and the operation of the Project and its facilities requires extensive and continued support and actions and grant of certain rights and authorities by GoAP which are pre-requisites to the mobilisation of resources (including financial resources) by HIAL and the performance of HIAL’s obligations under the Concession Agreement” clearly shows that both the Concession Agreement and the State Support Agreement are intertwined and the performance of obligations under one of the agreement has a direct bearing on the other.

Thus the minimum return on equity of 18.33% promised under the GO No.130 dated July 26, 2003 issued by GoAP and the State Support Agreement is integral to the concession itself being a fundamental premise of the said concession and cannot be read in isolation or disregarded/ varied once the Parties to the concession have recognised, accepted and acted on the same/ altered their position.

In view of the above, it would not be fair to alter or vary the assurance of 18.33% return on equity granted to GHIAL and the Authority is requested to take this in consideration and provide a return higher than 18.33% on equity.”

4.212. In response to Para 23.69 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“AERA act does not envisage considering the revenues from non-airport activities while setting aero charges. AERA act lay down as under:

“THE AIRPORTS ECONOMIC REGULATORY AUTHORITY OF INDIA ACT, 2008

No. 27 OF 2008

(5th December, 2008)

An Act to provide for the establishment of an Airports Economic Regulatory Authority to regulate tariff and other charges for the aeronautical services rendered at airports and to monitor performance standards of airports and also to establish Appellate Tribunal to adjudicate disputes and dispose of appeals and for matters connected therewith or incidental thereto: “

Airports are defined as:

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

The Act is for regulating charges at “Airports” and as such the regulation of charges is only at airport and the land which is outside airport is outside the purview of Authority. GoAP has also clarified that such a treatment would not lead to desirable outcomes being achieved.”

4.213. In response to Para 23.70 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“The authority is earnestly requested to appreciate the reason or necessity that warranted privatization and involvement of private entrepreneurship. If an entrepreneur works hard he needs to be rewarded and his returns should commensurate with his hard work. If that was not to be there then the earlier running of airports by AAI would meet Authority’s objective. However the Government of India brought in privatization as a conscious decision.

If the airport operator was not to get rewarded for his hard work and a fixed return was to be received by him there is no incentive to develop non-aeronautical activities at airport.”

4.214. In response to Para 23.73 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“The Concession Agreement, Land Lease Agreement and State Support Agreement, constitute the overall concessions granted to GHIAL. The clarification of the lessor i.e. GOAP that the land was given on lease for consideration for both airport and non-airport activities and that no reduction of RAB was envisaged as part of concession, should to be considered by AERA while proceeding with the determination of Regulated Charges.”

4.215. In response to Para 23.81 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“We appreciate that the Authority has recognised that the ICAO stands of preferring Single Till no more hold true. Hence, the earlier contention of the Authority that ICAO mandates single till, needs to be revisited.”

4.216. In response to Para 23.85 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“The Authority may be aware that there is a marked change in stand in UK. UK is moving away from rigid price cap single till to soft touch approach.

GATWICK:

As per CAA

“ the diversity of airline requirements at Gatwick means there could be particular benefits here from airport and airlines working more closely together, following commercial norms seen at non-regulated airports. We therefore welcome Gatwick’s initiative to make commitments to its airlines on price and service quality. However, airport commitments need to be fair and command the confidence of airlines if they are to work. “

As such there is a soft touch regulation on anvil at Gatwick.

STANSTED:

As regards to Stansted the following is the stand of CAA:

- *There are some uncertainties at Stansted. In March 2013, it was sold by BAA to Manchester Airports Group (MAG).*
- *CAA consider that the best approach is to move away from setting a five year fixed price cap, and instead introduce a price monitoring regime.*
- *Over the next five years, the CAA expects prices to fall in real terms at Stansted, and if this does not happen CAA will conduct a full investigation of the airport's position, with the threat of tighter regulation if CAA is not satisfied by its explanation.*

As such there is a clear shift to soft touch regulations as the rigid Single Till price cap has not delivered."

4.217. In response to Para 23.105 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

"As stated earlier, considering the revised clarity on Till brought by ICAO, and the reliance placed by the Authority on the ICAO view to support Single Till it is requested that the Authority may like to revisit its stand in Single till."

4.218. In response to Para 23.116 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

"It will be illogical to privatize an enterprise and still expect the entity to retain all its earnings. This approach is not envisaged and will go against the grain of privatization.

Also if the retention of entire earning leads to a good airport and creation of capacity, the US airports would be on the top of quality ratings. Unfortunately, none of the US airports have any good ranking in ASQ ratings. There is a need to learn from the mistakes and be forward looking. Hyderabad airport has the capacity well ahead of demand and is ranked amongst the top three airports in the world (5-

15 million categories). The good work done by GHIAL deserves appreciation.”

4.219. In response to Para 23.120 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“Some latest empirical research has examined the issue of single vs. dual till regulation with following results:

Bel and Fageda (2010), based on airport charges at 100 airports in Europe, found no statistical difference between the single till and dual till on the overall level of charges.

Adler and Liebert (2012) examined the cost efficiency and charges of European and Australian airports over a 10 year period. The analysis found that dual till produced greater cost efficiencies than single till and that dual till results in higher charges at congested airport (than single till) but lower charges at uncongested airports, the latter result supporting the arguments of Starkie (2001) regarding dual till restraining market power.

The empirical evidence suggests that the conception that single till airports are cheaper do not entirely hold true. State had contemplated a Dual Till regulation of Hyderabad in the concession agreement. As such the regulator must respect the concession agreement and adopt a Dual Till form of regulation rather than a single till regulation.”

4.220. In response to Para 23.139 and Para 23.140 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

“AERA act has not envisaged lowering of charges as objective of AERA. On the contrary there is proviso of: “Economic and viable operation of major airports;” This proviso has rarely been under consideration of Authority. Authority’s concerns like:

“regulatory till is only a mechanism or means to achieve given objectives like, capital for expansion, amounts to be spent for passenger conveniences, etc. “ are well founded and Dual till achieves all these objectives as under:

- *Niemeier (2009): Passenger spending and not airlines that create non-aeronautical revenues and therefore the airlines have no automatic entitlement to benefit from these revenues. Furthermore, while dual till may result in higher aeronautical charges, regulation should not try to regulate profits directly as this reduces incentives for cost savings from which the airlines also gain, especially in the long run.*
- *Starkie (2001) : Dual till significantly reduces the likelihood that airports will exploit any market power they may have, as airports will be incentivised to keep aeronautical charges lower in order to maximise unregulated commercial revenues (airports as two-sided platforms – see Section 2.4).*

Dual till pricing increases incentives to invest in airport facilities. This encourages investment. Under single till, any gains in non-aeronautical revenues flow through to reductions in aeronautical charges. Therefore, airports have little incentive to invest in capacity either to increase traffic (as aeronautical investment would do) or increase non-aeronautical revenues (through investment in commercial capacity). Dual till avoids this distortion.

The additional income from non-aeronautical revenue is essential for favourable credit ratings and the airport's ability to attract investors, private or public (and the associated financing of large infrastructure projects). Without control over these revenues, airports would be considered less attractive investments, reducing their ability to obtain low cost financing. Ultimately, this benefits airline, as it reduces the costs of capital improvements.

As such the desired objective is well achieved under Dual Till."

4.221. In addition to the above, in response to Para 23.61 of the Consultation Paper No. 09/2013-14 dated 21.05.2013, HIAL stated that

"We had pointed out that ICAO has left choice of till to the respective member States. The State in its concession has not mandated regulation of Cargo Ground Handling and Fuel and as such the same cannot be regulated. Govt. of Andhra Pradesh (GoAP) has written to AERA clarifying its position on Till:

Article 10 (3) of the Concession Agreement gives the right to GHIAL to set tariffs for non-airport facilities and services. The concession does not envisage cross subsidy of Non Aeronautical or Non-Airport revenues to defray aeronautical service charges.”

4.222. In addition to the above, HIAL commented on the MoCA’s affidavit before AERAAT as under

“MoCA has filed its reply clarifying its contractual obligations with GHIAL. As per MoCA, the terms of the Concession Agreement with GHIAL has to form a vital consideration and basis for the determination of tariff for aeronautical services at the airport. MoCA in its affidavit to AERAAT has mentioned that it has used Shared/hybrid till for determination of UDF of following airports:

Jaipur,

Amritsar,

Udaipur,

Varanasi,

Mangalore,

Trichy and

Ahmedabad airports,

Similarly a shared till approach has been use for:

Delhi and

Mumbai

The till principles across airports in India stands as under:

So the status of till looks likes this:

Jaipur Shared/Hybrid Till

Amritsar Shared/Hybrid Till

Udaipur Shared/Hybrid Till

Varanasi Shared/Hybrid Till

Mangalore Shared/Hybrid Till

<i>Trichy and</i>	<i>Shared/Hybrid Till</i>
<i>Ahmedabad</i>	<i>Shared/Hybrid Till</i>
<i>Hyderabad</i>	<i>Single Till</i>
<i>Bangalore</i>	<i>Single Till</i>
<i>Delhi</i>	<i>Shared/Hybrid Till</i>
<i>Mumbai</i>	<i>Shared/Hybrid Till</i>

Therefore, it is not logical to assume that Hyderabad Airport, a Greenfield investment, with significantly higher risks, have been privatized and developed on a Single Till basis whereas for major airports in India like Mumbai and Delhi and for smaller airports like Jaipur, Amritsar, Udaipur, Varanasi, Mangalore, Trichy, Visakhapatnam and Ahmedabad, shared till/Hybrid Till is being adopted.”

4.223. In addition to the above, HIAL on the issue of Privatization and till stated as under

“We earlier had submitted evidence to AERA showing that the privatization and single till do not go together. There are no major privatizations in world, which are on single till. UK’s privatization was due to extraneous reasons. We produce the list of the various private airports and its Till for ready reference.

Country	Airport	Private Ownership	None of these airports are under single till
Belgium	Brussels	Yes	
Denmark	Copenhagen	Yes	
Hungary	Budapest	Yes	
	Ferihegy		
Italy	Rome	Yes	
	Naples	Yes	
	Venice	Yes	
Malta	Malta Int’l	Yes	
Slovak Republic	Bratislava	Yes	
Australia	Melbourne	Yes	

Country	Airport	Private Ownership	None of
	Perth	Yes	
	Brisbane	Yes	
	Adelaide	Yes	
	Sydney	Yes	
New Zealand	Auckland	Yes	
	Wellington	Yes	
Mexico	Cancun	Yes	
	Guadalejara	Yes	
	Monterrey	Yes	
	Mexico City	Yes	

”

4.224. Additionally, HIAL stated that Planning Commission estimates around Rs. 65,000 crore of investment in Airport Sector in the 12th Five Year Plan (2012-17). It further stated that

“As such a sum of INR 40,000 Crore is expected from private sector in the 12th Five- Year plan. As explained above the privatization and single till do not go hand in hand.

So, if the single till is adopted, the investment envisaged in 12th Five year plan will be difficult to achieve. The private sector will not be inclined to invest in this sector.”

4.225. Additionally, HIAL stated Dual Till and its advantages

“We shall also like to submit that a dual till is good for an overall development of airport and for maintaining high quality of airport. World over Single Till always is termed as a failure and airports under single till have pathetic quality levels. Some of the benefits of Dual Till are as under:

DUAL till promotes investment:

Dual Till provides stronger investment incentives. If the airport operators undertake investment to expand capacity or to attract new

passengers to the airport, they retain the extra profits on commercial activities generated by these additional passengers.

DUAL till incentivized investment in aero assets as that will mean more passengers:

Fear that airport operators subject to dual till regulation might prioritise commercial activities are not a serious concern since airport operators have much stronger incentives than otherwise to attract new passengers to the airport

DUAL till safeguards passenger from developments in Non-Aero:

Dual Till allows promoting competition in the provision of non-aeronautical services without worrying about how it might affect airport charges to be paid by the airlines. In particular, dual till ensure that a stronger competition in the commercial activities at the airport does not lead to higher airport charges for airline and passenger;

Initiatives of long term benefits in Non-Aero are safeguarded in Dual Till and it promotes economic growth:

While reducing the scope of economic regulation is not necessarily an objective in its own right, it is possible in some cases that removing commercial revenues from the price cap will allow airport operators to take a more long-term or strategic view of their commercial activities. This may result, for example, in new initiatives that might not take place under a single till;

Burden of Non Aero costs not there in DUAL Till:

The fact that, in a Dual Till regime, regulation concerns exclusively costs pertaining to regulated services (while costs and revenues related to commercial activities are outside the regulatory framework), the regulatory burden on both airport and regulator is significantly reduced”

f Authority's Examination of Stakeholder Comments on Consideration of dual till in respect of RGI Airport, Hyderabad

4.226. The Authority has carefully examined the comments of the stakeholders including HIAL on the consideration of dual till in respect of RGI Airport, Hyderabad. The Authority notes the support extended by IATA, Blue Dart and FIA to The Authority's position in the Consultation Paper No 09/2013-14 of considering Single Till for determination of aeronautical tariff in respect of HIAL. APAO, HIAL and ACI have disagreed with the Authority and presented arguments in favour of dual till. 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.

4.227. The Authority had analysed several aspects in its consideration of single till or dual till for determination of aeronautical tariff in respect of HIAL (presented in Paras 4.3 to 4.144 above) and presented its analysis in the Consultation Paper No 09/2013-14 dated 21.05.2013. While the Authority notes that several arguments have been put forward by stakeholders including HIAL in favour of dual till, it also notes that most of these arguments were already considered and addressed by the Authority in the said Consultation Paper. The Authority's analysis of comments submitted by the stakeholders on consideration of dual till is presented below:

4.228. The Authority notes the arguments put forward by ACI in support of dual till. In addition to its own views, ACI has based these arguments on research papers by academicians such as Niemeier, H. M.²⁰ and Starkie, D.²¹ and empirical studies including those by Bel, G. and X. Fageda²² and Adler, N. and V. Liebert²³. Additionally ACI has referred to views of ICAO, OECD and Australia's Productivity Commission on the till method. Based on these references, ACI believes that *"dual till principle is the most economically sound argument in the regulatory till debate."* ACI further stated that the Act puts responsibility on the regulator to abide by the

²⁰ "Regulation of Large Airports", OECD International Transport Forum, 2009

²¹ Reforming UK Airport Regulation", Journal of Transport Economics and Policy 35, 2001, pages 119-135

²² Privatization, regulation and airport pricing: an empirical analysis for Europe", Journal of Regulatory Economics 37 (2), 2010, pages 142-161

²³ Joint Impact of Competition, Ownership Form and Economic Regulation on Airport Performance and Pricing", unpublished research paper

concession, which stipulates a Dual till and thus in case of Hyderabad, Dual Till need to be adopted.

4.229. The Authority has noted almost identical wording in the comments made by HIAL and ACI. As regards ACI's reference to certain arguments made in the research papers of various academicians, the Authority highlights that it has considered several studies and research papers from various academicians including those from Niemeier, Starkie and Fageda in its discussion on the choice of till in its White Paper No. 01/2009-10 dated 22.12.2009, Consultation Paper No. 3/2009-10 dated 26.02.2010 and Order No. 13/2010-11 dated 12.01.2011. The Authority had further made references to the research works by various academicians in its Consultation Paper No 09/2013-14 dated 21.05.2013 while discussing the choice of till. The Authority notes that academic discussions and debates on the matter of choice of till for airports has continued for a long duration and that there has not been a consensus view in any particular direction. In fact this position is also mentioned by ACI in its comments when it states that *"The issue of single till vs. dual till continues to generate considerable debate"*. The Authority feels that these research works, undertaken by respective academicians, analyse specific hypotheses and present the facts and inferences specific to respective contexts. The Authority has come across researches, which indicate preference for Single Till for regulation of airports as well as those which indicate preference for Dual Till. The Authority's choice of single till in its Order No. 13/2010-11 dated 12.01.2011 as well as in its Consultation Paper No 09/2013-14 dated 21.05.2013 has been based not just on the researches but on various other factors including those specific to the Indian context.

4.230. As regards the factors specific to the Indian context, the Authority would like to highlight the following:

4.230.1. 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.

- 4.230.2. The Authority's analysis of the tariff determination (including UDF), that it has made so far, indicates that airport's revenues from UDF bear a very high percentage as compared to airport's revenues from items like LPH and CGF. In case of Hyderabad, for example, HIAL's revenues from UDF are over 200% of HIAL's revenues from LPH plus CGF in Single Till and around 400% in Dual Till.
- 4.230.3. The Planning Commission in its comments to the Authority vide Letter dated 18.01.2010 (Para ii) has supported Single Till.
- 4.230.4. The latest proposals of Civil Aviation Authority for Q6 in respect of Heathrow and Stansted are based on single till approach.
- 4.230.5. The comments of some of the State governments to the Consultation Paper (Govt. of Karnataka vide Letter no IDD 79 DIA 2013 dated 26.08.2013 in response to Consultation Paper No 14/2013-14 dated 26.06.2013), to wit to keep passenger as a focus.
- 4.230.6. MoCA, vide its letter No.AV.2011/003/2009-AD dated 09.03.2010, had given its comments at the stage of this Authority's White Paper No. 01/2009-10 dated 22.12.2009, wherein MoCA stated inter alia that *"...The ultimate objective should be to reduce the burden on the end users (passengers)."* MoCA has also concurred stating that *"Consumer's interest is of paramount importance and it should be kept in view while deciding about the form of regulation."*
- 4.230.7. The AERA Act likewise defines airport users as "any person availing of passenger or cargo facilities at an airport".
- 4.230.8. The Authority's adoption of single till is in consonance with these requirements.
- 4.230.9. The legislative intent has already ruled out dual till, as has been agitated by HIAL before both AERA as well as AERAAT.
- 4.230.10. ICAO is neutral towards regulatory till and European Union has also left the choice of regulatory till to member states though it has required the establishment of an independent regulator.

4.230.11. Airport economic regulation is to be viewed in totality. Examples of certain airports following dual till cannot be relied upon only for the purpose of regulatory till (dual till) since this would amount to deciding only on the one element for the private airport operator and at any rate is legally ruled out.

4.230.12. In its latest communication in the Ministry of Civil Aviation, the Department of Economic Affairs has gone through the various orders and directions of AERA and come to the conclusion that

“.....AERA has also issued Order No. 13/2010-11 dated 12.01.2011 ("Single Till Order") in the matter of 'Regulatory Philosophy and Approach in Economic Regulation of Airport Operators'. In the Single Till Order, AERA has strongly made a case in favor of the determination of tariff on the basis of 'Single Till'. It is pertinent to note that the AERA 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(l)(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; and

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.

It is submitted that the Agreement may provide that Concessionaire may determine Fee as envisaged under Article 20 of the Agreement on Single Till Basis.

.....”

4.230.13. With the preponderance of low cost carriers in the aviation eco-system (the Authority understands that close to 70% of the passengers are catered by the

Low Cost Carriers), it would be necessary to make airport charges as affordable as possible (albeit keeping the interest of the airport operator in getting a fair rate of return consistent with the risk profile into view) which is only achievable in Single Till.

4.230.14. The Authority has also noted that various Departments / Agencies of the State / Central Government have stated lowering of costs / burden on the passengers as the key focus of their initiatives. Some such statements are presented below:

4.230.14.a. 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.”

4.230.14.b. The Government of Maharashtra vide letter No. D. O. No. AAI-2012/C. R. 522/28-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”

4.230.14.c. 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).

4.230.14.d. According to the 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 and single till is in consonance with passenger focus.

4.230.14.e. In a report on *“Private Participation in Infrastructure, Published by Secretariat for Infrastructure, Planning Commission, Government of India”* dated Jan 2010, Deputy Chairman, Planning Commission has 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).

4.230.14.f. The government through its various pronouncements has 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.**

4.231. As regards ACI’s reference to ICAO policies, the Authority has already considered the revised edition of ICAO 9082. The Authority has noted the change in wording of the referred clauses. Based on its reading of the changed wordings, the Authority concludes that ICAO is not favouring any particular form of regulatory till whether single till / dual till. Hence if any inferences are drawn by ACI that ICAO favours dual till, the same is misplaced. Instead ICAO leaves it to the member states to decide the suitable till based on its local conditions. The Authority has considered several relevant factors in coming to its choice of till in context of RGI Airport, Hyderabad.

4.232. The Authority notes ACI’s reference to the views of OECD and Australia’s Productivity Commission to infer that single till does not offer incentives for efficient resource management and is likely to generate large efficiency losses in long run. The Authority has had reference to the views of Australia’s Productivity Commission in its White Paper No. 01/2009-10 dated 22.12.2009, where the Authority had quoted the Commission’s acknowledgement in ‘Review of Price Regulation of Airports Services’, Productivity Commission Inquiry Report, 2006 that “*a desire to sustain and build non-aeronautical revenues is unlikely to be a significant constraint on aeronautical charges*” and that the approach still needed a credible threat of a return to price control. The Authority has adopted other measures to incentivize the efficient investment at airports including ensuring a fair rate of return on the investments made for the airport by the airport operator.

- 4.233.** The Authority notes the arguments by APAO supporting consideration of dual till in respect of HIAL. APAO has referred to ICAO's views, which leave the choice of till with the member states based on their local conditions, and has submitted that the Authority's proposition to undertake the cross-subsidization from non-airport revenues is not acceptable. The Authority has already considered the revised edition in its choice of till in respect of RGI Airport, Hyderabad.
- 4.234.** APAO has differed from the Authority's interpretation of views of Planning Commission on the choice of till as well as its interpretation of views of UK Competition Commission on the same. The Authority understands that according to Planning Commission, loans advanced by financial institutions (in public sector or private sector) to private sector company is regarded as private investment. Similarly if such loans are advanced to a public sector company, these are regarded as public investment. The Authority has also compared the equity investment made by HIAL with the financial support extended by State Government in respect of RGI Airport, Hyderabad noting that the paid-up capital by HIAL is Rs 378 crore, of which 26% namely Rs 98.3 crore is the contribution from State actors like AAI and GoAP. Hence the contribution of private promoters comes to around Rs 280 crore. As against this, financial assistance by GoAP in the form of subvention and interest free loan works out to Rs 422 crore (Para 4.68 above).
- 4.235.** APAO stated that all agreements associated with the concession should be taken into consideration by the Authority for RGI Airport, Hyderabad instead of only the Concession Agreement. Under Section 13 (1)(a) of the AERA Act, the legislature requires the Authority to determine tariff for the aeronautical services taking into consideration various factors, one of which is *"concession offered by the Central Government in any agreement or memorandum of understanding or otherwise;"*. Thus the concession agreement et al of the Central Government are the only ones mentioned in the AERA Act [Section 13 (1)(a)(vi)], as a factor to be considered in determination of aeronautical tariff. As is clear from the references made by the Authority in the Consultation Paper No 09/2013-14 dated 21.05.2013, it has also taken note of other relevant agreements while considering the Tariff Proposal from airport operator.

- 4.236.** AAI has mentioned certain factors, which, in its opinion, should be considered in choice of till. AAI has also presented the factors, based on which it follows Single Till. The Authority would like to point out that AAI had made its submission of Multi-Year Tariff Proposals in respect of all major airports of AAI under Single Till. The Authority has also made its aeronautical tariff determination in respect of Chennai, Kolkata and Guwahati airports based on Single Till approach. The Authority also finds that the factors indicated by AAI for Single Till are quite similar to those that have been considered by the Competition Commission / Civil Aviation Authority of UK in their analyses of regulatory till and recommendations in favour of Single Till. The Authority has considered these factors to come to its choice of Single Till for HIAL.
- 4.237.** As regards HIAL's comments on consideration of dual till, the Authority notes that HIAL has provided certain generic comments in addition to specific para-wise comments to the Consultation Paper No 09/2013-14 dated 21.05.2013. HIAL's references to the covenants of the Concession Agreement and to the AERA Act to infer Dual Till have already been considered and analysed in depth by the Authority in its Consultation Paper No 09/2013-14 dated 21.05.2013 and the Authority finds no new argument by HIAL in its comments. The Authority's analysis of the same is presented in Paras 4.4 to 4.12 above and in Paras 4.21 to 4.30 above.
- 4.238.** HIAL has referred to the Authority's replies to AERAAT, where it had represented that its guidelines (Direction No 5/2010-11) only indicated its mind prima facie. HIAL commented that when these guidelines itself are not final, the Authority's Order determining ad-hoc UDF for Hyderabad airport was an ad-hoc determination and hence question of this being challenged by HIAL did not arise. Based on AERAAT's Order dated 15.02.2013, the Authority objectively analysed both Single Till and Dual Till approaches, considering HIAL's various submissions in this regard and thereafter came to the considered conclusion that Single Till approach is appropriate for tariff determination for HIAL.
- 4.239.** HIAL has reiterated its inferences from the Concession Agreement regarding consideration of non-aeronautical revenues being used for cross-subsidization of aeronautical revenues and requested the Authority to consider the Concession

Agreement in its totality of letter and spirit. The Authority's views on such inferences are presented in detail in Paras 4.22 to 4.30 above and Para 4.50 above. The Authority finds no new arguments in HIAL's comments.

4.240. The Authority notes HIAL's comments that its concessions for the construction, development, operation and maintenance of RGI Airport, Hyderabad include the following:

4.240.1. Concession granted under the Concession Agreement

4.240.2. Concession granted under the State Support Agreement dated 30.09.2003

4.240.3. Concession granted under the Land Lease Agreement dated 30.09.2003

4.241. HIAL has thus requested the Authority to consider all of these agreements. The Authority notes that HIAL has been granted the concession by the Government of India to carry out the development, design, financing, construction, commissioning, maintenance, operation and management of RGI Airport, Hyderabad under the Concession Agreement. The other agreements including State Support Agreement and Land Lease Agreement do not grant concession to HIAL instead extend additional measures / support by the Government of Andhra Pradesh to HIAL primarily to make the airport project feasible. Thus while the Authority is not persuaded to accept that State Support Agreement and Land Lease Agreement are concessions offered by Central Government to HIAL, it has, however, taken note of the covenants of such State agreements, wherever appropriate, for analysis of specific and relevant aspects such as treatment of ADFG (Rs 107 crore), interest free loan (Rs 315 crore) and land.

4.242. The Authority notes HIAL's reference to ICAO policies and its request to the Authority to reconsider adoption of Single Till. The Authority's views on ICAO's stance on till is detailed above in Paras 4.19 and 4.20 above as well as in Paras 4.100 and 4.105 above and, in absence of any new argument, need no reconsideration. The Authority notes HIAL's comment that reading of the AERA Act with Article 10.2 and 10.3 of the Concession Agreement indicates that the Authority is only empowered to regulate the Regulated Charges and cannot regulate any other charges nor the revenue from same can be used for cross-subsidization of aeronautical charges. The Authority has provided its detailed analysis of its remit in

respect of RGI Airport, Hyderabad in Paras 3.61 to 3.63 above. Based on this, the Authority has come to the conclusion that it is expressly mentioned in the Concession Agreement itself that the Authority has the remit to regulate *any* aspect of airport activities. Further the Authority reiterates that it is quite apart from the fact that provisions of an Act (the AERA Act) passed by the Parliament take primacy over covenants of an agreement (even if entered into by the government). Thus the Authority has appropriately considered the covenants of the Concession Agreement in its choice of till and in determination of aeronautical tariff in respect of RGI Airport, Hyderabad.

4.243. As regards HIAL's comment that *"despite the higher risk associated with GHIAL the Authority has a higher WACC to AAI Airports compared to GHIAL"*, the Authority clarifies that it has considered the risks associated with HIAL and those with AAI Airports appropriately and separately and has accordingly considered different fair rates of return for these airports. The riskiness of an airport is separate and distinct from calculation of WACC. If indeed HIAL does consider its airport as having more risk than AAI airport(s), this assessment of risk should have translated into appropriate capital structure with higher proportion of equity (lower gearing) so that the perceived higher risk is not further exacerbated by additional financing risk (that would happen with higher gearing). HIAL's capital structure does not support the assertion that it is riskier than the AAI airports. At any rate, the Authority has followed the same process (viz. CAPM approach) in arriving at the riskiness of the airports in question. The overall WACC for an airport is contingent upon the capital structure of the airport and hence HIAL's contention that the Authority has allowed a higher WACC to AAI Airports compared to HIAL despite the higher risk associated with HIAL is unfounded.

4.244. The Authority has noted HIAL's comment that *"It is earnestly requested that the Authority must determine charges based on principles laid down in concession. Comparison of charges and thereafter deciding the principles violates the concession agreement. The level of service of AAI airports and GHIAL are different and not comparable."* As regards the first part of HIAL's comment, the Authority notes that the Concession Agreement, being referred by HIAL, does not specify

methodology for determination of charges and that Article 10.2.1 of the Concession Agreement provides that the Airport charges shall be consistent with ICAO policies. The Authority's current determination of tariff in respect of HIAL is not in conflict with ICAO policies. As regards the second part of HIAL's comment on comparison of charges and thereafter deciding the principles, the Authority in its Consultation Paper No 09/2013-14 has first outlined the considerations for Single Till and Dual Till, detailed its analysis in various building blocks and considered several factors in coming to its conclusion on choice of till. From the detailed analysis it emerges that Single Till is the most appropriate in respect of HIAL and thus the Authority had proposed to base its tariff determination on Single Till and put this proposal for Stakeholders' Consultation. It is therefore incorrect to say that the Authority has compared the charges and thereafter decided the principles. As regards the third part of HIAL's comment on difference in level of service of AAI Airports and GHIAL, the Authority notes that it has been HIAL's own submission that it should have the same standards as mentioned in the Concession Agreement and not the standards that the Authority would have liked to prescribe as per its Direction No. 5 dated 28th Feb 2011. The Authority has now accepted the submission of HIAL and decided on the same performance of service standards for Hyderabad airport as are contained in its Concession Agreement with MoCA. For AAI airports at Chennai, Kolkata and Guwahati, the Authority has however prescribed the rebate mechanism as contained in its Direction No 5/2010-11. Hence the difference in the performance standards between HIAL and AAI airports has arisen on account of HIAL's own submission. Furthermore, the cost associated with achieving a certain performance standard should already be built into the building blocks for tariff determination and has been considered by the Authority accordingly.

- 4.245.** The Authority has carefully noted the statement of HIAL that lowering of charges was not envisaged as objective of AERA Act. The Authority observes that in its various Orders the Authority had kept passengers' interests in focus. It has also indicated that its approach towards economic regulation would be to balance interests of the passengers with fair rate of return to the airport operator. HIAL does not appear to have properly understood this aspect. Fair rate of return to the

airport operator is a requirement of economic and viable operation of major airport and focus on passenger implies that consistent with fair rate of return to the airport operator, the charges that directly impinge on the passengers are kept to the minimum. This passenger focus has also been supported by the Government, Planning Commission, Department of Economic Affairs as well as the comments of the State Government of Maharashtra, Karnataka as well as West Bengal as presented in Para 4.230 above.

4.246. The Authority has already stated that its adoption of single till was guided by numerous considerations like the provisions of the Act, the practicalities of implementation, necessity for the investments at the airport to be made by airport operators (both public and private), as well as its review of the academic literature on the subject. Academic opinion is both in favour of single till as well as dual till.

4.247. The Authority has, therefore, not gone along with only one particular strand of academic opinion as reflected in the literature. However, HIAL has given the writings of Prof. Niemeier as well as of Prof. Starkie to support its contention that dual till achieves the objective of capital for expansion, amounts to spend on better passenger conveniences. Though the Authority does not propose to comment in detail on the writings of the academic experts, it only notes the following:

4.247.1. As far as the quotation of Prof. Niemeier (2009), as given by HIAL, in the Indian context single till minimizes charges that directly impinge on the passengers in the form of UDF. UDF does not impinge on the airlines. Higher UDF charges, therefore, can be viewed as transfer of resources from the passengers to the airport operator. In Authority's view, unless there is a demonstrable public purpose or public interest in allowing the airport operator to retain the extra amounts, over and above what he would have got under single till (consistent with fair rate of return), this could be construed as unjust enrichment of airport operator in as much as it would be bereft of any underlying public purpose. At any rate, the legal provisions in AERA Act ruled out dual till.

4.247.2. Apart from the above, the Authority has also been informed by a recent report of a panel that was established in UK in April 2008, under the

Chairmanship of Prof Martin Caves to advise the Secretary of State for Transport on the reform of the economic regulation of airports in the UK. Its members were:

Table 10: Members of the independent panel on airport regulation

Name	Designation
Chris Bolt:	Chairman of the Office of Rail Regulation and Arbiter of the London Underground Public Private Partnership Agreements.
Martin Cave:	Professor at Warwick Business School. He is the author of independent reviews for government of the regulation of social housing and of competition and innovation in the water sector.
Philip Cullum:	Deputy Chief Executive of Consumer Focus. He chairs the Food Standard Agency advisory committee on consumer engagement and is a member of the Risk and Regulation Advisory Council
Anne Graham:	Senior lecturer in air transport at the University of Westminster; she has been involved in teaching, research and consultancy in air transport for over 20 years.
David Gray:	was a member of the Gas and Electricity Markets Authority (GEMA) and Managing Director, Networks Division at Ofgem from 2003 to 2007, where he was responsible for all aspects of the regulation of the electricity and gas transmission and distribution networks.
Dieter Helm:	is a Fellow of New College and Professor of Economics at Oxford University. He is an economist specialising in utilities, infrastructure, regulation and the environment.
Sir Adrian Montague:	is chairman of Friends Provident and non-executive chairman of British Energy Group, Michael Page International plc, Infrastructure Investors Limited and CellMark Holdings AB of Gothenburg.

Name	Designation
Andrew Sentence:	is a member of the Bank of England's Monetary Policy Committee,, a professor at Warwick Business School, and a member of the Committee for Integrated Transport. He has been chief economist and head of environmental affairs at British Airways.

4.247.3. It gave its report on 27th Jan 2009. The panel in its final report noted that the choice of till has been controversial. It also observed that “incentives on BAA to invest in different facilities and the balance of charges to different airport users could be materially affected by the approach adopted.” However, while summarising it stated, inter alia, that **"the choice of the till is better left to the regulator to decide"** (Emphasis Added) further adding that “in the panel’s view the **regulator’s primary duty should be should be the promotion of the interests of passengers and freight users**”. The Authority has the same approach to keep the interests of the passengers and cargo facility users firmly in focus. AERA Act defines “airport users” as “any person availing of passenger or cargo facilities at an airport.” That is why the Authority has attempted to minimise the charges on passengers (UDF) that is possible under single till, albeit at the same time keeping also the reasonable interest of the airport operator by giving him a fair rate of return on his investments.

4.247.4. As far as the observation of Prof. Starkie (2001) is concerned that dual till will significantly reduce the likelihood that airports will exploit any market power that they have, the Authority has also came across a different academic viewpoint expressed by Prof. Polk. The Authority has come across different variants of the logic that the airport will be incentivized to keep airport charges lower in order to maximize unregulated commercial revenue, treating airport as a two-sided platform between the passengers and the concessionaires (giving non-aeronautical services). Since the Authority regards this as an important conceptual and academic issue, it is reproducing below in detail the context and observations of Prof. Polk in this regard.

4.247.4.a. As regards the light handed approach adopted in Australia for regulating its airports, the Authority has 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 same²⁴ 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 (a) about the experience of Australian regulation, (b) the countervailing power (or absence thereof) of the airlines arresting the tendency of the airport (under light touch regulation) to charge excessive tariffs and (c) the role of negotiations between the airport and airlines therein. According to Prof. Starkie, non-aviation 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 2010²⁵ and has countered the observations and comments of Prof. Starkie. Salient points of Prof. Polk’s rejoinder are given below.

4.247.4.b. Commenting on non-aviation activities restricting the airport’s incentive to increase charges for aviation activities, and the issue of market power Prof. Polk comments 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

²⁴ “The economic market power of Amsterdam Airport Schiphol: A review” by Prof David Starkie <http://www.airneth.com/news/details/article/the-economic-market-power-of-amsterdam-airport-schiphol-a-review/>

²⁵ “The economic market power of Amsterdam Airport Schiphol: A Rejoinder.” By Prof. Dr. Andreas Polk <http://www.airneth.com/news/details/article/the-economic-market-power-of-amsterdam-airport-schiphol-a-rejoinder/>

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 level²⁶ 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.²⁷ 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)”*

- 4.247.5. The Authority has come across similar observations in an article by Rui Cunha Marques and Ana Oliveira-Brochado titled “Comparing Airport Regulation in Europe: Is there need for a European Regulator?” (FEP working Papers No. 259, Dec 2007) wherein the authors reject the notion that in a non-congested airport, market forces will not have incentives to increase the airport charges.

²⁶Whatever "competitive" might mean in this context, as almost any company has market power to some extent. The relevant question is *how much* market power is necessary to justify regulation

²⁷One aspect which needs to be taken into account is the extent of market power in the non-aviation sector, which is likely to exist to a certain extent, and how this relates to the incentives to lower airfares.

The authors refers to the article of Prof Starkie, (2001)²⁸ and comment as under:

He (Starkie) even neglects the need for economic regulation for the non-congested airports, since the increased airports charges do not only reduce the demand for flights but also the demand for commercial activities, and therefore the return of airports. Thus, airports do not have incentives to increase their rents. We reject these conclusions because the best rent of the monopolies, including airports, is the quiet life of Hicks and so without economic regulation we are encouraging the inefficiency-X of Leibenstein

A latest report on Airport Competition by IATA (IATA Economics Briefing No. 11, Nov 2013) observes that “Where there is potential for competition in the airport sector, we welcome and encourage it. But the evidence we set out in this report makes clear that this simply isn’t the case for the majority of airports which continue to enjoy and exploit market power.” IATA has also stated that “that effective competition between airports remains the exception rather than the rule; so many airports remain insulated from competitive pressures. Only 9% of airports in Europe were in wholly private ownership in 2010, 78% of European airports remained in majority public ownership and control in 2010²⁹, with a further 13% in mixed public-private ownership; In particular, major airports continue to enjoy a strong position in their local markets such that market forces alone may not ensure the best outcome for consumers. Even in 2010, at the height of the European economic crisis and with passenger numbers in decline, more than a third of European airports, including 21 of 24 major airports, raised their charges, compared with just 17% that reduced them” as indicative of absence of competition in the airport sector.

²⁸ Starkie David, “Reforming UK airport regulation”, Journal of Transport Economics and Policy, 35(1):. 119-135.

²⁹ ACI-Europe, The Ownership of Europe’s Airports, 2010

According to IATA's calculations, "In 2014, even factoring in expectations of global economic recovery, airline profits are forecast to be less than \$5 per passenger. It is clear to see how easily increased airport charges could erode that." As regards Prof Starkie's observations regarding economic regulation of airports in Australia, Prof Polk's states as under,

"Moreover: 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 surely 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 outweigh all other indicators pointing towards the existence of market power of Amsterdam airport Schipol."

4.247.6. As regards Prof Starkie's observations regarding the usefulness of role of negotiation between the airport and airlines, Prof Polk has commented thus:

"The comment correctly indicates 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 (it's 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.”

4.247.7. Regarding the airlines exercising countervailing power, the Authority has come across writings of Prof. Forsyth (2008)³⁰ about the light handed regulation in Australia³¹, makes the following observations about competition, market power and distance of available alternatives as under:

The lack of actual or potential competition between airports means that airlines have very limited countervailing power to negotiate their charges with airports. To have countervailing power, a buyer must have a feasible alternative source of supply to which it can credibly threaten to shift its business. An airline may be large and powerful, and it may represent a high proportion of an airport’s aeronautical revenue, but this does not mean that it possesses countervailing power, because it may be locked into using that airport (at best an airline with political influence may pressure the government to use regulation to control airport charges, but that is not the use of countervailing power in the normal sense). 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 kilometers.

The Australian Productivity Commission considered that the major airports possessed significant market power, but it was less concerned about the smaller airports. If they could use countervailing power, airlines such as Virgin Blue would not enter expensive litigation with airports in an attempt to get them to lower their charges. Airlines would like some airports to reduce their charges, but they have not been able to force them to do so.

³⁰ “Airport policy in Australia and New Zealand: Privatization, Light-Handed Regulation and Performance”, in Clifford Winston and Ginés de Rus (eds) Aviation Infrastructure Performance: A Study in Comparative Political Economy, Washington DC: Brookings Institution Press, pp. 65-99.

³¹ “Airport policy in Australia and New Zealand: Privatization, Light-Handed Regulation and Performance”, in Clifford Winston and Ginés de Rus (eds) Aviation Infrastructure Performance: A Study in Comparative Political Economy, Washington DC: Brookings Institution Press, pp. 65-99.

4.247.8. Apart from Prof Polk and Prof Forsyth, the Authority has also come across in academic literature the observations of Oum and Fu of Airport Transport Research Society in Para 4.112 above which are worth noting, as under

*“In principle, under the dual-till system, the possible (excess) profits earned by airports from non-aeronautical services can be utilized to expand capacity and improve service quality³². **However, there is no easy answer to how to provide incentives for airports to do so.**”*
(Emphasis added)

4.247.9. The Authority has also noted that in academic literature focusing purely on welfare maximization, single till is regarded as preferable in non-congested airports and dual till in congested airports (Prof. Czerny as indicated in Para 4.111 above)

4.248. HIAL has submitted that GoAP was the main body in the privatization process and the Authority’s interpretation of the provisions of concession agreement in a different manner than that of GoAP despite a categorical clarification from GoAP is unjustified. The Authority would like to reiterate its stand explained in Paras 4.49 to 4.62 above. HIAL’s comments on the benefits of Dual till towards promoting investment in aeronautical assets have already been analysed and considered by the Authority and are presented in Paras 4.137 to 4.140 above. Other comments made by HIAL are mostly a reiteration of its earlier views / submissions towards consideration of dual till in respect of RGI Airport, Hyderabad, which have been adequately addressed / considered by the Authority in its Consultation Paper No 09/2013-14 and are presented in Paras 4.3 to 4.145 above.

4.249. On balance, the Authority finds no reason to change its earlier position of adopting Single Till for determination of aeronautical tariff in respect of RGI Airport, Hyderabad.

³² This then effectively becomes single till.

Decision No. 1. Regarding Consideration of Regulatory Till in respect of RGI Airport, Hyderabad

- 1.a. The Authority decides to adopt Single Till for determination of aeronautical tariff in respect of RGI Airport, Hyderabad for the current Control Period.**

5. Consideration of Pre-Control Period deficit (losses) of HIAL

a HIAL submission on Consideration of Pre-Control Period deficit (losses) of HIAL

5.1. HIAL in its submission of Pre-Control Period losses had stated that while the Control Period for the first MYTP was to be of 5 years from 01.04.2011 to 31.03.2016, it also proposed to include losses pertaining to the Pre-Control Period operations of 3 years from 23.03.2008 to 31.03.2011. HIAL also submitted that it had incurred losses during the first two years equal to nearly Rs.164 Crore and had urged the Authority that past period losses were to be included as part of the current MYTP which was to start from 01.04.2011. HIAL had taken reference to the Authority's Ad-hoc UDF Order and stated that as per the Authority's Order, the past period losses were to be considered under the current Control Period.

5.2. A summary of HIAL's submission on Pre-Control Period losses is presented below:

Table 11: Pre-Control Period losses for HIAL submitted by HIAL its MYTP submissions – Single Till

Values in crore	2008-09	2009-10	2010-11
RAB for calculating ARR	2,200	2,316	2,315
WACC	10.62%	10.62%	10.62%
RAB * WACC	234	246	246
Depreciation	100	116	127
Operation and Maintenance Expenditure (including revenue share)	218	220	264
Tax	2	0	0
Revenue from services other than aeronautical services	121	161	209
Average Revenue Requirement	433	421	428
Aeronautical Revenues (including fuel farm excess set-off)	231	293	360
Deficit	202	128	67
Future Value as on 31.03.2011 (discounted at WACC)	247	141	67
Aggregate Future Value of deficits as on 31.03.2011			455.19
The above calculations are based on inclusion of Hotel, SEZ, Forex Loss Adjustments, and Duty Free Shopping as per HIAL's Base Model.			

Table 12: Pre-Control Period losses for HIAL submitted by HIAL its MYTP submissions – Dual Till

Values in crore	2008-09	2009-10	2010-11
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Consideration of Pre-Control Period deficit (losses) of HIAL

Values in crore	2008-09	2009-10	2010-11
RAB for calculating ARR	1,790	1,740	1,709
WACC	10.63%	10.63%	10.63%
RAB * WACC	190	185	182
Depreciation	89	91	98
Operation and Maintenance Expenditure (including revenue share)	181	156	182
Tax	0	0	0
Revenue from services other than aeronautical services	0	0	0
Average Revenue Requirement	461	433	462
Aeronautical Revenues (including fuel farm excess set-off)	231	293	360
Deficit	230	140	102
Future Value as on 31.03.2011 (discounted at WACC)	281	154	102
Aggregate Future Value of deficits as on 31.03.2011			537.18
The above calculations are based on excluding Hotel, SEZ and Duty Free Shopping, and non-aeronautical activities as submitted by HIAL in its Base Model.			

b Authority's Examination of HIAL submissions on Consideration of Pre-Control Period deficit (losses) of HIAL

- 5.3. The Authority in its Ad-hoc UDF Order No. 06/2010-11, dated 26.10.2010 had stated that its ad-hoc determination of UDF for Hyderabad Airport would be reviewed at the stage of tariff determination for the first cycle in respect of Hyderabad Airport.
- 5.4. The past losses, if any, were considered to correspond to the period between 23.04.2008 till 31.03.2011. During this period, HIAL was granted ad-hoc UDF first by MoCA (23.04.2008 to 31.10.2010) and thereafter by the Authority (01.11.2010 till 31.03.2011). If the rate at which the Government had determined UDF proved to be inadequate for this purpose, it required to be revised (upwards). The Authority had taken the accounts of the Company as a whole (equivalent to single till) for the purposes of calculation of past losses. The Authority now needed to determine the aeronautical tariffs as well as UDF as a final determination during the current Control Period.
- 5.5. While calculating the past losses, the Authority proposed to consider the three services viz., Cargo, ground handling and supply of Fuel to aircraft (CGF services) as

aeronautical services regardless of its final tentative proposals regards the regulatory till on account of these services being defined as Aeronautical Services under the AERA Act. In line with the principles adopted in its ad-hoc determination of UDF, the Authority has not considered Hotel and Aero SEZ and Forex adjustment as per AS 11 (as assumed by HIAL) as part of the RAB while calculating the losses for the Pre-Control Period.

- 5.6. Considering the aeronautical revenue and cross-subsidisation due to non-aeronautical revenues for respective years, the Authority has calculated the year-wise deficit for HIAL. The value of these year-wise deficits (for FY 2008-09, FY 2009-10 and FY 2010-11) has been then calculated as on 31.03.2011.
- 5.7. Also, the Authority was to calculate the Pre-Control Period losses considering 16% return on equity. A rate of 18.33% was considered by HIAL in its initial filing for ad-hoc UDF on account of provisions in the State Support Agreement between itself and GoAP.
- 5.8. As per HIAL tariff model, the Aggregate Future Value of deficits as on 31.03.2011 were calculated to be Rs 455.19 Crore under single till and Rs 537.18 crore under a dual till but the losses by excluding Hotel, SEZ and Duty Free assets, and Forex Loss Adjustments were re-calculated by the Authority and a figure Rs 260.68 Crore was calculated under single till and Rs 447.14 under dual till.
- 5.9. Based on the material before it and its analysis, the Authority had proposed in the Consultation Paper No 09/2013-14 dated 21.05.2013:
 - 5.9.1. To consider Pre-Control Period Loss (for the period 23.04.2008 to 31.03.2011) (inclusive of carrying costs) as of 31.03.2011 at Rs. 260.68 crore under single till and Rs. 447.14 crore under dual till.
 - 5.9.2. To add this amount of pre control period loss to the ARR for FY 2011-12 while determining the tariffs for aeronautical services for the current Control Period so as to recoup these losses.

c Stakeholder Comments on Issues pertaining to Consideration of Pre-Control Period deficit (losses) of HIAL

5.10. Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the tentative proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its Consultation Paper No 09/2013-14 dated 21.05.2013. Stakeholders have also commented on Consideration of Pre-Control Period losses in respect of RGI Airport, Hyderabad. These comments are presented below:

5.11. On the issue of Pre-Control Period losses of HIAL, IATA 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. In assessing the pre-control period claim, the period between 23 April 2008 and May 2009 (the establishment of AERA) should be excluded. Therefore, the Authority’s proposed pre-control period losses (Rs260.68 crores under single till and Rs447.14 crores under dual till) should be re-computed.”

5.12. FIA on the issue of Pre-Control Period losses stated that levying Pre-Control Period losses in current Control Period would unreasonably burden the prospective passengers travelling from September 1, 2013. FIA further questioned the Authority on the issue of allowing of Pre-Control Period losses as under

“(a) What is the legal basis for inclusion of such Pre-control period losses?

(b) When the regulatory period is being computed from 01.04.2011 to 31.03.2016, how does the question arise of inclusion of losses prior to such control period?

(c) Under what circumstances, whether legally / economically / financially, can the present consumers (including passengers or airlines) be burdened with the past burden of the utility?

(d) Has the Authority verified the losses as claimed by HIAL?

(e) Is there any legal basis for allowing the carrying cost (Rs.73 crores) over and above the Pre-control Period losses to the detriment of passengers/consumers?"

- 5.13.** Further, FIA stated that increasing the Pre-Control Period losses to bring it to the present value as on 01.09.2013 would entail additional burden on passengers and should not be allowed.

"Increasing such Pre-control Period losses from Rs.260.68 crores to Rs.333 crores in order to bring it to the present value on 1.09.2013 would entail an additional burden of Rs. 73 crores on passengers and airlines. Carrying costs on past losses to hike the prospective tariff is untenable and Authority ought to discard this proposal.

It is to be noted that the regulatory period already stands diminished to almost 31 months and loss of Pre-control Period losses for 2008-2011 would translate into allowing exaction of money from present consumers for the alleged losses suffered by HIAL almost 5 years ago. It is settled position of law that future consumers cannot be burdened with the past burdens of the utility"

- 5.14.** FIA also stated that that UDF was allowed to HIAL merely by placing reliance on the Concession Agreement and without analysing the legal and economic impact of such levy on passengers/consumers.

"A perusal of the Consultation Paper No. 07/2010-11 dated 23.09.2010 and Order No.06/2010-11 dated 26.10.2010 indicates that UDF was allowed to HIAL merely by placing reliance on the Concession Agreement and without analysing the legal and economic impact of such levy on passengers/consumers. It is also glaring that earlier Ministry of Civil Aviation and later Authority allowed the levy of UDF

without conducting any prudence check exercise and was solely based on HIAL's submissions"

5.15. FIA further stated that

"It is pertinent to note that in the Stakeholders' Meeting conducted on 29.09.2010 in context of the Consultation Paper No.07/2010-11, FIA had submitted as to how the HIAL (the airport operator) should endeavour to enhance its share of non-aeronautical revenues and leverage the non-aeronautical to bring down the aeronautical tariffs."

5.16. Additionally, FIA stated that there seems to be no legal or regulatory basis for the Authority allowing HIAL to recover the Pre-Control Period losses of Rs. 333 crore.

"As noted above, Authority has proposed to allow HIAL to recover the Pre-control period losses to the tune of Rs. 333 crores under the Single Till Model by adding the same to the ARR of HIAL 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 HIAL prior to the control period;

(b) Secondly, to allow the carrying costs of Rs 73 crores (for period 1.4.2011-1.09.2013) on alleged losses.

It is submitted that levying such Pre-control period losses in current Control Period would unreasonably burden the passengers travelling from September 1, 2013 to March 31, 2016.

It is settled position of law that future consumers cannot be burdened with additional costs as there is no reason as why they should bear the brunt. Such quick-fix attitude is not acceptable. As such, the approach in the Consultation Paper does not appear to deal with the present economic realities and interests of consumers while proposing the tariff in its present form. Authority being a creature of statute is under a duty to balance the interest of all the stakeholders and consumers, which it is mandated to do under the AERA Act. Authority's proposal for tariff determination is retrospective, which is legally invalid."

5.17. AAI on the issue of Pre-Control Period losses stated that

- *“AERA has proposed to consider the carryover loss for the past period while calculating the tariff for the first control period 2011-16.*
- *AERA has to spell out the policy regarding carryover of loss from previous control period or period prior to effective control period.*
- *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”*

d HIAL’s response to Stakeholder Comments on Issues pertaining to Pre-Control Period deficit (losses) of HIAL

5.18. Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 09/2013-14 dated 21.05.2013, the Authority forwarded these comments to HIAL seeking its response to these comments. HIAL has provided responses to the Stakeholders’ comments, which are presented below:

5.19. In response to AAI’s comments on Consideration of Pre-Control Period loss, HIAL has stated as under:

“This is on account of the shortfall of previous ad-hoc determination by AERA.

AAI has concessioned the airports as PPPs and is under an obligation to ensure that the PPPs run on a viable and profitable basis and the terms of the concession are adhered to.

Consideration of only actual loss and not ARR means that no return will be allowed to the airport operator. This is a wrong methodology and this will mean the airport operator will not be entitled to any return on its investments.

The pre control period losses are owing to the lower tariff w.r.t the eligibility in terms of ARR in the previous period. The charges were set

on Adhoc terms only and were not a permanent feature for the control period.”

- 5.20.** Further in response to the AAI’s comments that consideration of loss effective 2008 on ARR method implies shifting of control period effective 2008, HIAL stated as under:

“During the Ad-hoc UDF Order AERA has laid down as under:

"The detailed comments of the Authority on the issues raised by HIAL (as indicated in Para 18.1 above) are given in Annexure-II. Broadly, it is the Authority's understanding that the aforesaid differences are arising mainly as HIAL is taking 2010-11 estimates as firm figures. It is reiterated that the figures of 2010-11 are only estimates and therefore, Authority proposes to continue with its approach of taking actuals of 2009-10 to estimate the figures in respect of 2010-11 and 2011-12 and 2012-13. After reconciliation the UDF rate has been worked out as Rs-430/-per domestic passenger and Rs.1700/-per international passenger, exclusive of service tax, on an ad-hoc basis w.e.f, 01.11.2010 (details at Annexure III). Authority is conscious that on a detailed assessment, including bottoms up analysis of all revenues and expenditures, the UDF rates presently determined may need to be altered. This exercise will be undertaken at the final determination stage."

Accordingly this is in continuation of the earlier order of the Authority”

- 5.21.** In response to FIA’s comments on issues pertaining to Pre-Control Period losses, HIAL has stated as under:

“The logic of inclusion of past losses (entitlement) is that any Capex and Opex spent by airport operator need to be remunerated in full.

The Authority can include the historical shortfall of entitlement for fixing the charges of the current Control Period. There is fair and logical approach to take to ensure the airport gets due returns.

The earlier losses are the shortfall of earlier tariff determination (vide order number 06/2010-11 dated 26th October 2010) after AERA came into existence.

These are not pre-control losses

The earlier shortfall of the period prior to 1st April 2011 was mandated by AERA to be reviewed during the current determination. GHIAL's tariff was first approved vide order number 06/2010-11 dated 26th October 2010.

GHIAL was granted inadequate interim UDF which has resulted in losses at airport. There has been a severe downturn in economy resulting in dip in air traffic since start of airport operations.

However, despite incurring these losses, GHIAL did not compromise on meeting its performance standards and enhancing infrastructure to the benefit of airlines and passengers. In order to enable GHIAL to continue to maintain globally benchmarked performance standards enhancement of UDF is critical.

Since financial and operational viability of the airport needs to be ensured which is an enshrined objective of AERA under its guiding legislation, he requested to consider the request made by GHIAL.

The earlier determination had laid down that the determination will be reviewed at the time of final determination. The earlier order laid down as under:

"After reconciliation the UDF rate has been worked out as Rs-430/-per domestic passenger and Rs.1700/-per international passenger, exclusive of service tax, on an ad-hoc basis w.e.f, 01.11.2010 (details at Annexure III). Authority is conscious that on a detailed assessment, including bottoms up analysis of all revenues and expenditures, the UDF rates presently determined may need to be altered. This exercise will be undertaken at the final determination stage."

As such the inclusion is justified."

- 5.22.** In response to FIA's question that whether the authority has verified the losses as claimed by HIAL, HIAL has stated as under:

"Entire data has been under scrutiny of the Authority.

This earlier adhoc determination also was scrutinized and based on the determination of Authority.

The earlier period also went through consultation vide consultation paper number 07/2010-11 dated 23rd September 2010.

As such Authority has scrutinized the past losses."

- 5.23.** In response to FIA's question that whether there is any legal basis for allowing the carrying cost (Rs.73 Crore) over and above the Pre-Control Period losses to the detriment of passengers/consumers, HIAL has stated as under:

"Money has a time value and this needs to be taken into consideration.

A rupee paid now or after 10 years has inherent difference and need to be recognized"

- 5.24.** In response to FIA's comments on levy of UDF on passengers/consumers, HIAL has stated as under:

"This is incorrect. Authority had done a detailed analysis earlier as well in current determination of tariff of GHIAL. The entire process has been put up for public consultation as well."

- 5.25.** In response to FIA's comment on the issue of enhancing the share of non-aeronautical revenue, HIAL has stated that:

"GHIAL has always made best efforts to increase revenue from all sources including non-aero revenues. It is not correct to question the endeavors of the GHIAL. The sharp increase in Non-Aero revenue post privatization goes on to show the endeavors done by private airport operators.

GHIAL has taken various initiatives to increase its non-aeronautical revenues on a continuous basis since operations which are also reflected in the growth rates in non-aeronautical revenues.

However under a single till there is no incentive for airport operator to improve upon its non-aeronautical revenues. The Authority should approve a suitable till to further incentivize for improvement of the Non Aero growth.”

5.26. In response to FIA’s comment that there seems to be no legal or regulatory basis for the Authority allowing HIAL to recover the Pre-Control Period losses of Rs. 333 crore, GHIAL has responded stating that it has already explained the rationale for the same.

5.27. In response to IATA’s comments on issues pertaining to Pre-Control Period losses, HIAL has stated as under:

“There is no bar on the Authority considering the eligible entitlement of previous periods for finalizing the tariff of current period.

The Authority is mandated to consider the concession agreements and as part of this role, will need to consider past losses in the computation of the tariffs post creation of AERA. There needs to be fairness in the process such that the Capex and opex spent by airport operator is properly remunerated. In the absence of this there cannot be any investment by the private sector under PPP.

The earlier interim (Ad-Hoc) determination of tariff was undertaken by Authority after its constitution.

The same was finalized after detailed public consultation under the AERA act. In the earlier tariff order, Authority has laid down the following:

"The detailed comments of the Authority on the issues raised by HIAL (as indicated in para 18.1 above) are given in Annexure-II. Broadly, it is the Authority's understanding that the aforesaid differences are arising mainly as HIAL is taking 2010-11 estimates as firm figures. It is reiterated that the figures of 2010-11 are only estimates and therefore, Authority proposes to continue with its approach of taking actuals of 2009-10 to estimate the figures in respect of 2010-11 and 2011-12 and 2012-13.

After reconciliation the UDF rate has been worked out as Rs-430/-per domestic passenger and Rs.1700/-per international passenger, exclusive of service tax, on an ad-hoc basis w.e.f, 01.11.2010 (details at Annexure III).

Authority is conscious that on a detailed assessment, including bottoms up analysis of all revenues and expenditures, the UDF rates presently determined may need to be altered. This exercise will be undertaken at the final determination stage."

Accordingly this is in continuation of the earlier order of the Authority."

e HIAL's own comments on Issues pertaining to Pre-Control Period deficit (losses) of HIAL

5.28. On the issue of Pre-Control Period losses, HIAL stated that

"We shall request Authority to revise the calculation of historical losses based on our submission as regards to allowance of Cost of Equity and all other submissions in the current response."

f Authority's Examination of Stakeholder Comments on Issues pertaining to Pre-Control Period deficit (losses) of HIAL

5.29. The Authority has carefully examined the comments made by the stakeholders as well as HIAL on the issue of consideration of Pre-Control Period losses in the tariff determination for the current Control Period.

5.30. The Authority notes that FIA stated that *"Has the Authority verified the losses as claimed by HIAL."* The Authority has in the Consultation Paper No 09/2013-14 given calculations of its assessment of the Pre-Control Period losses. It would thus be seen that the Authority has based its assessment on the financial statements of HIAL, auditor certificates thereof.

5.31. As regards the comment of AAI that *"It is felt that AERA should consider actual operational loss for the previous periods instead of calculating it on ARR method."*, the Authority notes that in Accounting methodology all items of expenditure (cash as well as non-cash) need to be taken into account to determine surplus (profit) or deficit (loss) of the entity in the respective accounting year so as to give a correct

picture of its business. Operational loss or profit does not reflect true and fair picture of the profitability of the entity inasmuch as it excludes one of the important elements namely depreciation (non-cash expenditure) that needs to be taken into account. The Authority is therefore unable to be persuaded by the suggestion of AAI in this regard.

- 5.32.** The Authority notes AAI's comment that *"AERA has to spell out the policy regarding carryover of loss from previous control period or period prior to affective control period"*. This comment consists of two parts: (a) AAI desires to know the Authority's approach regarding any loss from a particular Control Period to be taken into account at the time of tariff determination of the next Control Period and (b) any loss before the first Control Period.
- 5.33.** As regards (a) namely, the carryover of losses from *previous Control Period*, the Airport Guidelines present the correction factors and the true-ups to be considered by the Authority in its analysis and consideration of losses incurrent by an airport in a Control Period while determining aeronautical tariff in the next Control Period. Additionally in respective Orders in the matter of determination of aeronautical tariffs for various airports, the Authority has also presented the factors, which will be considered for truing-up the losses or otherwise suffered by an airport while determining aeronautical tariff in the next Control Period.
- 5.34.** As regards (b) namely, carryover of losses *prior to the first control period*, the Authority has given its reasoning in the Consultation Paper No 09/2013-14 dated 21.05.2013 in para 4.8 as under,

" 4.8. The MYTP submitted by HIAL corresponds to the first control period, which is in line with the Airport Order and Airport Guidelines and commences from 01.04.2011. The past losses, if any, correspond to the period between 23.04.2008 till 31.03.2011. During this period, HIAL was granted ad-hoc UDF first by MoCA (23.04.2008 to 31.10.2010) and thereafter by the Authority (01.11.2010 till 31.03.2011). As has been indicated by the Authority in the ad-hoc UDF Order No.06/2010-11 dated 26.10.2010, it had presumed that the Government had expected that HIAL would be able to receive a fair rate of return on its

investments (including return on equity). If the rate at which the Government had determined UDF proved to be inadequate for this purpose, it required to be revised (upwards). The Authority had taken the accounts of the Company as a whole (equivalent to single till) for the purposes of calculation of past losses. ...”

- 5.35.** The Authority had already stated that its determination of Pre-Control Period losses (losses / shortfalls for a period prior to 01.04.2011) in respect RGI Airport, Hyderabad was based on the approval for levy of UDF by the previous regulator i.e. the Government, referral of HIAL application for review of UDF by the Government to the Authority and the Authority's Ad-hoc UDF Order No. 06/2010-11 dated 26.10.2010. Based on the provision in its Concession Agreement, HIAL had made an application to MoCA for levy of UDF at RGI Airport, Hyderabad. UDF granted by MoCA, @ Rs. 1,000/- (inclusive of taxes) per international departing passenger (MoCA Letter No.AV.20015/03/2003-AAI dated 28.02.2008) and @ Rs. 375/- (inclusive of taxes) per departing domestic passenger (MoCA No.AV.20036/28/2004-AAI (Vol.IV) dated 18.08.2008), was found to be inadequate by HIAL and accordingly it made another application (GHIAL/F&A/UDF/2009-10/2 dated 02.08.2009) to MoCA to review the same. Pursuant to the coming into force of the AERA Act with effect from 01.01.2009 and the notification of the powers and functions of the Authority with effect from 01.09.2009, MoCA transferred the issue of determination of UDF for RGI Airport, Hyderabad for the Authority's consideration (vide Letter No F.No.AV.20036/014/2009-AD dated 06.10.2009). Based on an ad-hoc determination, the Authority issued its Ad-hoc UDF Order No. 06/2010-11 dated 26.10.2010 granting levy of revised UDF, wherein it stated that *“This ad-hoc determination would be reviewed at the stage of tariff determination for the first cycle and thereafter at such intervals as the Authority may determine, from time to time.”* At that time, the Authority was in the process of deliberating on the final commencement date for the first control period and also in the process of development of its Airport Order and Airport Guidelines. With the Airport Order and the Airport Guidelines now in place, the Authority determined the Pre-Control Period losses in respect of HIAL.

- 5.36.** The Authority has indicated that vide its Orders referred to in Para 5.35 above, the Government had determined UDF on an adhoc basis which were effective from 23rd April, 2008 for international departing passengers and 18th August, 2008 for domestic departing passengers respectively. The Authority had then proceeded to calculate what would be the UDF rates for the first control period taking into account the shortfall in ARR as per its Order no. 13 of 2011 dated 12th January, 2011 as well as Direction no. 05 of 2011 dated 20th February, 2011. The Authority had also noted that Government had determined the adhoc UDF rates (for both domestic as well as international passengers) in its capacity as the then Regulator at a time when AERA Act had not been brought into force nor the relevant powers of tariff determination for major airports notified.
- 5.37.** The third inference of AAI regarding the Authority's proposal of taking into account the Pre-Control Period Losses namely from 23.04.2008 till 31.03.2011 viz. *"The consideration of loss effective 2008 on ARR method implies shifting of control period effective 2008"*, the Authority has carefully considered this observation. As indicated in its approach towards calculation of Pre-Control Period losses, one of the important premises on which consideration of Pre-Control Period losses were proposed to be taken into account was that had the then Regulator namely, the Government, followed the Authority's tariff determination methodology effective from 01.04.2011 while determining UDF w.e.f. 23.04.2008, it (Government) would have arrived at a different (and as would appear, higher) level of UDF. By doing so the Authority has not extended / shifted the first Control Period back to 2008.
- 5.38.** The Authority has carefully considered the comments of different stakeholders, both supporting the taking into account of losses previous to the first control period as well as those against such inclusion. Upon reading the responses of various stakeholders including that of AAI mentioned above, it appears to the Authority that some of the stakeholders have viewed the Authority's approach regarding consideration of Pre-Control Period losses as extending the Authority's ambit to the period "prior to its establishment" (refer Para 5.11 above). As presented in Para 5.35 above, the powers and functions of the Authority were notified from 01.09.2009. The Authority feels that the financial position of the airport operator

before 01.09.2009 were addressed by the then Regulator, namely Government and that the Authority should focus on the period after 01.09.2009 till 31.03.2011 to examine if the airport operator has incurred any deficit (loss) for this period. From 01.04.2011, the first Control Period has commenced and the Authority's tariff determination is now being done for the first Control Period namely 01.04.2011 till 31.03.2016.

- 5.39.** As the Pre-Control Period is to be considered from 01.09.2009, the deficit (loss) for the entire year FY 2009-10 was worked out by the Authority as per its approach of building blocks to be Rs 67.46 crore and surplus for FY 2010-11 to be Rs 4.64 crore (Table 10 on Page 48 of the Consultation Paper 09/2013-14 dated 21.05.2013).
- 5.40.** After consideration of the stakeholders' comments and review of the various proposal in the Consutlation Paper as well as taking the assets of the Fuel Farm in the books of accounts of HIAL together with RAB of HIAL, the copmputation of Pre-Control Period deficit (loss) works out to Rs 67.89 crore for FY 2009-10 and surplus of Rs 3.09 crore for FY 2010-11. Steps for computation are given in Table 13.

Table 13: Pre-Control Period deficit (losses) in respect of HIAL as considered by the Authority for the current Control Period

Values in crore	2009-10	2010-11
RAB for calculating ARR	2,172.11	2,144.58
WACC	9.45%	9.45%
RAB * WACC	205.32	202.72
Depreciation	108.78	110.32
Operating Expenses (including concession fee)	199.96	221.39
Tax	0.00	(0.84)
Revenue from services other than aeronautical services	112.17	132.04
Average Revenue Requirement	401.89	401.56
Aeronautical Revenues (including fuel farm excess set-off)	334.00	404.65
Annual Deficit (losses)	67.89	(3.09)*
Pro-rated for the period to be considered	39.60	(3.09)*
Future Value as on 01.04.2011 (discounted at WACC)	43.34	(3.09)*
Aggregate Future Value of deficits as on 01.04.2011		40.25
* - denotes surplus		

- 5.41.** This deficit (loss) has now been pro-rated for 7 months (from 01.09.2009 till 31.03.2010) and this pro-rated figure (Rs 39.60 crore) has been assigned a carrying cost at WACC applicable for this period (9.45%) to determine its present value as on

01.04.2011, which works out to Rs 43.34 crore. For FY 2010-11, the surplus worked out by the Authority is of Rs 3.09 crore. Accordingly the Authority decides to consider the Pre-Control Period deficit (losses) of Rs 40.25 crore, as on 01.04.2011, (for the period 01.09.2009 to 31.03.2011) towards determination of aeronautical tariff for the current Control Period commencing from 01.04.2011.

- 5.42.** The Authority notes HIAL's comment with regard to Pre-Control Period losses namely, *"We shall request Authority to revise the calculation of historical losses based on our submission as regards to allowance of Cost of Equity and all other submissions in the current response."* The Authority has, after considering the comments of the stakeholders on the issues of Pre-Control Period losses, decided to consider Rs 40.25 crore as Pre-Control Period deficit (losses) for the purposes of determination of aeronautical tariff during the current Control Period.

Decision No. 2. Regarding Consideration of Pre-Control Period deficit (losses) of HIAL

- 2.a.** The Authority decides to consider the Pre-Control Period deficit (losses) of Rs 40.25 crore, as on 01.04.2011, for the period 01.09.2009 to 31.03.2011 towards determination of aeronautical tariff for the current Control Period commencing from 01.04.2011.
- 2.b.** Accordingly the Authority decides to add Rs 40.25 crore to the ARR of the current Control Period while determining tariff in respect of RGI Airport, Hyderabad.

6. Control Period

a HIAL Submission on Control Period

- 6.1.** As per its initial submission dated 31.07.2011, HIAL submitted that it has considered a control period of 5 years from 01.04.2011 up to 31.03.2016. Further HIAL submitted as under,

“The control period considered is 5 years starting from April 1st 2011 up to March 31, 2016, considering the past 3 years losses from April 2008 to March 2011.”

- 6.2.** In further submissions made as on 13.09.2011 and 14.12.2012, HIAL re-iterated that it has considered a control period of 5 years from 01.04.2011 up to 31.03.2016 as stated above.

b Authority’s Examination of HIAL Submissions on Regulatory Period

- 6.3.** The Authority proposes to follow the first control period in respect of RGI Airport, Hyderabad from 01.04.2011 to 31.03.2016 as per the Airport Guidelines and as submitted by HIAL.
- 6.4.** Based on the material before it and its analysis, the Authority proposed in the Consultation Paper No 09/2013-14 dated 21.05.2013:
- 6.4.1.** To consider the first Control Period in respect of determination of tariffs for aeronautical services in respect of RGI Airport, Hyderabad to be from 01.04.2011 up to 31.03.2016.

c Stakeholder Comments on Issues pertaining to Regulatory Period

- 6.5.** Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the tentative proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its Consultation Paper No 09/2013-14 dated 21.05.2013. Stakeholders have also commented on regulatory period to be considered in respect of RGI Airport, Hyderabad. These comments are presented below:
- 6.6.** On the issue of Regulatory Period, FIA stated that the Authority has overlooked the fact that HIAL has caused inordinate delay in submitting the details of project cost

and relevant information for determination of aeronautical tariff which has led to exponential increase in aeronautical tariff with the past charges of last 29 months recoverable in the next 31 months from the future passengers. This approach is unacceptable to FIA as it would increase the operational expenditure of the airlines and rendering its operations economically unviable.

“In the present consultation, the Authority has tentatively decided the tariff for the 5 years control period starting from 01.04.2011 which is likely to come into effect from 01.09.2013. As such, the Authority will be determining the tariff, retrospectively from 01.04.2011 exceeding its jurisdiction.

The Authority is overlooking that the HIAL 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 31 months from 5 years;
(b) Led to exponential increase in aeronautical tariff (40% to 400% on a component to component basis) of RGI Airport with the past charges of last 29 months recoverable in the next 31 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.”

d HIAL’s response to Stakeholder Comments on Issues pertaining to Regulatory Period

6.7. Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 09/2013-14 dated 21.05.2013, the Authority forwarded these comments to HIAL seeking its response to these comments. HIAL has provided responses to the Stakeholders’ comments, which are presented below:

6.8. In response to FIA’s comment, HIAL has stated as under:

“There has been no delay in submission of tariff proposal. The proposal was submitted in the timelines approved by Authority

There is no such impact as being referred. In fact the tariff as proposed by Authority has reduced entitlement in balance period.”

6.9. Further HIAL has stated that:

“This is a strange request that airport operator must not be reimbursed for the capital expenditure (done by private concessionaire).

This defies logic. Any charges approved by Authority whether ADF or UDF is critical for providing fair remuneration for the private operator and the continued operation of airport.

However we will like to clarify that GHIAL currently is levying UDF (not ADF) which is revenue receipt by nature whereas what FIA is referring is ADF which is of the nature of capital grant.

There has not been any increase in Aero charges of landing and parking for last 10 years, except 10% increase in 2009 and even if we take pure inflation the charges should go up considerably.”

6.10. In response to FIA’s comment on issues pertaining to increase in Aeronautical Charges, HIAL has stated as under:

“The charges of landing and parking even with proposed increase will be lower than the charges of Chennai and Kolkata airports.

Increased funding source will not mean revenue from GHIAL. The revenue can be achieved only by charges.”

6.11. Further HIAL has stated that:

“A better infrastructure is essential for the growth of aviation. This also means saving due to efficient operations and cost saving by way of lower turnaround time and no hovering time. This aspect needs to be kept in mind.

Entire privatization of the airports will fall apart if they are not properly remunerated. If PPP entity is allowed to continuously incur losses it will reach a stage when there will be no one forthcoming to invest in sector. This will mean lack of growth opportunities for airlines, delays at airport (eating into the precious time of airlines,) long hovering time (resulting in huge fuel bills).

Airlines must appreciate the good work done by airport and try to focus on other items like fuel etc. that are the most critical areas to improve their bottom-line.”

e HIAL’s own comments on Issues pertaining to Regulatory Period

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

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

6.13. The Authority has carefully examined the comments made by the stakeholders 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 it 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 Order No. 13/2010-11 dated 10.01.2011, 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 considered the first control period for HIAL 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 RGI Airport, Hyderabad for the first control period commencing from 01.04.2011 is within its jurisdiction.

6.14. The Authority notes FIA’s submission on truncation of the Control Period from the five year period to 31 months on the ground that HIAL 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. On the contrary, the Authority has presented its analysis on the proposed UDF in Para 24.8 below, where the UDF proposed to be levied based on the analysis at that stage is lower than the UDF currently being levied at RGI Airport, Hyderabad. The Authority further notes that FIA has stated that this delay has *“led to exponential increase in*

Control Period

aeronautical tariff (40% to 400% on a component to component basis)”. However, the Authority could not find any component of aeronautical tariff, presented in the Consultation Paper No. 09/2013-14 dated 21.05.2013, which has exponentially increased by 400% in the determination of tariff for RGIA, Hyderabad.

Decision No. 3. Regarding Control Period

- 3.a. The Authority decides to consider the First Control Period from 01.04.2011 to 31.03.2016 for determination of the aeronautical tariff in respect of RGI Airport, Hyderabad.**

7. Regulatory Building Blocks

7.1. The Authority's determination of aeronautical tariff in respect of HIAL has been based on calculation of Aggregate Revenue Requirement in respect of RGI Airport, Hyderabad for the current Control Period, which, in turn, is determined based on the Regulatory Building Blocks in respect of RGI Airport, Hyderabad for this Control Period.

7.2. The ARR for the current Control Period will be determined based on the following components of Regulatory Building Blocks with reference to the submissions made by HIAL:

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)

7.3. The ARR under single till for the Control Period (ARR) is calculated as under:

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

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

7.3.1. Where t is the Tariff Year in the Control Period

7.3.2. Where ARR_t is the Aggregate Revenue Requirement for year t

7.3.3. Where FRoR is the Fair Rate of Return for the Control Period

7.3.4. Where RAB_t is the Regulatory Asset Base for the year t

7.3.5. Where D_t is the Depreciation corresponding to the RAB for the year t

7.3.6. Where O_t 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. Where 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. Where NAR_t is the Revenue from services other than aeronautical services for the year t

8. Allocation of Assets (Aeronautical / Non-Aeronautical)

a HIAL Submission on Asset Allocation (Aeronautical / Non-Aeronautical)

- 8.1. HIAL in its submission, dated 31.07.2011 and 04.04.2013, had described that the assets were divided under two heads, **Aeronautical Assets**, which were required for the performance of Aeronautical Services at the Airport and for generating Aeronautical Revenues, considered necessary for reasonable rate of return and **Non-Aeronautical Assets**, which were necessary for the performance of Non Aeronautical Services at the airport. Apart from these two heads, “**Common Assets**” were identified categorized and assets that were not categorized either into Aeronautical Asset or Non Aeronautical Assets were placed under this head. Furthermore, these common assets were apportioned in aero and non-aero assets on the basis of the area and ratio of aero and non-aero assets. The overall ratio between Aeronautical Assets and Total Assets was computed by HIAL on area basis for each year of the Control Period and was finally summarized as given in the table below:

Table 14: Overall Aeronautical Assets on area basis as a % of Total Assets as submitted by HIAL

In%	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14
Aeronautical Assets as %age of Total Assets	85.44%	82.83%	83.05%	83.09%	83.09%	83.09%
Total Aeronautical Assets	2,276	2,420	2,438	2,432	2,461	2,492

- 8.2. Also, HIAL stated that Cargo and Ground Handling assets were to be placed under non-aeronautical assets as these operations were outsourced to a third party and HIAL was only receiving revenue from their operations and was not directly involved in the operations.

b Authority's Examination of HIAL Submissions on Asset Allocation (Aeronautical / Non-Aeronautical)

- 8.3. The Authority had noted the above submission of HIAL on the allocation of assets into Aeronautical and Non-aeronautical categories. The Authority in its review of HIAL's submission had proposed that aeronautical tariffs only under dual till were to be calculated based on the asset allocation indicated by HIAL as this asset

allocation was not relevant for calculations for single till. Also, an independent study to assess the reasonableness of the allocation was proposed to be commissioned by the Authority and the conclusions thereof were to be considered at the time of determination of tariffs for aeronautical services for the next Control Period.

8.4. Based on the material before it and its analysis, the Authority had proposed in the Consultation Paper No 09/2013-14 dated 21.05.2013:

8.4.1. To consider the allocation of assets, as submitted by HIAL, for computation of ARR for the current Control Period.

8.4.2. The Authority also had tentatively proposed that it will commission an independent study to assess the reasonableness of the asset allocation submitted by HIAL and will take corrective action, as necessary for determination of tariffs, at the commencement of the next Control Period commencing with effect from 01.04.2016. The Authority had further proposed that upon analysis / examination pursuant to such a study, the Authority may conclude that the allocation of assets considered needs to be changed. In such a case the Authority would consider truing up the allocation mix at the commencement of the next Control Period as may be relevant.

c Stakeholder Comments on Issues pertaining to Asset Allocation (Aeronautical / Non-Aeronautical)

8.5. Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the tentative proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its Consultation Paper No 09/2013-14 dated 21.05.2013. Stakeholders have also commented on allocation of asset into aeronautical / non-aeronautical assets in respect of RGI Airport, Hyderabad. These comments are presented below:

8.6. On the issue of allocation of assets between Aeronautical and Non-aeronautical Assets, IATA stated that

“It is noted that asset allocation only emerges as an issue if dual till is applied. The Authority had recognized the need for an independent

assessment of asset allocation in early 2012 during the tariff determination process for Indira Gandhi International Airport, Delhi but had not taken any action between then and this instance of tariff determination for Rajiv Gandhi International Airport. The absence of an independent study has left this issue in a non-ideal situation of having to rely on the airport's allocation formula and to endure an unverified allocation formula until the next control period. In the event that a decision to adopt dual till is taken, IATA does not support the unverified use of the airport's allocation formula but instead requests the Authority to adopt a nominal asset allocation percentage of 70% to the aeronautical category which is in line with the experience seen at a number of European airports (please see Appendix 1)."

8.7. Further, FIA stated that

"It is submitted that the Authority ought to conduct/commission its own study for allocation of assets and not accept HIAL'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."

8.8. AAI on the issue of allocation of assets between Aeronautical and Non-aeronautical Assets stated that

- *"AERA has agreed to accept the principle proposed by HIAL 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 HIAL."*

- *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 etc. which also catered to its subsidiaries (non-Airport Activity) have been apportion 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."*

d HIAL's response to Stakeholder Comments on Issues pertaining to Asset Allocation (Aeronautical / Non-Aeronautical)

8.9. Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 09/2013-14 dated 21.05.2013, the Authority forwarded these comments to HIAL seeking its response to these comments. HIAL has provided responses to the Stakeholders' comments, which are presented below:

8.10. In response to AAI's comments on Allocation of Assets, HIAL stated as under:

"In proposal no. 3 of the CP 09/2013-14 the Authority has stated that it proposed to commission an independent study on allocation. Following is the extract from the CP:

"The Authority also tentatively proposes that it will commission an independent study to assess the reasonableness of the asset allocation submitted by HIAL and would take corrective action, as may be necessary for determination of tariffs under dual till, at the commencement of the next control period commencing with effect from 01.04.2016."

Our analysis is based on scientific methodology adopted by us and we are open to its review by Authority. The classification methodology has been very clearly drafted vide a Concept Note and submitted to AERA.”

- 8.11.** Further in response to AAI’s comment on inclusion of other Assets, HIAL stated as under:

“No assets procured from PSF funds are there in GHIAL books. A certificate from Auditors in this respect is already submitted to Authority

No assets which are capitalized in GHIAL RAB are exclusively used for subsidiaries. An Auditors certificate in this regard is already submitted to Authority

There is no grant received from Govt exclusively for ATC. Auditor's Certificates requested by AERA for the ATC assets and usage of assets have been provided.”

- 8.12.** In response to FIA’s comments on issues pertaining to Asset Allocation, HIAL has stated as under:

“The details relating to all aspects have been submitted in great detail and each and every component has been closely scrutinized by the Authority and its consultants.”

- 8.13.** In response to IATA’s comments on issues pertaining to Asset Allocation, HIAL has stated as under:

“The allocation was done on a scientific method and details and necessary certificates thereof have been submitted to the Authority.

The asset allocation suggested by IATA is very unscientific and vague method. As regards to adoption of European methodology, we need to keep in mind that no two airports are similar in nature.

GHIAL has concessioned out most of its non-aero revenue streams and as such it will have low Non Aero assets in its books. Proposal 3. a (ii) of the Consultation Paper No. 09/2013-14 stated the following

"The Authority also tentatively proposes that it will commission an independent study to assess the reasonableness of the asset allocation submitted by HIAL and would take corrective action, as may be necessary for determination of tariffs under dual till, at the commencement of the next control period commencing with effect from 01.04.2016.

The Authority further proposes that upon analysis / examination pursuant to such a study, the Authority may conclude that the allocation of assets considered under dual till needs to be changed. In such a case the Authority would consider truing up the allocation mix at the commencement of the next control period as may be relevant."

As the Authority proposes to commission an independent study hence concern of IATA is no more valid."

e HIAL's own comments on Issues pertaining to Asset Allocation (Aeronautical / Non-Aeronautical)

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

f Authority's Examination of Stakeholder Comments on Issues pertaining to Asset Allocation (Aeronautical / Non-Aeronautical)

8.15. The Authority takes note of IATA and FIA concern that the Authority ought to conduct/commission its own study for allocation of assets into aeronautical and non-aeronautical assets and not accept HIAL's submission on as is basis. The Authority had proposed 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. However, for the current determination, the Authority will go ahead with the segregation provided by HIAL. The Authority however notes that the segregation is relevant under Single Till for the common use items.

8.16. The Authority also notes IATA'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 has already been commissioned and its outcome is awaited.

- 8.17.** 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 clarifies that the funds granted by GoAP have not been earmarked for certain class of assets and thus it is not possible for the Authority to ear mark specific asset class to be reduced from RAB. However, the Authority further clarifies that the quantum of non-refundable grant given by GoAP has already been reduced from RAB and the attributable depreciation has also not been considered.
- 8.18.** The Authority also notes AAI's comment regarding apportionment of the asset like electrical installation, water supply, roads etc. which also catered to HIAL's subsidiaries (non-Airport Activity) and deletion of the same from the Airport list. In this regard, the Authority has sought a rational apportionment of such assets from HIAL. HIAL's submissions, in response to the same, are being discussed in Paras 11.32 to 11.34 below.
- 8.19.** The Authority also notes IATA's recommendation to adopt a nominal asset allocation percentage of 70% to the aeronautical category which is in line with the experience as indicated by IATA is seen at a number of European airports. However, it is to be noted that the calculation of aeronautical RAB depends on the facts in the specific case, namely what proportion of the assets can physically be ascribed to aeronautical use in a given Airport. In Authority's view, aeronautical RAB does not depend on any pre-defined notional split between aeronautical and non-aeronautical assets. At any rate, the Authority has decided to consider single till regulatory regime while determining the tariff for RGIA, Hyderabad.
- 8.20.** The Authority agrees with AAI's suggestion that assets procured via PSF (SC) should be excluded from RAB. The Authority sought certificate from HIAL in this regard. HIAL has submitted an auditor certificate, which states as under,

"As on 31st March, 2013, the books of GHIAL and PSF (SC) are distinct and separately maintained. It is clear that there are no assets that are duplicated in the books GHIAL and PSF (SC)."

- 8.21.** The Authority also had reference to the audited Annual Report of HIAL for FY 2012-13, which stated as under,

“The Passenger Service Fee (PSF) charged from the departing passengers has two components viz. Facilitation Component (FC) and Security Component (SC). Ministry of Civil Aviation (MoCA) has issued a Standard Operating Procedure (SOP) for accounting / audit of PSF (SC), according to which amounts collected towards PSF (SC) are held by the Company in fiduciary capacity on behalf of the Government of India and is required to be deposited separately in an escrow account, to be utilised for meeting the security related expenses of the Airport. The PSF (SC) accounts are required to be maintained separately in accordance with the procedures laid down in SOP and are subject to audit by the Comptroller & Auditor General of India (C&AG).”

Decision No. 4. Regarding Allocation of assets (Aeronautical / Non-aeronautical)

- 4.a. The Authority decides to adopt the following approach for allocation of assets into aeronautical and non-aeronautical assets towards determination of tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:**

- i. To consider the asset allocation, as submitted by HIAL, for the determination of aeronautical tariff in respect of RGI Airport, Hyderabad**
- ii. To commission an independent study to assess the reasonableness of the asset allocation submitted by HIAL and will take corrective action, as necessary for determination of tariffs, at the commencement of the next Control Period commencing with effect from 01.04.2016. If upon analysis / examination pursuant to such a study, the Authority concludes that the allocation of assets considered needs to be changed, the Authority would consider truing up the allocation mix at the commencement of the next Control Period, as may be relevant.**

9. Future Capital Expenditure including General Capital Expenditure

a HIAL Submission on Future Capital Expenditure

9.1. HIAL in its submission dated 14.12.2012 stated that it had planned to incur general capital expenditure along with some additional future capital expenditure in order to smoothen the day to day operations at the RGI Airport, Hyderabad. Under this head HIAL had also included the future capital expenditure requirements of its SEZ, Hotel and Duty Free businesses. HIAL had stated that all the items under future capital expenditure were of value less than Rs. 50 crore and thus a prior stakeholder consultation on these items was not required.

9.2. These expenditures were defined by HIAL under various heads. These being:

9.2.1. Airport Connectivity from North: HIAL had stated that there was no connectivity to the airport from the northern boundary of the airport and thus HIAL had proposed constructing a public road considering the future traffic within the entire airport area. HIAL had estimated an expense of Rs. 30 crore under this head and proposed to add Rs. 20 crore to the RAB within the Control Period.

9.2.2. Water Supply Capacity Augmentation: HIAL had submitted that the water storage within the premises of RGI Airport, Hyderabad needed to be increased so that the supply inconsistency from Hyderabad Metropolitan Water Supply & Sewerage Board (HMWSSB) can be overcome. HIAL had estimated an expense of Rs. 30 crore under this head and proposed to add Rs. 30 crore to the RAB within the Control Period.

9.2.3. Flood Control & Rainwater Harvesting: HIAL had submitted that it proposes to develop 3 ponds in an area of 45 acres to contain the excess water due to heavy rainfall in the area. HIAL also proposed to construct a green belt along the pond. HIAL had estimated an expense of Rs. 30 crore under this head and proposed to add Rs. 20 crore to the RAB within the Control Period.

9.2.4. Sustainability through Renewable Energy: HIAL had submitted that as part of the green initiative for the Airport, it proposed to construct a 4 MW Solar Power plant in the premises to meet the current minimum load of the Airport.

Future Capital Expenditure including General Capital Expenditure

HAL also proposed to construct a green belt along the pond. HAL had estimated an expense of Rs. 40 crore under this head and proposed to add this to the RAB from FY 14 onwards.

- 9.2.5. Power Capacity Augmentation: HAL had submitted that in order to cater to the future requirements, it had proposed an inter-connection between existing and proposed Power distribution network. HAL had estimated an expense of Rs. 20 crore under this head and proposed to add this to the RAB within control period.
- 9.2.6. General Capex: In addition to the specific heads discussed above, HAL had also furnished their general capital expenditure based on the past trends in capital expenditure. It had furnished the general capital expenditure based on a list of ongoing and upcoming projects. It had considered the capex spend of 1% of the gross fixed assets annually and for this purpose, the gross fixed assets value was assumed to escalate by WPI Index year on year. HAL had submitted a list of ongoing and upcoming projects considered under the General Capital Expenditure. In response to the Authority's clarifications, it also submitted justification for these projects.
- 9.2.7. Apron Infrastructure, Land Development, Utilities, Roads and Buildings in SEZ: HAL submitted a list of activities being undertaken by them for the overall development of SEZ. It also submitted its estimates for these expenditures and submitted a schedule for its capitalization.
- 9.2.8. Future capex for Hotel, Fuel Farm and Duty free: Similarly HAL had submitted planned expenditures for these business units and had proposed consideration of some of these under the RAB.
- 9.2.9. The values considered in the above expenses are presented in the table below:

Table 15: Capitalization schedule of Future Capital Expenditure including General Capital Expenditure submitted by HAL in its MYTP submissions

(In Rs. crore)	2012-13	2013-14	2014-15	2015-16
1. Future Capital Expenditure				
Airport Connectivity from North	0.00	0.00	10.00	10.00
Water Supply capacity augmentation	0.00	5.00	15.00	10.00

Future Capital Expenditure including General Capital Expenditure

(In Rs. crore)	2012-13	2013-14	2014-15	2015-16
Flood Control & Rainwater Harvesting	0.00	0.00	10.00	10.00
Sustainability through Renewable Energy (Solar)	0.00	40.00	0.00	0.00
Power Capacity Augmentation	0.00	5.00	10.00	5.00
2. General Capital Expenditure (Projected Maintenance etc)				
General Capital Expenditure	29.28	31.45	34.03	36.97
3. Future Capital Expenditure in subsidiaries (assets not in the books of HIAL)				
Future capex in SEZ	27.56	48.63	0.00	0.00
Future capex in Hotel	0.40	2.00	2.00	2.00
Future capex in Duty Free	1.15	0.40	1.50	0.00
4. Future Capital Expenditure (assets reflected in the books of HIAL)				
Future capex in Fuel Farm	0.40	4.40	7.60	3.15

b Authority's Examination of HIAL Submissions on Future Capital Expenditure

9.3. The Authority had carefully examined HIAL submissions noting that they pertain to two categories namely, (a) Future Capital Expenditure and (b) General Capital Expenditure. The Authority had noted that the expenditure under both the categories had been segregated into various heads corresponding to respective assets. The Authority had sought clarifications / justifications in respect of various items considered under these heads. HIAL submitted the justification for some of these expense heads.

9.4. As regards HIAL's statement that these expenditures fall below the value of Rs 50 crore and hence do not need stakeholder consultation, the Authority also sought a confirmation on whether segregation of the works into such smaller components can be avoided and some of these items qualify to be considered together under single works. To this, HIAL submitted a Management Certification stating that *"We hereby confirm that the year on year project wise breakup of future general capex items (adding up to an amount of Rs. 131.73 Cr), provided by GHIAL vide email dated 27th April 2013, are independent works and none will form part of or be combined with other items as a single work in future"*.

- 9.5.** The Authority had noted that for the items, proposed by HIAL to be included in Future Capital Expenditure (items in Group 1 in Table 14 of Consultation Paper No. 09/2013-14), even designing of the proposed development had not been undertaken. Thus, the estimates submitted by HIAL in respect of these items appeared to be only broad estimations based on assumptions. Therefore the Authority had proposed not to include these Future Capital Expenditure. Further the Authority had proposed to consider these expenditures at the time of determination of tariffs in the next Control Period, in case these are incurred by HIAL and evidential submissions along with auditor certificates thereof are submitted by HIAL based on the approach adopted for inclusion or exclusion of assets in Regulatory Asset Base.
- 9.6.** The Authority had proposed to include the future capex proposed by HIAL in respect of only the standalone entity HIAL. Thus the proposed future capex (items in Group 3 in Table 14 of Consultation Paper No. 09/2013-14) in respect of the subsidiaries of Hotel, SEZ and Duty Free by HIAL were not considered for calculation of aeronautical tariff for the current Control Period.
- 9.7.** The Authority noted the details and remarks / explanations submitted by HIAL in respect of general capital expenditure (items in Group 2 in Table 14 of Consultation Paper No. 09/2013-14) and proposed to consider the amount of Rs 131.73 crore for the calculation of aeronautical tariff for the current Control Period.

Table 16: General Capital Expenditure submitted by HIAL in its MYTP submissions

Project Name	2012-13	2013-14	2014-15	2015-16
General Capital Expenditure	29.28	31.45	34.03	36.97

- 9.8.** The Authority further noted that the actual General Capital Expenditure (items in Group 2 in Table 14 of Consultation Paper No. 09/2013-14) incurred by HIAL might vary from this proposed figure. The Authority thus proposed to true-up the difference between the General Capital Expenditure considered now and that actually incurred based on evidential submissions along with auditor certificates thereof at the time of determination of aeronautical tariff for the next Control

Future Capital Expenditure including General Capital Expenditure

Period, based on the approach adopted for inclusion or exclusion of assets in Regulatory Asset Base.

- 9.9.** As far as items in Group 4 in Table 14 are concerned, the Authority notes that these are included in the tariff proposal submitted by HIAL in respect of fuel farm services provided by HIAL itself.
- 9.10.** A summary of Future Capital Expenditure including General Capital Expenditure considered by Authority in Consultation Paper No 09/2013-14 dated 21.05.2013 is presented below:

Table 17: Future Capital Expenditure including General Capital Expenditure considered by the Authority in Consultation Paper No 09/2013-14

(In Rs. crore)	2012-13	2013-14	2014-15	2015-16
1. Future Capital Expenditure				
Airport Connectivity from North	0.00	0.00	0.00	0.00
Water Supply capacity augmentation	0.00	0.00	0.00	0.00
Flood Control & Rainwater Harvesting	0.00	0.00	0.00	0.00
Sustainability through Renewable Energy (Solar)	0.00	0.00	0.00	0.00
Power Capacity Augmentation	0.00	0.00	0.00	0.00
2. General Capital Expenditure (Projected Maintenance etc)				
General Capital Expenditure	29.28	31.45	34.03	36.97
3. Future Capital Expenditure in subsidiaries (assets not in the books of HIAL)				
Future capex in SEZ	0.00	0.00	0.00	0.00
Future capex in Hotel	0.00	0.00	0.00	0.00
Future capex in Duty Free	0.00	0.00	0.00	0.00
4. Future Capital Expenditure (assets reflected in the books of HIAL)				
Future capex in Fuel Farm	0.00	0.00	0.00	0.00

- 9.11.** Based on the material before it and its analysis, the Authority had proposed in the Consultation Paper No 09/2013-14 dated 21.05.2013:

- 9.11.1. Not to include the Future Capital Expenditure (Refer items in Group 1 and items in Group 3 in Table 14 of Consultation Paper No. 09/2013-14) as submitted by HIAL for the purpose of the determination of tariff for aeronautical services during the current control period.

- 9.11.2. To include the General Capital Expenditure (Refer items in Group 2 in Table 14 of Consultation Paper No. 09/2013-14 details of which are given in Table 15 of Consultation Paper No. 09/2013-14) as submitted by HIAL for the present, for the purpose of the determination of tariff for aeronautical services during the current Control Period.
- 9.11.3. To true-up the difference between the General Capital Expenditure (Refer items in Group 2 in Table 14 of Consultation Paper No. 09/2013-14 details of which are given in Table 15 of Consultation Paper No. 09/2013-14) considered now and that actually incurred based on evidential submissions along with auditor certificates thereof at the time of determination of aeronautical tariff for the next Control Period, based on the approach adopted for inclusion or exclusion of assets in Regulatory Asset Base
- 9.11.4. The future capital expenditure (Refer items in Group 1 in Table 14 of Consultation Paper No. 09/2013-14) for FY 14, FY 15 and FY 16, actually incurred by HIAL during the balance control period, based on the audited figures and evidence of stakeholder consultation, as may be required, be reckoned at the time of determination of aeronautical tariffs for the next Control Period commencing from 01.04.2016 - based on the approach adopted for inclusion or exclusion of assets in Regulatory Asset Base during the current Control Period.

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

- 9.12.** Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the tentative proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its Consultation Paper No 09/2013-14 dated 21.05.2013. Stakeholders have also commented on consideration of Future Capital Expenditure including General Capital Expenditure in respect of RGI Airport, Hyderabad. These comments are presented below:
- 9.13.** On the issue of Future Capital Expenditure, IATA stated that it agrees with the Authority's proposal given that the costs submitted by GHIAL are only broad

estimates and capital expenditure taken on by a separate entity should not in normal circumstances be included for tariff determination of the airport entity.

9.14. On the issue of General Capital Expenditure, IATA stated that

“Admission of the General Capital Expenditure proposed by the airport in the Regulatory Asset Base for tariff determination in the current Control Period would necessitate that the estimated costs quoted are realistic and the eventual actual costs would not vary significantly from these estimates. To ensure proper cost control measures are practiced by the airport, there should be a cap on the upward variation of the costs allowable for truing up (e.g. up to 5%) notwithstanding that evidential submissions along with auditor certificates are required.”

9.15. On the issue of general capital expenditure, AAI stated as under,

“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 if so, needs to be deleted from the capital expenditure.”

9.16. Further AAI stated as under,

“All future capital expenditure proposed which are not finalized at this stage.”

d HIAL’s response to Stakeholder Comments on Issues pertaining to Future Capital Expenditure

9.17. Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 09/2013-14 dated 21.05.2013, the Authority forwarded these comments to HIAL seeking its response to these comments. HIAL has provided responses to the Stakeholders’ comments, which are presented below:

9.18. In response to AAI’s comments on Future Capital Expenditure, HIAL stated as under:

“The items being listed as capital in nature are capital assets and not revenue assets as being referred herein. Capitalization will be

scrutinized by Auditors before they allow the same to be approved.

Modification does not mean that this is opex.

If any item is considered as opex the same will be allowed as opex by Statutory Auditors and will accordingly be trued up.

The cost of the Land is not part of GHIAL's RAB.

No assets which are capitalized in GHIAL RAB are exclusively used for subsidiaries.

Also the allocation methodologies of common areas (where common areas are allocated based on pure aero and non-aero areas) ensure that the proportionate allocation amongst aero and non-aero is there for common assets.

A certificate from Statutory auditors in this regard has already been furnished to Authority.

It is not possible to identify specific assets funded through Advance Development fund grant (ADFG) of Rs. 107 Crore given by GoAP. However, value of Rs. 107 Crore has been excluded from the gross assets base of GHIAL for calculation of Yield Per Pax. RAB and the corresponding depreciation also have been reduced accordingly."

9.19. In response to IATA's comments on the issues pertaining to Future Capital Expenditure, HIAL has stated as under:

"The details submitted to the Authority are comprehensive to enable allowance of future Capex.

Sufficient evidences have been produced in support of the fact that no user consultation is required for such Capex.

The stand of allowing Capex at a future date makes the approval uncertain and will lead to inefficient operations at airport which may impact the quality of services at the airport. The stand of future approval also makes it difficult for the airport to borrow for such projects. Since a 100% true up will be there for the future Capex it is earnest requested that the Future Capex should be allowed to be part

of current approval. In absence of this the quality of the airport will suffer tremendously.”

e HIAL’s own comments on Issues pertaining to Future Capital Expenditure

9.20. On the issue of future capital expenditure, HIAL stated that

“1 The details submitted to Authority have sufficient details to enable allowance of future Capex.

2 Sufficient evidences have been produces in support of the fact that no user consultation is required for such Capex

3 The stand of allowance at a future date makes the approval uncertain and will lead to inefficient operations at airport impacting the quality of the airport services.

4 The stand of future approval also makes it difficult for the airport to borrow for such projects.

5 Since a 100% true up will be there for the future Capex it is earnest requested that the Future Capex should be allowed to be part of current approval.”

f Authority’s Examination of Stakeholder Comments on Issues pertaining to Future Capital Expenditure

9.21. The Authority has carefully examined the submissions made by the stakeholders including HIAL on the issue of Future Capital Expenditure including General Capital Expenditure.

9.22. The Authority gave careful consideration to different items of expenditure indicated in Table 15 and items 1 and 4 thereof. Based on the comments and submissions of HIAL on the Consultation Paper, the Authority has further analysed these proposed expenditure as under:

9.23. For Airport Connectivity from North: The expenditure of Rs 30 crore is proposed to be made by HIAL during the current Control Period and out of this Rs 20 crore is expected to be capitalized during the current Control Period. The Members of the Authority had visited the Airport and were informed that this connectivity will facilitate the flow of passengers from the North side. The Authority also

understands that this road, for which Rs. 30 crore are proposed to be expended, would be useful only if it is linked in a continuous manner with the road that the State government is supposed to construct outside the airport boundary. The Authority expects that the airport connectivity from North should also, if required, form part of the relevant master plan for the area. Subject to the above, the Authority notes this proposal but has not taken this expenditure into RAB for the current Control Period. If incurred and capitalized during the current Control Period, the same will be given effect to (including carrying cost if any) at the time of tariff determination of next Control Period.

9.24. Water Supply Capacity Augmentation: HIAL has proposed an expenditure of Rs.30 crore towards this item. It has proposed an expenditure of Rs. 5 crore in the current financial year, namely, 2013-14 itself. The Authority also notes that HIAL has also shown items under the heading "*Water Redundancy*" and "*Deepening of Main Holding Tank*" with an estimated cost of Rs 0.83 crore and Rs.1.67 crore respectively in its submission dated 27.04.2013 on General Capital Expenditure. The Authority expects HIAL to clearly separate these two items and ensure that Rs.30 crore, as and when spent, actually goes into overall enhancement of water supply capacity. The Authority also notes that as of today HIAL has storage capacity of 3 days' consumption and HIAL has proposed to augment the same to 6 days' consumption. The Authority expects that HIAL would take appropriate approvals for this expenditure as well as need for augmenting the storage facility to 6 days' consumption. Subject to the above, the Authority notes this proposal but has not taken this expenditure into RAB for the current Control Period. If incurred and capitalized during the current Control Period, the same will be given effect to (including carrying cost if any) at the time of tariff determination of next Control Period.

9.25. Development of Ponds for Flood control and Rain water harvesting: HIAL has indicated an expenditure of Rs.30 crore towards this item and capitalization of Rs 20 crore during the current Control Period. The Authority understands that HIAL has proposed to develop three ponds in the area of 45 acres. The Authority understands that to construct any water body within the airport is an activity which

requires to be carefully worked through since existence of such water bodies may increase the risk of bird-hits. Keeping this in view, the Authority expects HIAL will coordinate with AAI appropriately before commencement of this work. The Authority also expects that such works would also appropriately form part of overall master plan. Subject to the above, the Authority would take this expenditure as allowable expenditure and for the time being has decided to take an amount of Rs 20 crore (Rs 10 crore during FY 2014-15 and Rs 10 crore during FY 2015-16) towards capitalization and consequent addition to RAB.

- 9.26.** Sustainability of Renewable Energy (Solar power): HIAL proposed to have solar energy of the order of 4 MW to meet the current minimum load of the airport. HIAL has proposed an expenditure of Rs.40 crore on this item and has indicated that that it would be able to capitalize in FY 2013-14. The Authority recognizes the need to support this and would take into account the expenditure incurred for the purposes of RAB after capitalization. However as there are only two months left in this year FY 2013-14 and there does not seem to be a substantial progress indicating completion within this year, the Authority has decided to consider capitalization of Rs 40 crore in FY 2014-15 and not in FY 2013-14.
- 9.27.** Power Capacity Augmentation: In addition to Solar power mentioned above, HIAL has also proposed to spend and capitalize an amount of Rs.20 crore on this item during the current Control Period. The Authority also notes that HIAL has included an item under the heading "*Power Redundancy*" with an estimated cost of Rs 6.95 crore in its submission dated 27.04.2013 on General Capital Expenditure that the Authority has already allowed during the current Control Period. As regards the current item, the Authority has noted the submission of HIAL to augment the existing power capacity for future needs. The Authority proposes to take this into account in allowable project cost for computation of additional RAB as and when it is capitalized. Before incurring this expenditure, the Authority expects that HIAL would carefully analyse the need thereof and obtain appropriate approvals. Subject to the above, the Authority notes this proposal but has not taken this expenditure into RAB for the current Control Period. If incurred and capitalized during the

current Control Period, the same will be given effect to (including carrying cost if any) at the time of tariff determination of next Control Period.

- 9.28.** Fuel Farm related assets: The Authority has also noted the expenditure of Rs 15.15 crore proposed by HIAL to be made on the Fuel Farm related assets such as procurement of dispensers etc during the current Control Period. The Authority supports such expenditure and will consider it towards addition in RAB. The Authority has noted that HIAL has indicated the capitalization schedule for this item as Rs 4.4 crore in FY 2013-14, Rs 7.6 crore in FY 2014-15 and Rs 3.15 crore in FY 2015-16. Since only two months of FY 2013-14 are remaining; the Authority decides to consider an amount of Rs 12 crore in FY 2014-15 and Rs 3.15 crore in FY 2015-16 for the purposes of capitalization and addition to RAB.
- 9.29.** The Authority expects that HIAL would rigorously analyse the need for incurring these expenditures, which would enter into RAB, after it is capitalized. The Authority had already indicated in the Consultation Paper that it will true up the expenditure during the tariff determination in the next Control Period.
- 9.30.** The Authority notes IATA comments that *“To ensure proper cost control measures are practiced by the airport, there should be a cap on the upward variation of the costs allowable for truing up (e.g. up to 5%) notwithstanding that evidential submissions along with auditor certificates are required.”* The Authority understands that the estimates of general capital expenditure have been approved by the Board of HIAL, which includes representation from AAI. The Authority would hope and expect that HIAL undertakes adequate measures to implement the activities considered under the General Capital Expenditure within the estimated budget, submitted by HIAL to the Authority and considered by the Authority in its determination of tariff for HIAL. While the Authority has allowed this expenditure under General Capital Expenditure and considered it towards determination of RAB for the current Control Period, it will need auditor certificates from HIAL certifying the amounts incurred on these activities. Additionally, the Authority has sought a management representation from HIAL stating that none of the expenditure, allowed under General Capital Expenditure, will be claimed under the operating expenses and that each of these contracts will be awarded as a separate contract

and not clubbed into one while awarding these contracts. HIAL, in response, has submitted as under,

“We shall like to confirm that the expenditure classified by Auditors as capital in nature is treated as a capital expenditure in books of account and the same cannot and will not be charged as operating expenditure.”

- 9.31.** Thus the Authority does not feel the need of capping the items listed under General Capital Expenditure for the current Control Period.
- 9.32.** On the issue of General Capital Expenditure, the Authority is of the view that regular year-on-year operating and maintenance capex is required by major airports like RGIA, Hyderabad for upkeep and maintenance of the airport infrastructure. The Authority restates that the actual General Capital Expenditure incurred by HIAL may vary from this proposed figure and thus the Authority would true-up the difference between the General Capital Expenditure considered now and that actually incurred based on evidential submissions along with auditor certificates thereof.
- 9.33.** The Authority sought auditor certificates from HIAL for the actual value of General Capital Expenditure incurred by it in FY 2012-13. HIAL, in response, submitted that the General Capital Expenditure incurred by HIAL in FY 2012-13 is Rs. 33.33 crore and also submitted that it has incurred an expense of Rs 1.51 crore in the Fuel Farm assets. The Authority has considered the same for FY 2012-13 with the projections for future years remaining the same. Thus the Future Capital Expenditure including General Capital Expenditure considered by the Authority is presented below:

Table 18: Future Capital Expenditure including General Capital Expenditure considered by the Authority in current Control Period

(In Rs. crore)	2012-13	2013-14	2014-15	2015-16
1. Future Capital Expenditure				
Airport Connectivity from North	0.00	0.00	0.00	0.00
Water Supply capacity augmentation	0.00	0.00	0.00	0.00
Flood Control & Rainwater Harvesting	0.00	0.00	10.00	10.00
Sustainability through Renewable Energy	0.00	0.00	40.00	0.00

Future Capital Expenditure including General Capital Expenditure

(In Rs. crore)	2012-13	2013-14	2014-15	2015-16
(Solar)				
Power Capacity Augmentation	0.00	0.00	0.00	0.00
2. General Capital Expenditure (Projected Maintenance etc)				
General Capital Expenditure	33.33	31.45	34.03	36.97
3. Future Capital Expenditure in subsidiaries (assets not in the books of HIAL)				
Future capex in SEZ	0.00	0.00	0.00	0.00
Future capex in Hotel	0.00	0.00	0.00	0.00
Future capex in Duty Free	0.00	0.00	0.00	0.00
4. Future Capital Expenditure (assets reflected in the books of HIAL)				
Future capex in Fuel Farm	1.51	0.00	12.00	3.15

Decision No. 5. Regarding Future Capital Expenditure including General Capital Expenditure

5.a. The Authority decides to adopt the following approach for consideration of Future Capital Expenditure including General Capital Expenditure towards determination of tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:

- i. To include the General Capital Expenditure (Refer items in Group 2 in Table 18) as submitted by HIAL for the present, for the purpose of the determination of tariff for aeronautical services during the current Control Period.**
- ii. Not to include projects under “Future Capital Expenditure in subsidiaries (assets not in the books of HIAL)” (Refer items in Group 3 of Table 18) for the purpose of the determination of tariff for aeronautical services during the current Control Period.**
- iii. To include projects under “Future Capital Expenditure (assets reflected in the books of HIAL)” (Refer items in Group 4 of Table 18)**

for the purpose of the determination of tariff for aeronautical services during the current Control Period.

- iv. To include selected projects namely, “Flood Control & Rainwater Harvesting” and “Sustainability through Renewable Energy (Solar)” out of the Future Capital Expenditure (Refer items in Group 1 of Table 18) for the purpose of the determination of tariff for aeronautical services during the current Control Period.**
- v. To note that the remaining items under Future Capital Expenditure (Refer items in Group 1 of Table 18 namely “Airport Connectivity from North”, “Water Supply capacity augmentation” and “Power Capacity Augmentation”) have not been considered by the Authority for capitalization during the current Control Period. However, should HIAL capitalize any expenditure on these items, the Authority would reckon such capitalized expenditure towards RAB at the time of determination of aeronautical tariffs for the next Control Period commencing from 01.04.2016.**
- vi. As regards the projects referred to in Decisions i, iii and iv above, the Authority decides to true-up the expenditure as well as the date of capitalization, based on auditor certificates thereof, at the time of determination of aeronautical tariff for the next Control Period.**

10. Treatment of Land

a HIAL Submission on Treatment of Land in respect of RGI Airport, Hyderabad

10.1. HIAL had made submissions regarding the land leased by the GoAP to HIAL for the purpose of airport project. It had stated *“that land has been given for making project feasible (and that) its earnestly requested not to take away this incentive”*. The Authority was also copied on a letter written by Mr Siddharth Kapur, President & CFO - Airports, for GMR Hyderabad International Airport Limited to the Hon’ble Minister for Civil Aviation requesting that the usage and treatment of the Land should be left to the GoAP and GHIAL being Lessor and Lessee of the land respectively and also presenting that GoAP had already clarified to AERA that the reduction of Land value from RAB was not envisaged. Additionally HIAL attached a report from NERA on land treatment.

b Authority’s Examination of HIAL Submissions on Treatment of Land in respect of RGI Airport, Hyderabad

10.2. With regard to the issue of land and HIAL’s submission that land was given for making the project feasible, the Authority had considered the provisions in the Land Lease Agreement dated 30.09.2003, entered in to between the GoAP and HIAL. According to Authority’s reading, Recital ‘B’ referred to the **“Airport”** as *defined hereafter on a build, own and operate basis (Project)*. The **‘Project’** was defined to have meaning assigned to it in Recital ‘B’. Recital ‘C’ referred to the project being of prime importance to the State of Andhra Pradesh and referred to the policy of the lessor (State of Andhra Pradesh) to encourage and provide industrial development, tourism, passengers, cargo movement and general economic and social development of the State of Andhra Pradesh. The same Recital also spoke about the provision of financial support to assist the project. Recital ‘E’ explicitly stated that *“the project is feasible only with State Support of the lessor”*. Under the Land Lease Agreement, **“Airport”** was defined as

“the Greenfield international airport to be constructed and operated by the lessee at Shamshabad near Hyderabad and includes all buildings, equipments, facilities and systems, aeronautical and non-aeronautical and airport-centric activities and includes without limit, where the

circumstances so required, any expansion of the airport from time to time.”

- 10.3.** The Authority upon combined reading of these recitals felt that land was given to make the project (namely, the Airport) feasible. It, therefore, appeared to the Authority that any revenues obtained from commercialization of land in excess of the project requirements were required to be ploughed into the project. The GoAP had also made available State support for the project to make it feasible through the State Support Agreement (ADFG and IFL). Hence the Authority had thought of the mechanism to reduce RAB by the market value of such commercial activities generally outside the terminal building (except what clearly are aeronautical services). This, in view of the Authority, would establish the nexus between the purpose of grant of land (to make the project feasible) and lowering the charges on the passengers.
- 10.4.** The Authority, in any case, was 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 would become viable 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. According to the understanding of the Authority, land in excess of the airport requirement was leased out to make the ‘Project’ (namely, the Airport) feasible through commercial exploitation. Upon going through the purpose of grant of lease (Clause 3.1(b)), the Authority noted that some of the purposes were related to hotels, resorts, commercial and residential complexes, industrial facilities, and any other lawful commercial activity. According to Authority’s understanding, the disposal of land acquired for a ‘public purpose’ is normally not given for pure commercial or residential activities unless revenue generated from such activities was utilized for making some other public purpose feasible. In the extant case, therefore, the Authority felt that the revenues from such commercial activities should flow to the airport (public purpose). One of the mechanisms that the Authority had thus contemplated was to reduce the market value from RAB so

as to lower the charges on the passengers which, in its view, is consistent with the scheme of the grant of lease to HIAL for the project.

- 10.5.** The issue of incentive is relevant if in normal course the airport operator was unable to get fair rate of return on his investments only by airport operations and required additional source of funds to recoup the short-fall. The process of tariff determination undertaken by the Authority in accordance with the mandate of the AERA Act ensured that the airport operator would get the fair rate of return. The concession agreement dated 20.12.2004 between MoCA and HIAL also had a clause regarding UDF under Schedule 6, which stated that the UDF was not only to top-up the revenue short-fall that may arise in its absence so as to give a fair rate of return to the airport operator but even for capital expenditure. The UDF directly impinges on the passengers. Hence the regulatory framework fully addressed the issue of fair rate of return to the airport operator. The reduction in RAB on account of land monetisation was only a mechanism to give effect to the nexus between grant of land in excess of the airport requirements made to HIAL and the express objective of such grant mentioned in the Lease Deed viz. to make the project (namely airport) feasible. The Authority did not consider it to be the objective of grant of excess land to the airport operator that he could get additional revenue over and above what is considered and determined as a fair rate of return. It can be said that so doing may be **construed as unjust enrichment of the airport operator.**
- 10.6.** As far as NERA Economic Consulting's report on the treatment of land was concerned, the Authority had noted that the purpose of grant of land as well as permitted non-airport activities thereon did not form part of the Concession Agreement. They formed part of the Land Lease Agreement signed between Govt. of Andhra Pradesh and HIAL as well as in the provisions of the State Support Agreement and were duly addressed by the Authority at the respective position.
- 10.7.** The land of 5450 acres had been acquired by the State Govt. from the cultivators under the relevant provisions of Land Acquisition Act (and leased to the airport). The Authority noted that the rent for land was taken at 2% based on Rs. 155 crore which the Authority understood may be the acquisition cost under the Land Acquisition Act. The Authority thus understood that the rental of 2% did not make

distinction between different uses permitted on this land, namely, the airport activities and the other commercial activities, including hotel, shops, F&B, etc. The Authority understood that land for commercial purposes was generally based on certain well-defined principles of disposal including that of auction and, at any rate, attracted a higher lease rental.

- 10.8.** The Authority understood that land would have been granted by the State Govt under the relevant land disposal rules. The lease rental, generally, varied depending on the user and was substantially higher than 2% for any commercial exploitation. The Authority, therefore, reasonably concluded that the lease rental of 2% was on account of the land made available only for the stated public purpose like airport and further especially to make the airport feasible. As was indicated above, the Authority had made the airport feasible primarily through UDF. Hence any receipts from the commercial exploitation of land outside the terminal building should go to reduce the incidence of passenger charges namely UDF. In Authority's view, one of the definitive and transparent mechanism of doing so was to reduce the value of land used for such commercial exploitation (outside the terminal building) from RAB.
- 10.9.** HIAL in its letter dated 03.05.2013 to the Authority had given its interpretation of GoAP position on land (page 12 of the letter). According to it, GoAP had categorically clarified that the *"land given was for the economic and social development of the State and by reducing its market value from the RAB the desired objective will not be achieved"*. The Authority's reading of the Land Lease, as mentioned above in Para 9.22 above, indicated that the land was given for the project and that the project is defined as an airport. According to lease deed, it would appear that the project (airport) is important for overall social development of the state. If the project is feasible, the overall social and economic development of the state would follow. The link between the social and economic development of the state and grant of land is thus through the project (airport). It therefore does not appear that land is given bereft of any reference to the feasibility of the project.
- 10.10.** The grant of land is one of the elements of assistance to make the project feasible. The project is the development of airport which also is defined in the Lease

agreement. As was indicated in Para 7.2 above, one of the items that the Authority was required to take into consideration while determining aeronautical tariffs was “revenue from services other than aeronautical”. This would indicate that under the AERA Act such revenues from services other than aeronautical need to be taken into account while determining aeronautical tariffs. To the extent, the provisions of the AERA Act take primacy over this or any agreement, etc., the provisions of Concession Agreement would need to be construed accordingly. However, the Authority’s decision of subtracting the share market value of such lands under commercial exploitation from RAB was based on its understanding of the Lease Deed signed between GoAP and HIAL. If the land in excess of the airport development was used for commercial exploitation, but according to the letter of GoAP the revenues therefrom were not to be used to cross-subsidise the aeronautical tariffs, the Authority was not clear in what manner the excess land was to be understood to have been given to make the airport feasible. This was quite apart and distinct from the circumstance that under its mandate, the Authority was required to make the operations of the airport economically viable even if there were no revenue/capital proceeds from the commercial exploitation of land in excess of airport requirements. In such a scenario, it would appear that the proceeds from the commercial exploitation of lands in excess of airport requirement would accrue to airport operator without requiring of him to use it for the airport operations. Alternatively, it would appear that the land acquired by GoAP in excess of the airport requirements and leased out to HIAL at what appeared to be a concession rental @2%, had been used by the airport operator purely for commercial activities indicated in Part 2 of Schedule 3, and further that the proceeds of which were permitted to be retained by the airport operator.

- 10.11.** As has been indicated elsewhere, the Authority under its delimitation of RAB boundary, normally, would not take the proceeds of real estate development into determination of aeronautical tariffs (though under the express provisions of the Act, it may be required to do so). In the extant case, however, subtracting the market value of such land commercially exploited for purposes mentioned in Schedule-3, Part-2 from RAB was to give effect to the nexus between aeronautical

tariff determination and the express covenants of the lease deed that such lands were given to HIAL to *“make the project feasible”*.

10.12. For the time being, the Authority had noted that HIAL had used land in excess of airport requirement for commercial exploitation for Hotel (around 7 acres or so). It had also sub-leased land admeasuring 251.85 acres for purposes of developing an Aviation related Special Economic Zone (Aviation SEZ) at the airport and that in this Aviation SEZ, a Joint Venture company has taken a lease of land admeasuring 14.81 acres for establishment of Maintenance, Repair and Overhaul (MRO) facility. The MRO company had also agreed to exercise the right to take up to another 8.785 acres of land subject to certain conditions.

10.13. HIAL had indicated that according to it, the valuation of land was of the order of Rs.45 lakhs per acre. Having regard to the totality of the circumstances, the Authority, for the purposes of the calculation of aeronautical tariff in the Consultation Paper No 09/2013-14 dated 21.05.2013, had not subtracted the value of these lands from the RAB. The Authority had sought the stakeholders’ response in this regard and indicated that it would make appropriate final decision based on its consideration of such responses. The Authority had therefore not found it necessary, for the purposes of consultation paper, to independently assess the fair market value of these lands used for real estate development by HIAL.

10.14. The Authority, in its Airport Guidelines, had provided for a mechanism for calculation of Regulatory Asset Base, wherein the Initial RAB took into consideration original value of fixed assets, accumulated depreciation, accumulated capital grants, subsidies or user contribution, and adjustment for value of land excluded from the scope of RAB.

10.15. Based on the material before it and its analysis, the Authority had proposed in the Consultation Paper No 09/2013-14 dated 21.05.2013:

10.15.1. To calculate RAB without subtracting the fair market value of real estate development (outside the terminal building), and had presented the calculations of tariff determination accordingly.

10.15.2. To appropriately make a decision in this regard at the time of final Order based on the stakeholder’s comments.

c Stakeholder Comments on Issues pertaining to Treatment of Land in respect of RGI Airport, Hyderabad

10.16. Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the tentative proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its Consultation Paper No 09/2013-14 dated 21.05.2013. Stakeholders have also commented on treatment of land in respect of RGI Airport, Hyderabad. These comments are presented below:

10.17. On the issue of Regulatory Asset Base (RAB), specifically land, IATA stated that

“IATA agrees that land provided by the State for the airport project should result in benefits to the industry by way of lowering the cost environment at the airport which would in turn support aviation growth and drive economic growth within the state. IATA fully supports the Authority’s proposal to bring such intended benefits to the fore through a fair mechanism such as one that reduces the RAB by the market value of the land.”

10.18. On the issue of land, FIA stated that the Authority must exclude the market value of land on which Hotel and SEZ assets have been constructed for the purpose of computing RAB. Additionally, FIA on the issue of land stated as under,

“It is noteworthy that out of the land parcel of 5,450 acres, available with HIAL, the land being used for aeronautical purposes is 3,950 acres and that to be used for non-aeronautical purposes is 1,500 acres

It is noteworthy that the Authority, for the purposes of the calculation of aeronautical tariff presented in this Consultation Paper, has not subtracted the value of the lands on which the Hotel & Resorts and SEZ are being constructed by HIAL’s wholly owned subsidiaries from the RAB and requested stakeholders’ opinion in this regard. Without prejudice, it is submitted that if the Authority decides to exclude the revenue of the wholly owned subsidiaries like GMR Hyderabad Aviation SEZ Limited and GMR Hotels & Resorts Limited, then it must also

exclude the market value of land on which such assets (Hotel and SEZ) have been constructed for the purpose of computing RAB.

It is noteworthy that HIAL has been granted long term lease of such huge parcel of land, which has been acquired under Land Acquisition Act, 1894 to construct the RGI Airport at a concessional rate. It seems that HIAL has sub-leased the land on which Hotel and SEZ are constructed at very low rate, understandably as GMR Hyderabad Aviation SEZ Limited and GMR Hotels & Resorts Limited are its wholly owned subsidiaries. However, undeniably GMR Hyderabad Aviation SEZ Limited and GMR Hotels & Resorts Limited are deriving economic benefits which would be proportionate to the market value of land on which such Hotel and SEZ have been constructed. In other words, it is HIAL which has been granted the concession of the land parcel. By creating the wholly owned subsidiaries and sub-leasing at low rates, HIAL is channeling out the revenue stream while allowing wholly owned subsidiaries to operate on a location, which is commercially highly valuable. Hence, the market value of land on which Hotel and SEZ are constructed should be subtracted from RAB, which in effect will bring down the aeronautical tariffs.”

- 10.19.** On the issue of Land, ACI stated that the reduction of market value of Land from RAB, (when it's not existing in the RAB at first place) is a treatment never done in any regulatory regime and that the concession agreements signed by Hyderabad airport also did not contemplate this kind of treatment. Further, ACI stated that since the land is outside the airport, it should also be outside the regulatory jurisdiction of the Authority. Thus ACI has requested the Authority to keep the land outside regulation and not reduce market value of land from RAB nor do cross subsidization of revenues accruing thereto. ACI stated as under,

“AERA has contemplated a unique model of the treatment of land at Hyderabad airport. This kind of treatment has never been contemplated in any of the regulatory regimes in world.

The reduction of market value of Land from RAB, (when it's not existing in the RAB at first place) is a treatment never done in any regulatory regime.

AERA itself has confirmed that in normal course the land should be outside the regulation:

“3.9. 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.”

This is a clear admittance on part of AERA that the Land should be outside the regulations.

The concession agreements signed by Hyderabad airport also did not contemplate this kind of treatment and we understand that since this land is outside the airport it is also outside the regulatory jurisdiction of AERA.

As such we shall request AERA to keep the land outside regulation. AERA should not reduce market value of land from RAB nor do cross subsidize revenues accruing thereto.”

10.20. On the issue of Regulatory Asset Base (RAB), AAI stated that

“The Govt. of Andhra Pradesh (GAP) has given the land at concessional rate and no rent is to be paid during first 8 years. It needs to be examined whether the cost of the land in respect of Airport is to be included in the RAB for the first control period.”

10.21. On the issue of Land, APAO stated that

“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.

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.

It is also worth noting that the proposed treatment of non-aeronautical land 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),¹ 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. Non-airport related activities should not feature in the single till and to the extent adjustments to the till are made, they need to take account of all the financial flows involved."

10.22. On the issue of land, CII stated that the Land Lease Deed permits GHIAL to undertake Airport and Non-Airport activities while the Authority has taken a view

that since Land Lease Agreement has been signed with the State Government and not the Central Government, the Authority is not bound to consider them for tariff determination. It further stated as under

“GHIAL (GMR Hyderabad International Airport Limited) has been leased approx. 5500 acres of land by Govt. of Andhra Pradesh. The lease deed permits GHIAL to undertake Airport and Non-Airport activities and GHIAL has to pay nominal annual lease rent as per the lease deed. Now AERA has taken a view that since land lease agreement has been signed with the State Government and not the Central Government, the Authority is not bound to consider them for tariff determination.

As this goes against the very purpose of awarding the concession, we request the Authority to review its opinion.”

10.23. Blue Dart Aviation Ltd. on the issue of Regulatory Asset Base stated that

“The Regulatory Asset Base (RAB) has been arrived at without subtracting the fair market value of real estate development (outside the terminal building). The land outside the terminal building was given to HIAL to make the project viable, hence, we request AERA to reduce the fair market value of land from RAB. This will result in the reduction of Aeronautical charges to Airport User.”

d HIAL’s response to Stakeholder Comments on Issues pertaining to Treatment of Land in respect of RGI Airport, Hyderabad

10.24. Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 09/2013-14 dated 21.05.2013, the Authority forwarded these comments to HIAL seeking its response to these comments. HIAL has provided responses to the Stakeholders’ comments, which are presented below:

10.25. In response to FIA’s comments on excluding the market value of land, on which hotel and SEZ have been constructed, for the purpose of computing RAB, HIAL has stated as under:

“The methodology being suggested has no legal standing. Neither the concession, nor the AERA act has laid down any such methodology of removal of value of land.

This kind of treatment has never been seen in any regulatory tariff determination anywhere in world.

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

- *The Concession Agreement defines and differentiates between mandatory ‘Airport activities’ consisting of aeronautical as well as non-aeronautical activities at the Airport and non-mandatory ‘Non-Airport Activities’ which the GHIAL is entitled to undertake at the Land (as defined under the Land Lease Agreement).*

- *Thus, in addition to the rights granted to the GHIAL for setting up and operating the RGIA, certain additional rights have been granted for the purpose of development of the additional land for purely commercial purposes not relating to the airport activity.*

- *In this regard, as noticed hereinabove, the Concession Agreement also makes a distinction between “Airport Activities” and Non-Airport Activities”. While Airport Activities has been defined under Article 1.1 of the Concession Agreement to mean “the provision, at or in relation to the Airport, of the activities set out at Schedule 3, Part 1 as amended from time to time, pursuant to ICAO guidelines, provided that any activities that are not materially similar to those contemplated in Schedule 3, Part 1 shall require the mutual agreement of the Parties”, Non-Airport Activities means “the provision, at or in relation to the Airport, of the services set out at Schedule 3, Part 2”. Schedule 3, Part 2 of the Concession Agreement provides for the Non-Airport activities which consist of real estate activities. These activities are totally unconnected with the Airport Activities. In view of the above, it is*

pertinent to note that the land earmarked for development of Non-Airport Activities as well as the cost of setting up and carrying out the Non-Airport Activities is not to be considered for the purpose of arriving at 'total project costs' of the Airport.

- *GHIAL is permitted to utilize the said land parcel out of the total Land for carrying out Non-Airport Activities which are purely commercial, real estate and totally unconnected with the Airport business.*

Conclusion: On a conjoint reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement and not regulate any Other Charges in respect of the facilities and services provided at the Airport nor using the revenue therefrom to subsidize the Aero Charges. The value of the land earmarked for Non-Airport Activities (market or notional) cannot be included in nor deducted from the RAB and accordingly the revenue generated therefrom cannot be taken into account for cross subsidizing aeronautical tariff at airport."

10.26. In response to ACI's comments on Land Usage and the treatment, HIAL has stated as under:

"ACI has very well pointed out the lacuna in the proposed treatment of land by the Authority. This kind of mechanism is not followed anywhere across the globe. On a conjoint reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement and not regulate any Other Charges in respect of the facilities and services provided at the Airport nor using the revenue therefrom to subsidize the Aero Charges. The value of the land earmarked for Non-Airport Activities (market or notional) cannot be included in nor deducted from the RAB and accordingly the revenue generated therefrom cannot be taken into account for cross subsidizing aeronautical tariff at airport."

10.27. In response to Blue Dart's comments on adjusting value of land to determine the value of RAB, HIAL has stated as under:

"The methodology being suggested has no legal standing. Neither the concession, nor the AERA act has laid down any such methodology of removal of value of land.

This kind of treatment has never been seen in any regulatory tariff determination anywhere in world.

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

- *The Concession Agreement defines and differentiates between mandatory 'Airport activities' consisting of aeronautical as well as non-aeronautical activities at the Airport and non-mandatory 'Non-Airport Activities' which the GHIAL is entitled to undertake at the Land (as defined under the Land Lease Agreement).*

- *Thus, in addition to the rights granted to the GHIAL for setting up and operating the RGIA, certain additional rights have been granted for the purpose of development of the additional land for purely commercial purposes not relating to the airport activity.*

- *In this regard, as noticed hereinabove, the Concession Agreement also makes a distinction between "Airport Activities" and Non-Airport Activities". While Airport Activities has been defined under Article 1.1 of the Concession Agreement to mean "the provision, at or in relation to the Airport, of the activities set out at Schedule 3, Part 1 as amended from time to time, pursuant to ICAO guidelines, provided that any activities that are not materially similar to those contemplated in Schedule 3, Part 1 shall require the mutual agreement of the Parties", Non-Airport Activities means "the provision, at or in relation to the Airport, of the services set out at Schedule 3, Part 2". Schedule 3, Part 2 of the Concession Agreement provides for the Non-Airport activities*

which consist of real estate activities. These activities are totally unconnected with the Airport Activities. In view of the above, it is pertinent to note that the land earmarked for development of Non-Airport Activities as well as the cost of setting up and carrying out the Non-Airport Activities is not to be considered for the purpose of arriving at 'total project costs' of the Airport.

- *GHIAL is permitted to utilize the said land parcel out of the total Land for carrying out Non-Airport Activities which are purely commercial, real estate and totally unconnected with the Airport business.*

Conclusion: On a conjoint reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement and not regulate any Other Charges in respect of the facilities and services provided at the Airport nor using the revenue therefrom to subsidize the Aero Charges. The value of the land earmarked for Non-Airport Activities (market or notional) cannot be included in nor deducted from the RAB and accordingly the revenue generated therefrom cannot be taken into account for cross subsidizing aeronautical tariff at airport."

10.28. In response to CII's comments on issues pertaining to RAB, HIAL has stated as under:

"CII has very well pointed out the lacuna in the proposed treatment of land by the Authority.

On a conjoint reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement and not regulate any Other Charges in respect of the facilities and services provided at the Airport nor using the revenue therefrom to subsidize the Aero Charges. The value of the land earmarked for Non-Airport Activities (market or notional) cannot be included in nor deducted from the RAB and accordingly the revenue

generated therefrom cannot be taken into account for cross subsidizing aeronautical tariff at airport.”

10.29. In response to IATA’s comments on the issues pertaining to Treatment of land granted by the state government, HIAL has stated as under:

“The stand of IATA is misplaced to the extent that the entire land was not meant for airport as clarified by GoAP, the entity which gave land to GHIAL.

A conjoint reading Concession Agreement, State Support Agreement and the Land lease Agreement indicates that the following concessions and assurances have been granted to the GHIAL at the time of the grant of the right/concession to develop the Airport, namely: The Concession Agreement defines and differentiates between mandatory ‘Airport Activities’ consisting of aeronautical as well as non-aeronautical activities at the Airport and non-mandatory ‘Non-Airport Activities’ which the GHIAL is entitled to undertake at the Land (as defined under the Land Lease Agreement). Thus, in addition to the rights granted to the GHIAL for setting up and operating the RGIA, certain additional rights have been granted for the purpose of development of the additional land for purely commercial purposes not relating to the airport activity. In this regard, as noticed hereinabove, the Concession Agreement also makes a distinction between “Airport Activities” and Non-Airport Activities”. While Airport Activities has been defined under Article 1.1 of the Concession Agreement to mean “the provision, at or in relation to the Airport, of the activities set out at Schedule 3, Part 1 as amended from time to time, pursuant to ICAO guidelines, provided that any activities that are not materially similar to those contemplated in Schedule 3, Part 1 shall require the mutual agreement of the Parties”, Non-Airport Activities means “the provision, at or in relation to the Airport, of the services set out at Schedule 3, Part 2”. Schedule 3, Part 2 of the Concession Agreement provides for the Non-Airport activities which consist of real estate activities. These

activities are totally unconnected with the Airport Activities. In view of the above, it is pertinent to note that the land earmarked for development of Non-Airport Activities as well as the cost of setting up and carrying out the Non-Airport Activities is not to be considered for the purpose of arriving at 'total project costs' of the Airport. GHIAL is permitted to utilize the said land parcel out of the total Land for carrying out Non-Airport Activities which are purely commercial, real estate and totally unconnected with the Airport business. On a conjoint reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement and not regulate any Other Charges in respect of the facilities and services provided at the Airport nor using the revenue therefrom to subsidize the Aero Charges. The value of the land earmarked for Non-Airport Activities (market or notional) cannot be included in nor deducted from the RAB and accordingly the revenue generated therefrom cannot be taken into account for cross subsidizing aeronautical tariff at airport."

e HIAL's own comments on Issues pertaining to Treatment of Land in respect of RGI Airport, Hyderabad

10.30. On the issue of land, HIAL stated that

"On a conjoint reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement and not regulate any Other Charges in respect of the facilities and services provided at the Airport nor using the revenue therefrom to subsidize the Aero Charges.

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

10.31. Further, HIAL stated GoAP's position on land as under

“1. It is clear that the purpose of Land lease is twofold i.e. for (a) Airport and (b) Non-Airport activities as mentioned in the Land Lease Agreement.

2. As per the provisions of the AERA Act, AERA is authorised to determine charges pertaining to the aeronautical service charges at the Airport. Hence, in our view Authority should not consider the Land earmarked for Non-Airport activities for determination of Airport Charges.

3. Under the concession agreement HIAL or the service provider have been given unrestricted right to determine the charges in respect to the activities other than the Regulated Charges as mentioned in Schedule 6 of the Concession Agreement. There is no provision as regards to cross-subsidizing the aero revenue using the revenues from Non-Airport Activities/real estate nor is there any mention about assigning a market value to land and reducing it from RAB.

In fact the GoAP had given the land on lease for two independent purposes i.e.

(i) for Airport and

(ii) For development of non-airport activities.

These would not be feasible if the promoters were to acquire the Land on its own for the Airport and Non-Airport Activities. By assigning a value to the leased land and reducing the same from the RAB, the AERA is contemplating an action which is not envisaged in the Concession Agreement and also goes against the intended purpose of the Land Lease Agreement and would significantly affect the development of Non-airport Activities.

Hence we request AERA to keep the usage and treatment of the Land outside the regulation. It may be appreciated that GoAP had already clarified to AERA that the reduction of Land value from RAB was not envisaged.”

f Authority's Examination of Stakeholder Comments on Issues pertaining to Treatment of Land in respect of RGI Airport, Hyderabad

10.32. The Authority notes the comments from various stakeholders on the issue of treatment of land towards the determination of RAB as well as to the treatment of revenue accruing to HIAL on account of commercial exploitation of land. While IATA, Blue Dart and FIA have supported reduction of RAB by the market value of the land, ACI and APAO have found such reduction to be inconsistent with the Concession Agreement. AAI has not forwarded any preference towards treatment of land while it highlighted that the land has been given by GoAP to HIAL at concessional rates with certain deferment in payment of rent. CII has requested the Authority to review its opinion of not being bound to consider the Land Lease Agreement as it is not signed by the Central Government but by the State Government.

10.33. The Authority has carefully examined the comments from the stakeholders including HIAL on issues pertaining to treatment of land. As regards CII's request to review its opinion of not being bound to consider the Land Lease Agreement, the Authority would like to clarify that while it reiterates that under the AERA Act, it is mandated to consider the Concession Agreement by the Government of India, it has duly considered the Land Lease Agreement signed between HIAL and Government of Andhra Pradesh. The Authority's analysis and consideration of the Land Lease Agreement is presented in Paras 10.2 to 10.5 above and in Paras 4.60 to 4.62 above. The Authority has also considered HIAL's reference to GoAP letter on the issue of treatment of land in Paras 10.10 above and 10.11 above. Further the Authority, vide its letter (Ref D.O. No. AERA/20010/MYTP/HIAL/2011-12/Vol-IV dated 18.10.2013) has requested GoAP to suggest an appropriate framework or treatment so that the monies generated through commercial exploitation of land are properly ploughed back into the project, thereby minimizing the burden on passengers and at the same time, giving a fair rate of return to HIAL.

10.34. On the issue of land, the Authority notes HIAL comments stating that *"value of the land earmarked for Non-Airport Activities (market or notional) cannot be included in nor deducted from the RAB"*. The Authority reiterates its view that subtracting the

market value of such land commercially exploited for purposes mentioned in Schedule-3, Part-2 from RAB is one of the transparent mechanisms to give effect to the nexus between aeronautical tariff determination and the express covenants of the lease deed that such lands have been given to HIAL to “*make the project feasible*”.

10.35. Further, the Authority feels that if the land in excess of the airport development is used for commercial exploitation, but the revenues from such services are not to be used to cross-subsidise the aeronautical tariffs (according to the letter of GoAP), the whole purpose of granting the land for making the airport feasible is defeated and it would appear that the proceeds from the commercial exploitation of lands in excess of airport requirement would accrue to airport operator without requiring of him to use it for the airport operations. Alternatively, it would appear that the land acquired by GoAP in excess of the airport requirements and leased out to HIAL at what appears to be a concession rental @2%, has been used by the airport operator purely for commercial activities indicated in Part 2 of Schedule 3 of the Concession Agreement, and further that the proceeds of such services are permitted to be retained by the airport operator. This treatment is unjust to the passengers as well as to the land owners from whom GoAP has acquired this land under relevant land acquisition act for the public purpose of establishment of the Airport. The whole purpose of making acquired land for public purpose and leasing it to HIAL for making the airport feasible is not sub-served under such an approach.

10.36. The Authority has noted that HIAL has sub-leased certain part of the airport land for commercial utilization to entities including GHASL and GHRL, which are also its subsidiaries. On account of these sub-leases, the Authority understands that HIAL would be earning revenue from these entities including GHASL and GHRL in the form of rent / license fee / lease rentals etc. The Authority has duly deliberated the provisions of the Land Lease Agreement between GoAP and HIAL in Paras 10.2 to 10.11 above, wherein it observed that the land has been granted by GoAP to HIAL to make the project (namely, the Airport) feasible. In order to establish the nexus between the purpose of grant of land (to make the project feasible) and lowering the charges on the passengers, the Authority, at present, has considered the

revenue accruing in the hands of HIAL on account of these sub-leases towards cross-subsidization of aeronautical charges. However, the Authority notes that as the land has been granted to them by the State Government, the treatment to be accorded to this revenue would need to have reference to the views expressed by GoAP in this regard.

10.37. To this extent, as mentioned above, the Authority has sought the comments of GoAP. The Authority notes that GoAP has requested for extension for submission of comments on the Consultation Paper 09 / 2013-14 dated 21.05.2013 on the following occasions:

Table 19: Request for extension of submission of views by GoAP

Sl. No	Letter No	Letter Date	Reason for extension sought	Time/Days sought
1	331/Airports(A1)/2013	17.07.2013	The Consultation Paper is voluminous and requires detailed analysis with reference to various agreements between GHIAL, GoAP and AAI.	2 weeks
2	331/Airports(A1)/2013	02.09.2013	The Consultation Paper is voluminous and requires detailed analysis with reference to various agreements between GHIAL, GoAP and AAI.	1 month
3	331/Airports(A1)/2013	31.10.2013	The Consultation Paper is voluminous and requires detailed analysis with reference to various agreements between GHIAL, GoAP and AAI.	1 month
4	331/Airports(A1)/2013	02.12.2013	The Consultation Paper is voluminous and requires detailed analysis with reference to various agreements between GHIAL, GoAP and AAI. It is being examined in consultation with Finance department & Consultants.	1 month
5	331/Airports(A1)/2013	31.12.2013	The Consultation Paper is voluminous and requires detailed analysis with reference to various agreements between GHIAL, GoAP and AAI. It is being examined in consultation with Finance department & Consultants.	15 days
6	331/Airports(A1)/2013	22.01.2014	The Consultation Paper is voluminous and requires detailed analysis with reference to various agreements between GHIAL, GoAP and AAI. It is being examined in consultation with Finance department & Consultants.	1 month

10.38. Subsequent to the above requests for extensions, the Authority has received the views of GoAP vide its letter no 331/ Airports(A1)/2013 dated 12.02.2014 (Annexure – I to this Order). GoAP in this letter has stated as under,

“Government of Andhra Pradesh concurred with the views of Ministry of Civil Aviation, New Delhi relating to the issues arising from the Consultation paper No.9/2013 Dated.21-05-2013 issued by AERA pertaining to Rajiv Gandhi Hyderabad International Airport Limited, Hyderabad.

2. The views of the Government of Andhra Pradesh are as follows:

i. “Hybrid till” model would be most appropriate for RGIA and it may be adopted.

ii. Based on the experience gathered at Delhi, Mumbai Bangalore and Hyderabad Airports, an appropriate formula may be worked out to indicate as to what percentage of non-aeronautical revenue should be allowed for cross-subsidizing the aero charges under the “Hybrid Till” model. The non-aeronautical revenue would include the revenue generated through commercial activities inside the terminal building as well as through the development of real-estate on the airport land.

iii. The rate of Return of Equity (RoE) for the airport sector should be between 18.5% to 20.5% as communicated earlier based on a study done by SBI Caps for MOCA.

iv. Any security deposit raised by HIAL through real-estate development, must be utilized for airport development only. The deposit can also be used for infrastructure development of the land to be utilized for real estate development viz., land leveling, power and water supply. If the deposit carries any interest payable to the depositors, the same should be allowed as legitimate expenditure by AERA.

v. AERA may be requested to consider creation of a sinking fund to match the timelines of refund of Security Deposits collected out of Non-Airport / Real Estate activities.”

10.39. The Authority has carefully considered the views of the Govt. of Andhra Pradesh vide letter dated 12.02.2014. On going through the comments of Govt. of Andhra Pradesh, the Authority finds that they pertain to three broad issues as under:

10.39.1. Regulatory till

10.39.1.a. As far as the regulatory till is concerned, the Consultation Paper No 09/2013-14 had proposed to adopt single till approach as most appropriate for RGIA. Govt. of Andhra Pradesh has felt that hybrid till model should be adopted. It has suggested to consider the experience gathered at Delhi, Mumbai, Bangalore and Hyderabad airports to work out what percentage of non-aeronautical revenue should be allowed for cross-subsidising the aero charges under the hybrid till model.

10.39.1.b. In this regard, the Authority notes that HIAL in its submissions had argued that according to its reading, the Concession Agreement 'implies' dual till. The Authority had extensively analysed the provisions of the AERA Act as well as other relevant documents like Concession Agreement, State Support Agreement, etc and did not find any warrant in them supporting or implying dual till. After issuing the Consultation Paper, the Authority further analysed the submissions made by the stakeholders including HIAL in response to the Consultation Paper and has not found any reason to review its earlier proposal of adopting single till.

10.39.1.c. In its Consultation Paper of Bangalore airport, the Authority had given detailed comparison of the various provisions and covenants in SSA / OMDA in respect of Delhi and Mumbai airports comparing them with the agreements with Bangalore airport. Concession Agreement in respect of Hyderabad airport is almost identical to that of Bangalore airport. The Authority had then noted that in Delhi and Mumbai airports, apart from 30% shared revenue till (meaning thereby 30% of the gross revenue from Revenue Share Assets (RSA) was considered to cross-subsidise aeronautical tariff), the airport operator was also required to give around 46% (DIAL) and around 39% (MIAL) of the gross revenue (including non-aeronautical revenue) to Airports Authority of India as concession fee. The Authority had also noted that in case of Delhi and Mumbai,

the costs associated with generating the non-aeronautical revenues were not to be regarded as a cost pass-through. Similarly, the concession fee of 46% (DIAL) and 39% (MIAL), that the respective airport operators were required to pay to AAI for all revenues (including inter alia, aeronautical as well as non-aeronautical), was also not regarded as cost pass-through.

10.39.1.d. In case of Bangalore and Hyderabad airports, on the other hand, the concession fee/Revenue Share Assets paid by the airport operator to AAI is 4% of gross revenue and this is regarded as a cost pass-through. Furthermore, the payment of 4% concession fee is also deferred for 10 years. In case of Mumbai, the percentage of concession fee is 39% of the gross revenue, with similar percentage of 30% of gross revenue from Revenue Share Assets to be used to cross-subsidise the aeronautical tariffs. Apart from this, the Authority had noted other differences between the covenants governing Mumbai and Delhi airports and those governing Bangalore and Hyderabad airports. The Authority, therefore, concludes that the circumstances governing Hyderabad (and Bangalore) are different from those governing Delhi and Mumbai and hence the experience in respect of Delhi and Mumbai is not a useful guide to be followed for Hyderabad and Bangalore.

10.39.1.e. The Authority has always maintained that airports have the following characteristics:

- Monopoly
- Public infrastructure project (given to private sector under PPP mode) so as to access private capital and, inter alia, reduce costs
- Regulated entities

10.39.1.f. The Authority has, therefore kept in view the provisions of the AERA Act which enjoins upon the Authority to give fair rate of return to the airport operator as well as take into account the interest of the airport users (that are defined as passengers and cargo facility users). Once fair rate of return is assured to the airport operator, the approach of the Authority was to lower the costs impinging on the passengers. Through its various risk mitigating

measures, the Authority has substantially reduced the risks that the airport operator is exposed to (refer Paras 13.90, 13.91, 13.92 and 13.93 below). It has, therefore, decided to adopt single till as the regulatory approach towards tariff determination of aeronautical tariffs (Refer Para 4 above and particularly Paras from 4.226 to 4.249 above).

10.39.2. Rate of Return on Equity (RoE)

10.39.2.a. The Authority has already indicated the risk mitigating measures in Paras 13.90, 13.91, 13.92 and 13.93 below. Having regard to the same as well as considering the report of its financial consultant, namely, National Institute of Public Finance and Policy (NIPFP), the Authority felt that a fair rate of return on equity at 16% is appropriate for Hyderabad airport. During the initial submissions of HIAL, it had argued in favour of a return on equity at 24.4%. HIAL had based this figure on estimates of its consultants namely M/s Jacobs. In its response to the Consultation Paper No 09/2013-14, HIAL has further reiterated its request for return on equity of 24.4%. The Authority has also analysed the submission of HIAL regarding the figure of 18.33% as Equity Internal Rate of Return (IRR) (refer Paras 13.81 to 13.86 below)

10.39.2.b. The Authority had also clarified that the figure (18.33%) that appears in the SSA itself contains remedial measures in the event HIAL does not get equity IRR of 18.33% (para 13.84 below). The Authority also notes that in the Govt. of Andhra Pradesh letter no. GO No. 130 dated 26.07.2003, reference is not to equity IRR but return on equity of 18.33%. As has been analysed in Para 13.81 below, the Authority infers that Govt. of Andhra Pradesh has used the expressions “equity IRR” and “return on equity” interchangeably.

10.39.2.c. The Govt. of Andhra Pradesh had suggested the “Rate of Return on Equity (RoE) for the airport sector should be between 18.5% to 20.5% as communicated earlier based on a study done by SBI Caps for MoCA”. The Authority has extensively analysed the study report of SBI Caps in its tariff determination in respect of Delhi and Mumbai airports (Para 26 of Order No 03/2012-13 and Para 13 of Order No 32/2012-13). It had noted therein that the Authority has evaluated the riskiness of Hyderabad airport to arrive at fair

rate of return on equity. SBI Caps, on the other hand, in the analysis of the Authority, did not appear to have taken into consideration various risk mitigating measures that the Authority has decided to put in place in respect of HIAL. Its other reasons for not accepting the SBI Caps report suggesting a higher rate of return on equity in the band of 18.5% to 20.5% are already given in the above referred tariff determination Orders of Delhi and Mumbai. The Authority, therefore, does not find any reason to review its proposal of 16% return on equity as being reasonable in case of HIAL.

10.39.3. Development of real estate

10.39.3.a. As regards the development of real estate on the airport land, the Authority had extensively analysed the covenants of the Land Lease Agreement (with Govt. of Andhra Pradesh), State Support Agreement (with Govt. of Andhra Pradesh) and Concession Agreement (with Govt. of India). Its approach towards what can be called “real estate development” is generally, outside the terminal building has also been indicated in its Airport Order No. 13 / 2010-11 dated 12.01.2011. The Authority has noted that land transactions can be complex. There is also a relationship between revenues in terms of rentals, etc. and the quantum of security deposit that the land can generate in any real estate development. The Authority does not wish to go into these issues and therefore, had suggested reducing the RAB by an amount that is higher of the market value and the sale value (premium lease) for the land in question.

10.39.3.b. The Authority notes that HIAL has used land in excess of airport requirements for purposes like hotel, SEZs, MRO, university, training institutions relating to aviation sector etc. HIAL informed the Authority that it also plans to facilitate setting up of a world-class hospital. The Authority, in the current Control Period, does not wish to go into the question of the revenues that HIAL may receive from such real estate development activities. Neither does it wish to go into the issues of security deposits (that are in the nature of capital receipts that it may raise or will raise in future, their repayment schedule, etc.). That is why it had suggested that it would reduce the market value or sale value (premium lease) of such land from RAB to bring about a

nexus between real estate development and interest of the passengers. The Land Lease Agreement itself mentions that the GoAP has given land to HIAL to make the airport feasible. The issue of creating a sinking fund to match the timeline of refund or repayment of security deposits for the purpose of real estate development does not fall within the regulatory ambit of AERA. The repayment obligation of the security deposit is the sole responsibility of HIAL.

10.39.3.c. The Govt of Andhra Pradesh has not commented on the proposed mechanism of reduction of RAB on account of the market value of land used for real estate development etc. For the current Control Period the Authority has therefore not considered this mechanism. The Authority notes that in Para 2 (ii) of the letter of GoAP, it is stated that “The non-aeronautical revenue would include the revenue generated through commercial activities inside the terminal building as well as through the development of real-estate on the airport land”. The Authority, having adopted the single till model as considered appropriate for HIAL has taken into account the non-aeronautical revenues generated through commercial activities inside the terminal building. In the absence of RAB reduction mechanism and in its alternative, the Authority considers that since the land has been acquired by the GoAP for public purpose (of establishment of the airport project as well as to make it feasible) the GoAP would be better placed to indicate on annual basis what amount of receipts (both capital and revenue nature) generated through development of real estate on the land leased to HIAL be treated as cross-subsidy for the purposes of aeronautical tariff determination of HIAL airport.

10.39.3.d. On balance, the Authority decides to calculate RAB for the current Control Period without adjusting the market value of real estate development. Based on the exact quantum of revenues from real estate development to be considered for cross-subsidy for aeronautical tariff determination that the GoAP would provide to the Authority, the Authority would accordingly true-up the ARR in the current Control Period while determining tariff for the next Control Period. The Authority considers it the responsibility of HIAL to keep proper accounts of the security deposits raised through real estate

development, its deployment for infrastructure development, land leveling, power and water supply etc. as well as payment of any interests to the depositors. While indicating to the Authority the amount of receipts (both capital and revenue nature) generated through development of real estate on the land leased to HIAL be treated as cross-subsidy, the GoAP may take into account, as appropriate, the costs like interests on security deposits, their repayment schedule and sinking fund, etc.

10.39.3.e. The Authority, on receipt of such information, decides to appropriately rework the ARR for the current Control Period and true up the same for the purposes of tariff determination during the next Control Period.

Decision No. 6. Regarding Treatment of Land in respect of RGI Airport, Hyderabad

6.a. The Authority decides to adopt the following approach with respect to commercial exploitation of land (generally referred to as real estate development) allotted by GoAP to HIAL towards determination of tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:

- i. To calculate RAB for the current Control Period without subtracting the fair market value of real estate development and determine aeronautical tariff accordingly.**
- ii. To take into account the treatment of commercial exploitation of land towards aeronautical tariffs after receipt of information from the Government of Andhra Pradesh (as indicated in Para 10.39.3.c and Para 10.39.3.d above) and to give effect to the same in the tariff determination in the next Control Period**

11. Regulatory Asset Base

The discussion under this section includes the issues concerning forex fluctuations, inclusion of subsidiaries, and their proposed impact on the regulatory asset base.

a HIAL Submission on Regulatory Asset Base (RAB)

- 11.1. HIAL had submitted that it computed the RAB for each year by adding the Projected Capital Investment for a year to the Opening Balance of the RAB at the start of the year and then subtracting the Projected Depreciation to arrive at the Closing Balance RAB for respective period. It stated that RAB for each year was calculated by the following formula:

RAB at the start of a year/period + Actual Capital Investment (Subject to user consultation provisions and incentive adjustments) – Projected Depreciation – Disposals at Fair Value = RAB at the end of a year/period”

- 11.2. Also, HIAL submitted that FY 2008-09 was to be taken as the first year of the Control Period and opening RAB was to be firmed up by aggregating total assets other than hotel and fuel farm assets at book value on the last day of the previous year (2007-08). Addition and deletion had been taken as per audited financial statements. For the financial year 2011-12 to 2015-16, Capex was projected and added to the respective year.
- 11.3. The Advanced Development Fund Grant (ADFG) of Rs. 107 Cr was proportionately excluded from aero and non-aero assets along with corresponding depreciation. Also, the Fuel farms assets had been excluded from RAB.
- 11.4. Initially HIAL had proposed to reduce its RAB by alienating land of 200 acres with a value of Rs. 90 crore along with the corresponding depreciation and revenue and expenditures. However in subsequent submissions, this adjustment to RAB was removed.
- 11.5. In its submission dated 14.12.2012, HIAL stated that for firming up the RAB, HIAL had taken the actual numbers of FY 2011-12 and the assets for the fully owned subsidiaries GHRL, GHASL, and Hyderabad Duty Free Retail Limited had been included in the RAB calculations which it had not included in its initial submission

dated 13.09.2011. It had also considered including Forex Loss Adjustment and the yearly additions to forex account were assumed to be fully depreciated.

- 11.6.** In its submission dated 14.12.2012, a rationale for the inclusion of hotel assets in the RAB was presented by HIAL which stated that that Hotels were required near the Airport to meet the requirements of Transit Passengers, airline crew and other business and MICE travellers. Similarly it had also stated the rationale for inclusion of SEZ as it enhanced business activities, rationale for inclusion of duty free HIAL was that it had proved to be a stable business venture during 2010-12.

b Authority's Examination of HIAL Submissions on Regulatory Asset Base (RAB)

- 11.7.** The Authority had carefully examined the calculation of RAB and HIAL submissions in this regard. The Authority had sought the auditor's certificate for the class wise asset additions, deletions and depreciation in historical periods from HIAL. HIAL submitted the auditor certificate certifying the historical depreciation of assets and the historical asset additions and deletions. Accordingly, the Authority had updated the tariff model in line with the numbers provided as per the auditor certificates submitted by HIAL.
- 11.8.** The Authority, in its Airport Guidelines, had provided for a mechanism for calculation of Regulatory Asset Base, wherein the Initial RAB took into consideration original value of fixed assets, accumulated depreciation, accumulated capital grants, subsidies or user contribution, and adjustment for value of land excluded from the scope of RAB.
- 11.9.** The Authority observed that one of the heads under capital expenditure, considered by HIAL in its tariff model, is "*Forex Loss Adjustment as per AS 11*". HIAL explained that this head captures the amount, which is on account of losses / gains due to the ECB loan from Abu Dhabi Commercial Bank, as part of RAB.
- 11.10.** The Authority understood that sourcing of funds is a conscious business decision of the airport operator. Thus, the Authority had proposed not to consider any adjustments related to foreign exchange variations in its determination of tariff for aeronautical services and accordingly had proposed to disallow the amounts considered by HIAL under the head "*Forex Loss Adjustment as per AS 11*" as well as from ECB Loan facility.

11.11. The Authority had noted that HIAL had included its 100% subsidiaries namely, GMR Hotels and Resorts Limited (GHRL), GMR Hyderabad Aviation SEZ Limited (GHASL), and Hyderabad Duty Free Retail Limited in the RAB in the current MYTP.

11.12. The value of RAB for HIAL under single till and dual till as per the tariff model submitted by HIAL is presented below,

Table 20: Determination of RAB under Single Till – as per model submitted by HIAL

	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
	Single Till							
Opening RAB	2,099	2,300	2,332	2,299	2,267	2,236	2,250	2,226
Commissioned Assets	301	149	103	111	94	132	82	74
Depreciation and Amortization	100	116	127	123	126	118	106	109
Disposals	0	0	9	20	0	0	0	0
Closing RAB	2,300	2,332	2,299	2,267	2,236	2,250	2,226	2,191
RAB for calculating ARR	2,200	2,316	2,315	2,283	2,251	2,243	2,238	2,209

Table 21: Determination of RAB under Dual Till – as per model submitted by HIAL

	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
	Dual Till							
Opening RAB	1,824	1,756	1,724	1,694	1,656	1,615	1,596	1,587
Commissioned Assets	21	60	69	71	55	67	66	60
Depreciation and Amortization	89	91	98	94	96	86	74	77
Disposals	0	0	0	16	0	0	0	0
Closing RAB	1,756	1,724	1,694	1,656	1,615	1,596	1,587	1,570
RAB for calculating ARR	1,790	1,740	1,709	1,675	1,635	1,605	1,592	1,579

11.13. As regards inclusion and non-inclusion of assets in the RAB, the Authority has outlined the principles of RAB boundary and ring-fencing, it had been the stated position of the Authority that the assets, which were integral to the Airport or the activities pertaining to it or were integral for the functioning of the airport should

form part of the RAB. The assets in respect of those activities, which were not integral or non-related to the airport, should be excluded from the RAB.

11.14. The Authority noted that the hotel was used even by non-passenger clients also. Similarly MRO facility is not used by the Airport Users. Regarding Hyderabad Duty Free Retail Limited, the Authority noted that the assets of this subsidiary formed an integral part of the airport terminal building and were used exclusively by the passengers.

11.15. For the purpose of determination of RAB under single till, the Authority proposed to include the assets that are integral to the airport. In view the above, under single till RAB would include the aeronautical assets and non-aeronautical assets of the standalone entity HIAL. However under dual till, the Authority proposed to consider only the aeronautical assets of the standalone entity HIAL for the purpose of determination of RAB.

11.16. Accordingly the value of RAB for HIAL as calculated by the Authority in the Consultation Paper No 09/2013-14 dated 21.05.2013 under single till and dual till is presented below:

Table 22: RAB under Single Till as considered by Authority in the Consultation Paper No 09/2013-14

	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
	Single Till							
Opening RAB	2,099	2,061	2,102	2,014	1,902	1,826	1,750	1,696
Commissioned Assets	62	144	26	14	29	31	34	37
Depreciation and Amortization	100	104	105	105	106	107	87	83
Disposals	0	0	9	20	0	0	0	0
Closing RAB	2,061	2,102	2,014	1,902	1,826	1,750	1,696	1,650
RAB for calculating ARR	2,080	2,081	2,058	1,958	1,864	1,788	1,723	1,673

Table 23: RAB under Dual Till as considered by Authority in the Consultation Paper No 09/2013-14

	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
	Dual Till							

	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Opening RAB	1,824	1,756	1,724	1,652	1,557	1,490	1,423	1,379
Commissioned Assets	21	60	20	12	24	26	28	31
Depreciation and Amortization	89	91	92	91	92	93	72	68
Disposals	0	0	0	16	0	0	0	0
Closing RAB	1,756	1,724	1,652	1,557	1,490	1,423	1,379	1,341
RAB for calculating ARR	1,790	1,740	1,688	1,604	1,523	1,456	1,401	1,360

11.17. Based on the material before it and its analysis, the Authority had proposed in the Consultation Paper No 09/2013-14 dated 21.05.2013:

11.17.1. To include the assets - both aeronautical and non-aeronautical assets, of the standalone entity of HIAL (refer Para 3.4 above) in RAB for the purpose of determination of aeronautical tariffs for the current Control Period under single till.

11.17.2. To include only the aeronautical assets of the standalone entity of HIAL (refer Para 3.4 above) in RAB for the purpose of determination of aeronautical tariffs for the current Control Period under dual till.

11.17.3. To note that HIAL has capitalized the “Forex Loss Adjustment as per AS 11”. However the Authority had proposed to exclude the same for calculation of RAB under single till and dual till for the current Control Period.

11.17.4. To calculate the RAB for each year as the average of the opening and closing RAB and calculate the return for each year on the average RAB.

11.17.5. Accordingly to consider the value of RAB as per Table 22 for determination of aeronautical tariff under single till and as per Table 23 for determination of aeronautical tariff under dual till.

11.17.6. To work out the difference between the value of Return on RAB calculated based on actual date of commissioning/ disposal of assets and that calculated considering such asset has been commissioned/ disposed half way through the tariff year. The Authority further proposes to consider and adjust this difference at the end of the current Control Period considering Future Value of the differences for each year in the current Control Period.

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

11.18. Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the tentative proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its Consultation Paper No 09/2013-14 dated 21.05.2013. Stakeholders have also commented on determination of Regulatory Asset Base (RAB) in respect of RGI Airport, Hyderabad. These comments are presented below:

11.19. On the issue of Regulatory Asset Base (RAB), specifically treatment of forex losses, IATA stated that

“IATA agrees with the Authority’s proposal. Variations in foreign exchange can result in gains or losses which should be absorbed by the business entity as part of the risks of conducting business.”

11.20. On the issue of Regulatory Asset Base (RAB), AAI stated that

- *“Some of the assets at the Airport may be utilized for subsidiary like SEZ or hotel (non-Airport Activity). All such assets should be identified and deleted (100% or proportionately) as utilized for the subsidiary.*
- *All assets created out of non refundable grant given by GAP should be identified and deleted from RAB. Further depreciation on such assets is to be adjusted. In case it cannot be identified the same has to be deleted proportionately over all assets.”*

11.21. On the issue of exclusion of Forex losses from RAB, APAO stated that the Authority should allow the foreign exchange variations as a pass through cost in its determination of tariff for aeronautical services. Further, APAO stated as under

“APAO submits that the Authority should allow the foreign exchange variations as a pass through cost in its determination of tariff for aeronautical services on account of the following reasons:

- *HIAL chose to borrow funds by way of ECB due to the cheaper borrowing cost. It has passed on the entire benefit arising on such*

saving to the end user and as such the associated risk also needs to be passed on to the end user. If HIAL had chosen to borrow by way of a domestic loan, there would have been an additional cash outflow of approximately Rs.211 million per annum on account of interest costs [arrived at by considering a differential interest rate of 4.17% [11.85% on Rupee Loan -7.68% on ECB Loan] on a borrowing of Rs.5.07 billion.

- *The foreign exchange loss is not notional, but an actual loss*
- *The borrowing was finalized prior to AERA's proposition of disallowing the forex loss adjustment in the Consultation Paper. Hence, there is no way that this borrowing can be reversed by Airport Operator.*
- *The foreign exchange loss would adversely impact HIAL's profitability."*

d HIAL's response to Stakeholder Comments on Issues pertaining to Regulatory Asset Base (RAB)

11.22. Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 09/2013-14 dated 21.05.2013, the Authority forwarded these comments to HIAL seeking its response to these comments. HIAL has provided responses to the Stakeholders' comments, which are presented below:

11.23. In response to IATA's comments on issues pertaining to treatment of foreign exchange fluctuations, HIAL has stated as under:

"The sourcing of funds at a lower rate in foreign exchange is for the benefit to the passenger / other stakeholders by way of a lower WACC. However this means of funding also carries the inherent risk of foreign exchange fluctuations. Taking the benefit of a lower interest rate but not allowing the resultant Forex fluctuation goes against the principles of natural justice.

The fluctuation need to be incorporated as part of RAB because of following reasons:

(1) The level of Forex borrowing is not excessive. The level of borrowing is at level generally accepted to be normal in the industry.

(2) This borrowing was availed before the Authority's current stand was finalized. The borrowing structure cannot be amended now.

The Authority should appreciate the fact that the Company has not retained the benefits of cheaper borrowing cost and is passed on to the passenger in the form of lower WACC.

If the Company had taken Domestic Loan instead of the ECB equivalent amount, the outflows of cash towards interest costs would have been much more. Also, it should be noted that the loss of Forex fluctuation on interest payments & principal repayments is real in nature and not a notional loss.

GHIAL has taken the hit of the Forex fluctuations in actuals of FY 2011-12 and FY 2012-13 owing to interest and repayments servicing the ECB loan to the extent of Rs 34.46 Crs. This loss is not included in the computations of WACC.

Therefore, Authority is requested to allow the Loss on impact of Forex Fluctuations by Inclusion of same in RAB."

11.24. In response to AAI's comments mentioned above in Para 11.20 above, HIAL responded as under,

"No assets which are capitalized in GHIAL RAB are exclusively used for subsidiaries.

Also the allocation methodologies of common areas (where common areas are allocated based on pure aero and non-aero areas) ensure that the proportionate allocation amongst aero and non-aero is there for common assets.

A certificate from Statutory auditors in this regard has already been furnished to Authority.

It is not possible to identify specific assets funded through Advance Development fund grant (ADFG) of Rs. 107 Crores given by GoAP.

However, value of Rs. 107 Crores has been excluded from the gross assets base of GHIAL for calculation of Yield Per Pax. RAB and the corresponding depreciation also have been reduced accordingly.”

11.25. With reference to APAO’s comment mentioned in Para 11.21 above, HIAL responded as under,

“The Authority should not penalize GHIAL by not allowing foreign fluctuations. Cost of debt has reduced considerably because of ECB.

The sourcing of funds at a lower rate in foreign exchange is for the benefit to the passenger / other stakeholders by way of a lower WACC. However this means of funding also carries the inherent risk of foreign exchange fluctuations. Taking the benefit of a lower interest rate but not allowing the resultant Forex fluctuation goes against the principles of natural justice.

The fluctuation need to be incorporated as part of RAB because of following reasons:

(1) The level of Forex borrowing is not excessive. The level of borrowing is at level generally accepted to be normal in the industry.

(2) This borrowing was availed before the Authority’s current stand was finalized. The borrowing structure cannot be amended now.

The Authority should appreciate the fact that the Company has not retained the benefits of cheaper borrowing cost and is passed on to the passenger in the form of lower WACC.

If the Company had taken Domestic Loan instead of the ECB equivalent amount, the outflows of cash towards interest costs would have been much more. Also, it should be noted that the loss of Forex fluctuation on interest payments & principal repayments is real in nature and not a notional loss.

GHIAL has taken the hit of the Forex fluctuations in actuals of FY 2011-12 and FY 2012-13 owing to interest and repayments servicing the ECB

loan to the extent of Rs 34.46 Crs. This loss is not included in the computations of WACC.

Therefore, Authority is requested to allow the Loss on impact of Forex Fluctuations by Inclusion of same in RAB.

We request the Authority either to allow Forex fluctuation or treat ECB as if it were RTL.”

e HIAL’s own comments on Issues pertaining to Regulatory Asset Base (RAB)

11.26. On the issue of Forex Fluctuations, HIAL stated that

“The sourcing of funds at a lower rate in foreign exchange is for the benefit to the passenger / other stakeholders by way of a lower WACC. However this means of funding also carries the inherent risk of foreign exchange fluctuations. Taking the benefit of a lower interest rate but not allowing the resultant Forex fluctuation goes against the principles of natural justice.

The fluctuation need to be incorporated as part of RAB because of following reasons:

1 The level of Forex borrowing is not excessive. The level of borrowing is at level generally accepted to be normal in the industry.

2 This borrowing was availed before the Authority’s current stand was finalized. The borrowing structure cannot be amended now. However this can be a guiding principle for future.

In order to leverage an efficient financing structure and for reduction in interest cost, airport operators take foreign currency loans to part fund the project cost, the same is applicable for GHIAL.

The Authority should appreciate the fact that the Company has not retained the benefits of cheaper borrowing cost and is passed on to the passenger in the form of lower WACC. If the Company had taken Domestic Loan instead of the ECB equivalent amount, the outflows of cash towards interest costs would have been much more.

Also, it should be noted that the loss of Forex fluctuation on interest payments & principal repayments is real in nature and not a notional loss. GHIAL has taken the hit of the Forex fluctuations in actuals of FY 2011-12 and FY 2012-13 owing to interest and repayments servicing the ECB loan to the extent of Rs 34.46 Crs. This loss is not included in the computations of WACC.

Therefore, Authority is requested to allow the Loss on impact of Forex Fluctuations by Inclusion of same in RAB."

f Authority's Examination of Stakeholder Comments on Issues pertaining to Regulatory Asset Base (RAB)

11.27. The Authority notes the comments from the stakeholders on its determination of RAB presented by the Authority in the Consultation Paper No 09/2013-14 dated 21.05.2013. The Authority has carefully examined these comments and presents below its analysis of the issues.

11.28. Further, the Authority has noted AAI's comment stating that assets created out of non-refundable grant given by GoAP should be identified and deleted from RAB and corresponding depreciation should also be excluded. The Authority notes that the funds granted by GoAP have not been earmarked by GoAP for any particular class of assets and thus it is not possible for the Authority to earmark specific asset class to be reduced from RAB on this account. However, the Authority has reduced the quantum of ADFG grant (that HIAL is not required to refund back) given by GoAP has already been reduced from RAB and the attributable depreciation has also not been considered.

11.29. On the issue of forex loss adjustment, the Authority had stated in Consultation Paper No. 09/2013-14 dated 21.05.2013 its view that sourcing of funds is a conscious business decision of the airport operator and accordingly had proposed to disallow the amounts considered by HIAL under the head "Forex Loss Adjustment as per AS 11" as well as from ECB Loan facility. Accordingly, any depreciation on account of capitalized forex loss adjustments was also disallowed. The Authority notes that while IATA has favoured such a treatment, HIAL and APAO have objected to this treatment.

11.30. Further, as stated by HIAL, *“The Authority should appreciate the fact that the Company has not retained the benefits of cheaper borrowing cost and is passed on to the passenger”*. HIAL in its submission has capitalized the loss on account of forex fluctuation as part of its RAB and further depreciated it. The Authority also notes APAO’s request to allow consideration of forex fluctuation loss as a pass through cost in its determination of tariff for aeronautical services as it has cheaper borrowing cost than that of domestic loan.

11.31. The Authority notes the difference in borrowing cost for domestic loan and ECB with reference to HIAL, where the Rupee Term Loan has been borrowed at interest of around 12% per annum and the ECB has been arranged at interest of around 8%. The Authority also notes that forex fluctuation adds to the cost of borrowing and hence effective cost of borrowing for ECB could be higher than 8%. The amount by which the final effective cost of borrowing of ECB loan exceeds 8% depends on the exchange rate fluctuations. The Authority has however carefully gone into the various issues pertaining to foreign exchange fluctuations both from financial and accounting stand points. On balance, the Authority does not consider it appropriate that such foreign exchange fluctuations should be passed on to the passengers.

11.32. Further the Authority noted that the assets with the airport namely, Power sub-station, water supply infrastructure and roads within the perimeter of the airport are also being utilized (apart from HIAL itself) by HIAL’s subsidiaries namely, GHRL and GHASL (which do not form part of the stand-alone entity of HIAL and are not being considered by the Authority towards tariff determination for HIAL). The Authority sought a clarification in this regard from HIAL. HIAL, in response, has submitted an auditor certificate stating as under,

“... as on 31st March, 2013, there are no assets capitalized in the books of GHIAL which are exclusively used by its subsidiaries companies i.e. GMR Hyderabad Aviation SEZ Ltd and GMR Hotels & Resorts Ltd.”

11.33. HIAL further submitted as under,

“Clarification on Asset Allocation

Electricity:

The main substation (220/33 KV) for receiving power at the Airport has been built & owned by APTRANSCO and has been funded by the GoAP. This asset is not in GHIAL's books.

Roads:

GHIAL's main spine road has been transferred to the NAC (Notified Area Committee). The asset is not in GHIAL books and the O&M is also borne by the NAC only. The other internal roads within the premises of assets such as Aerospace SEZ and MAS GMR MRO are in the books of those respective companies only.

However, internal roads such as boundary peripheral roads, Car Park Roads and airside roads etc. are in the books of GHIAL.

Water:

GHIAL's main supply of water is from HMWS&SB (Hyderabad Metropolitan Water Supply & Sewerage Board). The water from HMWS&SB is received through the direct line and stored in Raw water UG (underground) storage tanks of 4800 KL capacity. The water treatment plant is designed to treat the total flow of 1600 KLD.

The HMWS Water is treated further as domestic water & flushing water and stored separately in storage tanks before pumping into the distribution pumping stations. Similarly the recycled water after the treatment (i.e. flushing & irrigation) also brought to Water treatment plant – flushing & irrigation water storage tanks.

From the Water Treatment Plant, all the three types of water i.e. Domestic, Flushing & Irrigation is pumped to four underground pumping stations i.e. CFR Main, PTB, CFR satellite and Engineering Building for distribution to all the users across RGIA.

Based on the usage by the concessionaires of water utilities, GHIAL is recovering the charges and the same is included in GHIAL revenues."

- 11.34.** Based on the above submission, the Authority notes that assets pertaining to the main substation, main spine road and other internal roads within the premises of assets such as Aerospace SEZ and MAS GMR MRO are not in books of HIAL. The Authority further notes that the assets pertaining to internal roads such as boundary peripheral roads, Car Park Roads and airside roads etc. and water supply

system are in the books of GHIAL. As regards the boundary peripheral road, the Authority understands that this is required on account of security reasons and therefore can be taken as the aeronautical assets.

11.35. The Authority notes that there may be some assets, which are on the books of HIAL and are also used by some of the subsidiaries, other entities in addition to their being used by HIAL itself. The Authority would at the time of tariff determination in the next Control Period based on auditor certificate exclude that reasonable portion of such assets from the RAB of HIAL and true-up the RAB for the current Control Period and consequential changes to aeronautical tariff, taking these forward while determining aeronautical tariff for the next Control Period.

11.36. Further, the Authority, in its calculations has combined the assets pertaining to the airport and fuel farm (and corresponding expenditure, interest payments, tax payments and concession fee). Accordingly, the final RAB considered by Authority in single till is presented in the table below:

Table 24: RAB under Single Till as considered by Authority (after combining Fuel Farm assets) in the current Control Period

	2011-12	2012-13	2013-14	2014-15	2015-16
Opening RAB	2,098.09	1,983.93	1,904.88	1,822.37	1,821.30
Commissioned Assets	16.31	34.84	31.45	96.03	50.12
Depreciation & Amortization (Airport Assets net off ADFG)	105.42	107.97	108.67	91.52	86.75
Depreciation & Amortization (Fuel farm Assets)	5.20	5.27	5.28	5.58	5.97
Total Depreciation	110.62	113.24	113.95	97.11	92.73
Disposals	19.85	0.67	-	-	-
Closing RAB	1,983.93	1,904.88	1,822.37	1,821.30	1,778.69
RAB for calculating ARR	2,041.01	1,944.41	1,863.63	1,821.83	1,799.99

Decision No. 7. Regarding Regulatory Asset Base

7.a. The Authority decides to adopt the following approach for consideration of Regulatory Asset Base towards determination of tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:

- i. To include the assets - both aeronautical and non-aeronautical assets, of the standalone entity of HIAL (refer Para 3.4 above) in RAB for the purpose of determination of aeronautical tariffs for the current Control Period under single till.**
- ii. To disallow capitalization of the Forex Loss Adjustment**
- iii. To calculate RAB for each year as the average of the opening and closing RAB and calculate the return for each year on the average RAB.**
- iv. Accordingly to consider the value of RAB as per Table 24 for determination of aeronautical tariff under single till**
- v. To work out the difference between the value of Return on RAB calculated based on actual date of commissioning/ disposal of assets and that calculated considering such asset has been commissioned/ disposed half way through the tariff year. The Authority further decides to consider and adjust this difference at the end of the current Control Period while determining tariff for the next Control Period considering Future Value of these differences for each year in the current Control Period.**
- vi. To note that certain assets with the airport namely, Power sub-station, water supply infrastructure and roads within the perimeter of the airport are being utilized by HIAL's subsidiaries namely, GHRL and GHASL (which do not form part of the stand-alone entity of HIAL and are not being considered by the Authority towards tariff determination for HIAL). The Authority would at the time of tariff determination in the next Control Period, based on auditor certificate,**

exclude such reasonable portion of such assets from the RAB of HIAL and true-up the RAB for the current Control Period and consequential changes to aeronautical tariff, taking these forward while determining aeronautical tariff for the next Control Period.

12. Cost of Debt

a HIAL Submission on Cost of Debt

- 12.1.** As per HIAL's submission on 13.09.2011, the total cost of debt was calculated by considering the actual Cost of Debt for previous years and it was considered to be increased by 50 basis points every year and by a 1.75% increase for ECB term loan.
- 12.2.** HIAL also submitted that an increase of 50 basis points on the Rupee Term Loan for a period of 2 years during FY 2013-14 and FY 2014-15 and an increase of 100 basis points on the ECB Term Loan (USD 125 million, 2007) with effect from April 2012 was being considered and an amount of Rs. 315 Cr with 0% cost was being considered as an Interest free loan.
- 12.3.** The weighted average cost of debt as submitted by HIAL was 9.78% under single and 9.54% under dual till.
- 12.4.** A summary of cost of debt submitted by HIAL in its MYTP filing is presented below:

Table 25: Cost of Debt for HIAL and its subsidiaries – As submitted by HIAL

Company	2011-12	2012-13	2013-14	2014-15	2015-16
GHIAL (Rupee loans)	12.58%	11.85%	12.35%	12.85%	12.85%
GHIAL ECB loan	7.68%	7.68%	9.43%	9.43%	9.43%
Hotel	13.00%	12.75%	13.25%	13.75%	13.75%
GHASL	13.00%	12.75%	13.25%	13.75%	13.75%
HDFRL	13.00%	12.75%	13.25%	13.75%	13.75%

b Authority's Examination of HIAL Submissions on Cost of Debt

- 12.5.** The Authority had carefully examined the submissions from HIAL in respect of cost of debt considered for the purpose of determination of tariff.
- 12.6.** The Authority has noted HIAL submission that it has considered actual cost of debt till FY 2013 and an increase of 50 basis points afterwards. The Authority sought from HIAL the Auditor's certificate(s) supporting their submissions on the rates of interests for the Rupee Term Loan as well as their ECB Facility.
- 12.7.** HIAL, vide their submission dated 04.04.2013, submitted the auditor certificate certifying the rates of interest for rupee term loans and the external commercial borrowing from Abu Dhabi Commercial Bank.

12.8. In the calculation of the cost of debt it was noted by the Authority that the interest free loan from the GoAP was to be repaid in 5 equal installments from the 16th anniversary of the Commercial Operations Date i.e., 23.03.2024. Thus the repayment of the interest free loan was not to commence in the current Control Period. Also, a ceiling to the cost of debt for HIAL at 12.50% for Rupee term loan and at 8.00% for the ECB loan was proposed by the Authority and any upward adjustment of rate of interest for the loans was not being considered at present. The Authority further proposed to true-up the cost of debt for the current Control Period with actuals subject to the proposed ceiling rates.

12.9. The Authority had considered the following cost of debt in respect of HIAL (after considering no increase in interest rates for future periods, excluding Hotel, SEZ and Duty Free assets / loans, excluding forex adjustments due to exchange rate variations in ECB loan):

Table 26: Weighted Average Cost of Debt as considered by Authority– Single Till in Consultation Paper No 09/2013-14

Particular	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Outstanding Debt (Rs. Cr.)	1,652.29	1,551.76	1,410.87	1,266.91
Cost of Debt - %	11.52%	11.57%	11.65%	11.75%

Table 27: Weighted Average Cost of Debt as considered by Authority– Dual Till in Consultation Paper No 09/2013-14

Particular	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Outstanding Debt (Rs. Cr.)	1,372.88	1,289.35	1,172.29	1,052.67
Cost of Debt - %	11.52%	11.57%	11.65%	11.75%

12.10. The Authority observed that an exchange rate of Rs.54.74 per USD was being considered by HIAL in its tariff application and the Authority had proposed to use Rs. 54.30 as the exchange rate which was calculated with reference to RBI published rates for exchange rate of USD to INR for latest 6 months.

Table 28: Impact of considering no increase in interest rates for future periods and Average Exchange rate for latest 6 months on calculation of Cost of Debt

	Single Till	Dual Till
Weighted Average Cost of Debt	9.44%	9.44%

12.11. Based on the material before it and its analysis, the Authority had proposed in the Consultation Paper No 09/2013-14 dated 21.05.2013:

- 12.11.1. To consider the actual cost of Rupee Term Loan and ECB Loan, paid by HIAL, for FY 2011-12 and FY 2012-13 towards the cost of debt for FY 2011-12 and FY 2012-13
- 12.11.2. To consider a ceiling in respect of the cost of debt for rupee term loan availed by HIAL at 12.50%.
- 12.11.3. Not to accept the proposed increase of 0.5% in the rate of interest of rupee term loan for calculation of future cost of debt for the FY 2013-14, FY 2014-15 and FY 2015-16.
- 12.11.4. 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 8.00% for the ECB Loan.
- 12.11.5. To review this ceiling upon reasonable evidence that HIAL may present to the Authority in this behalf.
- 12.11.6. To use the RBI reference exchange rate for exchange of USD into INR for latest 6 month period till 15.05.2013, which worked out to Rs. 54.30 for conversion of ECB Loan amount.

c Stakeholder Comments on Issues pertaining to Cost of Debt

12.12. Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the tentative proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its Consultation Paper No 09/2013-14 dated 21.05.2013. Stakeholders have also commented on cost of debt in respect of RGI Airport, Hyderabad. These comments are presented below:

12.13. 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.

“As per Authority’s proposal, 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 HIAL.

(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 8.00% for the ECB Loan.

However, 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.”

12.14. 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.”

d HIAL’s response to Stakeholder Comments on Issues pertaining to Cost of Debt

12.15. Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 09/2013-14 dated 21.05.2013, the Authority forwarded these comments to HIAL seeking its response to these comments. HIAL has provided responses to the Stakeholders’ comments, which are presented below:

12.16. In response to AAI’s comments on Cost of Debt, HIAL stated as under:

*“Truing up of cost of debt leaves no scope for operator to innovate and make saving in the interest cost, whereas the upper cap makes the business riskier. We request the Authority to approve an interest cost on RTL borrowings @ 12.5% and ECB @ 8.68% with no true up.
RBI also has recently hiked the key interest rate*

FINANCIAL TIMES

*October 29, 2013 11:31 am India raises interest rates to combat inflation
By Amy Kazmin in New Delhi India’s central bank has raised its key*

interest rates by 25 basis points to 7.75 per cent in an effort to tackle rising inflation, a move that Raghuram Rajan, the governor, said was critical to maintain the stability needed for faster growth.

<http://www.ft.com/cms/s/0/da22f582-4060-11e3-a39b-00144feabdc0.html#axzz2jpx2SLIJ>

Further in future also RBI is likely to hike rates in view of the current inflation. A report from standard chartered bank in this regards confirms our stand of interest rate hike in future:



Economic Alert | 29 October 2013

India – RBI likely to hike more

- RBI hikes repo rate, cuts MSF and announces liquidity-enhancing measures, in line with expectations*
- Given RBI's focus on inflation, we expect another 25bps repo rate hike at the next policy meeting."*

12.17. In response to APAO's comments on the issues pertaining to cost of Debt, HIAL has stated that:

"The Authority should not penalize GHIAL by not allowing foreign fluctuations. Cost of debt has reduced considerably because of ECB.

The sourcing of funds at a lower rate in foreign exchange is for the benefit to the passenger / other stakeholders by way of a lower WACC.

However this means of funding also carries the inherent risk of foreign exchange fluctuations. Taking the benefit of a lower interest rate but not allowing the resultant Forex fluctuation goes against the principles of natural justice.

The fluctuation need to be incorporated as part of RAB because of following reasons:

(1) The level of Forex borrowing is not excessive. The level of borrowing is at level generally accepted to be normal in the industry.

(2) This borrowing was availed before the Authority's current stand was finalized. The borrowing structure cannot be amended now.

The Authority should appreciate the fact that the Company has not retained the benefits of cheaper borrowing cost and is passed on to the passenger in the form of lower WACC.

If the Company had taken Domestic Loan instead of the ECB equivalent amount, the outflows of cash towards interest costs would have been much more. Also, it should be noted that the loss of Forex fluctuation on interest payments & principal repayments is real in nature and not a notional loss.

GHIAL has taken the hit of the Forex fluctuations in actuals of FY 2011-12 and FY 2012-13 owing to interest and repayments servicing the ECB loan to the extent of Rs 34.46 Crs. This loss is not included in the computations of WACC.

Therefore, Authority is requested to allow the Loss on impact of Forex Fluctuations by Inclusion of same in RAB.

We request the Authority either to allow Forex fluctuation or treat ECB as if it were RTL."

12.18. In response to FIA's comment 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, HIAL has stated as under:

"The AERA guidelines in Direction no.5 clearly state the Cost of Debt in the calculation of WACC is pre-tax.

All requisite details submitted to the Authority"

e HIAL's own comments on Issues pertaining to Cost of Debt

12.19. On the issue of Cost of Debt, HIAL stated that

"The Authority has done a double jeopardy by:

1.Put a ceiling on the cost of debt

2.Has proposed to true up the savings that airport operator may make in the cost of debt.

This leaves no scope for operator to innovate and make saving in the interest cost, whereas the upper cap makes the business riskier.

We shall request Authority to approve an interest cost on RTL borrowings @ 12.5% and ECB @ 8.68% with no true up.”

f Authority’s Examination of Stakeholder Comments on Issues pertaining to Cost of Debt

12.20. The Authority has carefully examined the comments received from the stakeholders on the cost of debt to be considered for HIAL.

12.21. With regard to the FIA’s comment on providing breakup of the rupee term loan and ECB loan over the historic period and forecast period, the Authority is of the view that this information is very sensitive and is a crucial factor in driving the business of HIAL and thus should not be provided on the public domain without the consent of HIAL.

12.22. Further, on the issue of the ceiling on cost of debt for ECB loan, the possibility of hardening of international commercial borrowing interest rates appears to be unlikely. Thus, while the Authority is not in a position to forecast the rate of interest for the ECB loan, allowing for some head room, it decides to presently put a ceiling on the rate of interest for the ECB loan at 8.00%. Similarly, on the issue of ceiling on the cost of debt for rupee term loan, the Authority is of the view that the rupee term debt contracted by HIAL 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 is cognizant of the fact that while the current highest rate of interest for HIAL is at 12.10%, the loans from other banks are at current rates of interest of 11.85% or less. Considering allowing for some head room, the Authority decides to put a ceiling to the cost of debt for HIAL at 12.50%. Thus the Authority maintains its stand to retain the ceiling on the cost of debt.

12.23. Further, the Authority also maintains its stand to true-up the savings that HIAL may make in the cost of debt.

12.24. The Authority notes AAI’s comment that *“rate in respect of debt needs to be analysed and fixed with reference to present interest rate with option of truing up the rate”*. The Authority has maintained the stand of truing up the rates with an

Cost of Debt

extra provision of ceiling the Rupee Term Loan at 12.50% and the ECB Loan at 8.00%.

12.25. Based on the above, the cost of debt considered by the Authority towards tariff determination for HIAL for the current Control Period is as follows:

Table 29: Weighted Average Cost of Debt as considered by Authority– Single Till in the current Control Period

Particular	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Opening Debt including Rupee Term Loan and Foreign Currency Loan (Rs. Cr.)	1,794.67	1,723.48	1,630.91	1,531.22	1,388.45
Closing Debt including Rupee Term Loan and Foreign Currency Loan (Rs. Cr.)	1,723.48	1,630.91	1,531.22	1,388.45	1,245.69
Average Debt including Rupee Term Loan and Foreign Currency Loan (Rs. Cr.)	1,759.07	1,677.19	1,581.06	1,459.84	1,317.07
Interest payment considered (Rs. Cr.)	177.88	169.45	170.88	158.40	143.03
Cost of Debt - %	10.11%	10.10%	10.81%	10.85%	10.86%

Decision No. 8. Regarding Cost of Debt

8.a. The Authority decides to adopt the following approach for consideration of cost of debt towards determination of tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:

- i.** To consider the actual cost of Rupee Term Loan and ECB Loan, paid by HIAL, for FY 2011-12 and FY 2012-13 towards the cost of debt for FY 2011-12 and FY 2012-13
- ii.** To consider a ceiling in respect of the cost of debt for rupee term loan availed by HIAL at 12.50%.

- iii. Not to accept the proposed increase of 0.5% in the rate of interest of rupee term loan for calculation of future cost of debt for the FY 2013-14, FY 2014-15 and FY 2015-16.**
- iv. 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 8.00% for the ECB Loan.**
- v. To review the ceiling of 12.5% for the Rupee Term Loan and 8.00% for the ECB Loan (mentioned in iv above) upon reasonable evidence that HIAL may present to the Authority in this behalf.**

13. Cost of Equity

a HIAL Submission on Cost of Equity

13.1. As per its initial submission dated 13.09.2011, HIAL submitted that it has considered Cost of Equity as 24% based on a study conducted by consultancy firm Jacobs. Further HIAL submitted as under,

*“Cost of Equity: - Given the importance of an accurate estimate of the cost of equity, GHIAL had mandated an independent study by consultancy firm Jacobs for this purpose. The study of Jacobs based on CAPM Model considers in detail, the risk free rate in India, the risk premiums and airport betas. The report is attached as **Annexure “A1”** In line with this recommendation, we have taken cost of equity as 24%.”*

13.2. Pursuant to this, HIAL, in its 14th submission dated 14.12.2012, re-iterated that Cost of Equity is considered as 24% based on the study conducted by consultancy firm Jacobs.

13.3. As per Jacob’s report, submitted by HIAL, the Cost of Equity was computed based on CAPM model. The relevant extracts from the Jacob’s report on the methodology of computation of Cost of Equity are as under,

“Although there are, in principle, a number of methods for estimating the cost of capital including the dividend growth model, and Fama French and other capital arbitrage based methodologies, by far the dominant approach to setting the cost of capital is the Capital Asset pricing Model (or CAPM). This assesses the cost of systematic or non-diversifiable risk associated with equity by a simple formula:-

$$re = rfr + (1+\beta) \times Mrp$$

where,

- *re is the cost of equity*
- *rfr is a notional rate of interest for a ‘risk free’ asset - conventionally taken as the interest rate on Government debt*

- β is a measure of systematic risk – the covariance between the movements of a quoted share equivalent to the company concerned and the stock market
- Mrp is the market risk premium – the average difference between returns on the (risky) market as a whole and the risk free rate.”

13.4. In respect of Risk Free Rate, Jacob’s report submitted by HIAL, mentioned that the risk free rate was computed based on Fisher’s formula. Further, the report stated that,

“CAPM formula assumes that there is an underlying long term risk free rate of debt – normally regarded as that of Government gilt edged securities - which reflects the real long term preferences of savers. The nominal risk free debt rate incorporates the effects of inflation which will vary over time. The equivalent real rate can be calculated through the Fisher formula as:

$$r_{fr\ real} = (1 + r_{fr\ nominal}) / (1 + i) - 1$$

13.5. Further this report has taken the research paper “A First Cut Estimate of the Equity Risk Premium in India” by Varma and Barua as their basis for estimation of risk free rate, which estimated an underlying risk free rate for India over 25 years from 1980 to 2005. Further, Jacob’s report stated as under,

“.....Varma and Barua in their paper ‘A First Cut Estimate of the Equity Risk Premium in India’ have, however estimated an underlying risk free rate for India over the 25 years from 1980 to 2005. They split this period into the period up to the onset of major economic reforms in 1991, and the period subsequent to those reforms from 1991 – 2005. Up to 1991 the estimate incorporates substantial adjustments to the one year bank deposit rate to allow for, what they describe as ‘interest rate repression’: beyond 1991 the estimates is based primarily on direct evidence from 364 day treasury bills (allowance is made for a transition period leading up to 1995). Since Varma and Barua’s prime intention to deal with the risk premium (see

later) they are content to show the risk free rate figures in nominal terms.

Exhibit 1 below shows their results together with inflation over the same period, and the implications for the real risk free rate. All series are shown in arithmetic and geometric terms

EXHIBIT 1

RISK FREE RATE ACROSS INDIA SINCE 1981

	Arithmetic			Geometric		
	Risk Free Rate	Inflation	Real Risk Free	Risk Free Rate	Inflation	Real Risk Free
<i>1981-1991</i>	12.0%	9.0%	2.8%	12.0%	8.9%	2.8%
<i>1991-2005</i>	9.5%	6.9%	2.4%	9.5%	6.8%	2.5%
<i>Whole Period</i>	10.6%	7.8%	2.6%	10.5%	7.7%	2.6%

The figure of 2.6% is numerically consistent with the 2.5% recommended for UK regulators in a major study by Smithers & Co and also used by the Irish regulator for the Dublin determination. We would have expected a higher rate to apply in the Indian context, and it is likely that the use of 1 year bills in India rather than 10 year bonds (which is standard in the UK) has depressed the risk free rate for this purpose (long bonds typically have a higher inflation and other risks leading to a premium which amounts to 0.5 to 1% for UK and US bonds). We have, however, left the real risk free rate unchanged so that it is consistent with the estimate used later for the equity risk premium, derived from the same source.”

13.6. Further, towards estimation of market risk premium, Jacob’s report stated that,

“Consistent with our use of a relatively low risk free rate of 2.6% derived from Varma and Barua, we have adopted the equity risk premium figures from the same source shown in Exhibit 6. This gives an estimate of the risk premium of between 8.75 and 12.51%.

These estimates are high compared with typical risk premia from other sources covering developed countries. However the results are

supported by, for example Mehra, who reports a risk premium between 1991 and 2004 of 9.7%. Mehra also gives figures for developed countries shown in Exhibit 7.

EXHIBIT 6
MARKET RISK PREMIUMS FOR EQUITY

	Arithmetic			Geometric		
	Equity Returns	Risk Free Rate	Market Risk Premium	Equity Returns	Risk Free Rate	Market Risk Premium
<i>1981-1991</i>	23.2%	12.0%	11.2%	21.00%	12.0%	9.0%
<i>1991-2005</i>	23.0%	9.5%	13.5%	18.10%	9.5%	8.6%
<i>Whole Period</i>	23.1%	10.6%	12.5%	19.30%	10.5%	8.8%

EXHIBIT 7
MARKET RISK PREMIUMS FOR EQUITY

Country	Period	Risk Premium
<i>United Kingdom</i>	<i>1947-1999</i>	<i>4.60%</i>
<i>Japan</i>	<i>1970-1999</i>	<i>3.30%</i>
<i>Germany</i>	<i>1978-1997</i>	<i>6.60%</i>
<i>France</i>	<i>1973-1998</i>	<i>6.30%</i>
<i>Sweden</i>	<i>1919-2003</i>	<i>5.50%</i>
<i>US</i>	<i>1889-2004</i>	<i>6.50%</i>
<i>Australia</i>	<i>1900-2000</i>	<i>8.70%</i>

.....Whilst the risk premiums estimates for India given are relatively high we have accepted them for current purposes as being consistent with the relatively low risk free rate applied.

As noted before academic research has generally supported the use of the arithmetic risk premium as the best unbiased estimate of the risk premium going forward, though there is also evidence suggesting that in certain circumstances this could be an overestimate. We have assumed an estimate of 11% which is significantly below the upper end of the scale.”

13.7. In respect of Beta, Jacob’s report stated as under,

“A standard approach is to use the Miller formula, which is applicable in conditions where the debt remains constant.

$$\beta_e = \beta_a \times (1 + D/E)$$

Where,

β_e is the equity beta; and

β_a is the asset beta

It should be noted that this formula follows the standard approach of assuming that the underlying beta of debt is insignificant. It is possible to extend the formula to include specific debt betas though these are very difficult (if not impossible) to measure under normal circumstances and have relatively little impact on the final result in most applications (though it will affect interim calculations of asset betas).

Where betas are estimated from comparable airport shares, the resulting beta will strictly speaking apply to the whole airport company - rather than to aeronautical activities in isolation. In some applications, attempts have been made to isolate the aeronautical components by treating the overall beta as a weighted average of activities comprising the aeronautical activities themselves together with a basket of companies which together represent non-aeronautical activities including retail companies (which typically have a high beta) and property investment companies (which have lower betas than airports). The results of these approaches have, in our experience, proved inconclusive and contentious, and for present purposes we have assumed that the airport company betas are broadly representative of the airport's aeronautical activities."

- 13.8.** Jacob's report calculated the Debt/Equity ratio for HIAL at 2.65. Jacob's report, in this regard, stated as under,

"The airport financing structure for Hyderabad is made more complex by the presence of Government grants and an interest free loan from the state Government (which is to be paid off between 15 and 20 years after the opening of the airport). The grant is non-refundable and is in

the nature of equity. The interest free loan is subordinated to term debt and is in the nature of quasi-equity.

The long term lenders of Hyderabad Airport have treated both of these as quasi-equity and this treatment has been followed here, resulting in a debt equity ratio of 2.65 as shown in Exhibit 2 below.

EXHIBIT 2
HIAL DEBT / EQUITY RATIO

Country	INR Crs
<i>Equity</i>	<i>378</i>
<i>Interest Free Loan from GoAP</i>	<i>315</i>
<i>Advanced Development Fund Grant</i>	<i>107</i>
<i>Total Equity</i>	<i>800</i>
<i>Term Loan 2005</i>	<i>960</i>
<i>Term Loan 2007</i>	<i>718</i>
<i>Additional Term Loan Required</i>	<i>442</i>
<i>Total Debt</i>	<i>2120</i>
<i>Debt/Equity</i>	<i>2.65</i>

“

- 13.9.** However, Jacob’s report considered Debt/Equity ratio of 1:1 throughout the period and stated as under,

“In this case we have taken a financial structure of 50% debt 50% equity throughout the period, which we have assumed will be consistent with investment grade debt over the long term.”

- 13.10.** Jacob’s report arrived at the value of asset Beta as 0.75 based on a comparison made between Beta values of sample airports taken as comparable airports and certain considerations towards the development stage and riskiness of the Hyderabad airport. Jacob’s report, in this regard, stated as under,

“Beta has been estimated for airports in a range in a range of regulatory and other applications. Beta evidence has been used in three major determinations at Dublin, Copenhagen, and Stansted. Evidence on quoted airport betas derived from submissions to the Dublin process is shown below in Exhibit 3.

EXHIBIT 3
BETA VALUES AT AIRPORTS ACROSS THE WORLD

	Daily				Monthly		
	Last 6 months	Last year	Last 2 Yeats	Last 5 Years	Last Year	Last 2 Years	Last 5 Years
<i>Vienna</i>	0.52	0.57	0.58	0.64	0.58	0.6	0.69
<i>Frankfurt</i>	0.52	0.57	0.63	0.67	0.66	0.69	0.72
<i>Copenhagen</i>	0.35	0.38	0.41	0.4	0.49	0.46	0.43
<i>Paris</i>	0.75	0.76	0.76	0.72	0.74	0.76	0.73
<i>Venice</i>	0.41	0.45	0.35	0.48	0.54	0.53	0.56
<i>Florence Airport</i>	0.43	0.42	0.42	0.46	0.44	0.45	0.48
<i>Auckland</i>	0.76	0.77	0.87	0.86	0.83	0.86	0.85
<i>Ljubljana</i>	1.16	1.16	1.09	1.07	1.17	1.11	1.07
<i>Zurich</i>	0.36	0.38	0.4	0.32	0.44	0.44	0.36
<i>Mexico</i>	0.67	0.7	0.73	0.72	0.75	0.79	0.81
<i>(Aeropuerto del Pacifico)</i>							
<i>Mexico</i>	0.68	0.69	0.67	0.65	0.56	0.61	0.63
<i>(Aeropuerto del Sureste)</i>							
Average	0.60	0.62	0.63	0.64	0.65	0.66	0.67

Taken together this gives a range for ‘typical’ airport betas of between 0.60 and 0.67. Even if Ljubljana is excluded (as an outlier) the range would be 0.55 to 0.63. These figures are consistent with the Copenhagen regulator’s estimate of 0.63 as an average beta for airports aeronautical activities in isolation derived from a sample of 7 comparator airports (including Thailand and Malaysia) and the Dublin Airports decision to use 0.61.

.....

Exhibit 5 outlines the relative systematic risk (relevant to beta) of Hyderabad compared with major airports in general.

EXHIBIT 5
HIAL DEBT / EQUITY RATIO

Source of Risk	Relative Risk Faced by Hyderabad compared to Typical Airport	Comment

Source of Risk	Relative Risk Faced by Hyderabad compared to Typical Airport	Comment
<i>Traffic Risk</i>	<i>High</i>	<i>Traffic growth crucially dependent on rapid recovery and subsequent growth of the Indian economy</i>
<i>Domestic Exposure</i>	<i>High</i>	<i>Hyderabad has a high proportion of domestic traffic which is fully exposed to the national economy</i>
<i>Low Cost Airlines</i>	<i>Medium</i>	<i>Hyderabad will have a limited proportion of low cost traffic. Although leisure traffic is sensitive to the economy, low cost airlines have shown themselves better able to deal with cyclical risk than full fare operators</i>
<i>Non-aeronautical business</i>	<i>Low/Medium</i>	<i>Low level of aeronautical business means that growth risks are not diversified</i>
<i>Capital Cycle Risk</i>	<i>High</i>	<i>Major capital expenditure in anticipation of traffic growth. No opportunities for lower risk incremental growth.</i>
<i>Proportion of Fixed Costs</i>	<i>High</i>	<i>Partly as a result of the capital cycle, and the limited activities undertaken, very large elements of Hyderabad's costs are fixed further leveraging exposure to economic growth.</i>
<i>Political Risk</i>	<i>High</i>	<i>The current issue of split of the state, if it materialises, may potentially impact traffic and the growth of revenues.</i>

.....

However for present purposes we have used a relatively modest premium to the airport range of 0.60-0.67 to arrive at an initial beta of 0.75."

13.11. Based on the above-mentioned considerations of asset beta of 0.75, debt equity ratio of 1:1, nominal risk free rate of 7.7% and a market risk premium of 11%, Jacob's report calculated the Cost of Equity in respect of HIAL at 24%. HIAL in its tariff proposal considered this cost of equity (24%).

13.12. With regard to equity contribution by HIAL in the three subsidiaries namely, GMR Hotel and Resorts Limited (GHRL), GMR Aviation SEZ Limited, Hyderabad Duty Free Retails Limited, HIAL submitted an auditor certificate stating as under,

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

13.13. With regard to equity contribution for GMR Aviation SEZ Limited and Hyderabad Duty Free Retails Limited, HIAL submitted an auditor certificate stating as under,

“Equity investment in GMR Aviation SEZ Limited and Hyderabad Duty Free Retails Limited are funded through internal accruals of GHIAL”

13.14. For equity investment in GMR Hotel and Resorts Limited, HIAL submitted an auditor certificate stating as under,

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

13.15. Further HIAL, in its submission dated 04.04.2013, submitted an auditor certificate stating the debt and equity standing of the hotel business as on 31.03.2012. The auditor certificate stated as under,

“Debt and Equity of Company as on March 31, 2012

Particulars	As on Mar 2012
<i>Debt (Secured term loan form Bank)</i>	<i>138.64</i>
<i>Equity (Issued and fully paid)</i>	<i>109.66</i>
Total	248.30

.”

13.16. Further, HIAL, in its submission dated 04.04.2013, submitted another auditor certificate which stated that the hotel assets acquired at time of demerger were Rs. 238.66 Cr. (FY 2009-10) and after relevant additions and deletions to assets in the subsequent years, the gross asset base of GMR Hotel and Resorts Limited stood at Rs. 246.13 Cr. as on FY 2011-12.

13.17. HIAL also submitted loan documents for GMR Hotel and Resorts Limited where in the total equity in GMR Hotel and Resorts Limited was considered as Rs. 110 Cr. and

Cost of Equity

the debt sanctioned for GMR Hotel and Resorts Limited was considered as Rs. 140 Cr. – with a total hotel cost of Rs. 250 Cr.

b Authority's Examination of HIAL Submissions on Cost of Equity

13.18. The Authority had carefully examined HIAL submissions on the cost of equity. The Authority's examination of the issue was as follows:

Quantum of Equity

13.19. The Authority had noted from HIAL submissions that the equity invested by the promoters in HIAL was at Rs. 378 crore. The Authority had also noted that HIAL has made investments into its 100% subsidiaries namely, GMR Hotel and Resorts Limited (GHRL), GMR Aviation SEZ Limited, Hyderabad Duty Free Retails Limited.

13.20. The Authority had noted from the tariff model submitted by HIAL that the equity investment in GHRL, in GMR Aviation SEZ Limited and in Hyderabad Duty Free Retails Limited were as follows:

Table 30: Equity investment in 100% subsidiaries of HIAL as submitted by HIAL

Rs. in crore	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
GMR Hotel and Resorts Limited	109.66	109.66	109.66	109.66	109.66
GMR Aviation SEZ Limited	25.00	30.00	36.89	36.89	36.89
Hyderabad Duty Free Retails Limited	4.95	4.95	4.95	4.95	4.95

13.21. The Authority sought clarifications / certifications from HIAL on the source of equity investment into these subsidiaries. With regard to the equity investment in these 100% subsidiaries, HIAL stated that equity investments in 100% subsidiaries have been funded either via debt or via internal accruals of HIAL. HIAL submitted auditor certificates to this effect, which are presented in Para 13.12 above to 13.17 above.

13.22. The Authority had noted differences in numbers certified by HIAL w.r.t. GMR Hotel and Resorts Limited. The Authority had observed that one of the auditor certificates

submitted by HIAL stated that the equity in GHRL stood at Rs. 109.66 Cr. and another certificate stated that it stood at Rs. 110 Cr. The Authority felt that the figure of Rs. 110 Cr. was provided after rounding off and had thus considered the equity investment into GHRL at Rs. 109.66 Cr. for further analysis.

13.23. The Authority also noted from the auditor certificate submitted by HIAL that at the time of demerger of the hotel business into GHRL, the assets being demerged were worth Rs. 238.66 crore. HIAL further stated vide the auditor certificate that this project was fully debt-funded, so at the time of demerger, Rs. 140 crore (a rounded-off figure) was considered as debt outstanding for GHRL and Rs. 110 crore (a rounded-off figure for Rs. 109.66 crore) was considered as equity investment into GHRL. The Authority thus noted from the auditor certificates that HIAL had used debt to fund the equity investment of Rs. 109.66 crore into GHRL.

13.24. As regards the equity investment into other two 100% subsidiaries namely, GMR Aviation SEZ Limited and Hyderabad Duty Free Retails Limited, the Authority had noted from the auditor certificates from HIAL that the amount of Rs. 41.74 crore had been invested into these two subsidiaries from the internal accruals of HIAL. As noted by the Authority in its Consultation Paper No 22/2012-13 dated 11.10.2012, the "*internal accruals*" is not a defined term and it may be used loosely to mean to include the net profits (profit after tax), depreciation and cash & bank balance.

13.25. The Authority had noted that there is a difference in the treatment accorded to net profits (profit after tax) and depreciation in the financial statements. In a normal course the profit after tax, available after distribution of dividends, would have been reflected in retained earnings (or Reserves and Surplus head of the Balance Sheet). Once reflected in the retained earnings, this value would have been available for the equity investors and would have been considered as equity investment by the investors in the airport / HIAL. On the other hand, depreciation would not form part of the retained earnings and thus would not be part of the equity investment by the investors in the airport / HIAL. Hence it was important for the Authority to know whether the equity investment into GMR Aviation SEZ Limited and Hyderabad Duty Free Retails Limited came from profit after tax or from depreciation and such a clarification / certification was sought from HIAL. HIAL had

clarified through its submission dated 09.05.2013 that such investments have come from depreciation and not from profit after tax. Accordingly, equity investment into GMR Aviation SEZ Limited and Hyderabad Duty Free Retails Limited was considered by the Authority not to have come from the equity base of HIAL.

13.26. Further the Authority had also sought the clarification / certification from HIAL on whether the amount of Rs. 378 crore brought-in as equity into HIAL has solely been used for payments in respect of the airport project at Hyderabad. In response to the same, HIAL produced an auditor certificate stating that the amount of Rs. 378 crore had been solely used for payments in respect of airport project at RGI Airport, Hyderabad.

13.27. Based on the above auditor certificates submitted by HIAL, the Authority came to the view that the equity of Rs. 378 crore, invested in HIAL, had been solely utilized for the payments in respect of airport project at RGI Airport, Hyderabad. The equity invested in the 100% subsidiaries of HIAL namely, GMR Hotel and Resorts Limited (GHRL), GMR Aviation SEZ Limited, Hyderabad Duty Free Retails Limited had not come from the equity investment of Rs. 378 crore, was rather sourced from other sources including debt and internal accruals (depreciation as was considered by the Authority). While the equity of Rs. 109.66 crore, invested in GMR Hotel and Resorts Limited had come from debt raised by HIAL, equity of Rs. 41.74 crore, invested in GMR Aviation SEZ Limited and Hyderabad Duty Free Retails Limited had come from the internal accruals of HIAL.

13.28. As mentioned in Para 3.4 above, the Authority had proposed not to include the asset of the hotel business (GMR Hotel and Resorts Limited) and the SEZ business (GMR Aviation SEZ Limited) into the determination of aeronautical tariff. Accordingly, the Authority had proposed not to consider the equity corresponding to these businesses in the calculation for cost of equity.

13.29. Considering the above, the Authority had proposed to consider the total equity investment in HIAL at Rs. 378 crore

Cost of Equity

13.30. The Authority had, in its Consultation Paper No. 03/2009-10 dated 26.02.2010 (on the Regulatory Philosophy and Approach in Economic Regulation of Airports and Air

Navigation Services), stated that it recognized that the assessment of the cost of equity will be highly material to the Authority's reviews of airport charges. The Authority considered that the CAPM was the most appropriate approach for determining the cost of equity. However, the CAPM approach would potentially result in a wide range of results, depending on assumptions made around different components of CAPM and while the range of results derived from CAPM is considerable, the Authority will consider the application, where appropriate, of benchmarks for the cost of equity, most notably from other regulatory estimates, but recognising the differences in risk profiles between sectors.

13.31. In addition, as stated in the Order No. 06/2010-11 as on 26.10.2010, the Authority had in the past noted that none of the private airports in India 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 was listed. The Authority had 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 RGI Airport, Hyderabad. NIPFP is a centre for advanced applied research in public finance and public policy. It is an autonomous society which is used as a think tank by the Ministry of Finance and other Government departments/ agencies.

13.32. NIPFP had, vide DO letter dated 13.12.2011, forwarded a Report to the Authority for its review. 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. Post discussions with the Authority, NIPFP, vide its revised report dated 19.04.2012, considered a wider set of comparator airports including both developed and developing economies. Based on this comparator set, NIPFP had worked out an asset beta of 0.58 based on book value of equity for airport companies in the comparator set. NIPFP had suggested an asset beta of 0.45 to 0.65 as a range. The Authority had considered the risk mitigating measures

available to RGI Airport, Hyderabad (presented in Para 13.90 below to Para 13.92 below). In view of these additional risk mitigating measures, the Authority had considered an asset beta of 0.50 in respect of RGI Airport, Hyderabad.

13.33. 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 20.04.2012 and Chapter 13 of Order No. 32/2012-13 dated 15.01.2013), the Authority had proposed to consider the following to estimate the cost of equity in respect of HIAL.

13.33.1. Determination of Asset beta of the airport based on the appropriately chosen comparator set

13.33.2. The asset beta of the airport to be re-levered using the notional Debt – Equity ratio of 1.5 (equivalent to gearing of 60%).

13.33.3. To calculate equity beta according to CAPM framework

13.33.4. WACC calculation to be made based on the book values of Debt and Equity.

13.34. Considering the asset beta of 0.50 on account of mitigation of risk factors by the Authority and a normative debt equity ratio of 1.5:1, the cost of equity would work out to be 15.74% (with Risk free rate of 7.35% and Equity risk premium of 6.71%). The Authority observed that its methodology and estimation of cost of equity appeared to be sufficiently robust. Rounding it to 16% thus appeared to the Authority an appropriate fair estimate of the cost of equity for HIAL.

13.35. The Authority had also noted the cost of equity calculations made by M/s Jacobs and presented to the Authority by RGI Airport, Hyderabad in its tariff proposal. The comparator set chosen by M/s Jacobs had 11 airports of which 9 were from developed economies (Vienna, Frankfurt, Copenhagen, Paris, Venice, Florence, Auckland, Ljubljana and Zurich) and 2 from the developing economies (Mexico). The 5 year beta of Mexican airports was lower than that of some of the developed country airports. It was thus clear to the Authority that Hyderabad Airport was thought to be comparable to other airports from developed economies.

13.36. With regards to the selection of comparator set, it was clear to the Authority that different stakeholders had quite different estimates on the asset betas. The Authority had relied upon the report of NIPFP to arrive at a fair rate of return on equity at 16%.

13.37. Risk Mitigating Measures: Return on equity is based on the risk profile of a particular project or airport. The Authority had carefully considered the factors impacting the riskiness of HIAL as also the de-risking measures proposed to be adopted in respect of HIAL. The Authority had noted that in addition to the many de-risking measures contained in this Consultation Paper and presented below (that were not available for airports in the comparator set), land for monetization (made available by the State Government), as discussed above, could 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 the Authority had proposed in the Consultation Paper No 09/2013-14 dated 21.05.2013 for stakeholders' consultation included:

- 13.37.1. Truing-up of traffic: (This transfers the risk of economic downturn from airport to the passengers)
- 13.37.2. Truing-up of non-aeronautical revenue,
- 13.37.3. Review of cost of debt on reasonable evidence, if provided by HIAL,
- 13.37.4. Review of capital expenditure,
- 13.37.5. Truing-up of certain operating costs namely, utilities expense and property tax
- 13.37.6. 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)

13.38. In addition to the above the Government of India and GoAP have also granted certain fiscal as well as infrastructure assistance to HIAL as under:

- 13.38.1. Closure of commercial and civil operations at the existing airport at Begumpet guaranteeing traffic at the airport
- 13.38.2. Support from the State Government in fiscal terms with Interest Free Loan of Rs. 315 crore and Advance Development Fund Grant of Rs. 107 crore
- 13.38.3. Support from the State Government in infrastructure in terms of road access, power supply and water supply
- 13.38.4. Airport land made available at concessional rental

13.38.5. Concession fee (to be paid by HIAL to the Government of India) being a nominal value of 4% and that too payable from 10th year onwards and treated as a cost pass through

13.39. The Authority had considered the report of M/s Jacob Consultancy. The Authority had also requested NIPFP to go into the question of appropriate cost of equity of HIAL. NIPFP is considered as an expert financial body under the Ministry of Finance. The basis of its estimation of these parameters was given in its report. As regards the calculation of the measure of risk viz. β (beta), Jacob's report had taken a comparator set of 11 countries consisting of both developed and developing regions. NIPFP had taken into account a wider set consisting of 27 airports also from both developed and developing regions. NIPFP's calculation showed the asset beta in the range of 0.45 to 0.65, which the Authority considered as a more robust estimation.

13.40. The Authority had noted that M/s Jacob had based their calculations of equity beta on gearing of 72% (taking both the ADFG and IFL as components of equity) and asset beta of 0.75. M/s Jacob had stated that the asset beta range for 'typical' airport betas was between 0.60 and 0.67 and that even if Ljubljana was excluded (as an outlier) the range would be 0.55 to 0.63. It had further added a premium of 0.17 and estimated the asset beta for HIAL at 0.75. The Authority did not believe that the airports in the comparator set chosen by M/s Jacob had comparable risk mitigating measures and support that Government of India, GoAP and the Authority had put in place in case of HIAL. Hence, the Authority did not believe that any premium was warranted and in fact there was a strong case for discount.

13.41. The Authority had noted that an equity beta of 1.275 (considering debt/equity ratio at 60:40 and asset beta of 0.50) indicated that the risk measure of HIAL airport was higher than the market as a whole (by definition equity beta of the market is 1). The Authority had noted that this could be taken as a somewhat generous allowance because the Authority had also introduced substantial risk mitigating measures for HIAL airport. These were listed in Para 13.37 above and are explained below:

- 13.41.1. From the date of opening of RGI Airport, Hyderabad, the functioning at AAI's Begumpet Airport was closed down to ensure passenger traffic and cargo volumes at the new airport.
- 13.41.2. The GoAP gave substantial financial aid of Rs. 315 crore as interest free loan and Rs.107 as advance development fund grant (grant-in-aid). This needed to be viewed against the amount of equity of Rs. 378 crore wherein AAI and Govt. of Andhra Pradesh put together have a share of Rs. 98.28 crore. Hence, the private equity at HIAL airport was of the order of Rs. 279.72 crore. The Govt. of Andhra Pradesh gave financial assistance in terms of subsidy and interest free loan to give amount of Rs. 422 crore which was higher than the total equity in HIAL. The basic purpose of GoAP infusing financial assistance into the project was to mitigate the financing risk during the construction of the project. At the same time, the debt burden was also brought down by the interest free loan.
- 13.41.3. The GoAP had leased land of around 5450 acres after acquiring the same from private cultivators. In the lease deed between the GoAP and HIAL it was mentioned that the land was leased to make the airport feasible. Hence this was another factor which mitigated the risk in terms of revenue accruing to the airport as well as any future capital needs for expansion, as and when they arise. In fact the Authority's aeronautical tariff determination made the airport feasible even without taking the revenues from the commercial exploitation of the excess land.
- 13.41.4. The Govt. of India 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 was exposed. The Govt. as well as the Authority had actually used this measure and granted appropriate UDF for domestic and international passengers.
- 13.41.5. The Govt. of India had stipulated that no new or existing airport shall be permitted by GoI 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 HIAL. It had also, therefore, given it a kind of monopoly within an aerial distance of 150 kms. This measure had been taken by the Govt. of India to assure HIAL of traffic both in terms of passengers and cargo. On the part of the Authority, it had also proposed to true up passenger traffic so that the risk to the airport on this account would get completely mitigated.

13.41.6. The Authority had also proposed to true up the non-aeronautical revenues under single till so that its fluctuations would not affect the returns that HIAL would get.

13.41.7. Operation of UDF ensured that HIAL would be able to get fair rate of return since UDF was 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.

13.41.8. The Authority had also proposed to take into account the interest cost which may be incurred by HIAL (subject albeit to reasonable evidence thereof).

13.42. The Authority had noted that the report of Varma and Barua as well as of Jacob taking into account the asset betas of the comparator set, consisting of 11 airports, may not have correspondingly equivalent risk mitigating measures. The Authority, while considering Jacob’s report, had noted that according to Jacob, the Govt. grants and interest free loan “may make the airport financing structure more complex”. The reason given by Jacob was that the interest free loan needed to be returned between 15th to 20th years after opening of the airport. First, the Authority had admitted depreciation on all the airport assets, excluding the ADFG i.e. the grant as it was subtracted from RAB, but including those that can notionally / proportionately represent the interest free loan of the GoAP. The average annual depreciation rate of HIAL was of the order of 4.5% and hence yearly depreciation should take care of the repayments of the interest free loan. Loans and grant-in aid were, in the opinion of the Authority, fairly standard means of financing. In DIAL for example, there were similar means of financing in terms of Development Fee, interest free refundable (after 57 years) security deposits etc. but this had not made the financing structure any more complex. Secondly, even assuming for sake of argument that Govt. grants and interest free loan may have made the financing

structure more complex, this was a business and financial decision of HIAL and passengers should not be made to pay for the same. The Authority had therefore taken a normative debt to equity ratio of 1.5:1 for the purposes of re-levering of asset beta of HIAL into equity beta.

13.43. Jacob had also indicated that the *“grant is not refundable and is in the nature of equity”*. The Authority noted that equity, as is commonly understood, included shareholders’ funds and was contributed by them. GoAP had already given funds to the extent of Rs. 49 crore representing 13% of the equity and these had been reckoned as equity in the statement of accounts of HIAL. Under the regulatory determinations, grant or subsidy by the Govt. is treated in accordance with Accounting Standard No. 12 and, therefore, needed to be subtracted from RAB. HIAL in its submissions had treated it accordingly and reduced the grant amount from RAB. The Authority proposed to accept reduction of amount of grant or subsidy by GoAP from RAB. Interest free loan advanced by GoAP was not proposed for reduction from RAB. However, the Authority noted that M/s Jacob in its report had stated that *“The grant is non-refundable and is in the nature of equity. The interest free loan is subordinated to term debt and is in the nature of quasi-equity. The long term lenders of Hyderabad Airport have treated both of these as quasi-equity and this treatment has been followed here, resulting in a debt equity ratio of 2.65”*. It appeared to the Authority that M/s Jacob had juxtaposed three separate concepts: (i) the total equity, (b) the treatment of grants in regulatory accounts and (iii) the calculation of debt equity ratio by the banks and lenders. The Authority was aware that the banks or the lenders may have a certain approach consistent with their lending policies as well as incidence of burden of the payment on HIAL. The Authority also did not believe that presence of interest free loan and grant had, in any manner, made the airport financing structure more complex. In airports of Delhi (DIAL) and Mumbai (MIAL), for example, the determination of development fee had not increased the complexities in the financial structure of these two companies. In the tariff / UDF determinations, the Authority could and had determined the average cost of debt based on the different elements thereof and arrived at Weighted Average Cost of Debt and therefrom also calculated Weighted

Average Cost of Capital (WACC) (which included the cost of equity or the return on equity).

- 13.44.** The Authority also noted that M/s Jacob had added a premium to the asset beta considering the relative riskiness of Hyderabad airport. As indicate above, numerous risks mitigating measures, in Authority's assessment, should in fact result in risk discount and not any risk premium.

Risk Elements

- 13.45.** M/s Jacob's study had identified certain sources of risks in respect of RGI Airport, Hyderabad. M/s Jacob may have identified these sources of risk as the study was prior to the proposals of the Authority regarding risk mitigating factors presented in the Consultation Paper No 09/2013-14 dated 21.05.2013. For example, the traffic risk as well as domestic exposure would get practically eliminated on account of truing up of passenger volumes. Similar argument was with respect to non-aeronautical business, which was also proposed to be trued up. As far as the capital cycle risk was concerned, Hyderabad airport was designed to handle traffic of around 12 million passengers. Its traffic, at that stage, was around 7.5 million passengers. Hence major capital expenditure in anticipation of traffic growth was not a source of risk during the current Control Period. If and when the airport needed expansion, the covenants of Concession Agreement regarding UDF being levied for capital expansion as one of the purposes was adequate to meet such a requirement. Hence passengers and not the airport operator would be bearing this risk if any. Commercial exploitation of land in excess of the airport requirements could also be expected to contribute to the capital as and when needed for expansion. Since the traffic was proposed to be trued-up, the downside risk would get mitigated.

- 13.46.** Jacob had referred to Capital Cycle risk and had stated that *"Major capital expenditure in anticipation of traffic growth. No opportunities for lower risk incremental growth"*. The Authority understood that what Jacob meant was that if there was incremental growth then the risk was lower. Hence the argument that HIAL did not have "opportunities for lower risk incremental growth" was also not applicable.

13.47. Jacob had indicated a *“likely split of the state”* as a source of political risk. The Authority was unable to agree with Jacob that reorganization of state, if and when done, constituted a political risk. Furthermore, the Authority was also unable to appreciate that mere reorganizing the state would have any adverse impact on the catchment area of RGI Airport, Hyderabad. In the AERA Act also, there was a specific provision of revisiting tariff determination *“in public interest”*. The Authority had also noted that the impact of traffic was proposed to be trued up as would be the consequent growth of revenues. At any rate, Govt. of India had stated that it would not allow any new airport within the radius of aerial distance of 150 kms. Hence in the analysis of the Authority, Jacob did not appear to have factored the risk mitigating measures put in place by the Govt. of India, the GoAP and the Authority and, therefore, Jacob’s estimates of asset beta appeared to have an upward bias. Furthermore Para 13.7.1 of the Concession Agreement also speaks specifically about political risk insurance, if any, raised by HIAL in the context of transfer of the Airport upon expiry of the term.

13.48. As regards the item of high proportion of fixed costs leading to increased risks, M/s Jacob had felt that this increased the risk on account of lower economic growth. The Authority had proposed to true up both traffic as well as non-aeronautical revenue that can be said to be dependent on economic growth. Hence, the Authority did not feel that high proportion of fixed costs would lead to increased risk on HIAL since this would get completely eliminated on account of proposed truing up. The same reasoning applied to alleged high risk on account of *“domestic exposure”*.

13.49. M/s Jacob had reasoned under the item *“Low Cost Airlines”* that *“Hyderabad will have a limited proportion of low cost traffic. Although leisure traffic is sensitive to the economy, low cost airlines have shown themselves better able to deal with cyclical risk than full fare operators”*. Jacobs therefore appeared to argue that if an airport had lesser low cost airlines, its riskiness was higher. Conversely, if an airport had greater proportion of Low cost airlines, its riskiness was lower. However M/s Jacob had not given relative percentages of low cost airlines in other airports in the comparator set. At any rate the Authority had proposed to true up the traffic and

hence this item could not add any premium to riskiness of HIAL. Furthermore, Low Cost Airlines are more sensitive to passenger charges like UDF since the proportion of airport charges to their operating costs is higher than that in full fare airlines. Hence if a regulatory till (single or dual till) enhances UDF, it will have an adverse impact on the Low Cost Airlines operating at that airport. Hence to increase the proportion of Low Cost Airlines, choice of regulatory till (single or dual) should be such as would result in lower UDF.

13.50. Considering all the alleged risk elements that, according to M/s Jacob, should add a premium to the riskiness of HIAL, it would appear that, subject to stakeholder's consultation if the Authority's proposals of truing up various parameters were accepted, then the risks would get effectively almost mitigated / eliminated. Hence none of these risks, in that case, would be relevant for HIAL. In the light of the above and considering that in the current Control Period, the Authority has proposed to give some allowance for the uncertainties in estimation of different parameters, the Authority had proposed to consider the Cost of Equity at 16%. The Authority felt that the rate proposed was reasonable for the current Control Period and provided for sufficiently generous allowance for any uncertainty in estimation of various parameters.

13.51. The Authority also noted that there would be no impact of considering a dual till regime on the cost of equity calculations.

13.52. Based on the material before it and its analysis, the Authority had proposed in the Consultation Paper No 09/2013-14 dated 21.05.2013:

- 13.52.1. To calculate asset beta for RGI Airport, Hyderabad based on the comparable airports as per the report by NIPFP.
- 13.52.2. To re-lever the asset beta of HIAL at the notional Debt-Equity Ratio of 1.5:1
- 13.52.3. To calculate equity beta according to CAPM framework
- 13.52.4. To consider Return on Equity (post tax Cost of Equity) as 16% for the WACC calculation – both under single till and dual till.

c Stakeholder Comments on Issues pertaining to Cost of Equity

13.53. Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the tentative proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its Consultation Paper No 09/2013-14 dated 21.05.2013. Stakeholders have also commented on the Authority's proposal to consider the cost of equity in respect of RGI Airport, Hyderabad at 16%. These comments are presented below:

13.54. On the issue of Cost of Equity, IATA stated that

"IATA views that the cost of equity of 13.2% calculated by NIPFP is a reasonable reflection of HIAL's cost of equity and disagrees with the Authority's tentative proposal to round the figure up to 16%. IATA believes that there is no need for rounding up and the value of 13.2% should be used as it is. This value of 13.2% should also be used for computation of HIAL's WACC as well as for assessment of pre-control period losses from September 2009 to March 2011."

13.55. ACI in its submission presented a detailed methodology of calculation of cost of equity and cost of capital (Para 14.10 below). ACI further stated that the concession agreement of Hyderabad airport contemplates an Equity IRR of minimum of 18.33% and the same should be the minimum equity IRR that the Authority should allow. It further stated that

"The concession agreement of Hyderabad airport contemplates an Equity IRR of minimum of 18.33%. This should be the minimum that the regulator must allow for Hyderabad airport to ensure:

The sovereign agreement is honoured

The airport continues to do the good work it has been doing (rated amongst the best airports in the world in ASQ ratings)

The investment required in the airport is made available due to attractive rate of return"

13.56. On the issue of cost of equity, APAO stated that

“The Authority has considered the Interest Free Loan, the Grant, the land given for the airport usage etc. in the State Support Agreement in determining the tariffs for RGIA. It therefore also needs to take into consideration the other critical aspect stated in this agreement, namely, the equity internal rate of return. APAO understands that the equity internal rate of return of 18.33% mentioned in the State Support Agreement is based on the business plan and the financial and feasibility projections in respect of the airports viability submitted to the State Government with the concurrence of the MoCA. The Authority should take this factor into account in determining the till.”

- 13.57.** Further, APAO has the view that 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. Additionally, APAO stated 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 RAB which depreciates over the concession period leading to a lower effective rate of return. APAO stated that

“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 or 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 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."

13.58. On the methodology of determination of CoE, APAO stated that the nominal risk free rate comprises of real rate of return and an inflation component. It further stated that on account of inflation, real returns which an operator would make would be substantially/totally wiped out and the effective real risk free rate will be negative. Further APAO stated as under

"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.”

- 13.59.** On the methodology of computation of Beta, APAO is in consonance with the comparator set used by HIAL and urges the Authority to consider the same for determining the beta in case of HIAL. APAO also stated that the beta of 0.75

originally proposed by HIAL should be considered in determining its CoE. APAO further stated as under

"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 approachit 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 /0 AERA Consultation Paper No.32, and the report by SB1Caps' 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 HIAL) and instead sought to hastily conclude that taking a bottom-up approach or using a different sample of comparator companies is not feasible.

Cost of Equity

The Cost of Equity estimates computed by various leading consulting firms are given below:

<i>Sr No</i>	<i>Name of Consultant</i>	<i>Cost of Equity</i>
<i>1</i>	<i>Crisil Infrastructure Advisory</i>	<i>18.16% – 20.44%</i>
<i>2</i>	<i>KPMG India Private Limited</i>	<i>20 – 25%</i>
<i>3</i>	<i>SBI Capital Markets Limited</i>	<i>18.5% – 20.5%</i>
<i>4</i>	<i>Jacobs Consultancy</i>	<i>24%</i>

As can be seen, the Cost of Equity estimates determined by NIPFP (13.2%) and the Authority (16%) are much lower than those arrived by the various consulting firms.

APAO stands by the comparator set used by HIAL and urges the Authority to consider the same for determining the beta In case of HIAL.

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 because inclusion of that wider range is likely systematically to bias the results and in a way that is at variance with economic common sense, the observations from markets such as Thailand, Mexico and Malaysia as well as China and produces a result which means 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 RGIA (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 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 to 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 de-facto as much of a 'monopoly' as RGIA. 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 0.75 originally proposed by HTAL be considered in determining its CoE."

13.60. On the methodology of computation of Equity Risk Premium, APAO further stated that

"The NIPFP paper relies solely 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 HIAL of 11 % was based on the research paper "**A First Cut Estimate of the Equity Risk Premium in India**" by **Prof. Jayanth R.Varma and Prof. S.K. Barua** which gave a range of the equity risk premium as being between 8.75% and 12.51%. The results were supported by **Prof. Rajnish Mehra**, who reports a risk premium between 1991 and 2004 of 9.7%.*

Based on the above discussion, APAO requests the Authority to reconsider the risk-premium to the originally proposed equity risk premium of 11 %."

13.61. Further, APAO stated that the report relied upon by NIPFP for consideration of re-levering asset beta should be reconsidered. APAO further stated that

"For re-levering the asset beta, NIPFP has relied upon a report published by the Bank of America -Merill Lynch.

APAO submits that the report relied upon by NIPFP should be reconsidered due to the following factors:

- *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”*

13.62. AAI on the issue of cost equity stated 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 only one Airport and economic scenario and factors affecting the Aviation Industry is almost the Same at all places. Further AAI stated that

- *“GMR, Hyderabad has stated that cost of equity should be determined taking into account the concession agreement rate of minimum 18.5/0 and risk 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 only one Airport and economic scenario and factors affecting the Aviation Industry is almost the Same at all places.*
- *It is not specified whether any internal accrual has been utilized for construction of the project.”*

13.63. On the matter of return on equity, CII stated that *“IRR on Equity should not be lowered below the percentage envisaged in the Concession Agreement”*. Further CII stated as under

“One of the most critical aspects that would define success of any ambitious plan would be the Rate of Return on the Capital deployed by private players on their investments across different sectors, commensurate to the risk taken. Any indication that the returns to the investors in the future would be sub-optimal would be disastrous for the investment climate and consequently private participation in PPP.

Therefore, Government needs to ensure a fair return, especially in sectors that are regulated.

This becomes even more pertinent for Airports Sector as they are often perceived as riskier when compared to other Infrastructure Sectors like power, ports, roads, etc. Further, Aviation Sector is cyclical in nature and the degree of severity or volatility in cash flows is higher. We are of the view that the IRR on Equity should not be lowered below the percentage envisaged in the Concession Agreement."

- 13.64.** On the same matter, ASSOCHAM stated that "concession agreement envisaged a minimum IRR of 18.33% on equity. This minimum should not be breached as proposed by Authority". It further stated that

"One of the most critical aspects that would define success of the ambitious plan would be the rate of return on the capital deployed by private players on their investments across different sector, commensurate to the risk taken. Any indication that the returns to the investors in the future would be sub-optimal will be disastrous for the investment climate for private participation in PPP. Government will need to ensure a fair return, especially in sectors that are regulated.

Specifically on airports, they are often perceived as more risky than other infrastructure sectors like power, ports, roads, etc. Aviation sector is cyclical in nature and the degree of severity or volatility in cash flows is higher. We understand that the concession agreement envisaged a minimum IRR of 18.33% on equity. This minimum should not be breached as proposed by Authority.

Even Ministry of Civil Aviation (MoCA) has recommended return on equity in the range of 18.5% to 20.5% based on the report of SBI Caps. Current proposed rate of 16% in the consultation paper is lower than the recommendation of MoCA."

- 13.65.** ASSOCHAM further stated that

"Allow return on equity in the range of 18.5% to 20.5% as recommended by SBI Caps (Report prepared for MoCA) or at least

18.33% Equity IRR as given in State Support agreement signed by GoAP.”

13.66. FICCI on the matter of return on equity stated that

“As regards the Return on Equity (RoE), FICCI would like to suggest the broad direction on the expected return and factors leading to calculation of a fair return.

- One of the most crucial aspects determining success of any ambitious PPP project would be an adequate rate of return on the capital deployed by private players, commensurate to the risk taken.*
- In particular, airports are often perceived as more risky than several other infrastructure projects. Aviation sector is cyclical in nature and there are significant geo-political risks in the airport sector.*
- From the consultation paper we understand that the State Support Agreement of 30.9.2003 (between Government of Andhra Pradesh and HIAL) provides for return on equity @ 18.33%.*
- Further, Government of Andhra Pradesh has also clarified that the concession agreement does not envisage cross subsidy of non-aeronautical revenues against the aeronautical revenues [reference Letter No. 245/Airports/2011 dated 03.03.2011].”*

13.67. Blue Dart Aviation Ltd. On the issue of Cost of Equity stated that

“HIAL has proposed 24% as return of equity. AERA has appointed National Institute of Public Finance and Policy (NIPFP) to estimate the cost of equity. NIPFP has arrived at a cost of equity of 13.2% considering asset beta 0.4% and debt equity ratio of 1.17:1. However, AERA has considered asset beta 0.5% and debt equity ratio of 1.5:1 and arrived at 16% as cost of equity. As NIPFP has determined 13.2% to be the cost of equity after detailed analysis, we request AERA to consider 13.2% as the final return on equity.”

d HIAL's response to Stakeholder Comments on Issues pertaining to Cost of Equity

13.68. Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 09/2013-14 dated 21.05.2013, the Authority forwarded these comments to HIAL seeking its response to these comments. HIAL has provided responses to the Stakeholders' comments, which are presented below:

13.69. In response to AAI's comments on Cost of Equity, HIAL stated that:

"There cannot be two principles one used for privatization and the second to be applied after he has invested in project.

Government of AP has clarified to the Authority and has reiterating clause 2.3 (b) (i) of the SSA which mandates maintaining minimum internal rate of return on equity at 18.33%.

As per the study conducted by us on Cost of Equity, the return allowed should be 24%

The rates proposed by MoCA were in range of 18.5% to 20.5% for Indian airports.

It will not be correct to assume that the cost of equity to be same at all airports as there is only one airport. By this logic the return across the world also should be one only.

The cost of equity may or may not be same for all the major airports as the risk profile is different of all airports.

SBI CAPS has proposed a range (of cost of equity) between 18.5% to 20.5% for airports in India. This goes on to show that the rate of return could be in a range but not same for all.

Risk profile of government owned airports and PPP airports may be quite different.

Wherever internal accrual will be available the same are considered for funding the future Capex."

13.70. In response to APAO's comments on the issues pertaining to Cost of Equity, HIAL has stated as under:

Cost of Equity

“The minimum equity IRR of 18.33% promised under the GO No.130 dated July 26, 2013 issued by GoAP and the State Support Agreement is integral to the concession itself being a fundamental premise of the said concession and cannot be read in isolation or disregarded/ varied once the Parties to the concession have recognized, accepted and acted on the same. In view of the above, the Authority is requested not to alter or vary the assurance of minimum 18.33% Equity IRR granted to GHIAL.

Also the following are results of some of the studies carried out by various experts on cost of equity. These are very established organizations of national and international repute. These studies were carried out on behalf of the Airports, the industry associations as well as MoCA, GOI. However the report of NIPFP relied by Authority have no such experience. The resultant number of NIPFP is nowhere near the estimates of these reports.

Cost of Equity

Financial Consultants	Estimates of Cost of Equity
Jacobs	24%
KPMG (for APAO)	20%-25% based on debt equity ratio.
SBI Caps (For MoCA/AAI)	18.5% to 20.5%
CRISIL (For MIAL)	18.16% to 20.44% based on debt equity ratio.
NIPFP	13.2%

We therefore request the Authority to reconsider Cost of Equity”

13.71. Further in response to APAO’s comments on the beta estimate, HIAL has stated as under:

“Same concern is raised by other airport operators. We request the Authority to reconsider the same.”

13.72. In response to APAO's comments on the report relying upon by NIPFP, HIAL has stated as under:

"GHIAL and various other private operators have raised their concerns regarding the Cost of Equity report prepared by NIPFP. We appreciate the concern raised by APAO and request the Authority to reconsider Cost of Equity."

13.73. In response to ASSOCHOM's comment on Cost of Equity, HIAL has stated as under:

"Following are results of some of the studies carried out by various experts on cost of equity. These are very established organizations of national and international repute. These studies were carried out on behalf of the Airports, the industry associations as well as MoCA, GOI. However the report of NIPFP relied by Authority have no such experience. The resultant number of NIPFP is nowhere near the estimates of these reports. Cost of Equity Jacobs 24% KPMG (for APAO) 20%-25% based on debt equity ratio. SBI Caps (For MoCA/AAI) 18.5% to 20.5% CRISIL (For MIAL) 18.16 to 20.44 % based on debt equity ratio. NIPFP 13.2% Cost of Equity proposed by the Authority is very low and we request the Authority to reconsider the same."

13.74. Further In response to ASSOCHOM's comments on Return of Equity, HIAL has stated as under:

"1. The minimum equity IRR of 18.33% promised under the GO No.130 dated July 26, 2013 issued by GoAP and the State Support Agreement is integral to the concession

2. The Authority is requested not to alter or vary the assurance of minimum 18.33% Equity IRR granted to GHIAL.

3. Also the following are results of some of the studies carried out by various experts on cost of equity. These are very established organizations of national and international repute. These studies were carried out on behalf of the Airports, the industry associations as well as MoCA, GOI. However the report of NIPFP relied by Authority have no

such experience. The resultant number of NIPFP is nowhere near the estimates of these reports.

Cost of Equity Jacobs 24% KPMG (for APAO) 20%-25%

based on debt equity ratio. SBI Caps

(Study for MoCA/AAI) 18.5% to 20.5% CRISIL (For MIAL) 18.16 to 20.44%

based on debt equity ratio. NIPFP 13.2%”

13.75. In response to Blue Dart’s comments on Issues pertaining to Cost of Equity, HIAL has stated as under:

“HIAL has proposed 24% return on equity based on the report submitted by Jacobs, an international expert and the same is submitted to the Authority.

The Authority has appointed NIPFP to determine cost of equity for private major airports in India. There are many lacunas in the report of NIPFP and the same have been pointed out at the time of consultation of Delhi and Mumbai airport.

Also the mandated minimum return in the concession also needs to be considered as the minimum return which needs to be allowed.”

13.76. In response to CII’s comments on the Issues pertaining to Cost of Equity, HIAL has stated as under:

“The minimum equity IRR of 18.33% (which is equivalent to approx. 24% return on Equity) promised under the GO No.130 dated July 26, 2013 issued by GoAP and the State Support Agreement is integral to the concession.

This is a fundamental premise of the said concession.

In view of the above, the Authority is earnestly requested to abide by minimum 18.33% Equity IRR granted to GHIAL under concession.”

13.77. In response to FICCI’s comments on Cost of Equity, HIAL has stated as under:

“The minimum equity IRR of 18.33% promised under the GO No.130 dated July 26, 2013 issued by GoAP and the State Support Agreement is integral to the concession.

This is a fundamental premise of the said concession.

The Parties to the concession have recognised, accepted and acted on the same. In view of the above, the Authority is requested to approve a minimum 18.33% Equity IRR (equivalent to return on equity of 24%).”

13.78. In response to IATA’s comments on the issues pertaining to Cost of Equity, HIAL has stated as under:

“The stand of IATA defies logic.

The bank borrowing rates being around 11% to 12% and inflation being in range of 10-11% there is no way equity return of 13.2% can be justified

The minimum equity IRR of 18.33% was promised under the GO No.130 dated July 26, 2013 issued by GoAP

The State Support Agreement is integral to the concession itself being a fundamental premise of the said concession and cannot be read in isolation or disregarded/ varied once the Parties to the concession have recognized, accepted and acted on the same. In view of the above, the Authority is requested not to alter or vary the assurance of minimum 18.33% Equity IRR (which is equivalent to 24% return on equity) granted to GHIAL.

Also the following are results of some of the studies carried out by various experts on cost of equity. These are very established organizations of national and international repute. These studies were carried out on behalf of the Airports, the industry associations as well as MoCA, GOI. However the report of NIPFP relied by Authority have no such experience. The resultant number of NIPFP is nowhere near the estimates of these reports. Cost of Equity Jacobs 24% KPMG (for APAO) 20%-25%

*based on debt equity ratio. SBI Caps (For MoCA/AAI) 18.5% to 20.5%
CRISIL (For MIAL) 18.16 to 20.44%*

based on debt equity ratio. NIPFP 13.2% Another interesting aspect is that with Cost of HIAL debt being around 12% the Cost of equity of 13.2% is very low. NIPFP report was flawed and needed a lot of corrections. Authority has accepted a return of 16% against 13.2% recommended by NIPFP. This goes on to show that the study has not been found to be fully acceptable by the Authority as well. As such without prejudice to our stand that the minimum equity IRR should be 18.33% (equivalent to cost of equity of 24%) it is earnestly requested that a cost of equity based on various other studies as enumerated above may be used for tariff determination of GHIAL. Since the report of SBI Caps was by the GoI which is an independent entity, and the study was for private airports, the equity return as given in that report may be considered by Authority. Considering the higher Debt Equity ratio of GHIAL the higher range of the said report i.e. 20.5% is the minimum that may kindly be approved."

e HIAL's own comments on Issues pertaining to Cost of Equity

13.79. On the issue of Cost of Equity, HIAL stated that minimum return on equity of 18.33% promised under the SSA is integral to the concession itself. This HIAL has requested the Authority not to alter or vary the assurance of minimum 18.33% return on equity granted to HIAL.

"The minimum return on equity of 18.33% contemplated under the GO No.130 dated July 26, 2013 issued by GoAP and the State Support Agreement is integral to the concession itself being a fundamental premise of the said concession and cannot be read in isolation or disregarded/ varied once the Parties to the concession have recognised, accepted and acted on the same/ altered their position. It would thus not be appropriate to alter or vary the assurance of 18.33% return on equity granted to GHIAL and Authority is requested to take the said provisions of the concession into account.

After the GMR-MAHB led consortium was selected by the GoAP as the successful bidder for setting up and operating the RGIA, the shares of the GHIAL were allotted as per the shareholding pattern mentioned above. Vide G.O No.130 issued by the GoAP, whereby the sanction for establishment of the Airport at Shamshabad was granted, GHIAL was assured a minimum Equity Internal Rate of Return of 18.33% and any return over and above the 18.33% was to be shared in proportion to the shareholding.

*GoAP vide State Support Agreement dated September 30, 2003 agreed to extend financial and other support, including grant of Interest Free Loan, one time grant and among others, acknowledged Equity Internal Rate of Return of 18.33% ("**State Support Agreement**"). The GoAP vide a Land Lease Agreement dated September 30, 2003 granted about 5500 acres of land on lease towards development of the airport as well as development of other commercial activities including real estate development ("**Land Lease Agreement**").*

Some of the provisions of the State Support Agreement relevant for the present issue are as under:

"RECITALS:

...

E. The Project is feasible only with State Support (as defined hereinafter) of GoAP, and both Gol and GoAP have agreed and accepted that the implementation of the Project and the operation of the Project and its facilities requires extensive and continued support and actions and grant of certain rights and authorities by GoAP which are pre-requisites to the mobilisation of resources (including financial resources) by HIAL and the performance of HIAL's obligations under the Concession Agreement, and therefore, the GoAP has agreed to provide the State Support to HIAL as set out in this Agreement.

2.1 Support

GoAP acknowledges and agrees that the Project is feasible only with the support of GoAP, and that the principal objective of this Agreements support for the economic and timely completion of the Project pursuant to the terms of the Concession Agreement, and has therefore agreed to provide the State Support to HIAL as set out in this Agreement.

2.3

...

(b) Interest Free Loan ("IFL")

(i) GoAP shall make available to the HIAL, an IFL in the sum of Rs.3,15,00,00,000 (Rupees three hundred and fifteen crores). IFL shall not in any circumstances attract interest repayments. GoAP agrees and accepts that the IFL may be adjusted pro-rata upwards or downwards on completion of the DPR, if the determination is made that such pro-rata adjustment is required as a result of change to the Project cost and so as to maintain equity internal rate of return at 18.33%."

It may further be noted that pursuant to GMR-MAHB led consortium being selected by GoAP as the successful bidder for setting up and operating the RGIA, GHIAL was formed as a special purpose vehicle wherein GMR Infrastructure Limited [GMR] (holding 63% equity), Malaysia Airports Holding Berhad [MAHB] (holding 11% equity), Government of Andhra Pradesh [GoAP] (holding 13% equity) and Airports Authority of India (holding 13% equity) are the shareholders. Further, vide G.O No.130 issued by the GoAP, GHIAL was assured a minimum Return on Equity of 18.33% and any return over and above the 18.33% was to be shared in proportion to the shareholding stated above.

The return of 18.33% is also recognised in the State Support Agreement, which is clarified from a reading of Clause 2.3(b)(i) which states as under:

*“GoAP shall make available to the HIAL, an IFL in the sum of Rs.3,15,00,00,000 (Rupees three hundred and fifteen crores). IFL shall not in any circumstances attract interest repayments. GoAP agrees and accepts that the IFL may be adjusted pro-rata upwards or downwards on completion of the DPR, if the determination is made that such pro-rata adjustment is required as a result of change to the Project cost and **so as to maintain equity internal rate of return at 18.33%.**”*

Further, the factum of ‘concession’ granted to GHIAL under the State Support Agreement being inherent to the Concession Agreement is also clear from the fact that not only the State Support Agreement predates the Concession Agreement but the same is also recognised under Article 1.1 of the Concession Agreement.

It may also be noted that in terms of Clause 7.5 of the Concession Agreement, non-performance by GoAP either under the State Support Agreement or the land Lease Agreement has the effect of relieving GHIAL from its obligations under the Concession Agreement. In fact, a perusal of the Recital Clause E of the State Support Agreement which provides that

“the Project is feasible only with State Support (as defined hereinafter) of GoAP, and both GoI and GoAP have agreed and accepted that the implementation of the Project and the operation of the Project and its facilities requires extensive and continued support and actions and grant of certain rights and authorities by GoAP which are pre-requisites to the mobilisation of resources (including financial resources) by HIAL and the performance of HIAL’s obligations under the Concession Agreement”

This clearly shows that both the Concession Agreement and the State Support Agreement are intertwined and the performance of obligations under one of the agreement has a direct bearing on the other.

Thus the minimum return on equity of 18.33% promised under the GO No.130 dated July 26, 2003 issued by GoAP and the State Support Agreement is integral to the concession itself being a fundamental premise of the said concession and cannot be read in isolation or disregarded/ varied once the Parties to the concession have recognised, accepted and acted on the same/ altered their position.

In view of the above, the Authority is requested not to alter or vary the assurance of minimum 18.33% return on equity granted to GHIAL.

Conclusion:

The minimum return on equity of 18.33% promised under the GO No.130 dated July 26, 2013 issued by GoAP and the State Support Agreement is integral to the concession itself being a fundamental premise of the said concession and cannot be read in isolation or disregarded/ varied once the Parties to the concession have recognised, accepted and acted on the same. In view of the above, the Authority is requested not to alter or vary the assurance of minimum 18.33% return on equity granted to GHIAL.”

f Authority’s Examination of Stakeholder Comments on Issues pertaining to Cost of Equity

13.80. The Authority has carefully examined the comments made by the stakeholders including HIAL on the issue of cost of equity. The Authority has noted that HIAL has given a table indicating the different estimated of cost of equity made by different financial consultants. This table is reproduced below for ready reference. Thereafter the Authority’s analysis is presented.

Table 31: Cost of Equity estimated by different financial consultants

Financial Consultants	Estimates of Cost of Equity
Jacobs	24%
KPMG (for APAO)	20%-25% based on debt equity ratio.

Financial Consultants	Estimates of Cost of Equity
SBI Caps (For MoCA/AAI)	18.5% to 20.5%
CRISIL (For MIAL)	18.16% to 20.44% based on debt equity ratio.
NIPFP	13.2%

13.81. The Authority has noted that HIAL in its comments to the Consultation Paper No 09/2013-14 dated 21.05.2013 has referred to a letter no GO No. 130 dated 26.07.2013 issued by GoAP with regard to the discussion on “*minimum return on equity*”. The Authority notes that HIAL has erroneously mentioned the date of this letter as 26.07.2013 while the letter is actually dated 26.07.2003. The Authority further notes that HIAL in its response has referred to 18.33% as the minimum return on equity while the State Support Agreement dated 30.09.2003 between the GoAP and HIAL refers to this 18.33% as the Equity Internal Rate of Return (EIRR). Furthermore vide letter dated 12.02.2014 from GoAP giving their comments on the Consultation Paper No 09/2013-14, the GoAP has however referred to the term “the rate of Return of Equity”. It appears that the GoAP has used the terms “return on equity” and “Equity Internal Rate of Return” interchangeably. The Authority has given detailed analysis to fair rate of return (RoE) of 16% as deemed appropriate, as well as its analysis of not accepting the results of the study of SBI Caps suggesting RoE in a band of 18.5% to 20.5%, in the Authority’s Order no 03/2012-13 dated 24.04.2012 in respect of determination of aeronautical tariffs for the first Regulatory Period for IGI Airport, Delhi and its Order no 32/2012-13 dated 15.01.2013 of determination of aeronautical tariffs for the first Regulatory Period for CSI Airport, Mumbai. The relevant analysis of the Authority are contained in Para 13 of Order no 32/2012-13 dated 15.01.2013 and Para 26 of Order no 03/2012-13 dated 24.04.2012

13.82. The Authority notes that CII, ACI as well as some other stakeholders have felt that the Authority should not give a lower percentage of equity return than what is indicated in, what they have termed as “Concession Agreement”. The Authority

first would like to clarify that the Concession Agreement does not stipulate 18.33% as the minimum equity internal rate of return, rather mention of 18.33% as a number is found in the State Support Agreement. Furthermore the State Support Agreement mentions 18.33% in the context of “equity internal rate of return” stating that

“(i) GoAP shall make available to the HIAL, an IFL in the sum of Rs 3,15,00,00,000 (Rupees three hundred and fifteen crores). IFL shall not in any circumstances attract interest repayments. GoAP agrees and accepts that the IFL may be adjusted pro-rata upwards or downwards on completion of the DPR, if the determination is made that such pro-rata adjustment is required as a result of change to the Project cost and so as to maintain equity internal rate of return at 18.33%.”

13.83. The Authority has extensively dealt with this subject in the Consultation Paper. Its views on the same are presented in Paras 4.51 to 4.53 above. The Authority, in its Order No 13/2010-11 dated 12.01.2011, has outlined its approach towards various building blocks for aeronautical tariff determination of major airports. One of the building blocks is the determination of fair rate of return on equity consistent with the risk profile of the airport in question. The Authority in its Direction No 5/2010-11 dated 28.02.2011 has also issued guidelines to operationalize the same. The Authority had indicated that it would follow the Capital Asset Pricing Model (CAPM) to arrive at the fair rate of return on equity. On the other hand the State Support Agreement speaks about equity IRR and not return on equity in accordance with the CAPM.

13.84. The Authority had already indicated that the State Support Agreement itself contains the remedial measures in the event HIAL does not get equity IRR of 18.33%. It has stated *“based on well-established financial principles and on the basis of a report of a reputed consultant like National Institute of Public Finance and Policy (NIPFP), arrived at a fair rate of return on equity of 16%. The Authority has noted the submission of HIAL with respect to Letter of Award. The tariff determination is required to be made on the basis of fair rate of return, which in Authority’s view, is 16%. The financial and commercial arrangements between GoAP*

(that is one of the shareholders in HIAL) and HIAL should thus not require the passengers to bear the extra burden of grant of rate of return on equity that is in excess of the fair rate of return, namely 16%.”

13.85. Further, the Authority notes that FICCI has made a reference to the letter of GoAP stating that *“the concession agreement does not envisage cross subsidy of non-aeronautical revenues against the aeronautical revenues”*. The Authority has addressed this issue and its views are presented in Paras 4.49 to 4.62 above. The Concession Agreement with MoCA dated 20.12.2004 does not give any methodology or formulation of determining aeronautical tariffs. All it says is that HIAL would be free to levy other charges (other than the Regulated Charges). The Authority’s views on its remit under the Concession Agreement are presented in Paras 3.59 and 3.63 above, where the Authority notes that as per the Concession Agreement, it has the remit to regulate any aspect of Airport activities. The Authority has pointed out that it is proposing to adopt single till for economic regulation of Hyderabad Airport for reasons and analysis made by it in the Para 23 of the Consultation Paper No. 09/2013-14 dated 21.05.2013. Apart from that many of the activities mentioned in Part-1 of Schedule – III (Airport Activities) include many items that are normally considered as non-aeronautical activities (generally understood to be within the terminal building). Examples of these activities are Hotel reservation services, Restaurants, Bars, and other refreshment facilities, banks / ATM / Bureaux de Change, business center, duty-free sales etc. The Concession Agreement also clearly states that the Independent Regulatory Authority namely, AERA, is set up to regulate any aspect of Airport Activities. Schedule 3 Part 2 defines non-airport activities, the charges for which in any case are not determined by AERA.

13.86. The Authority had also pointed out that under the policy guidance of the legislature it is required to take into account, *“revenue from services other than the aeronautical services”* (section 13 (a) (v) of the AERA Act). The freedom to charge for services included in Non-airport activities or for that matter for services other than aeronautical services is quite different and distinct from reckoning the revenue from such services other than aeronautical ones in calculation of

aeronautical tariffs. The Authority therefore considers it within its remit as per the policy guidance of the legislature to include such revenues in calculation of aeronautical tariffs.

13.87. The Authority has carefully considered an interesting argument made by HIAL that *“NIPFP report was flawed and needed a lot of corrections. Authority has accepted a return of 16% against 13.2% recommended by NIPFP. This goes on to show that the study has not been found to be fully acceptable by the Authority as well”*. The Authority had appointed NIPFP as an expert financial institution to assist it in determining a fair cost of equity. The Authority’s reasoning for keeping the RoE at 16% has been fully documented in Para 11.30 to Para 11.35 of the Consultation Paper. This in no way indicates that the Authority is in disagreement with the methodology of the NIPFP report or its findings. It was only with the purpose of giving some headroom and allowance over the assessment of NIPFP that the Authority finally proposed a rate of return on equity at 16%.

13.88. Further 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 HIAL 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 HIAL 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.

13.89. 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 Authority also notes that the design capacity of RGIA, Hyderabad, is around 12.5 million passengers as compared to the actual passenger throughput of around 8.2 million. At the passenger growth forecast of around 7%, additional capacity may not be required during the current Control Period. Secondly, 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 HIAL, which are presented below.

13.90. Risk mitigation by State Government

13.90.1. The State Government has incorporated a number of risk mitigating measures especially with respect to financing of the investment at the RGI Airport, Hyderabad so as to make the airport feasible. These are given below:

13.90.2. Interest Free Loan: GoAP has made available to the HIAL, an Interest Free Loan in the sum of Rs. 3,15,00,00,000 (Rupees three hundred and fifteen crore). This has ensured that the interest burden during the initial years of the project is reduced.

13.90.3. Advance Development Fund Grant: GoAP has provided HIAL with an ADFG in the sum of Rupees 107 Crore. ADFG does not attract interest payments nor is it repayable. This is contribution of the State Government towards the project financing.

13.90.4. Acquisition of land and lease thereof at concessional rent at %)

13.90.5. Land for monetization (made available by the State Government) aimed at reducing the risk associated with raising capital for the project

13.90.6. Provision of supporting infrastructure like approach road including elevated express highway at a total cost of Rs 600 crore borne by State Government as well as other infrastructure elements like water and power etc.

13.91. Risk Mitigation by Central Government

13.91.1. Closure of existing operational Begumpet Airport so as to assure traffic to Shamshabad Airport from the day it starts its commercial operation: The traffic

risk has been thereby completely mitigated. The operational airport of Begumpet was a profit making airport. After the commencement of operations of the RGI Airport, Hyderabad (March 2008), AAI has been deprived of the year on year surplus, a loss that was not required to be compensated by HIAL. This can be deemed as support provided by AAI/ GoI to HIAL in Public Interest.

13.91.2. Deferment of Concession Fee, to be paid to the Government of India, (at 4% of Gross Revenue) by 10 years so that initial financial burden and risk associated therewith is mitigated.

13.92. Risk mitigation by the Authority

13.92.1. Truing-up of traffic: (This transfers the risk of economic downturn from airport to the passengers)

13.92.2. Truing-up of non-aeronautical revenue (so as to mitigate the risk associated with factors like GDP etc),

13.92.3. Review of cost of debt on reasonable evidence, if provided by HIAL,

13.92.4. Review of capital expenditure,

13.92.5. Truing-up of certain operating costs namely, utilities expense and property tax

13.92.6. Determination of UDF so that the Airport Operator is able to get a fair rate of return on his investment including fair return on equity invested by the promoters

13.93. In view of the above de-risking measures available, the Authority therefore is of the view that return on equity at 16% is sufficiently attractive for the private sector to put in necessary capital. The Authority is conscious of the fact that there are certain monetary ceilings in the Shareholder's Agreement with respect to bringing in additional equity by the state promoters (AAI and GoAP). The Authority is of the view that if additional equity is required, the shareholders will need to revisit this agreement.

13.94. In case of Airport sector, weighted average cost of capital has the proportionate component of equity infused in its calculation. WACC is applied to RAB to arrive at the required return on investment. Hence the return on equity that is infused in the

project is assured. When RAB is reduced on account of, inter alia, depreciation, it is expected that the debt component would also get correspondingly reduced through repayment schedule. It is therefore conceivable that the proportion of equity in WACC would increase, however the return on equity as well as the quantum of equity would generally remain the same (except in unusual situations like equity buyback). In a situation of expansion necessitated by increased traffic (as has been also recognized by APAO above), it is expected that additional funds in the form of equity and debt would need to be raised. At any rate to expect increasing returns on equity without infusing any additional equity is not reasonable expectation.

13.95. 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.

13.96. 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 HIAL.

13.97. 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 HIAL 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 HIAL. The Authority also notes that having regard to the specific characteristics of Greenfield nature of the project, both the GoAP and MoCA have advanced substantial concessions and support to the project (vide Para 13.90 and 13.91 above). 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.

13.98. In addition, the Authority notes that AAI has stated 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 only one Airport and economic scenario and factors affecting the Aviation Industry is almost the Same at all places.”* The Authority has taken into account the report of NIPFP which is an expert financial institution in this field.

13.99. As regards the point of AAI on utilization of internal accruals for the project, the Authority’s analysis indicates that HIAL did not seem to have internal resource generation during the construction stage of this Greenfield Airport.

13.100. 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 RGI Airport, Hyderabad at 16%.

Decision No. 9. Regarding Cost of Equity

9.a. The Authority decides to adopt the following approach for consideration of cost of equity towards determination of tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:

- i. To calculate asset beta for RGI Airport, Hyderabad based on the comparable airports as per the report by NIPFP and thus proposes to consider asset beta for RGI Airport, Hyderabad at 0.50 in view of the various risk mitigating measures.**
- ii. To re-lever the asset beta of HIAL at the notional Debt-Equity Ratio of 1.5:1.**
- iii. To calculate fair rate of return on equity according to CAPM framework**
- iv. To consider Return on Equity (post tax Cost of Equity) as 16% for the purpose of calculation of WACC.**

14. Weighted Average Cost of Capital (WACC)

a HIAL Submission on Weighted Average Cost of Capital (WACC)

14.1. HIAL submitted that the WACC for the Control Period was determined based on Cost of Equity of 24% which was as per the independent study conducted by consultancy firm Jacobs and also, the Cost of debt which was calculated by considering actual Cost of Debt for previous years and an increase of 50 basis points every year for each of the FY 2012-13 up to 2015-16 and 1.75% for ECB. The fair rate of return was calculated to be 10.63% for the Pre-Control Period and 12.38% for the current Control Period. HIAL stated that the future projects were to be funded via internal accruals in place of 100% debt assumption which was made earlier in the tariff model.

14.2. The WACC calculations as per the revised tariff model after incorporating changes as per auditor certificates and meetings with HIAL is as under,

Table 32: WACC as per Base Model (refer Para 1.41) submitted by HIAL – Single Till

Particulars	2009	2010	2011	2012	2013	2014	2015	2016
Debt	1,918	2,082	2,183	2,112	2,097	2,010	1,861	1,676
IFL	315	315	315	315	315	315	315	315
Equity	378	378	378	378	407	508	587	659
Debt + Equity (C)	2,611	2,775	2,876	2,805	2,819	2,833	2,763	2,650
Cost of Debt (Kd)	9.3%	10.3%	9.7%	11.1%	10.7%	11.5%	11.9%	11.9%
Cost of IFL	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Cost of Equity (Ke)	24.0%	24.0%	24.0%	24.0%	24.0%	24.0%	24.0%	24.0%
Individual year Gearing (G)	85.5%	86.4%	86.9%	86.5%	85.6%	82.1%	78.8%	75.1%
	2008-09 to 2010-11			2011-12 to 2015-16				
Weighted Average Gearing (WG)	86.27%			81.70%				
Weighted Average Cost of Debt (Rd)	8.4%			9.78%				
Cost of Equity (Re)	24%			24.00%				
Fair Rate of Return	10.62%			12.39%				

Table 33: WACC as per Base Model (refer Para 1.41) submitted by HIAL – Dual Till

Particulars	2009	2010	2011	2012	2013	2014	2015	2016
Debt	1,595	1,730	1,696	1,615	1,580	1,500	1,380	1,237
IFL	262	262	262	262	262	262	262	262
Equity	314	314	314	314	338	422	488	548
Debt + Equity (C)	2,171	2,306	2,272	2,191	2,180	2,185	2,130	2,047
Cost of Debt (Kd)	9.3%	10.3%	9.7%	11.1%	10.7%	11.3%	11.7%	11.6%
Cost of IFL	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Cost of Equity (Ke)	24.0%	24.0%	24.0%	24.0%	24.0%	24.0%	24.0%	24.0%

Weighted Average Cost of Capital (WACC)

Individual year Gearing (G)	85.5%	86.4%	86.2%	85.7%	84.5%	80.7%	77.1%	73.2%
	2008-09 to 2010-11			2011-12 to 2015-16				
Weighted Average Gearing (WG)	86.03%			80.34%				
Weighted Average Cost of Debt (Rd)	8.46%			9.54%				
Cost of Equity (Re)	24.00%			24.00%				
Fair Rate of Return	10.63%			12.38%				

b Authority's Examination of HIAL Submissions on Weighted Average Cost of Capital (WACC)

14.3. The Authority had duly considered and analysed HIAL submissions on cost of debt and cost of equity in Para 10.23 and 13 above respectively, and then had examined the calculation of WACC submitted by HIAL.

14.4. The Authority, in its Airport Guidelines and Airport Order, had outlined the principles for calculation of WACC as part of the exercise of determination of tariff for aeronautical services. The Authority has provided that the fair rate of return for a control period, as its estimate of weighted average cost of capital for an airport operator, is to be considered as follows:

$$FRoR = (g * R_d) + ((1 - g) * R_e)$$

Where g is gearing (i.e. debt / debt + equity)

R_d is the pre-tax cost of debt

R_e is the post-tax cost of equity

14.5. In the Airport Guidelines, the Authority has further provided that a weighted average gearing in a control period will be determined for the purpose of determination of FRoR. The determination of such weighted average gearing would have reference to actual and projected quantum of debt submitted by the Airport Operator. The calculation of such weighted average gearing is to be based on the forecast quantum of debt and equity for each Tariff Year in a Control Period. The calculation of weighted average gearing is as follows:

$$\text{Weighted average gearing} = \sum_{t=1}^5 (C_t \times G_t) / \sum_{t=1}^5 C_t$$

Where, $t = 1$ to 5 denotes each Tariff Year in the Control Period

Weighted Average Cost of Capital (WACC)

- 14.6.** The Authority had considered the issue of calculation of WACC. It 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.
- 14.7.** Also, according to the Authority, the Government Grant, which was proposed to be considered as capital reserve by HIAL in its books of accounts, was to be adjusted from the Regulatory Asset Base, the Cost of Equity was proposed to be at 16% and equity investment made in HIAL was to be considered at Rs. 378 crore. Also, the Authority was of the view that the Government grants (ADFG) was to be adjusted from the RAB under the section stated in Accounting Standard 12. So according to the calculations made by the Authority, WACC was worked out to be 10.68%.
- 14.8.** Based on the above approach and all tentative proposals of the Authority, the Authority proposes to compute the Weighted Average Cost of Capital for HIAL under single till and dual till as under,

Table 34: WACC calculation for HIAL by the Authority under Single Till in the Consultation Paper No 09/2013-14

Particulars	2009	2010	2011	2012	2013	2014	2015	2016
Debt	1,556	1,756	1,826	1,775	1,695	1,602	1,481	1,339
IFL	315	315	315	315	315	315	315	315
Equity	378	378	378	378	407	439	473	510
Debt + Equity (C)	2,249	2,449	2,519	2,468	2,418	2,356	2,269	2,164
Cost of Debt (Kd)	9.5%	10.3%	9.2%	10.0%	11.6%	11.6%	11.7%	11.8%
Cost of IFL	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Cost of Equity (Ke)	16.0%	16.0%	16.0%	16.0%	16.0%	16.0%	16.0%	16.0%
Individual year Gearing (G)	83.2%	84.6%	85.0%	84.7%	83.2%	81.4%	79.2%	76.4%
	2008-09 to 2010-11			2011-12 to 2015-16				
Weighted Average Gearing (WG)	84.28%			81.10%				
Weighted Average Cost of Debt (Rd)	8.15%			9.44%				
Cost of Equity (Re)	16.0%			16.00%				
Fair Rate of Return	9.39%			10.68%				

Table 35: WACC calculation for HIAL by the Authority under Dual Till in the Consultation Paper No 09/2013-14

Particulars	2009	2010	2011	2012	2013	2014	2015	2016
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Weighted Average Cost of Capital (WACC)

Debt	1,293	1,459	1,517	1,474	1,409	1,331	1,231	1,112
IFL	262	262	262	262	262	262	262	262
Equity	314	314	314	314	338	365	393	424
Debt + Equity (C)	1,868	2,035	2,093	2,050	2,009	1,957	1,885	1,798
Cost of Debt (Kd)	9.5%	10.3%	9.2%	10.0%	11.6%	11.6%	11.7%	11.8%
Cost of IFL	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Cost of Equity (Ke)	16.0%	16.0%	16.0%	16.0%	16.0%	16.0%	16.0%	16.0%
Individual year Gearing (G)	83.2%	84.6%	85.0%	84.7%	83.2%	81.4%	79.2%	76.4%
	2008-09 to 2010-11			2011-12 to 2015-16				
Weighted Average Gearing (WG)	84.28%			81.10%				
Weighted Average Cost of Debt (Rd)	8.15%			9.44%				
Cost of Equity (Re)	16.0%			16.00%				
Fair Rate of Return	9.39%			10.68%				

14.9. Based on the material before it and its analysis, the Authority had proposed in the Consultation Paper No 09/2013-14 dated 21.05.2013:

- 14.9.1. 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 (adjusted to the extent of Capital Reserve of Rs. 107 crore)
- 14.9.2. To calculate WACC at 10.68% (based on 16% cost of equity) for the purpose of determination of aeronautical tariffs during the current Control Period. The Authority has already given its tentative proposal regarding the ceiling on cost of debt at 12.50%.

c Stakeholder Comments on Issues pertaining to Weighted Average Cost of Capital (WACC)

14.10. Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the tentative proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its Consultation Paper No 09/2013-14 dated 21.05.2013. Stakeholders have also commented on the Authority's proposal for determination of WACC in respect of RGI Airport, Hyderabad. These comments are presented below:

14.11. FIA on the issue of WACC stated that the Authority should factor such tax saving for computation of cost of debt for computing WACC.

"It is noteworthy that cost of debt is the effective rate that a company pays on its current debt post adjustment for tax savings. However, based on aforementioned proposal of the Authority and review of Consultation Paper, it appears that cost of debt is not adjusted for any tax savings. Post adjustment of such tax savings (assuming tax rate at 30%) in cost of debt, WACC will reduce from 10.68% to 8.39%. It is submitted that Authority should factor such tax saving for computing WACC of HIAL. It is submitted that reduction in WACC from 10.69% to 8.39% will reduce target revenue by 11% (and will reduce the present value of Target Revenue by 17%)."

14.12. On the issue of Weighted Average Cost of Capital, ACI presented the methodology of computing WACC and stated that if WACC is set too low, it can result in delayed or inadequate investment as investors seek higher returns elsewhere and if WACC is set too high it can result in customers paying prices higher than what would occur in a competitive market. Further ACI stated that

"The rate of return on capital needs to be sufficient to maintain adequate investment in the airport over the life time of the assets, and results in airport charges which further users' reasonable interests."

Weighted Average Cost of Capital (WACC)

One common approach is to estimate the Weighted Average Cost of Capital (WACC) which involves weighting together the cost of debt and cost of equity:

$$(Pre-tax) WACC = g \times r_d + (1 - g) \times r_e$$

Where g is the gearing ratio (net debt/total value), r_d is the return required on debt; and r_e is the return required on equity. The required return on debt is generally assessed based on the airport's credit rating (i.e., the typical interest rate charged to companies with similar credit ratings and debt levels).

Another common approach to determining the return on equity is via using the Capital Asset Pricing Model (CAPM), which is based on the risk free rate, the equity risk premium (ERP) for the market as a whole, and the company-specific risk parameter (the beta):

$$r_e = \text{Risk Free Rate} + \text{beta} \times \text{ERP}$$

The beta in this equation is a measure of the riskiness of the firm in question relative to some asset benchmark (e.g., the stock market). Firms that exhibit a beta of more than 1 can be considered more risky than the asset benchmark, while a beta of less than 1 are less risky than the asset benchmark. The riskier an asset, the higher return that investors will require on their investment. In the case of airports, the beta involves considerations not only of how risky the airport industry is relative to other industries, but also how risky a particular airport is relative to its peers, often based in part on the volatility of traffic at the individual airport. The decision of the regulator on the appropriate beta for a particular airport can significantly affect the return charged on capital investments, and the ability of the airport to raise financing. Given their importance, the calculation of the WACC and its constituent parts can require considerable analysis and research. A permitted WACC set too low can result in delayed or inadequate investment, as investors seek higher returns elsewhere, while a WACC set too high can

result in customers paying prices higher than would occur in a competitive market.

The values are normally set at the start of the regulatory period based on market conditions at the time, and remain fixed throughout. This can result in the airport achieving returns above or below the WACC (for example if market interest rates decline or increase after the regulatory decision). Airports can also potentially attempt to achieve higher return by selecting a gearing ratio different to the regulator's which provides a lower cost of capital. To avoid perceived "windfall" gains from such activities, some regulators have sought to address this by selecting a projected or optimal gearing ratio rather than relying on historical values."

14.13. AAI on the issue of WACC stated that

- *"WACC needs to be determined after taking into account the amount of debt utilized by HIAL towards formation of SEZ and Hotel business. The HIAL has stated that the SEZ and Hotel has mainly been finalized through debt and internal accrual.*
- *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."*

d HIAL's response to Stakeholder Comments on Issues pertaining to Weighted Average Cost of Capital

14.14. Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 09/2013-14 dated 21.05.2013, the Authority forwarded these comments to HIAL seeking its response to these comments. HIAL has provided responses to the Stakeholders' comments, which are presented below:

14.15. In response to AAI's comments on Weighted Average Cost of Capital, GHIAL stated that:

"The debts of GHIAL and debts of subsidiaries are different

Weighted Average Cost of Capital (WACC)

The Authority has taken into consideration of this fact and accordingly has adjusted debt for determination of tariff.”

- 14.16.** Further in response to AAI’s comment 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, GHIAL stated that:

“Internal accrual to the extent used for project need to get return equivalent to equity return.

There is no logic of the same being excluded from equity.”

e HIAL’s own comments on Issues pertaining to Weighted Average Cost of Capital

- 14.17.** On the issue of WACC, HIAL stated that

“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 on Issues pertaining to Weighted Average Cost of Capital

- 14.18.** The Authority has carefully analysed the comments made by various stakeholders with reference to WACC for RGI Airport, Hyderabad.

- 14.19.** 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 has responded to this comment in Para 17.11 below.

- 14.20.** The Authority also notes AAI’s comments that WACC needs to be determined after taking into account the amount of debt utilized by HIAL towards formation of SEZ and Hotel business. The Authority has considered HIAL as a stand-alone entity based on the accounts of HIAL without any consolidation with its subsidiaries or taking into account the balance sheets and income statements of other subsidiaries. Hence the equity of HIAL at Rs. 378 crore as on 01.04.2011, as a standalone entity, is taken into account for further consideration.

- 14.21.** The Authority has noted ACI’s comment regarding potential impact of considering too high or too low WACC. The Authority’s determination of WACC is contingent upon its determination of cost of debt and cost of equity, which are discussed in

detail in respective sections and thus the Authority has arrived at a fair rate of return for HIAL.

14.22. The Authority shall compute WACC based on the methodology for determination presented in Paras 14.4 to 14.6 above. This determination will be based on decisions regarding cost of equity and cost of debt presented in Decision No. 9 above and Decision No. 8 above respectively.

14.23. As regards the equity to be considered towards determination of WACC, the Authority notes that HIAL had a paid-up equity of Rs 378 crore at the beginning of this Control Period. HIAL had stated vide its submission dated 04.04.2013 that General Capital Expenditure incurred by HIAL in this Control Period, presented in Para 9.32 and 9.33 above, will be funded by internal accruals. HIAL had considered this expenditure as part of the equity for the purpose of calculating WACC. Thus the yearwise equity levels submitted by HIAL in its application are as presented in

Table 36: Yearwise Equity submitted by HIAL in the current Control Period

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Paid-up Equity	378.00	378.00	378.00	378.00	378.00
Internal Accrual utilized for General Capital Expenditure	0.0	33.33	31.45	34.03	36.97
Equity considered for calculation of WACC	378.00	411.33	442.78	476.81	513.78

14.24. The Authority notes that HIAL has used the term internal accrual to refer to the internal resource generation. The Authority has not found definition of the term “internal accruals”. However, it understands that this term is used interchangeably with “internal resource generation” (IRG). The IRG comprises of (a) Profit After Tax (PAT) (b) depreciation and (c) deferred liabilities, if any. The Authority is of the view that the Profit After Tax, which is decided by the firm to be appropriated in the Reserves and Surplus of the firm (and thereafter forms part of the Net Worth, which is the sum of paid-up equity and accumulated retained earnings), belongs to equity investors and would be eligible to equity return. Depreciation is a non-cash expenditure and it reflects the reduction in the value of assets (reflected in the difference between the Gross Block and the Net Block) and can not be considered as eligible for equity return.

14.25. The Authority has noted that HIAL balance sheet shows accumulated Reserves and Surplus as negative for the year FY 2011-12. The Authority has also noted that HIAL has recorded Rs. 107 crore received as Advance Development Fund Grant from the Government of Andhra Pradesh as “Capital Reserve” in its balance sheet and included this amount (namely ADFG) in the Reserves and Surplus for the HIAL. Since the audited balance sheet of HIAL reflects the Advance Development Fund Grant under Capital Reserve, this amount will need to be adjusted while considering the accumulated retained earnings for HIAL. With this adjustment, the opening balance of Reserves and Surplus for HIAL for FY 2011-12 comes to a negative of Rs 164.09 crore. Profit After Tax for HIAL for FY 2011-12 and then for FY 2012-13 only makes this negative Reserves and Surplus less negative or in other words partly recoups the losses in the previous years to that extent. As the accumulated Reserves and Surplus for HIAL for the FY 2012-13 is negative, question of having funded the additions to the assets from PAT (though positive for the particular year) does not arise.

14.26. The Net Worth of HIAL for FY 2011-12 and FY 2012-13 would be less than the paid-up equity of Rs 378 crore (as of 01.04.2011) on account of negative Reserves and Surplus. However for the purpose of calculation of WACC the Authority has decided to consider equity at this value namely, Rs 378 crore and add to it accumulated retained earnings, if positive, to arrive at the shareholders’ funds in the calculation of WACC (Refer Table 37). The Authority notes that these calculations are made for HIAL as a standalone entity. Together with the long term debt (again for HIAL as a standalone entity including for example, Interest Free Loan) the Authority has calculated WACC for the particular year (Refer Table 38). This then is applied to RAB to arrive at Return on RAB, which is a building block in the calculation of ARR for a particular year.

14.27. The above approach for calculation of Equity towards WACC in respect of HIAL in the current Control Period has been presented in Table 37.

Table 37: Authority’s computation of Equity towards WACC in respect of HIAL in the current Control Period

Equity	Formulae	2011-12	2012-13	2013-14	2014-15	2015-16
Paid-up Equity						

Weighted Average Cost of Capital (WACC)

Equity	Formulae	2011-12	2012-13	2013-14	2014-15	2015-16
Opening Paid-Up Equity	OEQ	378.00	378.00	378.00	378.00	378.00
Additions to Paid-Up Equity	AEQ	-	-	-	-	-
Closing Paid Up Equity	CEQ	378.00	378.00	378.00	378.00	378.00
Reserves and Surplus to be considered towards equity						
Reserves and Surplus brought forward for funding Capital Expenditure including General Capex	A	(164.09)	(147.40)	(41.32)	88.64	(43.78)
Profit for the Year appropriated to Reserves and Surplus to Balance Sheet	B	16.69	106.08	128.07	(166.09)	(135.77)
Reserves and Surplus carried forward for funding Capital Expenditure including General Capex	F = A + B	(147.40)	(41.32)	86.75	(79.34)	(215.11)
Reserves and Surplus to be considered towards equity only if F > 0	G	-	-	86.75	-	-
Equity considered for calculation of WACC	EQ = CEQ + G	378.00	378.00	464.75	378.00	378.00

14.28. After considering the above calculation of equity in respect to HIAL, the Weighted Average Cost of Capital considered by the Authority under single till is provided as under,

Table 38: WACC calculation for HIAL considered by the Authority under Single Till in the current Control Period

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Debt	1,759.07	1,677.19	1,581.06	1,459.84	1,317.07
IFL	315.00	315.00	315.00	315.00	315.00
Equity*	378.00	378.00	464.75	378.00	378.00
Debt (including IFL) + Equity	2,452.07	2,370.19	2,360.82	2,152.84	2,010.07
Cost of Debt (Kd)	10.11%	10.10%	10.81%	10.85%	10.86%
Cost of IFL	0.0%	0.0%	0.0%	0.0%	0.0%
Cost of Equity (Ke)	16.0%	16.0%	16.0%	16.0%	16.0%
Individual year Gearing (including debt as IFL) (G)	84.6%	84.1%	80.3%	82.4%	81.2%
	2011-12 to 2015-16				
Weighted Average Gearing (WG)	82.58%				
Weighted Average Cost of Debt (including cost of IFL) (Rd)	8.75%				
Cost of Equity (Re)	16.00%				
Fair Rate of Return	10.01%				

* - Equity calculation as per Table 37

Decision No. 10. Regarding Weighted Average Cost of Capital

10.a. The Authority decides to adopt the following approach for consideration of WACC towards determination of tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:

- i. To calculate WACC based on the audited balance sheet items like debt, equity, Reserve & Surplus as well as any other means of finance (adjusted to the extent of Capital Reserve of Rs. 107 crore) (Refer Table 37 and Table 38)**
- ii. To calculate WACC at 10.01% (based on 16% cost of equity) for the purpose of determination of aeronautical tariffs during the current Control Period.**
- iii. WACC as calculated will apply on RAB to yield Return on RAB as a building block in the computation of ARR for the particular year.**
- iv. To true-up WACC on account of the following:**
 - 1. Changes in equity and Reserves and Surpluses (accumulated profits or retained earnings),**
 - 2. Cost and level of debt (subject to Decision No. 8 above) as well as any other means of finance that HIAL may contract in this behalf**

15. Depreciation

a HIAL Submission on Depreciation

- 15.1.** As per its submissions in respect of depreciation HIAL stated that the depreciation rates had been considered as per schedule XIV of the Companies Act 1956 and that no depreciation was assumed on assets funded from ADFG. HIAL further submitted that the depreciation on the land value being carved out has been reduced at an average rate of depreciation of 4.5% and that the overall depreciation was restricted to 90% of the asset value.
- 15.2.** Further HIAL submitted that depreciation on its three subsidies and depreciation on the capitalized forex loss adjustment was considered for the full year as per AS 11 assuming that the same were incurred in the beginning of the financial year. HIAL also requested to the Authority to be allowed to consider 100% depreciation on RAB and not 90%.
- 15.3.** A summary of Depreciation as submitted by HIAL in its MYTP filing under single till and dual till is presented below:

Table 39: Depreciation under Single Till as submitted by HIAL in its MYTP submissions

	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
	Single Till							
Gross Block	2,515	2,663	2,757	2,848	2,943	3,075	3,157	3,231
Depreciation as per Company's Act	105	121	132	128	130	122	111	114
Depreciation on assets funded out of ADFG	4.82	4.82	4.82	4.82	4.82	4.82	4.82	4.82

Table 40: Depreciation under Dual Till as submitted by HIAL in its MYTP submissions

	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
	Dual Till							
Gross Block	1,945	2,005	2,073	2,128	2,183	2,251	2,316	2,376
Depreciation as per Company's Act	94	96	103	98	100	91	78	81

Depreciation

	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Depreciation on assets funded out of ADFG	4.18	4.18	4.18	4.18	4.18	4.18	4.18	4.18

b Authority's Examination of HIAL Submissions on Depreciation

15.4. The Authority observes that HIAL has calculated depreciation on assets commissioned or disposed-off during a tariff year as if these assets were commissioned or disposed-off half way through the tariff year, calculating depreciation thereon on a pro-rata basis. It is observed that this methodology does not require any change.

15.5. By its examination of HIAL's submission, certain changes were proposed by the Authority in HIAL's consideration of depreciation. The Authority stated that the approach of adjusting the gross block by the considering the amount of ADGF funding should be done instead of earmarking assets funded from the specified sources. The Authority also observed that HIAL's methodology of pro-rata depreciation calculation was justified but it also proposed that depreciation on account of capitalized forex loss adjustments was not to be considered.

15.6. Further, after careful consideration of the provisions, the Authority decided that a residual value (of 10% of RAB) was not required and hence, the depreciation of 100% of RAB was proposed to be permitted. With incorporation of the proposed changes, revised depreciation of RAB under single till and dual till was calculated by the Authority. The calculations were as below:

Table: Depreciation under Single till as considered by Authority in the Consultation Paper No 09/2013-14

	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
	Single Till							
Gross Block	2,276	2,420	2,438	2,432	2,461	2,492	2,526	2,563
Depreciation as per Company's Act	105	109	110	110	111	112	92	88

Table: Depreciation under Dual till as considered by Authority in the Consultation Paper No 09/2013-14

	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
	Dual Till							
Gross Block	1,945	2,005	2,024	2,020	2,045	2,071	2,099	2,130
Depreciation as per Company's Act	94	96	96	95	96	97	77	73

15.7. Based on the material before it and its analysis, the Authority had proposed in the Consultation Paper No 09/2013-14 dated 21.05.2013:

15.7.1. To consider depreciation up to 100% of RAB.

15.7.2. Not to consider any depreciation on account of capitalized forex loss adjustments (as submitted by HIAL).

15.7.3. Accordingly, to consider depreciation on RAB under single till as per Table 43 of the Consultation Paper No. 09 / 2012-13 dated 21.05.2013 and under dual till as per Table 44 of the Consultation Paper No. 09 / 2012-13 dated 21.05.2013.

15.7.4. To work out the difference between the amounts of depreciation calculated based on actual date of commissioning/ disposal of assets and the amount of depreciation calculated considering such asset has been commissioned/ disposed half way through the Tariff Year. To adjust this difference at the end of the current Control Period considering future value of the differences for each year in the current Control Period.

c Stakeholder Comments on Issues pertaining to Depreciation

15.8. Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the tentative proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its Consultation Paper No 09/2013-14 dated 21.05.2013. Stakeholders have also commented on depreciation to be considered in respect of RGI Airport, Hyderabad. These comments are presented below:

15.9. FIA on the issue of allowing 100% depreciation stated that this is in contravention to the AERA Guidelines which allows depreciation to be calculated to the extent of

Depreciation

90% of the assets. FIA further stated that considering 100% depreciation would result in an artificial increase in the depreciation charge and thereby have an adverse impact of increasing the tariff.

“HIAL has calculated depreciation up to 100% of the value of the asset based on the assumption that no compensation will be received towards the value of the net block of assets upon transfer of the airport upon completion of term. This is in contravention of the AERA Guidelines (Para 5.3.3) which allows depreciation to be calculated to the extent of 90% of the assets. Considering depreciation up to 100% value would result in an artificial increase in the depreciation charge and thereby have an adverse impact of increasing the tariff. It is submitted that Authority should consider 10% residual value of the assets for computing depreciation as mentioned in the AERA Guidelines. As per data provided in the Consultation Paper, considering depreciation up to 90% only would bring the Target revenue by 1%. The same is tabulated as under:-

<i>Particulars</i>	
<i>Yield per passenger</i>	
<i>-As per the Base Model-90% depreciation of RAB</i>	<i>861.99</i>
<i>-As per the Base Model-100% depreciation of RAB</i>	<i>867.23</i>
<i>Net Impact- (A)</i>	<i>-5.24</i>
<i>Net Impact %</i>	<i>(1%)</i>
<i>Number of Pax (in crores)*- (B)</i>	<i>4.93</i>
<i>Net Impact on PV of Target Revenue (Rs. in Crores)- (A X B)</i>	<i>(25.85)</i>
<i>% Impact on PV of Target Revenue</i>	<i>(1%)</i>

”

15.10. On the issue of Depreciation, AAI stated that the treatment of scrap / residual value of the asset is not clear. Further AAI stated that

“The AERA has proposed to charge depreciation on 100% of the asset. It is not clear that the treatment given in respect of scrap /residual value of the asset after the lifetime.”

d HIAL’s response to Stakeholder Comments on Issues pertaining to Depreciation

15.11. Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 09/2013-14 dated 21.05.2013, the Authority forwarded these comments to HIAL seeking its response to these comments. HIAL has provided responses to the Stakeholders’ comments, which are presented below:

15.12. In response to AAI’s comment on Depreciation, HIAL has stated as under:

*“The scrap whenever sold will be netted off from asset value.
The Depreciation allowed by AERA is primarily for the purpose of Building Blocks and not for the Books.”*

15.13. In response to ACI’s comments on Cost of Capital, HIAL has stated that:

*“The 18.33% was the minimum Equity IRR (equivalent to Cost of Equity of 24%) promised at time of award of concession.
Non Adherence to this leads to a noncompliance to a sovereign agreement.
As such it is earnestly requested that a minimum Equity IRR of 18.33% is maintained”*

15.14. In response to FIA’s comments on allowing 100% depreciation, HIAL has stated as under:

“Depreciation is a return of capital and should lead to ensure adequate provision for replacement of assets. Hence the same needs to be allowed to 100%.

Authority has already clarified this in consultation paper 09/2013-14 as under:

13.15. The calculation of depreciation, submitted by HIAL in the tariff model, presently considers depreciation up to 90%, which is in line with the provisions of the Airport Guidelines vide Para 5.3.3. However, HIAL has requested the Authority to allow them to depreciate the assets up to 100%. According to the Authority’s understanding, the Concession

Depreciation

Agreement does not appear to include compensation towards the value of the net block of assets upon transfer of the airport upon completion of term. The Authority also notes that the depreciation policy of HIAL stipulates 100% depreciation of RAB. The Authority after careful consideration of these provisions feels that keeping a residual value (of 10% of RAB) may not be required. Having considered this issue in its totality, the Authority tentatively proposes to permit depreciation of 100% of RAB.”

e HIAL’s own comments on Issues pertaining to Depreciation

15.15. On the issue of Depreciation, HIAL stated that

“The Forex loss is associated with the borrowing in Forex which is cheaper compared to the rupee borrowing costs. The benefit of this is passed on fully to the end user with no benefit accruing to the airport operator. As such the risks associated with such borrowing also need to be part of the building block.

These borrowings were done much before the current philosophy has come into place and the funding structure cannot be changed at this juncture. As such the depreciation on the Forex loss also needs to be allowed.

Airport Operator has to make the repayments of ECB on current rate of exchange. This means that the airport operator has to make payments higher than the book value of debt. Allowing depreciation on the enhanced Forex rate will mean that the airport operator has been compensated for these higher payouts of principle.”

f Authority’s Examination of Stakeholder Comments on Issues pertaining to Depreciation

15.16. The Authority has carefully analysed the comments from the stakeholders including HIAL on issues pertaining to Depreciation.

15.17. The Authority has noted comments from the stakeholders regarding granting 100% depreciation to HIAL. The Authority has given due consideration to the fact that the Concession Agreement does not appear to include compensation towards the value

Depreciation

of the net block of assets upon transfer of the airport / upon completion of term. Further, the depreciation policy of HIAL stipulates 100% depreciation of RAB. Accordingly the Authority has granted 100% depreciation of RAB.

15.18. The Authority is aware of the fact that depreciation up to 100% will imply a small increase in tariff charged per embarking passenger with respect to increased depreciation charged each year. However, it is also to be noted that if rate of depreciation is increased, the corresponding RAB also gets reduced accordingly and the return on such RAB will also get proportionately reduced. The Authority notes FIA's comment where it has calculated that consideration of depreciation upto 100% results in increase in target revenue by 1%. The Authority had already undertaken this sensitivity analysis for considering 90% and 100% depreciation in its Consultation Paper No 09/2013-14 dated 21.05.2013, which indicated lesser impact than that indicated by FIA.

15.19. Further, AAI stated that *"It is not clear that the treatment given in respect of scrap /residual value of the asset after the lifetime."* It is not clear to the Authority the import of the comment of AAI with respect to the sentence above. However, in case the asset is being disposed after its lifetime, which falls within the concession period (i.e. 30 years in case of RGIA, Hyderabad), then the asset would have fully depreciated. Gains to HIAL on account of sale of such asset would be reckoned towards Other Income of HIAL and under the Single Till regime would be considered towards determination of aeronautical tariffs.

15.20. HIAL on the issue of depreciation stated that depreciation on forex loss adjustment should be allowed to compensate HIAL for the higher payout of principal amount of foreign debt. However, the Authority, in view of its decision to disallow forex loss adjustment in the RAB, notes that the question of allowing consideration of depreciation on such forex loss adjustments does not arise. The Authority notes that the audited financial statements of HIAL reflect depreciation on such forex loss adjustments and these are to be adjusted while determining the depreciation to be considered towards determination of aeronautical tariffs.

15.21. As noted in Para 14.25 above, HIAL has recorded Rs. 107 crore received as Advance Development Fund Grant from the Government of Andhra Pradesh as "Capital

Depreciation

Reserve”. Fixed Assets on the books of HIAL include the assets attributable to the funding of this Grant namely, Rs 107 crore. In its MYTP submission dated 31.07.2011, HIAL stated that *“Advance Development fund grant of Rs 107 Cr has been excluded from assets as of March -09. RAB and the corresponding depreciation also have been excluded.”* The Authority is in consonance with this treatment and notes that the depreciation as reflected in books of HIAL needs to be adjusted by an amount of depreciation that would be attributable to the funding of ADFG (Rs 107 crore) along with any other adjustments being made to RAB (such as forex loss). To derive the value of depreciation attributable to ADFG for adjustment, the Authority has applied the average depreciation rate for HIAL on the value of ADFG (Rs 107 crore).

Table 41: Depreciation attributable to ADFG as considered by Authority in the current Control Period

	2011-12	2012-13	2013-14	2014-15	2015-16
Depreciation & Amortization of airport assets attributable to ADFG	4.82	4.82	4.82	4.82	4.82

15.22. Accordingly, revised depreciation of RAB under single till as considered by the Authority for the current Control Period is presented below:

Table 42: Depreciation under Single till as considered by Authority in the current Control Period

	2011-12	2012-13	2013-14	2014-15	2015-16
Depreciation & Amortization (Airport Assets) excluding depreciation for forex loss adjustments	110.23	112.78	113.49	96.35	91.58
Plus Depreciation & Amortization (Fuel farm Assets)	5.20	5.27	5.28	5.58	5.97
Less Depreciation & Amortization of airport assets attributable to ADFG	4.82	4.82	4.82	4.82	4.82
Total Depreciation	110.62	113.24	113.95	97.11	92.73

Decision No. 11. Regarding Depreciation

11.a. The Authority decides to adopt the following approach for consideration of depreciation towards determination of tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:

- i. To consider depreciation up to 100% of RAB.**
- ii. Accordingly, to consider depreciation on RAB under single till as per Table 42.**
- iii. To work out the difference between the amounts of depreciation calculated based on actual date of commissioning/ disposal of assets and the amount of depreciation calculated considering such asset has been commissioned/ disposed half way through the Tariff Year. To adjust this difference at the end of the current Control Period considering future value of the differences for each year in the current Control Period.**

16. Operating Expenses

a HIAL Submission on Operating Expenses

- 16.1.** HIAL had submitted that the total operating expenditure was classified into **Aeronautical, Non-aeronautical and Common operating expenditures**. There were four bases considered for segregation of the operating expenditures into the three proposed heads. These bases included Head count, Cost Centre, Asset Ratio and Common costs. HIAL submitted a list of all the heads of operating expenditures and the corresponding basis for segregation of these heads into Aeronautical or Non-aeronautical expenditures.
- 16.2.** HIAL submitted auditor certificates for the historic values of operating expenditure. As regards the future increases, HIAL submitted that the Operating cost was increased only by real increase and volume increase but not by an inflationary increase. In HIAL's tariff model, the historical concession fee was allocated into aeronautical and non-aeronautical concession fee based on pro-rata allocation in the respective heads. For most of the expenses the real increase was considered at 7% per annum and 10% per annum for every increase in passenger by 1.5 million.
- 16.3.** In its initial submissions, HIAL segregated the Operations and Maintenance Costs into various heads namely Salaries and manpower outsourcing (real increase of 7% p.a. and 10% increase in manpower for every 1.5mn passenger increase), Power Cost (real increase of 7% p.a.), Security Cost (real increase of 7% p.a. and 10% increase in manpower for every 1.5mn passenger increase), Repair and Maintenance (real increase of 7% p.a. and 10% increase in manpower for every 1.5mn passenger increase), Utilities, other operating expenses and insurance (real increase of 7% p.a.) and General and Administration charges (real increase of 5% p.a.). Subsequently some of these increases were revised.
- 16.4.** An area of 5,400 acres and a value of Rs. 155 crore was considered by HIAL for the purpose of calculation of land lease and this land was separated into heads of aeronautical (3900 acres) and non-aeronautical (1500 Acres) land uses and the value of land, 2% of which was to be calculated as the lease rent, was decided to be increased by 5% per annum from 24.03.2016 onwards.

- 16.5.** The operating expenses of its subsidiaries Hotel, SEZ and Duty free, 5% of the total cumulative capitalized costs related to the future capex expenses were included by HIAL. In its submission HIAL had also included the cumulative operational costs related to Future Capital expenditure and 5% p.a. from the operating expenses of the items in the future capex.
- 16.6.** As per the Concession Agreement, HIAL was required to pay a concession fee of 4% of gross revenue with the payment being deferred by 10 years. The concession fee in the tariff model was taken from actuals till FY 2011-12 and computed using the 4% of gross revenue for future years. However, HIAL in its submission had computed concession fees in two different places with inclusion of dividend income as part of gross revenue which is used for computing the concession fee at one place and at another place without the inclusion of the same. Also, the concession fee for the subsidies of HIAL had been based on pro-rata basis.
- 16.7.** Keeping in view the above all inclusions HIAL had calculated the concession fee for the two heads, under single till and under dual till.

Table: Concession Fee as per HIAL Base Model– under Single Till

	2009	2010	2011	2012	2013	2014	2015	2016
Total Concession Fee	16.34	17.26	21.55	24.90	27.21	36.70	39.28	41.97
Aero Concession Fee	11.08	12.25	15.39	17.78	19.42	30.02	32.09	34.23
Non-Aero Concession Fee	5.26	5.01	6.17	7.12	7.79	6.67	7.19	7.74

Table: Concession Fee as per HIAL Base Model – under Dual Till

	2009	2010	2011	2012	2013	2014	2015	2016
Total Concession Fee	11.08	12.25	15.39	17.78	19.42	35.98	38.46	41.03

b Authority's Examination of HIAL Submissions on Operating Expenses

- 16.8.** The Authority had carefully considered and analysed the submissions from HIAL on the operating expenses. The Authority in its review of the projections made by HIAL stated that, an inconsistency in determination of aeronautical tariff was being

created due to HIAL's non-consideration of inflationary growth as some expenses were real and some were nominal in the Control Period. Further each cost was examined in detail by the Authority and certain clarifications on certain cost heads were requested by the Authority and Auditor's certificates on certain heads and their breakups were also sought. The Authority also sought clarifications on HIAL's consideration of escalation rate of 7% p.a. and noted that a bare minimum increase was requested by HIAL and no calculations / derivations as the basis for the proposed increase were presented. Hence, the historical operating costs for HIAL and the possible increase or decrease based on the Auditor's certificates submitted by HIAL were assessed and a net real increase of 2.42% from 2009-10 to 2011-12 and an average annual growth of 10.89% was calculated. The Authority also specified that only "other mandated operating costs" and "statutory operating costs" were to be considered as uncontrollable costs in the calculations.

- 16.9.** The Authority was of the view that the expense General Admin / Corporate Costs was governed by the rates decided by other regulatory / government agencies and do not follow the increase of 5% proposed by HIAL. Thus the Authority proposed that this expense was to be considered without any increase from the last actual value.
- 16.10.** The breakup of all Utility costs for all years, including water and electricity was sought by the Authority as the utility expenses for only the control year i.e., FY2011-12 were submitted by HIAL. The Authority also proposed that inflationary increase in the unit rate of these utility costs was not to be considered. HIAL's submission was noted by the Authority that for the forecast years i.e. FY 2012-13 to FY 2015-16, the "Bank charges , Exchange Fluctuation and others" expense were not to be increased from its base levels in FY 2011-12.
- 16.11.** The Authority noted that the entire land of 1,500 acres was not utilized by HIAL and only a part of it was utilized for non-aeronautical purposes and hence for the purpose of calculation of lease rental, only the utilized part of the land was to be considered.
- 16.12.** The Authority had also proposed that the Future capex was not to be considered as part of RAB since the Future capex was incurred and was not being considered in

RAB. The Authority also proposed that in the computation of the concession fee the dividend income which was included as the dividend earned was to be considered as revenues for HIAL, i.e., in case an equity investment into an entity from sources other than equity or retained earnings was made by HIAL, the dividend from such an entity to HIAL was not to be considered towards revenue of HIAL.

16.13. On account of certain proposed exclusions by HIAL (e.g. hotel, SEZ and duty free businesses), the Authority was of the view that the revenue which was being considered in the calculation for determination of tariff was to be considered for computation of concession fee as well.

16.14. A summary of total operating expenses considered by the Authority as per Consultation Paper No. 09/2013-14 dated 21.05.2013 is presented below:

16.14.1. Payroll Costs

Table 43: Payroll expenses considered by the Authority in the Consultation Paper No 09/2013-14

		2009	2010	2011	2012	2013	2014	2015	2016
Salary and Wages	Total	36.88	40.15	43.41	45.69	50.12	54.98	60.31	66.16
	Aero	31.09	30.65	35.76	36.95	40.53	44.46	48.77	53.50
	Non-Aero	5.79	9.50	7.65	8.74	9.59	10.52	11.54	12.65
Staff Welfare	Total	9.68	5.85	5.56	5.71	6.26	6.87	7.54	8.27
	Aero	8.13	4.89	4.91	5.08	5.57	6.11	6.71	7.36
	Non-Aero	1.55	0.96	0.65	0.63	0.69	0.76	0.83	0.91
Training	Total	0.00	0.00	1.17	1.51	1.66	1.82	1.99	2.19
	Aero	0.00	0.00	1.02	1.34	1.47	1.61	1.77	1.94
	Non-Aero	0.00	0.00	0.15	0.17	0.19	0.20	0.22	0.25
Total Payroll Costs		46.56	46.00	50.14	52.91	58.04	63.67	69.84	76.61

16.14.2. Utility Costs

Table 44: Utility expenses considered by the Authority in the Consultation Paper No 09/2013-14

		2009	2010	2011	2012	2013	2014	2015	2016
Utility Costs	Total	16.40	15.08	15.13	15.89	15.89	15.89	15.89	15.89
	Aero	16.40	15.08	15.13	15.89	15.89	15.89	15.89	15.89
	Non-Aero	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Operating Expenses

		2009	2010	2011	2012	2013	2014	2015	2016
Total Utility Charges		16.40	15.08	15.13	15.89	15.89	15.89	15.89	15.89

16.14.3. General / Admin Costs

Table 45: General / Admin expenses considered by the Authority in the Consultation Paper No 09/2013-14

		2009	2010	2011	2012	2013	2014	2015	2016
Auditors Fee	Total	0.16	0.20	0.21	0.31	0.34	0.37	0.41	0.45
	Aero	0.13	0.17	0.18	0.28	0.31	0.34	0.37	0.41
	Non-Aero	0.03	0.03	0.03	0.03	0.03	0.04	0.04	0.04
Directors Sitting Fee	Total	0.07	0.08	0.07	0.07	0.08	0.08	0.09	0.10
	Aero	0.06	0.07	0.06	0.06	0.07	0.07	0.08	0.09
	Non-Aero	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01
Communication Expenses	Total	3.63	2.64	2.48	1.72	1.89	2.07	2.27	2.49
	Aero	3.12	2.51	2.32	1.65	1.81	1.99	2.18	2.39
	Non-Aero	0.51	0.13	0.16	0.07	0.08	0.08	0.09	0.10
Travelling Expenses	Total	17.81	6.29	12.30	8.13	8.92	9.78	10.73	11.77
	Aero	14.39	4.74	10.52	6.68	7.33	8.04	8.82	9.67
	Non-Aero	3.42	1.55	1.78	1.45	1.59	1.74	1.91	2.10
Rent	Total	3.05	5.17	5.56	6.78	7.44	8.16	8.95	9.82
	Aero	2.44	4.33	4.83	5.43	5.96	6.53	7.17	7.86
	Non-Aero	0.61	0.84	0.73	1.35	1.48	1.62	1.78	1.95
Rates and Taxes	Total	6.91	7.58	7.29	6.99	6.99	6.99	6.99	6.99
	Aero	6.25	6.02	6.38	6.25	6.25	6.25	6.25	6.25
	Non-Aero	0.66	1.56	0.91	0.74	0.74	0.74	0.74	0.74
Advertisement	Total	3.06	1.02	1.09	1.96	2.15	2.36	2.59	2.84
	Aero	2.31	0.55	0.72	1.76	1.93	2.12	2.32	2.55
	Non-Aero	0.75	0.47	0.37	0.20	0.22	0.24	0.26	0.29
Ofc Maintainance	Total	4.32	3.75	3.43	2.78	3.05	3.35	3.67	4.03
	Aero	3.58	3.14	3.13	2.45	2.69	2.95	3.23	3.55
	Non-Aero	0.74	0.61	0.30	0.33	0.36	0.40	0.44	0.48
Printing and Stationary	Total	1.08	0.76	0.54	0.56	0.61	0.67	0.74	0.81
	Aero	0.77	0.71	0.45	0.48	0.53	0.58	0.63	0.70
	Non-Aero	0.31	0.05	0.09	0.08	0.09	0.10	0.11	0.12
Event Management	Total	2.25	0.12	1.29	0.34	0.37	0.41	0.45	0.49
	Aero	0.70	0.08	0.96	0.25	0.27	0.30	0.33	0.36
	Non-Aero	1.55	0.04	0.33	0.09	0.10	0.11	0.12	0.13

Operating Expenses

		2009	2010	2011	2012	2013	2014	2015	2016
Recruitment	Total	0.80	1.63	0.84	0.43	0.47	0.52	0.57	0.62
	Aero	0.66	1.45	0.73	0.36	0.39	0.43	0.48	0.52
	Non-Aero	0.14	0.18	0.11	0.07	0.08	0.08	0.09	0.10
Community Development	Total	0.00	0.00	1.12	1.47	1.61	1.77	1.94	2.13
	Aero	0.00	0.00	0.99	1.31	1.44	1.58	1.73	1.90
	Non-Aero	0.00	0.00	0.13	0.16	0.18	0.19	0.21	0.23
Other Miscellaneous+Business Promotion	Total	11.31	9.28	11.43	22.08	24.22	26.57	29.14	31.97
	Aero	8.14	6.25	9.87	21.17	23.22	25.47	27.94	30.65
	Non-Aero	3.17	3.03	1.56	0.91	1.00	1.10	1.20	1.32
Consultancy	Total	23.32	13.57	4.97	13.41	14.71	16.14	17.70	19.42
	Aero	19.10	8.63	2.28	10.94	12.00	13.16	14.44	15.84
	Non-Aero	4.22	4.94	2.69	2.47	2.71	2.97	3.26	3.58
Total Bank Charges	Total	0.27	2.95	7.82	3.35	3.35	3.35	3.35	3.35
	Aero	0.23	2.48	6.75	2.98	2.98	2.98	2.98	2.98
	Non-Aero	0.04	0.47	1.07	0.37	0.37	0.37	0.37	0.37
Security Cost	Total	0.43	0.63	4.83	5.78	6.34	6.96	7.63	8.37
	Aero	0.35	0.53	4.76	5.40	5.92	6.50	7.13	7.82
	Non-Aero	0.08	0.10	0.07	0.38	0.42	0.46	0.50	0.55
Total General / Admin Costs		78.47	55.67	65.27	76.16	82.54	89.54	97.22	105.64

16.14.4. Repair and Maintenance Costs

Table 46: Repair and Maintenance expenses considered by the Authority in the Consultation Paper No 09/2013-14

		2009	2010	2011	2012	2013	2014	2015	2016
Building	Total	4.39	5.88	5.02	5.02	5.51	6.04	6.63	7.27
	Aero	3.71	5.01	4.49	4.31	4.73	5.19	5.69	6.24
	Non-Aero	0.68	0.87	0.53	0.71	0.78	0.85	0.94	1.03
Plant and Machinery	Total	12.64	9.34	12.25	13.15	14.42	15.82	17.36	19.04
	Aero	11.80	9.09	12.01	12.85	14.10	15.46	16.96	18.61
	Non-Aero	0.84	0.25	0.24	0.30	0.33	0.36	0.40	0.43
IT	Total	10.00	8.77	7.19	8.57	9.40	10.31	11.31	12.41
	Aero	10.00	8.70	6.26	8.38	9.19	10.08	11.06	12.13
	Non-Aero	0.00	0.07	0.93	0.19	0.21	0.23	0.25	0.28
Others	Total	0.94	1.84	1.89	2.53	2.78	3.04	3.34	3.66
	Aero	0.80	1.52	1.77	2.38	2.61	2.86	3.14	3.45

Operating Expenses

		2009	2010	2011	2012	2013	2014	2015	2016
	Non-Aero	0.14	0.32	0.12	0.15	0.16	0.18	0.20	0.22
Dimulation in value of Inventory	Total	3.23	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	Aero	3.23	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	Non-Aero	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Stores and Spares	Total	0.61	3.39	6.75	6.57	7.21	7.91	8.67	9.51
	Aero	0.41	2.93	6.36	6.28	6.89	7.56	8.29	9.09
	Non-Aero	0.20	0.46	0.39	0.29	0.32	0.35	0.38	0.42
Total RM Costs		31.81	29.22	33.10	35.84	39.31	43.13	47.31	51.89

16.14.5. Other Operating Expenses

Table 47: Other Operating expenses considered by the Authority in the Consultation Paper No 09/2013-14

		2009	2010	2011	2012	2013	2014	2015	2016
Insurance Cost	Total	2.33	2.25	2.53	2.14	2.35	2.58	2.82	3.10
	Aero	2.11	1.79	2.21	1.91	2.10	2.30	2.52	2.77
	Non-Aero	0.22	0.46	0.32	0.23	0.25	0.28	0.30	0.33
Manpower Outsourcing expenses	Total	12.32	14.93	13.42	15.57	17.08	18.74	20.55	22.54
	Aero	11.25	14.70	13.20	15.23	16.71	18.33	20.10	22.05
	Non-Aero	1.07	0.23	0.22	0.34	0.37	0.41	0.45	0.49
Bus Hire Expenses	Total	0.00	1.17	1.20	0.99	1.09	1.19	1.31	1.43
	Aero	0.00	1.17	1.05	0.86	0.94	1.03	1.14	1.25
	Non-Aero	0.00	0.00	0.15	0.13	0.14	0.16	0.17	0.19
Car Parking	Total	2.85	2.31	2.60	2.39	2.62	2.88	3.15	3.46
	Aero	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	Non-Aero	2.85	2.31	2.60	2.39	2.62	2.88	3.15	3.46
House Keeping	Total	10.09	8.18	8.34	8.28	9.08	9.96	10.93	11.99
	Aero	7.98	6.85	7.29	7.39	8.11	8.89	9.75	10.70
	Non-Aero	2.11	1.33	1.05	0.89	0.98	1.07	1.17	1.29
O&M Expenses	Total	0.87	0.24	0.31	0.09	0.10	0.11	0.12	0.13
	Aero	0.72	0.09	0.23	0.09	0.10	0.11	0.12	0.13
	Non-Aero	0.15	0.15	0.08	0.00	0.00	0.00	0.00	0.00
Operator Fee	Total	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	Aero	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	Non-Aero	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Other Operating Costs		28.46	29.08	28.40	29.46	32.32	35.45	38.89	42.66

16.15. Based on the material before it and its analysis, the Authority had proposed in the Consultation Paper No 09/2013-14 dated 21.05.2013:

- 16.15.1. To consider the operational expenditures in respect of HIAL as a standalone entity (refer Para 3.4 above) as forecasted by HIAL with certain modifications as given in Table 63, Table 64, Table 65, Table 66, and Table 67 of the Consultation Paper No. 09/2013-14 dated 21.05.2013.
- 16.15.2. To institute an independent study to assess the reasonableness of operation and maintenance costs. The Authority would consider the results of the study in its tariff determination for the next Control Period commencing on 01.04.2016, including truing up as may become necessary.
- 16.15.3. To review and true up if necessary the following factors for the purpose of corrections (adjustments) to tariffs on a tariff year basis
- 16.15.4. To mandate costs incurred due to directions issued by regulatory agencies like DGCA;
 - 16.15.4.a. Change in per unit rate of costs related to electricity and water charges as determined by the respective regulatory agencies;
 - 16.15.4.b. All statutory levies in the nature of fees, levies, taxes and other such charges by Central or State Government or local bodies, local taxes/levies, directly imposed on and paid for by HIAL on final product/ service provided by HIAL, will be reviewed by the Authority for the purpose of corrections (adjustments) to tariffs on a Tariff year basis. Furthermore, any additional payment by way of interest payments, penalty, fines and other such penal levies associated with such statutory levies, which HIAL has to pay for either any delay or non-compliance, the same will not be trued up. On the input side if HIAL has to pay higher input costs even on account of change in levies/ taxes on any procurement of goods and services, the same will not be trued up.
- 16.15.5. To grant an additional increase of 3.0% in real terms over WPI increase of 6.5% (as per latest RBI forecasts) for applicable operating cost head (except statutory charges and levies).

c Stakeholder Comments on Issues pertaining to Operating Expenses

16.16. Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the tentative proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its Consultation Paper No 09/2013-14 dated 21.05.2013. Stakeholders have also commented on operating expenses to be considered in respect of RGI Airport, Hyderabad. These comments are presented below:

16.17. On the issue of Operating Expenses, IATA stated that

“IATA disagrees that a real increase of 3% over and above the current inflation of 6.5% provides a reasonable incentive for the airport operator to improve operating efficiency. The average used by the Authority to derive the 3% figure is flawed as three data points is far too few to provide a reliable and accurate average. Also, using data for the first three years of the airport’s operations to represent that of future years is not reasonable as the nature of costs at start-up is unlikely to be the same as the steady-state costs.

IATA notes that as a result of the assumptions used by the Authority to grant a 3% real increase, it has unfairly provided an operating expense budget that is even higher than what the airport had asked for. This should be reviewed especially given that the airport’s proposal would have more likely than not already built in some buffer.

IATA also notes that the 3% real increase have been approved across the board, even for irregular or ad hoc expense categories such as “Consultancy” and “Other Miscellaneous+Business Promotion” that do not necessarily increase over time. This has resulted in provision of budget that is more than necessary for the airport and has led to additional buffer that does not incentivize operational efficiency.

IATA would propose that in order to provide a reasonable challenge for the airport to push for operational efficiency, the allowable annual

increase in operating expenses needs to be below the inflation rate which is currently at 6.5%.”

- 16.18.** 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.

“In the CP No. 09/2013-14, General Operating Expenditure and non-aeronautical revenue have been forecasted without evaluating the commercial and financial terms in detail. Review of the Consultation Paper indicates that Authority has made the proposals without getting into commercial and financial details of the forecasted numbers and has based its proposal on very broad assumptions for the purpose of determining forecasted General Operating Expenditure and non-aeronautical revenue. For instance:

(a) Re. Operating Expenses:

For the purpose of projecting operating costs/expense for balance control period, real increase in operating costs for HIAL for FY 2011-12 and FY 2010-11 comes to approximately 3.35% and 1.48% respectively. Further, average real increase for the period FY 2009-10 to FY 2011-12 has been computed by the Authority which comes out to be 2.42%. Hence, Authority has considered an increase of 3.0% for computing projected operating expenses, over the calculated average increase of 2.42% would provide for some generic allowance for uncertainties.

It is submitted that Operating Expenses (71%) and Non-aeronautical Revenue (50%) are inter alia the major components for determining Target Revenue. Thus, the Authority ought to evaluate these components in detail by evaluating commercial and financial details of each expense and income/revenue head.”

- 16.19.** FIA further stated that

“Authority should independently scrutinise the claims of HIAL with respect to Operating Expenditure (71% of the HIAL’s claim towards ARR)”

16.20. 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”

d HIAL’s response to Stakeholder Comments on Issues pertaining to Operating Expenses

16.21. Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 09/2013-14 dated 21.05.2013, the Authority forwarded these comments to HIAL seeking its response to these comments. HIAL has provided responses to the Stakeholders’ comments, which are presented below:

16.22. In response to AAI’s comments on Operating Expenditure, HIAL has stated as under:

“The Authority has taken into consideration of this fact and accordingly has adjusted expenses for determination of tariff. The opex is classified amongst Aero and Non Aero.

However in single till all expenses are to be allowed.

In case of Dual Till the appropriate allocation exercise has been done.

All Users of Common Assets have a business relationship with the Airport either directly or indirectly. The Users pay either directly/ indirectly for such usage in the medium of charges, rents etc. This income is accounted in GHIAL's books and the same is considered during the tariff determination.”

16.23. In response to FIA’s comment that the Authority ought to evaluate Operating Expenses in detail by evaluating commercial and financial details of each expense, HIAL has stated as under:

“The Authority has sought necessary documents/certificates whenever the requirement was felt and we have submitted the same for scrutiny of the Authority.

The basis of aforesaid allegation is not clear wherein the claim is being made that Authority has not evaluated the terms in detail.”

16.24. HIAL further stated as under:

“The detailed rationale of each and every component has already been submitted to Authority.

The operating expenses increase as the facility gets older. This factor needs to be considered in tariff determination.

When the facility was new many equipment were under defect liability period / Warranty. The above is no more in vogue and these expenses will increase significantly.

These factors need to be kept in mind while projecting the future expenditure.”

- 16.25.** Further in response to FIA’s comment that the Authority should independently scrutinise the claims of HIAL with respect to Operating Expenditure (71% of the HIAL’s claim towards ARR, HIAL has stated as under:

“The details relating to all expenditure have been submitted in great detail and each and every component has been closely scrutinized by the Authority and its consultants.”

- 16.26.** In response to FIA’s comment on issues pertaining to Concession Fee, HIAL has stated as under:

“This is as per the terms of the Concession Agreement. This is expenditure and all expenditures need to be allowed. There is no expenditure which can go unremunerated.”

- 16.27.** In response to IATA’s comments on the issues pertaining to Operating Expenditure, HIAL has stated as under:

“GHIAL had asked for a real increase much higher than proposed by Authority.

The increase currently proposed by Authority is very miniscule and GHIAL will not be able to carry out operations efficiently with such meager increase.

The increase proposed by the Authority in consultation paper takes away the incentive to airport operator for the good work done of containing costs in past.

Also the additional quality parameters imposed by the Authority will entail additional expenditure. The same also need to be taken into account while approving the operating expenditure.

Hence, the Authority is requested to consider the growth rates as submitted by GHIAL.

With reference to the increase GHIAL had made its submissions without considering WPI growth and requesting AERA to consider the same during the final tariff determination.

Authority also needs to note that the operating expenses rise sharply as the facility gets older. Mere inflationary increase cannot sustain operations.”

e HIAL’s own comments on Issues pertaining to Operating Expenses

16.28. On the issue of increase of operating expenditure by 3.00% over WPI, HIAL stated that

“The increase proposed by Authority takes away the incentive to airport operator for the good work done of containing costs in past. Additionally the miniscule increase proposed by authority will make it difficult to sustain operations especially given the fact that there is no true up of operating cost.

Also the additional quality parameters imposed by Authority will entail additional expenditure. The same also need to be taken into account while approving the operating expenditure.

Hence, the Authority is requested to consider the growth rates as submitted by GHIAL i.e. 7% in Manpower and Operating Costs and 5% in Administrative Costs on a Real Basis in addition to the WPI increase which will adjust for the inflation in the prices. The submissions by GHIAL were basis the real increase in the various cost heads as per our projections.”

16.29. On the issue of conducting an independent study by Authority, HIAL stated that

“The decision of the Authority to do a study at a later date goes against the very principles of price cap. This in real terms means that the airport operator will not have any incentive in saving costs as any saving done by him will be assumed to be the efficient cost by the independent consultant appointed in this regard. The Authority must

give its final verdict on the efficient operating expenses before the tariff approval.”

16.30. Further HIAL stated that the Authority is requested to allow a full true up for penalty and interest payable by HIAL on account of statutory levies.

“The expenses which are in form of penalties resulting in difference of opinion relating to some interpretation etc. may be allowed as they also are beyond the control of the airport operator. There can be circumstances wherein no statutory liability was perceived by the Airport Operator based on its interpretation of law. However later on the stand of Airport Operator was not accepted by the statutory authorities and the Airport Operator was asked to pay for the same. This may sometime also entail a penalty and interest. The Authority is requested to allow a full true up for such payments including the penalties and interests.”

f Authority’s Examination of Stakeholder Comments on Issues pertaining to Operating Expenses

16.31. The Authority has carefully examined the comments made by various stakeholders in respect of operating expenses to be considered for HIAL.

16.32. The Authority has noted HIAL’s comment that *“The decision of the Authority to do a study at a later date goes against the very principles of price cap.”* HIAL has also felt that *“The Authority must give its final verdict on the efficient operating expenses before the tariff approval.”* However, under Clause 8.9 of the Concession Agreement HIAL is expected to *“manage and operate the airport in a competitive efficient and economic manner as a commercial undertaking”*. HIAL has also been requesting the Authority to take into consideration the covenants of the Concession Agreement. Hence the Authority feels that its decision to commission an independent study is fully in consonance with the Concession Agreement and the Authority thus finds no reason to review its earlier proposal in this regard. However based on the experience gained on commissioning of such a study for this control period, the Authority would consider commissioning such studies in future.

- 16.33.** The Authority also notes that HIAL has opposed the Authority's stand of granting an additional increase of 3.0% in real terms over WPI increase, which at the time of Consultation Paper No 09/2013-14 was 6.5% but has now been estimated by RBI as 5.9%. The Authority is of the view that the real increase proposed by the Authority is sufficient as the Authority has thoroughly examined the past trends of increase in operating expenses for HIAL. Since the Authority has separately decided to true-up utility costs, operating expense pertaining to projects under Future capital expenditure and other mandated costs (Refer Decision No 12.a.iv), expense on these items will be trued-up on actuals without separation of these expenses into real and inflationary components of growth.
- 16.34.** The Authority also understands that IATA has disagreed with the Authority's calculation in this regard and has stated that *"The average used by the Authority to derive the 3% figure is flawed as three data points is far too few to provide a reliable and accurate average."* However, given the limited information in hand, the Authority feels that based on the historical trend, 3.0% real increase is reasonable. Further, as mentioned above, the Authority is to institute an independent study to assess each operating expense head for the next Control Period.
- 16.35.** Further, Authority also notes that HIAL has disagreed with Authority's stand of not truing up interest payments, penalty, fines and other penal levies associated with statutory levies. However, the Authority is of the view that these charges do not merit any true up as penalties on account of default of any statutory requirements can never be considered as a business expense for the purposes of regulatory determination.
- 16.36.** Further the Authority has sought a clarification from HIAL on whether the utility expenses submitted by HIAL are net off the recovery on such expenses made by HIAL from the concessionaires. HIAL in its submission dated 25.11.2013 confirmed that the utility expenses submitted by HIAL in the MYTP submissions are net off the recoveries made by it from the concessionaires.
- 16.37.** The Authority had noted in the Consultation Paper no 09/2013-14 dated 21.05.2013 that HIAL, vide its submissions dated 04.04.2013, has requested for 100% true up in the utility costs. The Authority had clarified that Electricity Charges

are fixed by regulatory authorities/agencies and may not necessarily be linked to inflation. The Authority had proposed to follow the most recent unit rate approved by the regulator for the remaining years in the Control Period subject to true-up based on actuals. The Authority was of the view to consider a nominal increase in the number of units (also subject to true-up) but was constrained by unavailability of information from HIAL on the number of units and unit rate of electricity for all the historical years. The Authority had proposed to consider the actual electricity expense for FY 2011-12 for the remaining years in the Control Period without any increase.

16.38. However, post the consultation stage, HIAL, vide its submissions dated 07.12.2013 brought to the notice of the Authority that there has been an increase in the electricity tariff with effect from 01.04.2012 and that *“Tariff has been revised from 4.1 to 4.54 for non-peak hours and 5.54 for peak hours”*. HIAL also submitted the actual electricity expense for FY 2012-13 as Rs 23.48 crore (the Authority had considered the utility expense at Rs 15.89 crore vide Table 64, Page 204-205 of the Consultation Paper No 09/2013-14). The Authority has noted that the Andhra Pradesh Electricity Regulatory Commission has determined different tariffs for peak hour and non-peak hours. The Authority has decided to consider the actual utility expenses (Rs 23.48 crore) for FY 2012-13. The Authority has also decided to project the utility expenses at this level (FY 2012-13) for the years FY 2013-14 and FY 2014-15 of the current Control Period. For the last year (FY 2015-16), the Authority has taken into account savings of Rs 3.0 crore (as estimated by HIAL) on account of operationalization of the proposed solar plant. The Authority has also decided that utility expenses will be trued-up on actuals at the time of determination of aeronautical tariff for the next Control Period.

16.39. The Authority has noted HIAL’s submission that the electricity expense for HIAL may come down when the solar plant proposed by HIAL is commissioned. In view of the decision indicated in Para 16.38 above, should this happen, it may result in lowering of the actual utility expenses. The Authority has separately decided to take the proposed expenditure on solar plant as allowable project cost (Refer Para 9.26 above).

16.40. HIAL had proposed the estimated savings from the solar plant for FY 2013-14, FY 2014-15 and FY 2015-16 as presented in Table 48.

Table 48: Saving in electricity expense upon commissioning of solar plant as submitted by HIAL for the current Control Period

(Rs in crore)	2011-12	2012-13	2013-14	2014-15	2015-16
Savings from the Solar project	-	-	1.5	3.0	3.0

16.41. As discussed in Para 9.26 above, the Authority has decided to consider capitalization of Rs 40 crore in FY 2014-15 and not in FY 2013-14 and accordingly the Authority has decided to consider the savings from the solar as presented in Table 49.

Table 49: Saving in electricity expense upon commissioning of solar plant as considered by the Authority for the current Control Period

(Rs in crore)	2011-12	2012-13	2013-14	2014-15	2015-16
Savings from the Solar project	-	-	-	-	3.0

16.42. The Authority has noted that HIAL has submitted operating expenses pertaining to the projects (as indicated in items in Table 15), proposed by HIAL to be undertaken under the Future Capital Expenditure as follows:

Table 50: Operating expenses pertaining to the projects under the Future Capital Expenditure (as indicated in items in Table 18) submitted by HIAL in the current Control Period

(Rs in crore)	2011-12	2012-13	2013-14	2014-15	2015-16
Operating expense on Future capex projects	-	-	0.76	3.26	5.02

16.43. The Authority, as per its Decision No. 5 above, has approved selected projects (as indicated in items under Group 1 in Table 18 namely, Flood Control & Rainwater Harvesting and Sustainability through Renewable Energy (Solar)) to be added to RAB upon capitalization. The Authority notes that incurring operating expenses on these projects are contingent upon their completion and commissioning. Hence for the purpose of the current Control Period, the Authority is not considering these operating expenses for the purposes of tariff determination. However, as and when

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these projects are capitalized and commissioned and operating / maintenance expenses are incurred thereon, the Authority will take these into account as a true-up for operating expenses for the current Control Period provided HIAL gives documentary evidence of such expenses having been incurred by them.

16.44. A summary of total operating expenses considered by the Authority is presented below (includes the actual operating expenses incurred by HIAL in FY 2012-13):

Table 51: Operating expenses considered by the Authority in the current Control Period

(Rs in crore)	2011-12	2012-13	2013-14	2014-15	2015-16
Payroll Expenses					
Salary and Wages	45.69	48.02	52.37	57.13	62.31
Staff Welfare	5.71	5.31	5.79	6.31	6.88
Training	1.51	0.48	0.53	0.57	0.63
Total Payroll expense	52.91	53.80	58.69	64.01	69.82
Utility expenses					
Utility Costs	15.89	23.48	23.48	23.48	20.48
General / Admin expenses					
Auditors Fee	0.31	0.40	0.44	0.48	0.52
Directors Sitting Fee	0.07	0.08	0.09	0.10	0.11
Communication Expenses	1.72	1.38	1.50	1.64	1.79
Travelling Expenses	8.13	6.57	7.17	7.82	8.53
Rent	6.78	6.83	7.45	8.13	8.87
Rates and Taxes	6.99	14.99	14.99	14.99	14.99
Advertisement	1.96	10.72	11.70	12.76	13.92
Ofc Maintainanance	2.78	2.57	2.81	3.06	3.34
Printing and Stationary	0.56	0.33	0.36	0.40	0.43
Event Management	0.34	0.13	0.14	0.16	0.17
Recruitment	0.43	0.16	0.18	0.19	0.21
Community Development	1.47	1.35	1.47	1.61	1.75
Other Miscellaneous+Business Promotion	22.08	4.25	4.63	5.05	5.51
Consultancy	3.35	2.07	2.07	2.07	2.07

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(Rs in crore)	2011-12	2012-13	2013-14	2014-15	2015-16
Total Bank Charges	13.41	13.85	15.11	16.48	17.97
Security Cost	5.78	6.96	7.59	8.28	9.03
Total General / Admin expenses	76.16	72.65	77.70	83.20	89.21
Repair and Maintenance expenses					
Building	5.02	4.74	5.17	5.64	6.15
Plant and Machinery	13.15	11.11	12.12	13.22	14.42
IT	8.57	10.05	10.96	11.95	13.04
Others	2.53	1.67	1.82	1.99	2.17
Diminution in value of Inventory	-	-	-	-	-
Stores and Spares	6.57	5.78	6.30	6.87	7.50
Total RM expenses	35.84	33.35	36.38	39.68	43.28
Other Operating expenses					
Insurance Cost	2.14	2.49	2.71	2.96	3.23
Manpower Outsourcing expenses	15.57	14.84	16.18	17.65	19.25
Bus Hire Expenses	0.99	0.47	0.52	0.56	0.62
Car Parking	2.39	2.34	2.55	2.79	3.04
House Keeping	8.28	8.36	9.12	9.95	10.85
O&M Expenses	0.09	0.39	0.43	0.47	0.51
Operator Fee	-	-	-	-	-
Land Lease	-	-	-	-	3.10
Total Other Operating expenses	29.46	28.89	31.52	34.38	40.60
Fuel Farm expenses					
Fuel Farm expenses	8.55	9.52	10.39	11.33	12.36
Concession Fee					
Concession Fee	24.95	29.23	29.16	14.66	16.21
Total Operating Expense					
Total Operating Expense	243.76	250.93	267.30	270.74	291.96

Decision No. 12. Regarding Operating expense

12.a. The Authority decides to adopt the following approach towards operating expenses while determining tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:

- i. To consider the operating expenses in respect of HIAL as a standalone entity (refer Para 3.4 above) as given in Table 51.**
- ii. Not to true-up the operating expenses as referred to in i above, except for the points mentioned in iii and iv below.**
- iii. To commission an independent study to assess the reasonableness of operation and maintenance costs. The Authority would consider the results of the study in its tariff determination for the next Control Period commencing on 01.04.2016, including truing up as may become necessary. However based on the experience gained on commissioning of such a study for this control period, the Authority would consider commissioning such studies in next Control Periods.**
- iv. To review and true up if necessary the following factors for the purpose of corrections (adjustments) while determining aeronautical tariffs for the next Control Period**
 - 1. Mandated costs incurred due to directions issued by regulatory agencies like DGCA;**
 - 2. Costs on actuals related to electricity and water charges;**
 - 3. Operating expenses pertaining to the selected projects (as indicated in items in Table 18), proposed by HIAL to be undertaken under the Future Capital Expenditure based on evidential submissions made by HIAL in this regard**
 - 4. All statutory levies in the nature of fees, levies, taxes and other such charges by Central or State Government or local bodies,**

local taxes/levies, directly imposed on and paid for by HIAL on final product/ service provided by HIAL in the current Control Period, will be reviewed by the Authority for the purpose of corrections (adjustments) to tariffs in the next Control Period.

- 5. Furthermore, any additional payment by way of interest payments, penalty, fines and other such penal levies associated with such statutory levies, which HIAL has to pay for either any delay or non-compliance, the same will not be trued up. On the input side if HIAL has to pay higher input costs even on account of change in levies/ taxes on any procurement of goods and services, the same will not be trued up.**
- v. To grant an increase of 3.0% in real terms over WPI increase of 5.9% (as per latest RBI forecasts) for applicable operating cost head (except statutory charges and levies).**

17. Taxation

a HIAL Submission on Taxation

17.1. HIAL in their submission, dated 31.07.2011, stated that computation of income tax was made based on the prevailing Income Tax laws and rules and also, MAT provisions and 80IA benefits were considered for normal tax computations. Corporate tax rate @ 33.99% and MAT rate @ 20.96% were considered by HIAL as desired by the Authority. HIAL calculated the Gross Taxable Income by adding back the Book depreciation to the Profit before Tax numbers for each year and then subtracting the Tax Depreciation. HIAL also considered Section 80IA benefit under the Income Tax Act wherein HIAL was allowed the tax exemptions for any 10 consecutive assessment years out of 15 years beginning from the date of commercial operations i.e., 28.03.2008. Considering the above assumptions the tax was calculated by HIAL under single till and dual till.

17.2. The tax numbers computed as per the meeting on 10.04.2013 is as under,

Table 52: Tax numbers as per HIAL model – under Single till

	2009	2010	2011	2012	2013	2014	2015	2016
Tax Payable	1.95	-	(0.45)	10.88	20.91	66.16	80.34	93.62

Table 53: Tax numbers as per HIAL model – under Dual till

	2009	2010	2011	2012	2013	2014	2015	2016
Tax Payable	-	-	-	-	-	82.49	96.40	108.54

b Authority's Examination of HIAL Submissions on Taxation

17.3. The Authority had carefully reviewed the taxation calculations methodology followed by HIAL in the tariff model and a mismatch in the tax rates considered by HIAL and the current tax rates applicable in India (32.45%) was noted by the Authority which was later corrected by HIAL and the differences were incorporated in the tariff model. The tariffs of (a) stand-alone entity of HIAL, (b) Hotel, (c) the SEZ and (d) the Duty Free were included in HIAL's tax liability. But only the tax paid by the standalone entity of HIAL under single till and dual till was considered by the

Authority. Also, the depreciation considered in tax calculation was the depreciation derived from WDV method. The Authority finally decided that truing up the difference between the actual corporate tax paid and that used by it for determination of tariff for the current Control Period was required to be done in the next Control Period commencing 01.04.2016.

17.4. Based on the material before it and its analysis, the Authority had proposed in the Consultation Paper No 09/2013-14 dated 21.05.2013:

17.4.1. To consider taxes paid on actuals in each year for the years 2011-12 and 2012-13 and the estimated tax liability for the remaining years 2013-14, 2014-15 and 2015-16. To note actual tax paid / payable is according to MAT on account of 80 IA benefit availed by HIAL as per the Concession Agreement terms.

17.4.2. 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 proposes that this truing up will be done in the next Control Period commencing 01.04.2016.

17.4.3. To note that there may be difference in actual taxes paid in single and dual till approaches.

c Stakeholder Comments on Issues pertaining to Taxation

17.5. Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the tentative proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its Consultation Paper No 09/2013-14 dated 21.05.2013. Stakeholders have also commented on taxes to be considered in respect of RGI Airport, Hyderabad. These comments are presented below:

17.6. FIA on the issue of taxation stated that

“It is noteworthy that cost of debt is the effective rate that a company pays on its current debt post adjustment for tax savings. However, based on aforementioned proposal of the Authority and review of Consultation Paper, it appears that cost of debt is not adjusted for any tax savings. Post adjustment of such tax savings (assuming tax rate at 30%) in cost of debt, WACC will reduce from 10.68% to 8.39%. It is

submitted that Authority should factor such tax saving for computing WACC of HIAL. It is submitted that reduction in WACC from 10.69% to 8.39% will reduce target revenue by 11% (and will reduce the present value of Target Revenue by 17%).

In the stakeholders' meeting, it was informed that vanilla approach has been followed due to which interest has been considered for the purpose of computing tax. However, no computations are available in the CP to substantiate this fact"

d HIAL's response to Stakeholder Comments on Issues pertaining to Taxation

17.7. Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 09/2013-14 dated 21.05.2013, the Authority forwarded these comments to HIAL seeking its response to these comments. HIAL has provided responses to the Stakeholders' comments, which are presented below:

17.8. In response to FIA's comment on consideration of tax saving for adjusting the cost of debt, HIAL stated as under,

"The AERA guidelines in Direction no.5 clearly state the Cost of Debt in the calculation of WACC is pre-tax."

e HIAL's own comments on Issues pertaining to Taxation

17.9. On the issue of taxation, HIAL stated that

"1 The actual tax paid is dependent on various revenues and ventures of concessionaires apart from the airport business. This could lead to the tax being paid being lower than entitled under the tariff calculation methodology. As such the tax payable under the tariff calculation should be allowed with no true up.

2 The section 80IA benefit accrues to airport operator as an incentive by the GoI to promote investment. This may result in saving to airport operator. By taking away benefit of the amount accruing to airport operator on this account, there is a disincentive to invest in infrastructure sector."

f Authority's Examination of Stakeholder Comments on Issues pertaining to Taxation

17.10. The Authority has carefully analysed the comments of the stakeholders in respect of taxes to be considered for determination of aeronautical tariff for RGI Airport, Hyderabad.

17.11. 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 firm. Effective tax rate for a firm 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. Further FIA has stated that *"it was informed that vanilla approach has been followed due to which interest has been considered for the purpose of computing tax. However, no computations are available in the CP to substantiate this fact"*. It is highlighted that the calculation of WACC has been presented in Table 38.

17.12. Further the Authority has deliberated on the issue of treatment of taxation. The Authority noted that HIAL is regarded as a new infrastructure facility. Accordingly, HIAL has actually paid out certain amount to the taxation authorities during their relevant years provided the profit before tax has been positive. The Authority has, as a general principle, decided 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. It 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.

- 17.13.** In the case of HIAL, it has ascertained tax liabilities of Rs.8.96 crore for the FY 2011-12 and Rs.30.99 crore for the FY 2012-13 according to the MAT provisions of the Income Tax Act. The Authority has noted HIAL submission, which states as under,

“In the case of GHIAL, during the financial year 2011-12, the company was liable to pay the MAT tax of Rs. 8.96 Crs. and accordingly the same was provided in the statement of profit & Loss. However, MAT credit was not recognised as limit of 10 years for carry forward of MAT credit was expiring in the FY 2021-22 i.e. within the tax holiday period under 80IA of the IT Act 1961 as normal tax will not be payable by the company till that year.

During the year 2012-13, the company was liable to pay the MAT tax of Rs. 30.98 Crs. and accordingly the same was provided in the statement of profit & Loss and also paid by the company. However, MAT credit was also available for set off in the FY 2022-23 as limit of 10 years for carry forward of MAT credit will expire in the FY 2022-23 i.e. one year after the tax holiday period under 80IA of the IT Act 1961 when the company will be liable to pay the tax under the normal provisions of the IT Act, 1961 and accordingly will be able to adjust this MAT credit against the normal tax liability.”

- 17.14.** In accordance with the principle of taxation followed by the Authority in the building block approach to calculate ARR, the Authority has taken Rs 8.96 crore for the FY 2011-12 and Rs 30.99 crore for FY 2012-13 as tax actually paid for the ARR requirements of these two years.

- 17.15.** For the three remaining years of the current Control Period, namely, 2013-14, 2014-15 and 2015-16, the Authority has estimated tax @ 20.905% (based on Alternate Minimum Tax at 18.5% and Surcharge of 10% & Cess of 3% on tax) of the Performa income tax statement for these years for the purposes of estimating ARR requirements for these three years. The Authority notes that the actual tax paid by the company for these three years may vary from the estimated numbers indicated in Table 54. Since tax actually paid is an element of the building blocks for

computation of ARR, the Authority decides to true up the tax figures on the basis of actuals while determining aeronautical tariffs for the next Control Period.

17.16. The above principles pertain to the amount of tax that is reckoned towards the calculation of ARR for a particular year. Under the accounting principles to prepare the financial statements the company, after appropriate adjustments and appropriations, permitted under the company law for the relevant accounting standards, computes Profit After Tax (PAT), which is taken into the balance sheet as shareholders' funds, generally known as retained earnings, after making appropriations as the company may require.

17.17. The Authority is of the view that the actual tax paid by HIAL should be considered while determining the tariff for a control period and has thus considered truing up the actual tax paid by HIAL in the next Control Period starting from 01.04.2016. Accordingly the tax actually paid by HIAL for FY 2011-12 and FY 2012-13 has been considered towards determination of aeronautical tariff without including the Deferred Tax in the same. For the remaining years, the tax liability has been projected based on financials for respective years.

Table 54: Tax values considered by the Authority in this Order

	2012	2013	2014	2015	2016
Tax Payable	8.96	30.99	33.96	-	-

Decision No. 13. Regarding Taxation

13.a. The Authority decides to adopt the following approach for consideration of taxation towards determination of tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:

- i. To consider taxes paid on actuals in each year for the years 2011-12 and 2012-13 and the estimated tax liability for the remaining years 2013-14, 2014-15 and 2015-16. To note actual tax paid / payable is according to MAT on account of Section 80 IA benefit under Income Tax Act availed by HIAL as per the Concession Agreement terms.

- ii. **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 at the time of determination of tariff for the next Control Period commencing 01.04.2016.**

18. Non-aeronautical revenue

a HIAL Submission on Non-aeronautical revenue

- 18.1.** HIAL, in its various submissions, had provided breakup of the Non-aeronautical revenue.
- 18.2.** HIAL stated that the revenues from car parking, Food and beverages, premium plaza , advertisement, hotel, retail outlets and duty free revenues from HIAL for the FY 2011-12 were considered at actuals and the revenues for the FY 2012-13 were considered based on extrapolated revenues of first six months' actuals and that from FY 2013-14. Also, the YOY revenues were assumed to be escalated by the growth rate in the total passengers and additional 5% growth on account of increase in spending capacity of the passengers was also to be considered.
- 18.3.** Similarly, for radio taxis, the revenue share of 19.02% was considered on the expected revenues of radio taxi operator and the expected revenues of the operator was worked out based on SPP of Rs. 40/ per passenger and a growth of 5% YOY increase in spending capacity of the passengers was attributed.
- 18.4.** HIAL also stated that advertisement revenues from FY 2013-14 were considered at the rate of 60% of the gross turnover of the concessionaire and the gross turnover of the concessionaire was considered as per the business plan projections as per the Revenue Share agreement, i.e. 10% increase in the projected sales YOY was assumed and similarly the YOY rental revenue was assumed to increase at 4% from FY 2013-14 onwards for rental revenues and this escalation was to be based on the growth in international passengers for public admission fee.
- 18.5.** Also, HIAL stated that a revenue share assumption of 5.56%, SPP of Rs. 300/international passenger and upfront non-refundable deposit for a concession of 7 year of Rs. 13.74 Cr. for the Forex revenues and the revenue from miscellaneous income (including income from AEP, IT, permits, Airline Security, Filming, paid Portal) on actual income of previous year escalated by traffic growth projected YOY was considered.
- 18.6.** Certain revenue streams, which were not considered in HIAL's previous submissions, like the Incomes from Go Karting, Simulator and Amusement were

presented by HIAL in its subsequent submissions and revenues from these were considered as per contracts from 2011-12 onwards and the One time incomes like payment of interest on delayed payments etc were extrapolated in the projections as these were one time one-off types of incomes and were not likely to recur.

18.7. The revenues from In-flight Kitchen were assumed to be Non- Aeronautical revenues by HIAL in their Tariff model and the Land lease rentals from the inflight kitchen were also considered under the same head.

18.8. As per HIAL's submission, the Non-Aero revenues for future years were escalated by Traffic growth along with an additional increase of 5%. As per the historical trends, CAGR in the non-aero revenues for the FY 2008-09 to FY 2012-13 was 10.96%; however CAGR traffic growth during such period was 7.3%. Therefore, past trend showed a CAGR growth of around 3.66%. Hence, an additional growth of 5% in addition to the traffic growth was assumed by HIAL.

18.9. With the inclusion of the mentioned assets, the non-aeronautical revenue was calculated to be:

Table 55: Total Non-Aeronautical Revenues as per HIAL tariff model

	2009	2010	2011	2012	2013	2014	2015	2016
Total Non-Aeronautical Revenues submitted by HIAL	121.0	161.2	208.6	262.7	278.7	253.9	273.2	293.7

b Authority's Examination of HIAL Submissions on Non-aeronautical revenue

18.10. The Authority carefully considered HIAL's submission on non-aeronautical revenue and in its examination, the Authority stated that, HIAL had not considered any inflationary increase on the Non-Aeronautical revenues and hence clarification was sought on the same.

18.11. The Authority stated that in the Indian context, non-aeronautical revenues were generated by passengers and hence, the passenger volumes were proposed to be trued-up in the tariff determination. The Authority considered a projection of passenger traffic as per HIAL's estimate of 0.00% for FY 2013-14, 6.88% for FY 2014-

15 and 6.74% for FY 2015-16. The Authority noted that in case of Hyderabad, the concessionaires for non-aeronautical services were broadly in position and any substantial increase in their number was not expected.

18.12. The Authority also noted that HIAL had followed different approach for the calculation of revenue for different heads under Non-Aeronautical revenues. The Authority also observed that HIAL had projected nil revenue for the next three years of the Control Period (i.e. till 31.03.2016) for a non-aeronautical revenue head of Interest Income. Hence, for different heads, the Authority proposed that the non-aeronautical income was not to be projected separately on account of different concessionaires. Hence, an increase in the non-aeronautical revenue into the future was considered, based on the broad drivers of passenger numbers and the passenger spend. Accordingly the Authority proposed that the non-aeronautical revenue projections were to be based on total non-aeronautical revenue (minus the interest income).

18.13. The Authority also proposed to true-up the non-aeronautical revenues during this control period while determining its tariff in the next Control Period. Based on the stakeholders' consultation, the Authority will make a final decision in this matter.

18.14. Based on these proposals, total Non-Aeronautical Revenues from 2009 to 2016 considered by the Authority for determination of aeronautical revenue for HIAL was as follows:

Table 56: Total Non-Aeronautical Revenues considered by the Authority in the Consultation Paper No. 09/2013-14 dated 21.05.2013

	2009	2010	2011	2012	2013	2014	2015	2016
Total Non-Aeronautical Revenues considered by Authority	121.0	129.5	153.6	178.4	194.4	177.7	199.4	223.5

18.15. Based on the material before it and its analysis, the Authority had proposed in the Consultation Paper No 09/2013-14 dated 21.05.2013:

Non-aeronautical revenue

18.15.1. To consider non-aeronautical revenues as per Authority's assumptions as summarized in Table 87 of the Consultation Paper No. 09/2013-14 dated 21.05.2013.

18.15.2. To true-up the non-aeronautical revenue for HIAL for the current Control Period at the time of tariff determination for the next Control Period

c Stakeholder Comments on Issues pertaining to Non-aeronautical revenue

18.16. Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the tentative proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its Consultation Paper No 09/2013-14 dated 21.05.2013. Stakeholders have also commented on non-aeronautical revenues to be considered in respect of RGI Airport, Hyderabad. These comments are presented below:

18.17. FIA on the issue of Non-aeronautical revenue stated that the Authority ought to evaluate Non-aeronautical revenue in detail by evaluating commercial and financial details of each income/revenue head.

"In the CP No. 09/2013-14, General Operating Expenditure and non-aeronautical revenue have been forecasted without evaluating the commercial and financial terms in detail. Review of the Consultation Paper indicates that Authority has made the proposals without getting into commercial and financial details of the forecasted numbers and has based its proposal on very broad assumptions for the purpose of determining forecasted General Operating Expenditure and non-aeronautical revenue. For instance:

(b) Re. Non-aeronautical Revenue:

Non-aeronautical Revenue for FY 2013-14 to FY 2015-16 has been proposed by considering a 'year on year' (YoY) escalation of 5% and passenger growth rate, on total non-aeronautical revenue (minus the interest income) in FY 2012-13.

It is submitted that Operating Expenses (71%) and Non-aeronautical Revenue (50%) are inter alia the major components for determining

Target Revenue. Thus, the Authority ought to evaluate these components in detail by evaluating commercial and financial details of each expense and income/revenue head.”

18.18. On the issue of Non-aeronautical revenue, AAI stated that

“The treatment of commercial revenue inside the Terminal Building should be treated as aeronautical revenue as Terminal Bldg. is mostly treated as aeronautical asset”

d HIAL’s response to Stakeholder Comments on Issues pertaining to Non-aeronautical revenue

18.19. Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 09/2013-14 dated 21.05.2013, the Authority forwarded these comments to HIAL seeking its response to these comments. HIAL has provided responses to the Stakeholders’ comments, which are presented below:

18.20. In response to AAI’s comment that “commercial revenue inside the Terminal Building should be treated as aeronautical revenue as Terminal Bldg. is mostly treated as aeronautical asset”, HIAL has stated as under:

“This statement is not based on rationale.

The commercial revenue generated within the terminal building cannot be classified as aero just because it is being earned within the terminal building.

The portion of building used for non-aero is classified as non-aero and as such the non-aero revenue will remain to be non-aero.

It will be wrong to treat commercial revenue inside the terminal as aeronautical revenue on plea that terminal building is mostly aeronautical.

The Terminal Building is not treated completely as an aeronautical asset. The area has been split into non-aeronautical asset also based on floor space usage as explained in the Concept Note of Asset allocation methodology.”

18.21. In response to FIA’s comment that Authority ought to evaluate Non-aeronautical revenue in detail by evaluating commercial and financial details of each income/revenue head, HIAL has stated as under:

“All relevant details were submitted to the Authority.

The opex is based on actual amount spent by GHIAL extrapolated on a basis which is evaluated by Authority.

One of the components of the growth is inflation which is based on the projections of RBI.

Another aspect is traffic which is based on a study conducted in this regard.”

e HIAL’s own comments on Issues pertaining to Non-aeronautical revenue

18.22. HIAL has requested the Authority to accept the non-aero revenue projections as per their filing with no true up and stated as under

“1. Regarding true up of Non-Aeronautical revenues:

The true up of non-aeronautical revenues leaves no incentive for the airport operator to innovate and improve the non-aeronautical revenue.

This also caps the probable upsides for the airport operator which in long run deteriorates quality of the airport. This also results in this becoming a rate of return regulation.

2. Regarding Authorities Projections of Non-Aeronautical Revenues:

There is a significant difference between GHIAL and the Authority w.r.t the forecast of Non-aero revenues.

<i>Non aero revenues</i>	<i>2011-12</i>	<i>2012-13</i>	<i>2013-14</i>	<i>2014-15</i>	<i>2015-16</i>	<i>Total</i>
<i>Filed (Without Subsidiaries)</i>	<i>178.4</i>	<i>194.3</i>	<i>166.8</i>	<i>180.2</i>	<i>194.5</i>	<i>914.2</i>
<i>As per CP</i>	<i>178.4</i>	<i>194.4</i>	<i>177.7</i>	<i>199.4</i>	<i>223.5</i>	<i>973.4</i>

Authority has proposed to base all the streams of non-aeronautical revenues in FY 12-13, increasing it by traffic forecast of GHIAL as well passenger spend of 5% p.a.

Non-aeronautical revenue

As part of Authority's approach, there are certain anomalies which are listed as under:

Growth on one time incomes and Minimum Guaranteed Incomes which GHIAL does not envisages to earn is also considered

Rentals have been escalated by traffic growth.

Growth on Incomes pertaining to Fy 11-12 received in Fy 12-13 is also considered.

A detailed analysis of anomalies will be provided as under:

Duty Free

Revenues from the duty free shops for the years FY 2011-12 to FY 2015-16 are as following:-

<i>Scenarios (fig in Rs. Crores)</i>	<i>2011-12</i>	<i>2012-13</i>	<i>2013-14</i>	<i>2014-15</i>	<i>2015-16</i>	<i>Total</i>
<i>Filed</i>	<i>4.02</i>	<i>5.99</i>	<i>9.00</i>	<i>9.68</i>	<i>10.33</i>	<i>39.02</i>
<i>As per CP</i>	<i>4.02</i>	<i>5.99</i>	<i>9.35</i>	<i>10.49</i>	<i>11.76</i>	<i>41.61</i>

Unrealistic Forecast:

There is significant difference between expectation of duty free revenue by GHIAL and that proposed by the Authority. As per the agreement between GHIAL and HDFRL (Duty Free Co.), GHIAL is entitled to a max revenues of Minimum guarantee of 0.75 USD/pax (MAG) or revenue share.

As per the current projections, GHIAL is entitled to MAG of 0.75 USD/pax which is linked to traffic growth.

Authority has applied an additional growth of 5% over and above the MAG revenue which is not realistic and not achievable.

Advertisement

Advertisement Revenues for the years FY 2011-12 to FY 2015-16 are as following:-

Non-aeronautical revenue

<i>(fig in Rs. Crores)</i>	<i>2011-12</i>	<i>2012-13</i>	<i>2013-14</i>	<i>2014-15</i>	<i>2015-16</i>	<i>Total</i>
<i>Filed</i>	<i>16.57</i>	<i>13.10</i>	<i>15.84</i>	<i>17.42</i>	<i>19.16</i>	<i>82.09</i>
<i>Filed – Upfront/ One time revenues</i>	<i>2.72</i>	<i>5.66</i>				<i>8.38</i>
<i>Total as per filing</i>	<i>19.29</i>	<i>18.76</i>	<i>15.84</i>	<i>17.42</i>	<i>19.16</i>	<i>90.47</i>
<i>Total as per CP</i>	<i>19.29</i>	<i>18.76</i>	<i>19.85</i>	<i>22.27</i>	<i>24.96</i>	<i>105.13</i>

Revenues for 2011-12 and 2012-13 included onetime upfront fee Rs 2.72 and Rs 5.66 Crs respectively as per the agreement. The same will not accrue in future; hence growth on the same should not be projected.

Also, the revenues projected from advertisement includes minimum guarantee amount to be received from the concessionaire as per the agreed business plan. Therefore, the company does not foresee any revenues over and above MAG from this source.

Forex

Forex revenues are shown in the following table

<i>(fig in Rs. Crores)</i>	<i>2011-12</i>	<i>2012-13</i>	<i>2013-14</i>	<i>2014-15</i>	<i>2015-16</i>	<i>Total</i>
<i>Filed</i>	<i>2.74</i>	<i>4.30</i>	<i>3.46</i>	<i>3.90</i>	<i>4.36</i>	<i>18.75</i>
<i>Filed – Upfront/ One time revenues</i>	<i>1.96</i>	<i>1.96</i>	<i>1.96</i>	<i>1.96</i>	<i>1.96</i>	<i>9.81</i>
<i>Total as per filing</i>	<i>4.70</i>	<i>6.26</i>	<i>5.42</i>	<i>5.86</i>	<i>6.32</i>	<i>28.56</i>
<i>As per CP</i>	<i>4.70</i>	<i>6.26</i>	<i>6.57</i>	<i>7.38</i>	<i>8.27</i>	<i>33.18</i>

Revenues projections from Forex included upfront fee Rs 1.96 Crs every year respectively which will not grow year on year. Hence, Authority's assumption of applying growth on these upfront revenues is not relevant and should be changed.

Non-aeronautical revenue

Rental Revenue

Rental revenues are shown in the following table

<i>(fig in Rs. Crores)</i>	<i>2011-12</i>	<i>2012-13</i>	<i>2013-14</i>	<i>2014-15</i>	<i>2015-16</i>	<i>Total</i>
<i>Filed</i>	44.06	49.66	49.19	51.16	53.21	247.28
<i>As per CP</i>	44.06	49.66	52.14	58.52	65.59	269.97

4% Growth YOY on Rental revenue of Fy 12-13 was applied by the company for projecting revenues from Fy 13-14 onwards as most of the rental agreements have 4% escalation YOY . Also FY 12-13 revenues included 2.36 Crs of revenue of previous FY (11-12); hence, 4 % esc was not applied on this revenue.

However, Authority has applied Growth of Traffic +5% on rental Incomes of Fy 12-3 for projecting revenues from rentals and also applied escalations on revenues of 2011-12 booked in 2012-13.

There is no rationale for applying traffic growth on this revenue stream.

Cargo Revenue

<i>(fig in Rs. Crores)</i>	<i>2011-12</i>	<i>2012-13</i>	<i>2013-14</i>	<i>2014-15</i>	<i>2015-16</i>	<i>Total</i>
<i>Filed</i>	10.72	10.58	10.77	11.63	12.56	6.26
<i>Filed – Upfront/ One time revenues</i>	5.78	5.78	5.78	5.78	5.78	8.90
<i>Total as per filing</i>	16.5	16.36	16.55	17.41	18.34	85.16
<i>As per CP</i>	16.5	16.36	17.18	19.28	21.61	0.92

Authority has considered growth in cargo Rentals Revenues as well, which as per agreement is same YOY. There cannot be increase based on traffic growth in this segment.

Also, GHIAL has considered a realistic growth in cargo revenues based on cargo tonnage growth assumption of 8% YOY. In the filing, Authority has applied a growth of spend increase of 5% over and above the cargo tonnage growth which is not foreseen and achievable in the coming future.

Request: We request the Authority to accept the non-aero revenue projections as per our filing with no true up.”

f Authority’s Examination of Stakeholder Comments on Issues pertaining to Non-aeronautical revenue

18.23. The Authority has carefully analysed the comments made by the stakeholders on the issues pertaining to non-aeronautical revenue in respect of RGI Airport, Hyderabad. The Authority has noted that HIAL is not in conformity with Authority’s approach of determining the non-aeronautical revenues.

18.24. The Authority will like to clarify that growth in non-aeronautical revenues arises out of growth in passengers and growth in GDP of the country. It should however be noted that growth in passengers is again dependent on growth in GDP of the country. Empirically it is noted growth in passenger captures normal spending power of passengers. In addition, the Authority has considered a 5% spend increase on account of improved layout of area catering to non-aeronautical services, diversity in non-aeronautical services offered, etc. The Authority considers that this approach is robust.

18.25. Further, the Authority has decided to true up all non-aeronautical revenue in the next Control Period and thus the Authority feels that getting into details of individual non aeronautical business of HIAL (as a standalone entity), as commented by HIAL, may entail different escalation factors for each non aeronautical revenue head and may not be appropriate. However, since the non-aeronautical revenue is to be trued up, hence the Authority has applied a single approach of escalating each non aeronautical revenue head by the traffic growth plus an additional 5% spend increase for the current tariff determination .

18.26. The Authority notes AAI comment that *“The treatment of commercial revenue inside the Terminal Building should be treated as aeronautical revenue as Terminal Bldg. is mostly treated as aeronautical asset”*. However, the Authority clarifies that aeronautical revenues arises out of aeronautical services and Terminal Building may also contain non aeronautical services. The Authority further notes that in AAI submission w.r.t. Chennai, Kolkata, etc. AAI has treated commercial revenue inside terminal building as non-aeronautical and not completely aeronautical.

18.27. The total Non-Aeronautical Revenues from 2012 to 2016 considered by the Authority for determination of aeronautical revenue for HIAL is as follows:

Table 57: Total Non-Aeronautical Revenues considered by the Authority in the current Control Period

	2011-12	2012-13	2013-14	2014-15	2015-16
Total Non-Aeronautical Revenues considered by Authority	156.65	186.23	164.37	184.48	206.77

Decision No. 14. Regarding Non-aeronautical Revenue

14.a. The Authority decides to adopt the following approach for consideration of non-aeronautical revenue towards determination of tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:

- i. To consider non-aeronautical revenues as per Authority’s assumptions as summarized in Table 57.
- ii. To true-up the non-aeronautical revenue for HIAL for the current Control Period at the time of tariff determination for the next Control Period

19. Treatment of Cargo, Ground Handling & Fuel throughput Revenues

a HIAL Submission on Treatment of Cargo, Ground Handling & Fuel throughput Revenues

19.1. HIAL stated that Cargo Revenues were considered as per the projections given by the cargo operator at Hyderabad airport and the revenue share to HIAL was 18% of gross revenue as per the agreement between the cargo operator and HIAL. Also, the Cargo revenues for the FY 2011-12 were considered at actuals and the cargo revenues for the FY 2012-13 were considered based on extrapolation of six months actual revenue. HIAL had escalated cargo revenues by 8.00% each year stating that *“Cargo escalation is as same escalation as used by HMA CPL which is approved by AERA”*.

19.2. The Cargo revenues as per HIAL tariff model is as under,

In crore	2009	2010	2011	2012	2013	2014	2015	2016
Cargo – Revenue Share	7.41	6.41	10.16	10.72	10.58	10.77	11.64	12.57
Cargo – rental Revenue	5.78	5.78	5.78	5.78	5.78	5.78	5.78	5.78
Cargo- Total	13.19	12.19	15.94	16.50	16.36	16.55	17.41	18.34

19.3. For the Ground Handling revenues, HIAL stated that the ground handling contributed to 10% of revenue share and this revenue was escalated based on growth in international ATMs. Also, this ground handling and cargo revenue was categorized as non-aeronautical since it was not involved in the operations directly and only revenues from these outsourced operations were being received.

19.4. HIAL in its submission dated 04.04.2013 stated that Ground Handling revenues have been escalated based on increase in ATM and increase in spending as ground handling is dependent on ATM growth.

19.5. The Ground Handling revenues as per HIAL tariff model is as under,

Treatment of Cargo, Ground Handling & Fuel throughput Revenues

	2009	2010	2011	2012	2013	2014	2015	2016
Ground Handling	5.37	5.16	5.57	5.22	5.30	5.57	6.30	6.99

19.6. A separate tariff proposal for fuel farm was also submitted by HIAL in line with the requirement under the Authority's previous order. HIAL's submission on the broad approach was as follows:

19.7. Financial year 2011-12 was taken as the first year of the Control Period. And Opening RAB was firmed up by aggregating the total assets of fuel farm assets at book value on the last day of the year 2010-11. Addition and deletion was taken as per audited financial statements. Additional Capex was projected for Fuel Farm from FY 12-13 onwards as per the business plan. And the depreciation was computed as per Schedule XIV of the Companies Act 1956. WACC calculation in respect of Fuel Farm facility was considered equity cost of 24%. In line with these considerations, calculations for the same were submitted and the Eligible Yield per kilolitre was worked out to be Rs. 828.29 per kiloliter for the Control Period.

19.8. Accordingly the Yield calculations, the following figures were submitted by HIAL:

	2008-09 to 2010-11	2011-12 to 2015-16
PV of Gross target Revenue	105.32	132.53
PV of Fuel upliftment	0.13	0.16
Eligible Yield Per KL	826.08	828.29
Yield Actually charged	2,170.00	2,170.00
Excess Charged adjusted in HIAL Aero Revenues per KL	(1,343.92)	(1,341.71)

19.9. HIAL had also submitted that if the Yield per Kl granted by the Authority was different from the Yield considered by HIAL in its submissions, the "Excess Charged adjusted in HIAL Aero Revenues" would also get adjusted.

b Authority's Examination of HIAL Submissions on Treatment of Cargo, Ground Handling & Fuel throughput Revenues

19.10. The Authority had carefully considered the submissions of HIAL in respect of revenue received from cargo, ground handling and fuel farm.

19.11. The Authority had noted that HIAL had outsourced the cargo handling activity to Hyderabad Menzies Air Cargo Pvt Ltd. (HMACPL), which was incorporated by HIAL and Menzies Aviation Plc (with 51% of the shareholding in the Company held by HIAL and 49% held by Menzies). The Operation and Maintenance Agreement was signed between HIAL and HMACPL for provision of operation and maintenance services of the cargo terminal by HMACPL. The Authority had noted that some assets like cargo terminal building and associated infrastructure etc. in respect of cargo service are in the books of HIAL and not in the books of HMACPL.

19.12. The Authority had observed that the charges in respect of cargo services were not included in Schedule 6: Regulated Charges of the Concession Agreement. However, under the legislative policy guidance of the AERA Act, the tariffs in respect of cargo services were determined by the Authority at RGI Airport, Hyderabad. Cargo service, under the AERA act, was considered as aeronautical. Primary consideration for classification of an asset into aeronautical or non-aeronautical was based on the fact whether the service being provided utilizing those assets was aeronautical or non-aeronautical. The AERA Act clearly states that cargo and ground handling are both aeronautical services. Both have been concessionised out by HIAL to third party concessionaires. However the assets which are used to give cargo service are on the books of accounts of HIAL but the assets used to give ground handling service are not on the books of HIAL as per the information available. Accordingly the Authority notes that the assets being utilized for provision of cargo service will be considered as aeronautical assets and the revenues therefrom accruing in the hands of the airport operator should also be considered as aeronautical revenue despite the fact that this service is concessionised out to third party concessionaires.

19.13. However, the value of such assets was not immediately identifiable from the tariff model submitted by HIAL. Hence the Authority was unable to shift the value of such

assets from non-aeronautical assets to aeronautical assets. The revenue from these assets was to be considered as aeronautical after receiving the auditor certificates.

19.14. The Authority had sought auditor certification from HIAL on the value of such assets along with its yearwise capitalization and depreciation schedule. Once the values were available to the Authority, it had proposed to shift the auditor certified value of assets pertaining to cargo service from non-aeronautical assets to aeronautical assets. The Authority was aware that this shifting of assets might have an upward impact on the aeronautical tariff under dual till but that was not expected to be very material. Under single till this inter se shift from non-aeronautical to aeronautical asset base would have no impact. Pending the receipt of such certification, the Authority had performed the dual till calculations with the cargo assets being clubbed in non-aeronautical assets and had also considered the revenue therefrom as non-aeronautical revenue. Upon receiving this information, revenue from cargo service in the hands of HIAL was also proposed to be shifted to aeronautical revenue.

19.15. Also the Authority noted that HIAL receives two payments from HMA CPL: (a) a Revenue Share of 18% and (b) Rent calculated as $1/12^{\text{th}}$ of 14% of the Capital Investment by HIAL. And HIAL had considered an increase of 8.00% per annum in the revenue share from HMA CPL for the rest of the Control Period

19.16. Tariffs in respect of ground handling services provided by two agencies, Air India SATS Airport Services Pvt Ltd. and Menzies Bobba Ground Handling Services Pvt Ltd were determined by the Authority, vide its Order No 12 / 2011-12 dated 29.09.2011 and Order No 15 / 2011-12 dated 17.10.2011 respectively. In the tariff model, the authority noted that revenue in the hands of HIAL from the provision of Ground Handling services at RGI Airport, Hyderabad was in the form of a revenue share from these two agencies and the break-up of revenue earned from AI-SATS and Menzies Bobba were not furnished by HIAL. The Authority had noted that as per Schedule 3: Part 1 – Airport Activities of the Concession Agreement between Ministry of Civil Aviation and HIAL, 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 were not included in the Schedule 6 of

the Concession Agreement. However, under the legislative policy guidance of the AERA Act, the Authority undertook the determination of tariff in respect of ground handling services at RGI Airport, Hyderabad vide its Orders referred above.

19.17. The Authority also carefully considered the submissions made by HIAL in respect of Fuel Farm facilities. The Authority understood that the fuel farm facility at RGI Airport, Hyderabad was owned by HIAL i.e. the assets thereof were on the books of HIAL, however the operations of fuel farm facility were contracted out to a third party under an Operations contract.

19.18. HIAL is providing fuel farm service at RGI Airport, Hyderabad which is a part of the aeronautical service of supply of fuel to an aircraft. Hence, the tariffs for this service have to be determined by the Authority as per the Authority's Direction No. 04/2010-11 dated 10.01.2011 (i.e. CGF guidelines). The materiality and competition indices were first determined by the Authority, which were based on total fuel throughput in KL at all major airports. The materiality index for supply of fuel in respect of RGI Airport, Hyderabad was noted to be 5.92% and hence this service was material. Also, the Authority observed that no reasonable objections were received from the users of fuel farm services and hence, the tariffs were proposed to be determined under light touch approach. Authority noted that the existing users were being charged at a yield of Rs. 2,170 per kiloliter instead of the calculated Rs. 828.29 per kiloliter and hence this difference was being considered as excess yield from the fuel farm services and was being linked to the MYTP submissions. This amount was proposed to be subtracted from the ARR for defraying the passenger charges under MYTP.

19.19. A cost of equity of 16% and cost of debt as that under MYTP submissions were considered by the Authority which resulted in a different WACC and hence a different ARR than that being considered by HIAL. Accordingly, the yield per kiloliter and the excess charge per kiloliter were re-calculated by the Authority.

Table 58: Calculation of Yield Per Kiloliter in respect of fuel farm services – as per the Authority in the Consultation Paper No 09/2013-14

	2011-12 to 2015-16
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Treatment of Cargo, Ground Handling & Fuel throughput Revenues

NPV of Gross target Revenue calculated by AERA	115.59
Fuel upliftment (in Kilolitres)	0.16
Yield Per KL	728.40
Yield Actually charged	2,170.00
Excess Charged adjusted from the ARR of MYTP	(1,441.60)

19.20. Based on the material before it and its analysis, the Authority had proposed in the Consultation Paper No 09/2013-14 dated 21.05.2013:

- 19.20.1. To consider the revenue from Ground Handling services (provided by third party concessionaires) accruing to HIAL as non-aeronautical revenue for determination of tariffs of aeronautical services for the current Control Period.
- 19.20.2. To consider revenue from fuel farm service provided by HIAL (assets on the balance sheet of standalone entity of HIAL (refer Para 3.4 above) and given to M/s RIL under operations and maintenance agreement) as aeronautical revenue in the hands of HIAL, also taking into account the expenses thereof.
- 19.20.3. To determine the tariffs for fuel farm service provided by HIAL under light touch approach (through this service is “material but not competitive”, however HIAL having entered into reasonable user agreements).

19.21. Based on the material before it and its analysis, the Authority had proposed in the Consultation Paper No 09/2013-14 dated 21.05.2013:

- 19.21.1. To note that (a) Cargo service is an aeronautical service, (b) Cargo service is outsourced by HIAL to third party concessionaires, (c) There are assets pertaining to cargo service which are in the books of HIAL, (d) In the model submitted by HIAL assets pertaining at (c) are considered as non-aeronautical assets under both single and dual till, inasmuch as HIAL does not regard cargo service as a regulated (aeronautical) service (e) As per Authority’s treatment of revenue recognition, in normal course the revenues received by the airport operator from third party concessionaires are to be reckoned as non-aeronautical revenues, (f) The Authority proposes to take into account the assets as at (c) above as aeronautical assets after obtaining a due certification

and details from HIAL and treat the revenues accruing to HIAL from these assets as aeronautical revenue.

19.21.2. Having regard to 19.21.1.(a) - 19.21.1.(e) above, to treat for the time being the revenues from cargo service as non-aeronautical (both under single and dual till)

19.21.3. To treat the revenue from the cargo service as aeronautical (along with associated expenses if any) as and when the Authority, after stakeholders consultation gives effect to 19.21.1.(f) above (both under single and dual till), the impact of which on the aeronautical tariffs in dual till cannot, for the time being, be calculated.

c Stakeholder Comments on Issues pertaining to Treatment of Cargo, Ground Handling & Fuel throughput Revenues

19.22. Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the tentative proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its Consultation Paper No 09/2013-14 dated 21.05.2013. Stakeholders have also commented on treatment of Cargo, Ground Handling & Fuel throughput Revenues in respect of RGI Airport, Hyderabad. These comments are presented below:

19.23. On the issue of revenue from Cargo services, IATA stated that

“IATA agrees with the Authority’s treatment of revenues from cargo service accruing to the airport operator as aeronautical revenue. In addition, IATA asserts that since cargo service is defined as an aeronautical service under the AERA Act to be regulated by AERA, any revenue (e.g. concession fee, revenue share, rental etc) derived by the airport from provision of this aeronautical service (regardless of whether the service is provided by the airport itself, by concessionaires or by the airport’s appointed agent) should be treated as aeronautical revenue”

19.24. On the issue of revenue from Cargo services, IATA further stated that

“IATA is concerned that while the assets used for provision of cargo services are in the books of the airport thus requiring the users to shoulder the burden of depreciation and WACC payable to the airport, the revenue that goes back to the airport to be treated as aeronautical revenue (which is a minor portion of the amount earned by the concessionaire) may not be commensurate with the costs borne by the users. Furthermore, the users could already be paying to the concessionaire (Hyderabad Menzies Air Cargo Pvt Ltd) cargo rates that are far in excess of the returns that the airport is entitled to should it be handling the cargo services itself. In other words, the users could be hit with a double whammy. IATA urges the Authority to re-examine the situation thoroughly and in conjunction with the returns that HMA CPL is getting to ensure that users do not end up shouldering unnecessary high costs for cargo services.”

19.25. On the issue of revenue from Ground Handling services, IATA stated that

“Under the AERA Act, ground handling service is an aeronautical service. Regardless of who provides the service, the airport has the monopoly power to affect the cost which is a significant component of industry cost. In order to curb any monopolistic tendency of the airport to treat ground handling services as a convenient source of revenue which could then lead to runaway cost for the airlines and the industry, IATA asserts that revenue in any form (including royalties and concession revenue) derived by the airport from ground handling services should be treated as aeronautical revenue.”

19.26. On the issue of Treatment of Fuel Throughput charges, IATA stated that

“IATA agrees with the Authority’s treatment of revenues from fuel services as aeronautical revenue. In addition, IATA asserts that a primary reason for fuel services to be regarded as an aeronautical service is because the airport can abuse its monopolistic position in this area and cause fuel costs to go up unreasonably and unnecessarily. Hence, any form of revenue derived by the airport from fuel services

(e.g. concession fee, rentals, fuel facility fees etc.) should be treated as aeronautical revenue to curb the ability of the airport to treat fuel services as a convenient source of revenue that will have repercussions on the cost efficiency of the aviation industry.”

19.27. On the issue of Treatment of Fuel Throughput charges, IATA further stated that

“IATA is of the strong view that the sanctity of the tariff determination process should not be compromised by allowing the airport to levy a fuel throughput charge that is 2.6 times higher than what is allowed based on the ARR. AERA must preserve an orderly process by only allowing the ARR for fuel services to be collected through the fuel throughput charge and not allow a huge over-collection above the ARR to take place on the weak justification that it would be compensated through a lower YPP. It is unfair and indefensible to have the airlines pay a much higher rate just because they had been grossly over-charged all along. IATA also disagrees with the Authority’s observation that the fuel farm agreements had been reasonable because the Authority was not aware of reasonable objections from the users of fuel farm services. The airlines had all along vehemently objected to the high fuel throughput charge at HYD but had no recourse since the airport had absolute monopoly over fuel services. IATA urges AERA to redress this unfair situation and reduce the fuel throughput charge to what is permissible based on ARR i.e at Rs 828.29 per kiloliter.”

19.28. FIA on the issue of cargo revenue stated that Revenue from Cargo service ought to be treated as Aeronautical Revenue.

“In the present Consultation Paper, Authority has noted that cargo service is an aeronautical service and the assets pertaining to the cargo services are in the books of HIAL. It is astounding that in one breath Authority has contemplated that revenue arising from assets which are being shown in the books of HIAL and pertaining to cargo service will be treated as aeronautical and yet the revenue receivable by HIAL from cargo service (an aeronautical service in terms of Section 2(a) of the

AERA Act) will be treated as nonaeronautical revenue under both Single Till and Dual Till models.

As per Section 2(a)(v) of the AERA Act, that aeronautical service inter alia means any service provided for the cargo facility at an airport. A bare reading of the statutory provision reflects that nowhere the AERA Act provides that treatment of a service is dependent on factors like treatment/handling of assets or whether it is being provided by the airport operator or is being outsourced by it. Thus, irrespective of any such interpretation as put forward by the Authority, cargo service ought to be treated as an aeronautical service and revenue arising out of it should be treated as aeronautical revenue.

FIA is conscious /aware that Authority has proposed to follow the Single Till Model for determination of aeronautical tariffs at RGI Airport. Thus, the proposal to treat the revenue arising from cargo services as non-aeronautical revenue won't materially affect the inclusion of revenue for determination of the Target Revenue. However, treatment of revenue arising from aeronautical service contrary to the statutory mandate, irrespective of the Till to be followed, is crucial for precedential value in the sector."

19.29. FIA on the issue of fuel farm stated that

"Authority has noted that Airlines are presently making use of the fuel farm services at RGI Airport, Hyderabad and they would have entered into agreements with the fuel farm service provider, wherein the tariffs would have been indicated to the airlines. AERA is not aware of any reasonable objections from the users of fuel farm services (Clause 6 of CGF Guidelines). Thus, in view of the reasonableness of these agreements, AERA has proposed to determine the tariffs for fuel farm service provided by HIAL at RGI Airport, Hyderabad under light touch approach."

19.30. AAI on the issue of treatment of cargo, ground handling and fuel assets stated that

- *“The AERA has proposed to include the cargo and Fuel dispenses activity in the aeronautical services. However, it has proposed to treat ground handling as non aeronautical services. This aspect needs to be re-examined.*
- *In the Consultation Paper ground handling has been treated as non aeronautical revenue. In case of Single Till there is no effect on this subject. However, in case of Dual Till, the classification of some assets like Conveyor Belt, Baggage Claim Area used for ground handling activity into aeronautical and non aeronautical needs to be determined.”*

19.31. With regard to the fuel throughput charges, combined response of Oil Companies including IOCL, BPCL and HPCL stated that the price for supply of fuel was not indicated in Suppliers agreement and a separate e-mail was sent conveying the same.

“With regard to paras 17.25 and 17.29 of the Consultation Paper, we would like to submit, that the Oil companies, as Suppliers at the airport, are the users of the fuel farm services and have entered into individual tri-partite Suppliers Agreements with the fuel farm service provider i.e. GHIAL as Airport Operator and M/s Reliance Industries Ltd. as Fuel Farm Operator.

The tariff for use of fuel facilities at the airport was not indicated in the Suppliers Agreement, however the same was mentioned in an e-mail message dated 6th Feb, 2008 from GHIAL, as Rs. 2170 per KL (Rs. 670 per KL towards Throughput Fee plus Rs.1500 per KL towards Infrastructure Recovery Charge, which includes fee towards Into Plane services). Copy of the e-mail is attached as Annexure-I.”

19.32. Further, combined response of Oil Companies including IOCL, BPCL and HPCL stated that the oil companies jointly protested against the exorbitant price but given no other alternative, had to abide by the price set by HIAL.

“The Fuel Throughput charges of Rs. 2170 per KL demanded by GHIAL was considered exorbitant and the Oil PSUs had jointly protested

against the same, vide communication ref. AV/SSB/GHIAL dated 15 July, 2008. A copy of the joint letter protesting against such exorbitant rate demanded by GHIAL is attached as Annexure-II. GHIAL did not have any reasonable consultation, stakeholder meeting or discussion for exchange of views with Suppliers or any back ground of such over-priced Fuel Throughput Charge. However, with no other alternative, and in order to ensure supplies to honour contractual commitments to Airline customers, the Suppliers had no option but to accept the tariff demanded by GHIAL, and since then have been releasing the payments to GHIAL at these rates.

As you may kindly be aware, the 'Throughput Fee' & 'Infrastructure & Opex Fee' charged to the Suppliers gets added to final ATF price for Airlines, thereby increasing the input cost to Airline Operations."

- 19.33.** Combined response of Oil Companies including IOCL, BPCL and HPCL further stated that the oil companies advised GHIAL to arrange necessary approvals from the Authority for the throughput charges.

"It may further be noted that in response to Authority's letter ref. F.No.AERA/20015/FT/2010-II/305 dated 24th June 2010 addressed to GHIAL, the Oil PSUs had, vide joint letter dated 16th July, 2010, advised GHIAL to arrange necessary approvals from AERA for the throughput charges demanded by GHIAL."

- 19.34.** Combined response of Oil Companies including IOCL, BPCL and HPCL further stated that

"In view of the above fact, which is on record, and which information might not have been made available to the Authority, we are of the opinion that 'reasonable objection from users of the fuel farm facilities' do exist, and that the tariffs for fuel farm services should therefore, not be determined under light touch approach and without consultation of Suppliers, which are the major stakeholders with regard to Fuel supplies at GHIAL.

We would further like to submit that, the existing Supplier Agreement, between Suppliers, GHIAL and the Fuel Farm Operator which was renewed on 8th August, 2011 for a period till 8th March, 2014, clearly mentions that the Throughput Fee is required to be regulated by any appropriate authority as per the law, and that the regulated fee that attains finality, shall prevail. During renewal of Supplier Agreement, discussions were held between Suppliers and GHIAL and Suppliers had clearly stated their position with respect to Authority's role regarding determination of tariff, thereby implying that the charges should not be considered under soft touch."

19.35. Combined response of Oil Companies including IOCL, BPCL and HPCL requested the Authority to look at the following points

"a) Authority may consider and treat the joint letter ref AV/SSB/GHIAL dated 1st July, 2008 (Annexure-II) as objection to user agreement with regard to high Fuel Throughput Charges at Rajiv Gandhi International Airport, Shamshabad, Hyderabad.

b) The tariffs for fuel farm service provided by HIAL may not be determined under light touch approach, as proposed at para 13.a.iii of the Consultation Paper

c) HIAL submission for considering the excess yield being charged in respect of fuel farm services towards defraying the aeronautical charges for the passengers, may not be accepted and only the actual lower eligible yield per KL may be approved as Fuel Throughput Charge applicable at the airport.

d) The above revised tariff for fuel farm services at Rajiv Gandhi International Airport, Shamshabad, Hyderabad may please be made applicable on prospective basis, in order to avoid complications of adjustments of FTC already collected by Suppliers from the Airlines, as per GHIAL's demand, and paid to GHIAL."

19.36. Additionally, the combined response of Oil Companies including IOCL, BPCL and HPCL also stated that

“While on the subject, we would also like to bring to notice of the Authority the media reports about GHIAL's proposal to hive off its Fuel Farm business to a Special Purpose Vehicle (SPV) through a slump sale. The fuel-farm business will be transferred by GHIAL to the SPV, which will then divest 74% stake. As per the reports, the SPV will have equity and debt components of Rs. 57 Crore and Rs. 85.56 Crore respectively, making the asset value as Rs. 142.56 Crore.”

d HIAL's response to Stakeholder Comments on Issues pertaining to Treatment of Cargo, Ground Handling & Fuel throughput Revenues

19.37. Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 09/2013-14 dated 21.05.2013, the Authority forwarded these comments to HIAL seeking its response to these comments. HIAL has provided responses to the Stakeholders' comments, which are presented below:

19.38. In response to AAI's comments on Treatment of Cargo, ground handling and Fuel, HIAL has stated as under:

“Cargo and Fuel are not regulated activities as per the concession agreement.

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

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

Cargo, Fuel and Ground Handling should be outside the regulations.

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

As regards to the baggage claim area etc. it is wrongly being termed as ground handling assets as these are pure aero assets and in books of GHAL.

The assets such as Conveyor Belt and Baggage Claim Area are not Ground Handling assets. They are aeronautical assets and the same will not impact the Dual Till calculations.

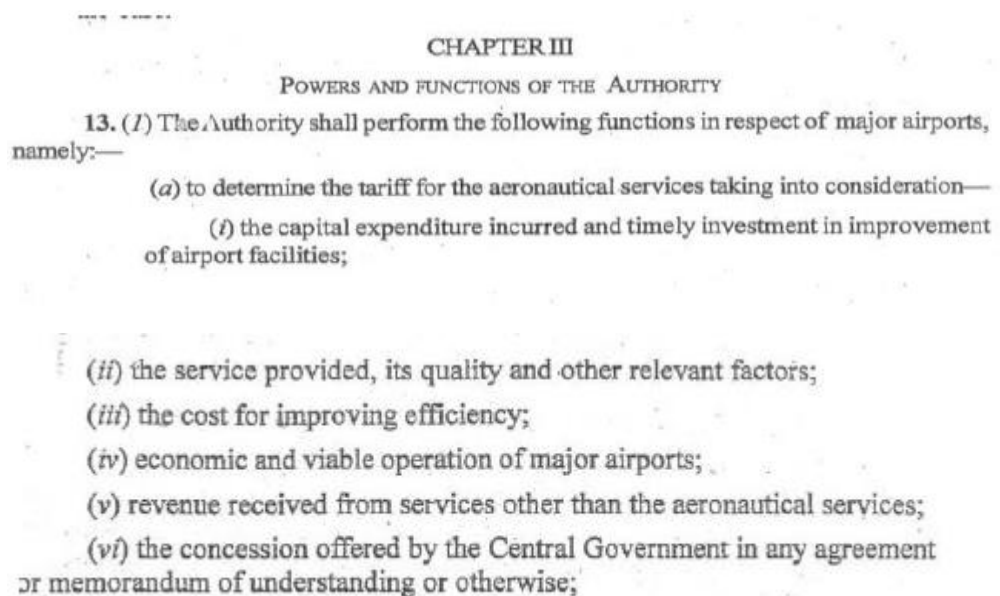
The Auditor's certificate has been provided clarifying the same."

19.39. In response to FIA's comment that the Revenue from Cargo service ought to be treated as Aeronautical Revenue, HIAL has stated that:

"Cargo must be kept outside the regulations.

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

AERA act contemplates that the concession needs to be taken into consideration in fixing the charge. The clause 13(1)(a)(iv) reads as under:



The Concession Agreement contemplates regulations of only the Regulated Charges by the Authority as mentioned in the Schedule 6 of Concession Agreement. The AERA act also contemplated that the

concession should be adhered. As such the provisions of the concession agreement needs to be adhered.

Provisions of Concession Agreement:

Only the following Regulated Charges as enumerated in the Schedule 6 of the Concession Agreement are to be regulated by the Independent Regulatory Authority (IRA):

- 1. Landing Charges*
- 2. Parking Charges*
- 3. Housing Charges*
- 4. Passenger Service Fee*
- 5. User Development Fee*

Clause 10.2 of the Concession Agreement reads as under:

10.2 Airport Charges

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

iii. Freedom to determine Other Charges for other facilities or services:

Clause 10.3 of the Concession Agreement reads as follows:

10.3 Other Charges

HIAL 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.

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

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

19.40. Further, in response to FIA’s comment on Fuel Farms, HIAL has stated that”

“The Authority has provided chance to all the stakeholders to submit their comments/responses on the issues related to CP 09/2013-14 and called for written evidence based feedback, comments and suggestions from stakeholders on the proposed stand of the Authority.”

19.41. In response to the combined comments of IOCL, BPCL and HPCL on the issues pertaining to Treatment of Cargo, Ground Handling and Fuel throughput revenues, HIAL has stated as under:

“We disagree with the stand of oil companies that the fuel charges must be regulated.

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

Section 13 of the AERA Act states as under: “13. Functions of authority- (1) The Authority shall perform the following functions in respect of major airports, namely:- (a) to determine the tariff for the aeronautical services taking into consideration- (i) the capital expenditure incurred and timely investment in improvement of airport facilities; (ii) the service provided, its quality and other relevant factors; (iii) the cost for improving efficiency; (iv) economic and viable operation of major airports; (v) revenue received from services other than aeronautical services (v) revenue received from services other than the aeronautical services; (vi) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise; (vii) any other factor which may be relevant for the purposes of this Act: Provided that different tariff structures may be determined for

different airports having regard to all or any of the above considerations specified at sub-clauses (i) to (vii)” (...emphasis added) A perusal of Section 13 of the AERA Act makes it clear that while determining tariff for aeronautical services, AERA is statutorily obligated to consider the concession offered to the Airport Operators by the Central Government and the other agreements which form an integral and inalienable part of such concession. Reading of Section 13(1)(a)(vi) indicates that the concession granted by the Central Government has to be read into the AERA Act and all its provisions as well as limitations contained therein have to be considered by AERA while determining tariff including while deciding which services in a particular case and in terms of the relevant Concession, can be regulated by AERA. This is further confirmed by a reading of the proviso to Section 13(1)(a) of the AERA Act which 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 the said section. In other words, the AERA Act recognizes that a straightjacket applicability of its provisions to all major airports is not intended and grants flexibility to AERA to determine tariff structures to different airports having regard to various considerations including the concession granted by the Central Government. Thus, even though the AERA Act empowers AERA to regulate tariff for Aeronautical Service as defined in Section 2(a) of the AERA Act, in case any concession has already been granted by the Central Government, AERA is statutorily mandated to consider such concession. In the case of RGIA, since one of the concession granted by the Central Government is that save for the ‘Regulated Charges’, the GHIAL shall be free without any restriction to determine all Other Charges. Thus, on a reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement, AERA is only empowered to regulate the Regulated Charges as defined in the Concession Agreement (as an exception to the mandate of the Act which is recognized and allowed

by the Act itself) and cannot regulate any Other Charges in respect of the facilities and services provided at the Airport including the other Aeronautical Services as defined in Section 2(a) of the AERA Act.

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

Accordingly, it's an earnest request that the Fuel charges should be kept outside the regulations."

19.42. Further HIAL added that:

"The fuel throughput charges are not 2170/- per KL as being mentioned here. The 1500/- per KL out of this is infrastructure charge.

The rates proposed by GHIAL were accepted by the oil companies and they have continued to pay the same.

There was no coercion of any type with oil companies. It is ridiculous to assume any coercion with these large monopolistic public sector oil companies.

Also the fuel throughput charge is a profit sharing with oil companies and the same should not be passed on to the end users.

Also pertinent is the fact that oil companies also are supplying fuel to the airlines at airports and thus their profits (which are not transparent) and revenues should also be scrutinized by AERA as it is the ultimate cost of fuel that is important to airlines and excessive profits should not be allowed to monopolistic oil companies.

Without prejudice to our rights, AERA has considered fuel throughput charges as aeronautical revenue in the consultation paper. As per building block approach, GHIAL is entitled to get aero-nautical revenue as per the building blocks. So irrespective of the charges towards Fuel, total entitlement of GHIAL remains the same.

Also as per the concession agreement the fuel charges are not to be regulated by the Authority.

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

Section 13 of the AERA Act states as under: “13. Functions of authority- (1) The Authority shall perform the following functions in respect of major airports, namely:- (a) to determine the tariff for the aeronautical services taking into consideration- (i) the capital expenditure incurred and timely investment in improvement of airport facilities; (ii) the service provided, its quality and other relevant factors; (iii) the cost for improving efficiency; (iv) economic and viable operation of major airports; (v) revenue received from services other than aeronautical services (v) revenue received from services other than the aeronautical services; (vi) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise; (vii) any other factor which may be relevant for the purposes of this Act: Provided that different tariff structures may be determined for different airports having regard to all or any of the above considerations specified at sub-clauses (i) to (vii)” (...emphasis added) A perusal of Section 13 of the AERA Act makes it clear that while determining tariff for aeronautical services, AERA is statutorily obligated to consider the concession offered to the Airport Operators by the Central Government and the other agreements which form an integral and inalienable part of such concession. Reading of Section 13(1)(a)(vi) indicates that the concession granted by the Central Government has to be read into the AERA Act and all its provisions as well as limitations contained therein have to be considered by AERA while determining tariff including while deciding which services in a particular case and in terms of the relevant Concession, can be regulated by AERA. This is further confirmed by a reading of the proviso to Section 13(1)(a) of the AERA Act which 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 the said section. In other words, the AERA Act recognizes that a straightjacket applicability of its provisions to all major airports is not intended and grants flexibility to AERA to determine tariff structures to different airports having regard to various considerations including the concession granted by the Central Government. Thus, even though the AERA Act empowers AERA to regulate tariff for Aeronautical Service as defined in Section 2(a) of the AERA Act, in case any concession has already been granted by the Central Government, AERA is statutorily mandated to consider such concession. In the case of RGIA, since one of the concession granted by the Central Government is that save for the ‘Regulated Charges’, the GHIAL shall be free without any restriction to determine all Other Charges. Thus, on a reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement, AERA is only empowered to regulate the Regulated Charges as defined in the Concession Agreement (as an exception to the mandate of the Act which is recognized and allowed by the Act itself) and cannot regulate any Other Charges in respect of the facilities and services provided at the Airport including the other Aeronautical Services as defined in Section 2(a) of the AERA Act.

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

Accordingly, it’s an earnest request that the Fuel charges should be kept outside the regulations.

19.43. Further HIAL stated as under:

“The earlier charging also had considered the fuel charges @ 2170/- per KL.

The ad-hoc tariff approval was done vide order number 06/2010-11 dated 26th October 2010 for this period.

AERA approved Fuel throughput charges to continue at the prevailing rate till the order was valid or till the final order is passed, whichever is earlier.

However we shall like to clarify that the fuel throughput charge is a profit sharing with oil companies and the same should not be passed on to airlines. Further as stated above oil companies also are supplying fuel to the airlines at airports and thus their profits (which are not transparent) and revenues should also be scrutinized by AERA as it is the ultimate cost of fuel that is important to airlines and excessive profits should not be allowed to monopolistic oil companies.”

- 19.44.** Further to the combined comments of IOCL, BPCL and HPCL on the issue that tariffs for fuel farm services should not be determined under light touch approach, HIAL has stated as under:

“The existing agreements including the rates being charged have been agreed upon by oil companies and the same has been paid by them.

AERA is taking a holistic view for the Airport as well as Fuel Farm and the excess revenue from Fuel Farm is being set off against the Airport's Revenue eligibility

There is nothing on record to show that oil companies had communicated against the soft touch regulation.

The Para reproduced herein in no way can be interpreted to mean that the soft touch regulation cannot be there.

AERA has considered fuel throughput charges as aeronautical revenue in the consultation paper. As per building block approach, GHIAL is entitled to get aero-nautical revenue as per the building blocks.

So irrespective of what GHIAL is charging towards Fuel total entitlement remains the same.

However we are of the view that the fuel charges are akin to profit sharing with oil companies and should be treated as non-Aeronautical.

We shall also like to clarify that the fuel throughput charge is a profit

sharing with oil companies and the same should not be passed on to airlines as an airport charge. Further as stated above oil companies also are supplying fuel to the airlines at airports and thus their profits (which are not transparent) and revenues should also be scrutinized by AERA as it is the ultimate cost of fuel that is important to airlines and excessive profits should not be allowed to monopolistic oil companies.

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

As such Authority is not mandated to regulate any Other Charges in respect of the facilities and services provided at the Airport. Accordingly, it's an earnest request that the Fuel charges should be kept outside the regulations.

The statement being referred herein in no way supports the stand of oil companies against soft touch

The clause referred to in the Supplier's Agreements does not in any way contradict the Soft Touch Stance. However, the clause states that the Final price shall at all times be such price as approved by the Regulator."

- 19.45.** Further in response to the combines comments of IOCL, BPCL and HPCL on the issue pertaining to excess yield being charged in respect of fuel farm services, HIAL has stated as under:

"Without prejudice to our rights, AERA has considered fuel throughput charges as aeronautical revenue in the consultation paper. As per building block approach, GHIAL is entitled to get aero-nautical revenue as per the building blocks. So irrespective of what GHIAL is charging towards Fuel total entitlement remains the same.

However we shall like to clarify that the fuel throughput charge is a profit sharing with oil companies and the same should not be passed on to airlines as an airport charge."

19.46. In response to the combined comments of IOCL, BPCL and HPCL on the issue of HIAL's proposal to hive off its fuel farm business to a SPV, HIAL has stated as under:

"These are hypothetical statements and cannot be commented."

19.47. In response to the combined comments of IOCL, BPCL and HPCL on the issue of foregoing PSU suppliers, HIAL has stated as under:

"We are of the view that under AERA acts and under the concession agreement the Fuel charges are not to be regulated.

Also there is nothing on the record to show that a light touch regulation cannot be mandated by authority.

As per Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement. As such Authority is not mandated to regulate any Other Charges in respect of the facilities and services provided at the Airport.

Accordingly, it's an earnest request that the Fuel charges should be kept outside the regulations.

Without prejudice to our rights, In case the excess of Fuel Throughput revenue is not used towards defraying the aeronautical charges, the aeronautical charges will increase steeply which will also affect airline customers only.

However, it is not clear how an oil company is affected as they are saying that the same is passed on to airlines.

However we shall like to clarify that the fuel throughput charge is a profit sharing with oil companies and the same should not be passed on to airlines as an airport charge.

Further as stated above oil companies also are supplying fuel to the airlines at airports and thus their profits (which are not transparent) and revenues we would request these to be scrutinized by AERA as it is the ultimate cost of fuel that is important to airlines and excessive profits should not be allowed to monopolistic oil companies."

19.48. In response to IATA's comments on issues pertaining to Recognition of revenue from cargo services, ground handling services and fuel services HIAL has stated as under:

"It's earnestly requested that Cargo, ground handling and Fuel should not be regulated by Authority.

The rationale of the same is as under:

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

Section 13 of the AERA Act states as under: "13. Functions of authority- (1) The Authority shall perform the following functions in respect of major airports, namely:- (a) to determine the tariff for the aeronautical services taking into consideration-

(i) the capital expenditure incurred and timely investment in improvement of airport facilities;

(ii) the service provided, its quality and other relevant factors;

(iii) the cost for improving efficiency;

(iv) economic and viable operation of major airports;

(v) revenue received from services other than aeronautical services;

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

(vii) any other factor which may be relevant for the purposes of this Act: Provided that different tariff structures may be determined for different airports having regard to all or any of the above considerations specified at sub-clauses (i) to (vii)" (...emphasis added) A perusal of Section 13 of the AERA Act makes it clear that while determining tariff for aeronautical services, AERA is statutorily obligated to consider the concession offered to the Airport Operators by the Central Government and the other agreements which form an integral and inalienable part of such concession. Reading of Section

13(1)(a)(vi) indicates that the concession granted by the Central Government has to be read into the AERA Act and all its provisions as well as limitations contained therein have to be considered by AERA while determining tariff including while deciding which services in a particular case and in terms of the relevant Concession, can be regulated by AERA. This is further confirmed by a reading of the proviso to Section 13(1)(a) of the AERA Act which 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 the said section. In other words, the AERA Act recognizes that a straightjacket applicability of its provisions to all major airports is not intended and grants flexibility to AERA to determine tariff structures to different airports having regard to various considerations including the concession granted by the Central Government. Thus, even though the AERA Act empowers AERA to regulate tariff for Aeronautical Service as defined in Section 2(a) of the AERA Act, in case any concession has already been granted by the Central Government, AERA is statutorily mandated to consider such concession. In the case of RGIA, since one of the concession granted by the Central Government is that save for the ‘Regulated Charges’, the GHIAL shall be free without any restriction to determine all Other Charges. Thus, on a reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement, AERA is only empowered to regulate the Regulated Charges as defined in the Concession Agreement (as an exception to the mandate of the Act which is recognized and allowed by the Act itself) and cannot regulate any Other Charges in respect of the facilities and services provided at the Airport including the other Aeronautical Services as defined in Section 2(a) of the AERA Act.

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

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

GoAP:

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

19.49. In response to IATA’s comments on issues pertaining to treatment of Cargo revenue, ground handling revenue and fuel throughput, HIAL has stated as under:

“As explained above in detail, we are of the view that cargo should be outside regulation and all Capex and the revenue associated therein should be treated as Non Aero. This includes the revenue share as well as the rentals.

Cargo must be kept outside the regulations.

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

AERA act contemplates that the concession needs to be taken into consideration in fixing the charge. The clause 13(1)(a)(iv) reads as under:

CHAPTER III	
POWERS AND FUNCTIONS OF THE AUTHORITY	
13. (1) The Authority shall perform the following functions in respect of major airports, namely:—	Functions of Authority.
(a) to determine the tariff for the aeronautical services taking into consideration—	
(i) the capital expenditure incurred and timely investment in improvement of airport facilities;	
(ii) the service provided, its quality and other relevant factors;	
(iii) the cost for improving efficiency;	
(iv) economic and viable operation of major airports;	
(v) revenue received from services other than the aeronautical services;	
(vi) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise;	

The Concession Agreement contemplates regulations of only the Regulated Charges by the Authority as mentioned in the Schedule 6 of Concession Agreement. The AERA act also contemplated that the concession should be adhered. As such the provisions of the concession agreement needs to be adhered.

Provisions of Concession Agreement:

Only the following Regulated Charges as enumerated in the Schedule 6 of the Concession Agreement are to be regulated by the Independent Regulatory Authority (IRA):

- 1. Landing Charges*
- 2. Parking Charges*
- 3. Housing Charges*
- 4. Passenger Service Fee*
- 5. User Development Fee*

Clause 10.2 of the Concession Agreement reads as under:

10.2 Airport Charges

10.2.4 From the date the IRA has the power to approve the Regulated Charges, HIAL shall be required to obtain approval thereof from the IRA. In this regard HIAL shall submit to the IRA, in accordance with any regulations framed by the IRA, details of the Regulated Charges

proposed to be imposed for the next succeeding relevant period together with such information as the IRA may require for review...

iii. Freedom to determine Other Charges for other facilities or services:

Clause 10.3 of the Concession Agreement reads as follows:

10.3 Other Charges

HIAL 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.

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

As explained above in detail, we are of the view that ground handling should be outside the regulation.

In the current tariff filing the upsides of fuel are being utilized for reduction of aeronautical charges.

GHAL is recovering as per entitled target revenue based on building blocks approach.

However we are of the view that Fuel Charges should be outside regulation.”

e HIAL’s own comments on Issues pertaining to Treatment of Cargo, Ground Handling & Fuel throughput Revenues

19.50. On the issue of Treatment of Cargo, Ground Handling & Fuel throughput Revenues, HIAL stated that

“A joint reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement. As such Authority is not mandated to regulate any Other Charges in respect of

the facilities and services provided at the Airport. As such the Cargo should be outside the regulations.

GoAP also has clarified that Cargo, Ground Handling and Fuel should not be regulated.

We also have accordingly classified Cargo assets as non-aero and the revenue therefrom also has been classified as non-aero. In our view this is what is contemplated under the Concession Agreement and the same is requested be accepted by Authority.”

19.51. Further, with regard to the treatment of cargo assets as aeronautical, HIAL stated that

“Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement. Other Charges in respect of the facilities and services provided at the Airport are outside the regulatory ambit of Authority. As such it is earnestly requested that the Cargo should be outside the regulations.

In case of BIAL CP, Authority has laid down as under;

“19.11 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). It had stated therein that the revenue in the hands of the airport operator on account of rendering Cargo and Ground Handling services (being aeronautical services as per the AERA Act) by 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”.

As such, the treatment being meted out to GHIAL is in contradiction of treatment made in case of DIAL, MIAL and BIAL. We request the Authority to treat Cargo assets as well as its revenue as non-aero."

19.52. HIAL further stated that

"The Authority has classified these services based on the provisions of concession agreement of DIAL and MIAL and the same principle be applied in case of GHIAL. In Case of GHIAL the Cargo is not a regulated activity and as such the revenue therefrom should not be used for cross subsidization of aero charges."

19.53. Further, with regard to the treatment of cargo revenue to cross subsidize the aeronautical charges, HIAL stated that

"As per concession the Cargo is not a regulated activity and as such Authority is requested not to use the proceeds from cargo to cross subsidize aeronautical charges. Since the revenue from these assets is Non Aeronautical we had classified these assets also as non-aeronautical"

19.54. Further, with regard to the concession fee received by HIAL for cargo assets, HIAL stated that

"Without prejudice to our rights under concession, if the assets are being classified as Aero then the rental revenue accruing on this account can be classified as AERO. However the concession fee received by GHIAL is not for usage of these assets and as such could not be classified as AERO. This goes against the very principles set by the Authority."

19.55. With respect to fuel charges, HIAL stated that

"Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates to regulate the Regulated Charges as defined in the Concession Agreement and not regulate any Other Charges in respect of the other facilities and services provided at the Airport. As such the fuel charges should also be outside regulations."

f Authority's Examination of Stakeholder Comments on Issues pertaining to Treatment of Cargo, Ground Handling & Fuel throughput Revenues

19.56. The Authority has carefully considered the comments made by the stakeholders on treatment of Cargo, Ground Handling & Fuel throughput Revenues in respect of HIAL. The Authority's analysis of these comments is presented below:

19.57. The Authority has noted that HIAL wants the Authority to consider CGF charges outside the regulations.

19.58. The Authority notes that Concession Agreement defines "*Independent Regulatory Authority*" or IRA to mean the Airports Economic Regulatory Authority set up to regulate any aspect of airport activities. The Agreement 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 'airside facilities' in the Schedule-3, Part-1 of the Concession Agreement. Hence, even going by the Concession Agreement, the Authority is to regulate "any aspect" of "airport activities". The remit of the Authority would thus be what the legislature has given to it and this has already been embodied and expressly provided for in the Concession Agreement. After the promulgation of AERA Act, there can be no doubt that it needs to determine tariff for cargo, ground handling and fuel services.

19.59. The Authority further notes (and as already stated in the Consultation Paper No 09/2013-14 dated 21.05.2013) that the Government suo moto added the services of Cargo and Ground Handling in the list of aeronautical services in the AERA Act. Classifying CGF as aeronautical services was thus a conscious decision of the Government around 2008-09. The concession agreements of all the four metro airports predate this conscious decision of the Government and are therefore not relevant for the purpose of classification of CGF as aeronautical services. This is quite apart from the fact that provisions of an act passed by the Parliament take primacy over covenants of an agreement (even if entered into by the government) and that the Sovereign has no estoppel. Hence in the Authority's understanding,

CGF are aeronautical services and are required to be regulated in terms of fixation of tariffs thereof.

19.60. The Authority noted IATA's comments. However the Authority understands that generally CGF are concessioned out to independent service providers and they charge accordingly to the users of the services. Thus these service providers automatically become regulated entities. Further IATA has not indicated that such concessioning out is not an industry norm. However the Authority understands that that this is an industry norm. Thus the Authority is unable to understand the logic of IATA.

19.61. On the issue of Fuel Throughput Charges, the Authority clarifies that Fuel Throughput Charges is entirely treated as aeronautical services and therefore defraying UDF. On the issue of reducing the fuel throughput charge, the Authority clarifies that this issue has been handled earlier and stands closed as on date and thus stands rested there. Before the Authority came into existence, whatever was being charged is deemed to have continued. This has also been stated in Order No. 17/2010-11 dated 31.03.2011 in the matter of Economic Regulation of Services provided for Cargo facility, Ground Handling and Supply of fuel to the aircraft issued by the Authority.

19.62. The Authority's views regarding treatment of revenue from services of cargo, ground handling and fuel farm are presented in Paras 3.12 to 3.20 above.

19.63. The Authority had sought details of cargo and ground handling assets from HIAL to confirm that these assets on HIAL's books. In response, HIAL submitted the auditor certificates for cargo assets and ground handling assets on HIAL's books, as under

Table 59: Assets Addition Relating to Cargo Buildings for the period April 1, 2007 to March 31, 2013 (Rs in crore)

<i>Particulars</i>	<i>Financial Years</i>					
	<i>2007-08</i>	<i>2008-09</i>	<i>2009-10</i>	<i>2010-11</i>	<i>2011-12</i>	<i>2012-13</i>
<i>Buildings</i>	44.14	22.23	5.04	-	-	-
<i>Electrical Installations</i>	-	-	0.50	-	-	1.52
<i>Furniture and Fixtures</i>	-	0.39	0.17	0.01	-	-
<i>Improvements to</i>	-	0.21	-	-	-	-

Treatment of Cargo, Ground Handling & Fuel throughput Revenues

<i>Leasehold Land</i>						
<i>IT Systems</i>	-	0.10	-	-	0.01	-
<i>Office Equipment</i>	-	0.18	0.05	-	-	0.01
<i>Other Roads</i>	-	-	0.54	-	-	-
<i>Plant and Machinery</i>	4.12	1.90	0.47	-	-	-
<i>Runways</i>	-	-	-	-	-	12.10
<i>Software</i>	-	-	-	-	-	-
<i>Vehicles</i>	-	-	-	-	-	-
Total	48.26	25.01	6.77	0.01	0.01	13.63

19.64. With the above additions, the Gross Block relating to the cargo buildings for the period 01.04.2007 to 31.03.2013 as certified by the auditors of HIAL is as under,

Table 60: Assets Gross Block Relating to Cargo Buildings for the period April 1,2007 to March 31,2013 (Rs in crore)

<i>Particulars</i>	<i>Financial Years</i>					
	<i>2007-08</i>	<i>2008-09</i>	<i>2009-10</i>	<i>2010-11</i>	<i>2011-12</i>	<i>2012-13</i>
<i>Buildings</i>	44.14	66.37	71.41	71.41	71.41	71.41
<i>Electrical Installations</i>	-	-	0.50	0.50	0.50	2.02
<i>Furniture and Fixtures</i>	-	0.39	0.56	0.57	0.57	0.57
<i>Improvements to Leasehold Land</i>	-	0.21	0.21	0.21	0.21	0.21
<i>IT Systems</i>	-	0.10	0.10	0.10	0.11	0.11
<i>Office Equipment</i>	-	0.18	0.23	0.23	0.23	0.24
<i>Other Roads</i>	-	-	0.54	0.54	0.54	0.54
<i>Plant and Machinery</i>	4.12	6.02	6.49	6.49	6.49	6.49
<i>Runways</i>	-	-	-	-	-	12.10
<i>Software</i>	-	-	-	-	-	-
<i>Vehicles</i>	-	-	-	-	-	-
Total	48.26	73.27	80.04	80.05	80.06	93.69

19.65. Similarly, the assets relating to Ground Handling are given in Table 61 and Table 62.

Table 61: Assets Addition Relating to Ground Handling Asset for the period April 1, 2007 to March 31, 2013 (Rs in crore)

Particulars	Financial Years					
	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Buildings	54.67	-	1.23	-	-	-
Electrical Installations	-	-	-	-	-	-
Furniture and Fixtures	-	-	-	-	-	-
Improvements to Leasehold Land	-	-	-	-	-	-
IT Systems	-	-	-	-	-	-
Office Equipment	-	-	0.16	-	-	-
Other Roads	-	-	-	-	-	-
Plant and Machinery	-	-	-	-	-	-
Runways	-	-	-	-	-	-
Software	-	-	-	-	-	-
Vehicles	-	-	-	-	-	-
Total	54.67	-	1.39	-	-	-

Table 62: Assets Gross Block Relating to Ground Handling Asset for the period April 1, 2007 to March 31, 2013 (Rs in crore)

Particulars	Financial Years					
	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Buildings	54.67	54.67	55.90	55.90	55.90	55.90
Electrical Installations	-	-	-	-	-	-
Furniture and Fixtures	-	-	-	-	-	-
Improvements to Leasehold Land	-	-	-	-	-	-
IT Systems	-	-	-	-	-	-
Office Equipment	-	-	0.16	0.16	0.16	0.16
Other Roads	-	-	-	-	-	-
Plant and Machinery	-	-	-	-	-	-

Treatment of Cargo, Ground Handling & Fuel throughput Revenues

<i>Runways</i>	-	-	-	-	-	-
<i>Software</i>	-	-	-	-	-	-
<i>Vehicles</i>	-	-	-	-	-	-
Total	54.67	54.67	56.06	56.06	56.06	56.06

19.66. As observed by the Authority in Para 3.15 above, considering the assets pertaining to the aeronautical services of cargo and ground handling, which are in the books of HIAL, as aeronautical and considering the revenues in the hands of HIAL on account of these services as non-aeronautical would be inconsistent in that while depreciation on these assets would be considered towards tariff determination, there would be no revenue corresponding to these assets. Accordingly the assets pertaining to cargo and ground handling have been shifted from non-aeronautical assets (as considered in the Consultation Paper No 09/2013-14 dated 21.05.2013) to aeronautical assets. However, the Authority observed that this shifting of assets from non-aeronautical assets (as considered in Consultation Paper 09/2013-14) to aeronautical assets has not resulted into an impact on the YPP under Single Till.

Decision No. 15. Regarding Treatment of Revenue from Ground Handling, Fuel throughput and Cargo Services

15.a. The Authority decides to adopt the following approach regarding treatment of Revenue from Ground Handling, Fuel throughput and Cargo Services towards determination of tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:

- i. To consider the cargo, ground handling and fuel supply services as aeronautical services
- ii. To consider the assets, which are on the books of standalone entity of HIAL and are utilized in provision of cargo, ground handling and fuel throughput services, as aeronautical assets
- iii. To treat the revenue from the cargo service (provided by third party concessionaires) accruing to HIAL as aeronautical revenue

- iv. To consider the revenue from Ground Handling services (provided by third party concessionaires) accruing to HIAL as aeronautical revenue**
- v. To consider revenue from fuel farm service (including Fuel Through Charges) provided by HIAL as aeronautical revenue in the hands of HIAL and to note that assets of fuel farm are on the balance sheet of standalone entity of HIAL (refer Para 3.4 above) and have been given to M/s RIL under operations and maintenance agreement**

20. Traffic Forecast

a HIAL Submission on Traffic Forecast

- 20.1.** HIAL submitted that Traffic forecasts (study conducted by Madras School of Economics, MSE) formed an important component of the price cap regulatory framework and the short run as well as long run relationship between air-travel demand and other economic factors was examined in the study submitted and a summary of the traffic forecast for the next 5 years was also included in the same.
- 20.2.** HIAL also stated that traffic for the first year of the Control Period i.e. 2011-12 was revised and the actual traffic achieved at the airport was considered as the base. HIAL stated that a substantial drop in domestic traffic in the year 2012-13 was noticed while the growth in international traffic was marginal. Hence nil growth in traffic in 2013-14 was considered. It was observed that though HIAL submitted the traffic forecast report of MSE, but included different traffic numbers in its MYTP submissions than those in the MSE study. HIAL explained that this was because of the log formula for calculation of growth rates.
- 20.3.** HIAL requested the Authority to consider a 100% true up for any shortfall in traffic at any given level of forecast.

Table 63: Passenger Traffic as submitted by HIAL in its MYTP submissions

	2011-12	2012-13	2013-14	2014-15	2015-16
International Passengers	1,899,289	1,973,304	1,973,304	2,126,548	2,273,113
Domestic Passengers	6,703,050	6,267,106	6,267,106	6,681,056	7,128,502
Total Passengers	8,602,339	8,240,410	8,240,410	8,807,604	9,401,615

Table 64: ATM Traffic as submitted by HIAL in its MYTP submissions

	2011-12	2012-13	2013-14	2014-15	2015-16
International ATM	11,552	14,686	14,686	15,826	16,734
Domestic ATM	88,286	78,232	78,232	83,399	87,731
Total ATM	99,838	92,918	92,918	99,226	104,465

b Authority's Examination of HIAL Submissions on Traffic Forecast

- 20.4.** The Authority carefully considered HIAL submissions on the traffic forecast. The Authority observed that the traffic growth numbers considered by HIAL were not as

per the report by MSE. It also observed that the actual traffic in FY 2012-13 was not as per the traffic forecasted by the MSE report. The Authority had noted that HIAL had not considered any growth in traffic in FY 2012-13 as against that in FY 2011-12. In view of the volatile traffic volumes in the past, the Authority proposes to accept the HIAL submission on traffic and true up the same as per actual traffic volumes at the time of determination of aeronautical tariffs in the next Control Period.

20.5. Based on the material before it and its analysis, the Authority had proposed in the Consultation Paper No 09/2013-14 dated 21.05.2013:

20.5.1. To consider the actual traffic numbers as provided by HIAL in respect of the years 2011-12 and 2012-13 and to consider the traffic forecast as submitted by HIAL for the balance years in the current Control Period.

20.5.2. 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.

Table 65: Passenger Traffic as considered by Authority in Consultation Paper No. 09/2013-14

	2011-12	2012-13	2013-14	2014-15	2015-16
International Passengers	1,899,289	1,973,304	1,973,304	2,126,548	2,273,113
Domestic Passengers	6,703,050	6,267,106	6,267,106	6,681,056	7,128,502
Total Passengers	8,602,339	8,240,410	8,240,410	8,807,604	9,401,615

Table 66: ATM Traffic as considered by Authority in Consultation Paper No. 09/2013-14

	2011-12	2012-13	2013-14	2014-15	2015-16
International ATM	11,552	14,686	14,686	15,826	16,734
Domestic ATM	88,286	78,232	78,232	83,399	87,731
Total ATM	99,838	92,918	92,918	99,226	104,465

c Stakeholder Comments on Issues pertaining to Traffic Forecast

20.6. Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the

tentative proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its Consultation Paper No 09/2013-14 dated 21.05.2013. Stakeholders have also commented on traffic forecast in respect of RGI Airport, Hyderabad. These comments are presented below:

- 20.7.** On the issue of Traffic Forecast, AAI stated that the growth in traffic in 2013-14 needs to be analysed with respect to ATM and passenger movements in first quarter of 2013-14. Further AAI stated that

“The HIAL had projected a negative growth in aircraft movement and passenger movement for 12-13 and nil growth for 13-14. The growth of 13-14 needs to be analysed with respect to the aircraft movement and passenger movement with reference to the first quarter of 13-14.”

d HIAL’s response to Stakeholder Comments on Issues pertaining to Traffic Forecast

- 20.8.** Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 09/2013-14 dated 21.05.2013, the Authority forwarded these comments to HIAL seeking its response to these comments. HIAL has provided responses to the Stakeholders’ comments, which are presented below:

- 20.9.** In response to AAI’s comments on Traffic Forecast, HIAL has stated as under:

“This will have no bearing while tariff determination as the Authority has proposed to allow complete true up for traffic”

e HIAL’s own comments on Issues pertaining to Traffic Forecast

- 20.10.** HIAL stated as under

“Corrections in ATM projections for FY 12-13 and subsequent correction in ATP. ATM Growth considered in Filing.

Traffic projections of Fy 12-13 was based on Half actual tariff of Financial Year 12-13 pro-rated for full year. In the half year traffic data provide by the company, the domestic leg of the international flights is being grouped under international ATM’s. The projections as per filing were as under:

ATM Projections (As per filing)	2011-12	2012-13	2013-14	2014-15	2015-16

<i>Total ATM's (Initially Filed)</i>	99658	92918	92918	99226	104465
<i>International</i>	14111	14686	14686	15826	16734
<i>Domestic</i>	85547	78232	78232	83399	87731
<i>Total ATM's (Growth % As per filing)</i>	19.6%	-6.8%	0.0%	6.8%	5.3%
<i>International (%)</i>	2.1%	4.1%	0.0%	7.8%	5.7%
<i>Domestic (%)</i>	23.1%	-8.6%	0.0%	6.6%	5.2%

However, later on as per the Auditor certificate provided by the company for the historic ATM data for the period Financial Year 2009- Financial Year 2012, domestic leg of international ATMs is treated under domestic ATM by the auditors. Hence, post correction in ATM projections, the ATM numbers used in the current model were as following.

<i>ATM Projections (considered in final Model post Auditor Certification)</i>	2011-12	2012-13	2013-14	2014-15	2015-16
<i>Total ATM's (Final Post Auditor Certificate)</i>	99838	92918	92918	99226	104465
<i>International</i>	11552	14686	14686	15826	16734
<i>Domestic</i>	88286	78232	78232	83399	87731
<i>ATM Growth % as per final Model</i>	19.93%	-6.93%	0.0%	6.8%	5.3%
<i>International (%)</i>	-2.7%	27.1%	0.0%	7.8%	5.7%
<i>Domestic (%)</i>	23.7%	-11.4%	0.0%	6.6%	5.2%

Though in the model ATM projections were changed as per the auditor certificate till Financial Year 11-12, the ATM numbers for Financial Year 12-13(based on HY actuals) were kept same as our initial filing numbers., wherein the domestic leg of the international flights was grouped under international ATM's.

Due to this, international ATM for Financial Year 12-13 was showing a very high growth % of 27.1% as against FINANCIAL YEAR 11-12 audited numbers and domestic ATM was showing a greater dip of - 11.7%.

Hence, we request the authority to rectify this mistake and consider the traffic for Financial Year 12-13 onwards by applying growth rates as filed on Financial Year 11-12 audited ATM numbers to arrive at a correct traffic mix.

<i>ATM Projections (in Numbers)</i>	<i>2011-12</i>	<i>2012-13</i>	<i>2013-14</i>	<i>2014-15</i>	<i>2015-16</i>
<i>Total ATM's (Growth % As per filing)</i>	<i>19.6%</i>	<i>-6.8%</i>	<i>0.0%</i>	<i>6.8%</i>	<i>5.3%</i>
<i>International (%)</i>	<i>2.1%</i>	<i>4.1%</i>	<i>0.0%</i>	<i>7.8%</i>	<i>5.7%</i>
<i>Domestic (%)</i>	<i>23.1%</i>	<i>-8.6%</i>	<i>0.0%</i>	<i>6.6%</i>	<i>5.2%</i>
<i>Total ATM's (Filed)</i>	<i>99838</i>	<i>92760</i>	<i>92760</i>	<i>99026</i>	<i>104239</i>
<i>International</i>	<i>11552</i>	<i>12023</i>	<i>12023</i>	<i>12956</i>	<i>13700</i>
<i>Domestic</i>	<i>88286</i>	<i>80737</i>	<i>80737</i>	<i>86070</i>	<i>90540</i>

The above change in ATM projections has been made in the revised ATP submitted by GHIAL.

We request the Authority to incorporate the above correction in the tariff model for calculating the YPP and the final tariff."

f Authority's Examination of Stakeholder Comments on Issues pertaining to Traffic Forecast

20.11. The Authority has carefully considered the comments made by the stakeholders in respect of traffic forecast considered for the determination of aeronautical tariff for HIAL. The Authority notes AAI comments that traffic growth for FY 2013-14 needs to be analysed with respect to the aircraft movement and passenger movement with reference to the first quarter of 2013-14. The Authority has noted that FY 2012-13 is over and first 6 months of FY 2013-14 are also over. Accordingly the Authority has sought the actual traffic numbers for these periods from HIAL. HIAL's submission on the actual traffic number, as certified by its auditor, is as follows:

Table 67: Passenger Traffic Data for FY 12-13 submitted by HIAL

Particulars	Scheduled			Total
	Embarking PAX		Disembarking PAX	
	Embarking	Transfer and Infants		
Domestic	3,022,992	172,006	3,095,731	6,290,729
International	978,834	39,023	1,067,533	2,085,390
Total	4,001,826	211,029	4,163,264	8,376,119

Table 68: ATM Traffic Data for FY 12-13 submitted by HIAL

Particulars	Scheduled	Non Scheduled	Total
Domestic	77,468	1,010	78,478
International	12,006	324	12,330
Total	89,474	1,334	90,808

Table 69: Passenger Traffic Data from 1 April, 2013 to 30, September 2013 submitted by HIAL

Particulars	Scheduled			Total
	Embarking PAX		Disembarking PAX	
	Embarking	Transfer and Infants		
Domestic	1,540,347	90,092	1,578,575	3,209,014
International	547,606	20,852	609,298	1,177,756
Total	2,087,953	110,944	2,187,873	4,386,770

Table 70: ATM Traffic Data from 1 April, 2013 to 30, September 2013 submitted by HIAL

Particulars	Scheduled	Non Scheduled	Total
Domestic	35,990	880	36,870
International	6,482	192	6,674
Total	42,472	1,072	43,544

20.12. The Authority has also noted HIAL's submission regarding differences in its initial filing of ATM numbers for FY 2012-13 and that certified by its auditors, which is understood to be on account of different treatment of domestic leg of international ATMs. The Authority, however, notes that it has anyways considered the actual numbers for FY 2012-13 in the tariff model for determination of aeronautical tariffs for HIAL. Based on HIAL's submission and the Authority's proposal regarding consideration of actual traffic and traffic forecast, as submitted by HIAL, the Authority decides to consider the following traffic numbers for determination of aeronautical tariffs for HIAL:

Table 71: Passenger Traffic as considered by Authority for the current Control Period

	2011-12	2012-13	2013-14	2014-15	2015-16
International Passengers	1,899,289	2,085,390	2,085,390	2,247,338	2,402,229
Domestic Passengers	6,703,050	6,290,729	6,290,729	6,706,240	7,155,372
Total Passengers	8,602,339	8,376,119	8,376,119	8,953,578	9,557,600

Table 72: ATM Traffic as considered by Authority for the current Control Period

	2011-12	2012-13	2013-14	2014-15	2015-16
International ATM	11,552	12,330	12,330	13,288	14,050
Domestic ATM	88,286	78,478	78,478	83,662	88,006
Total ATM	99,838	90,808	90,808	96,949	102,056

Decision No. 16. Regarding Traffic forecast

16.a. The Authority decides to adopt the following approach for consideration of traffic towards determination of tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:

- i. To consider the actual traffic numbers as provided by HIAL in respect of the years 2011-12 and 2012-13 and to consider the traffic forecast as submitted by HIAL for the balance years in the current Control Period.**
- ii. 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.**

21. Inflation

a HIAL Submission on Inflation

21.1. HIAL submitted that an allowance towards inflation (WPI) over and above the submitted target revenue was to be given by the regulator. Also, WPI for the Control Period was considered to be 6.2% by HIAL based on the Survey of Professional Forecasters (RBI website). HIAL requested the authority to consider the above inflationary increase over and above the tariff entitlement.

b Authority's Examination of HIAL Submissions on Inflation

21.2. The Authority had reference to the recent Results of the Survey of Professional Forecasters on Macroeconomic Indicators, where WPI for next five years was forecast to be 6.5% per annum. The same was proposed to be considered by the Authority. Also, the Authority was of the view that the actual inflation during the Control Period may differ from the forecasted assumption which was being considered presently and thus was proposed to be trued up for each year.

21.3. Based on the material before it and its analysis, the Authority had proposed in the Consultation Paper No 09/2013-14 dated 21.05.2013:

21.3.1. To consider WPI at 6.5% for remaining years of the current Control Period based on the latest assessment by RBI.

21.3.2. 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

21.4. Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the tentative proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its Consultation Paper No 09/2013-14 dated 21.05.2013. Stakeholders have also commented on inflation to be considered in respect of RGI Airport, Hyderabad. These comments are presented below:

21.5. On the issue of Inflation FIA stated that allowing inflation at various levels has multiplier impact on Tariff and thus expenditure should be delinked from inflation.

“In the Consultation Paper, for the purpose of forecasting operating expenses Authority has included WPI at 6.5% over and above increase in real terms at 3.0% on items where WPI is relevant. Further as per Proposal No.17 of CP No. 09/2013-14, it appears that HIAL is also considering an inflationary increase in the proposed Yield Per Passenger (“YPP”) for the balance years of the current Control Period. Since inflation has been considered on YPP and operating expense is one of the components to determine YPP. Therefore, in order to avoid manifold impact of inflation, it is submitted that all the expenditure should be delinked from inflation.”

d HIAL’s response to Stakeholder Comments on Issues pertaining to Inflation

21.6. Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 09/2013-14 dated 21.05.2013, the Authority forwarded these comments to HIAL seeking its response to these comments. HIAL has provided responses to the Stakeholders’ comments, which are presented below:

21.7. In response to the FIA’s comment that allowing inflation at various levels would have multiplier impact on Tariff and thus expenditure should be delinked from inflation, GHIAL responded by stating that there is no double impact of inflation.

e HIAL’s own comments on Issues pertaining to Inflation

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

f Authority’s Examination of Stakeholder Comments on Issues pertaining to Inflation

21.9. The Authority has carefully considered the comments made by the stakeholders on consideration of inflation in respect of HIAL. The Authority’s analysis of these comments is presented below:

21.10. The Authority notes FIA’s comment that allowing inflation at various levels has manifold impact on inflation and thus all the expenditure should be delinked from inflation. However the Authority points out that while considering the operating expenses as a building block in determination of ARR, it has considered the historical actuals for various operating expense items as well as the projections made by HIAL for these items. Since the actual numbers for historical period (submitted by HIAL) includes both the real and the inflationary growth, these

numbers are on a nominal basis. If the projected expense numbers for FY 2014, 2015 and 2016 do not include inflation, these numbers will be on real basis. This creates an inconsistency in determination of aeronautical tariff as some expenses are real and some are nominal within the Control Period. The Authority has, hence, considered inflation in the projections also to remove this inconsistency. Similar treatment has been considered for non-aeronautical revenue. Having determined the ARR for the Control Period, the Authority determines the YPP for the first year. As per the formulation considered in the Airport Guidelines, the Authority shall determine the yield per passenger for the second Tariff Year onwards using the following formula:

$$Y_{t,EWPI} = Y_{t-1,EWPI} \times (1 + WPI_t - X_t)$$

where:

$Y_{t,EWPI}$ = is the yield per passenger for the Tariff Year t with forecasted change in WPI;

$Y_{t-1,EWPI}$ = is the yield per passenger for the Tariff Year preceding Tariff Year t and Y_1 for the first Tariff Year shall be determined by the Authority in Multi Year Tariff Order;

(WPI_t) = is the forecast of change in WPI for Tariff Year t as determined by the Authority;

(X_t) = is determined by the Authority for Tariff Year t in the Multi Year Tariff Order.

21.11. Based on the above formulation, the Authority determines the YPP for subsequent years. As the NPV of Target revenue is matched with the NPV of actual and estimated (using the estimated YPPs) revenues, consideration of inflation in YPPs of subsequent year does not lead to manifold impact.

21.12. Hence the Authority is of the view that the computations done by the Authority stands correct and does not feel the need to revise the same.

21.13. 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. 17. Regarding Inflation

17.a. The Authority decides to adopt the following approach for consideration of inflation towards determination of tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:

- i. To consider WPI at 5.9% for remaining years of the current Control Period based on the latest assessment by RBI.**
- ii. 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.**

22. Calculation of WPI –X

a HIAL Submission on Calculation of WPI –X

22.1. HIAL submitted that the current proposal was for the approval of Yield Per Pax (computed by dividing the NPV of Aggregate Revenue Requirement by the NPV of total number of passengers in the Control Period). HIAL had not factored in the Inflation in their forecast for future years assuming that the Authority would give a year on year WPI based inflation increase over and above approved yield calculated based on actual WPI data. The formula submitted by HIAL considered the Present Value of the passengers in the denominator instead of the absolute value. The formula submitted was:

$$\text{Yield Per Pax} = \frac{\sum_{t=1}^5 PV(ARR_t) - \text{Actual Realised Revenues}}{\sum_{t=1}^5 PV(VE_t)}$$

b Authority's Examination of HIAL Submissions on Calculation of WPI –X

22.2. According to the Authority, Yield per passenger was to be calculated according to the formula below:

$$\text{Yield per passenger (Y)} = \frac{\sum_{t=1}^5 PV(VE_t \times Y_t)}{\sum_{t=1}^5 VE_t}$$

Where,

- VE_t is the volume as estimated by the Authority in a Tariff year t in the Multi Year Tariff Order
- Y_t is the yield per passenger for Tariff Year t calculated according to Para ;
- Present value (PV) of $(VE_t \times Y_t)$ for a Tariff Year t is being determined at the beginning of the Control period and the discounting rate for calculating PV is equal to the Fair Rate of Return determined by the Authority

22.3. The Authority had noted the HIAL submission regarding calculation of YPP by using the Present Value of number of passenger traffic in the denominator of the above formula instead of the absolute value thereof. The Authority was of the view that HIAL's inference drawn by connecting two separate tables of the Illustration 8 of the Airport Guidelines i.e. Direction No. 5 of the Authority was not correct. It was

observed that the Authority, in this illustration, had clearly mentioned the formula to be followed for calculation of Yield Per Passenger – which did not factor the present value of traffic volume in the denominator (number of passengers in this case). This formula is reproduced above. The Authority's determination of Yield Per Passenger in the Consultation Paper NO 09/2013-14 dated 21.05.2013 was based on this formula.

- 22.4.** The Authority has further provided for the determination of Yield per passenger for the second Tariff Year onwards using the following formula:

$$\text{Yield per passenger } (Y_t) = Y_{t-1} \times (1 + WPI_t - X_t)$$

Where,

- Y_t is the yield per passenger for the Tariff Year t with forecasted change in WPI;
 - Y_{t-1} is the yield per passenger for the Tariff Year preceding Tariff Year t determined by the Authority
 - WPI_t is the forecast of change in WPI for Tariff Year t as determined by the Authority;
 - X_t is determined by the Authority for Tariff Year t in the Multi Year Tariff Order.
- 22.5.** The Authority noted that HIAL had not considered the inflation in the calculated Yield Per Passenger and had assumed that the Authority will give a year on year WPI based inflation increase over and above approved yield. The Authority in its Guidelines stated that the Yield for a year is to be calculated based on the formula provided by the Authority. This formula (reproduced above) for determination of Yield for a year included an inflation to be applied over the yield in the previous year. Thus the Authority considered an inflationary increase over the Yield Per Passenger in the first year for determination of Yield Per Passenger for future years. This yield per passenger was to be derived from balancing of Net Present Value of ARR on one hand and actual and projected aeronautical revenue on the other hand.
- 22.6.** The Authority further observed that this is the first control period in respect of HIAL. The Authority, accordingly felt that the sufficient information on the determination of X factor for this control period was not 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.

22.7. Based on the material before it and its analysis, the Authority had proposed in the Consultation Paper No 09/2013-14 dated 21.05.2013:

22.7.1. To consider an inflationary increase in the proposed Yield Per Passenger for the balance years of the current Control Period.

22.8. The Authority has not received any comments / views from the stakeholders in response to the above proposal presented by the Authority in its Consultation Paper No 09/2013-14 dated 21.05.2013. Accordingly the Authority determines the X-factor in respect of RGI Airport, Hyderabad as Nil.

22.9. The Authority has also decided that the aeronautical charges would remain unaltered for the next two years. The Authority has further noted that even after considering inflationary increase in the Yield Per Passenger for the balance period of the current Control Period, there would still be cumulative over-recovery even after keeping the UDF at zero and the aeronautical charges unaltered (Refer Decision No. 20 below).

Decision No. 18. Regarding Calculation of WPI-X

18.a. The Authority decides:

- i. To note that even after considering inflationary increase in the Yield Per Passenger for the balance period of the current Control Period, there would still be cumulative over-recovery on ARR (Refer Para 22.9 above)**
- ii. To determine X-factor as Nil for the current Control Period**

23. YPP Calculations with Sensitivity Analysis

23.1. As per the Base Model finalized by HIAL, the YPP number under single till submitted by HIAL was Rs. 861.99 and that under dual till was Rs. 1042.41. The Authority had analysed HIAL submissions on each of the regulatory building block and presented its analysis in the respective sections of the Consultation Paper No 09/2013-14 dated 21.05.2013. Accordingly the Authority had determined YPP of 416.64 under Single Till with the date of tariff hike being 01.09.2013 and YPP of 801.98 under Dual Till with the same date of tariff hike.

Table 73: Cumulative Impact of all Sensitivities on YPP under single and dual till as considered in Consultation Paper No. 09/2013-14

Cumulative Impact of all above Sensitivities on YPP			
Single Till		Dual Till	
If tariff is implemented with effect from 01.04.2013			
YPP as per Base Model*	861.99	YPP as per Base Model*	1042.41
Cumulative Impact of all above Sensitivities on YPP as on 01.04.2013. List of Sensitivities included: <ul style="list-style-type: none">• Cost of Equity at 16%• No increase in interest rates for rupee term loan and ECB loan• Exclusion of Hotel assets, SEZ assets and Duty Free assets from RAB, but including revenue share from Duty Free in the hands of HIAL• Exclusion of Forex Loss Adjustment as per AS11 as part of RAB• Considering 100% depreciation of RAB• Considering Inflation as per current RBI forecasts of 6.5%• Considering exchange rate as per average exchange rate for latest 6 months• WPI increase of 6.5% and	429.54	Cumulative Impact of all above Sensitivities on YPP as on 01.04.2013. List of Sensitivities included: <ul style="list-style-type: none">• Cost of Equity at 16%• No increase in interest rates for rupee term loan and ECB loan• Exclusion of Hotel assets, SEZ assets and Duty Free assets from RAB• Exclusion of Forex Loss Adjustment as per AS11 as part of RAB• Considering 100% depreciation of RAB• Considering Inflation as per current RBI forecasts of 6.5%• Considering exchange rate as per average exchange rate for latest 6 months• WPI increase of 6.5% and a real increase of 3% in relevant expense heads and further assuming no	776.96

Cumulative Impact of all above Sensitivities on YPP			
Single Till		Dual Till	
<p>a real increase of 3% in relevant expense heads and further assuming no escalation in utility costs and Rates and Taxes</p> <ul style="list-style-type: none">Excluding Future capital expenditure itemsConsidering non-aeronautical revenues as per Authority's examination (i.e. increasing total non-aeronautical revenues for FY 2013-14 onwards by applying traffic increase as per HIAL's Base Model and an additional 5% increase in passenger spend on the total non-aeronautical revenue of FY 2012-13 as per HIAL Base Model, minus the revenue from interest expense in FY 2012-13, and further excluding hotel, SEZ and duty free assets but including revenue share from duty free)Considering Inflationary increase of 6.5% in YPP		<p>escalation in utility costs and Rates and Taxes</p> <ul style="list-style-type: none">Excluding Future capital expenditure itemsExcluding all non-aeronautical revenuesConsidering Inflationary increase of 6.5% in YPP	
Cumulative Impact of all above Sensitivities on YPP			
Single Till		Dual Till	
If tariff is implemented with effect from 01.09.2013			
YPP as per Base Model*	861.99	YPP as per Base Model*	1042.41
YPP as on 01.09.2013 as per Authority	416.64	YPP as on 01.09.2013 as per Authority	801.98
* - Base Model – Refer to Para 1.41			

23.2. The Authority accordingly calculated the target revenue with respect to the YPP as of 01.09.2013 for single till and presented the same in the Consultation Paper No. 09/2013-14 dated 21.05.2013 (Table 74 below).

Table 74: Target Revenue Calculation in the Consultation Paper No 09/2013-14 under Single Till

Values in Rs. Cr.	2011-12	2012-13	2013-14	2014-15	2015-16
RAB for calculating ARR	1,958	1,864	1,788	1,723	1,673
WACC	10.68%	10.68%	10.68%	10.68%	10.68%
Return on Capital Employed	209	199	191	184	179
Depreciation	105	106	107	87	83
Operation and Maintenance Expenditure (including Concession Fee)	234	255	272	294	323
Tax	9	26	11	13	26
Revenue from services other than aeronautical services	178	194	178	199	223
Average Revenue Requirement	379	392	404	379	387
Discounted ARR as on 01.09.2013	461	431	400	340	313
Pre-Control Period losses brought forward to 01.09.2013			333*		
Total Present Value of ARR as on 01.09.2013	2,278				
Aeronautical Revenues (including fuel farm excess set-off)	421	487	447	436	492
Discounted Aeronautical Revenues as on 01.09.2013	511	535	444	390	398
Total Present Value of Actual Revenues as on 01.09.2013	2,278				
* Refer Tentative Decision No1.a.i of the Consultation Paper No. 09/2013-14 dated 21.05.2013 in which the Authority had proposed to consider the Pre-Control Period losses of Rs. 260.68 Cr. as of 01.04.2011 under single till in the current MYTP and the same has been brought forward to 01.09.2013.					

a Authority's Further Examination of Sensitivity Analysis

23.3. The Authority has noted the comments from some of the stakeholders regarding the impact of carrying cost of Pre-Control Period losses on ARR. While the Authority has decided not to consider the Pre-Control Period losses for the determination of aeronautical tariff for the current Control Period for HIAL, it has restated the target revenue requirement under single till as presented in Table 74 to present target

revenue requirement with all the NPV values calculated as on 01.04.2011. The revised numbers are presented below:

Table 75: Target Revenue Calculation under Single Till as calculated in Consultation Paper No. 09/2013-14 dated 21.05.2013 restated with NPV on 01.04.2011

Values in Rs. Cr.	2011-12	2012-13	2013-14	2014-15	2015-16
RAB for calculating ARR	1,958	1,864	1,788	1,723	1,673
WACC	10.68%	10.68%	10.68%	10.68%	10.68%
Return on Capital Employed	209	199	191	184	179
Depreciation	105	106	107	87	83
Operation and Maintenance Expenditure (including Concession Fee)	234	255	272	294	323
Tax	9	26	11	13	26
Revenue from services other than aeronautical services	178	194	178	199	223
Average Revenue Requirement	379	392	404	379	387
Discounted ARR as on 01.04.2011	361	337	313	266	245
Pre-Control Period losses as on 01.04.2011	261				
Total Present Value of ARR as on 01.04.2011	1,782				
Aeronautical Revenues (including fuel farm excess set-off)	421	487	447	436	492
Discounted Aeronautical Revenues as on 01.04.2011	400	418	347	306	311
Total Present Value of Actual Revenues as on 01.04.2011	1,782				

23.4. The Authority had noted the comments from some of the stakeholders that the Authority had allowed carrying cost on the Pre-Control Period losses by transferring it to the date. The Authority has also analysed the impact of the above restatement of NPV values and found that while the ARR value with present values calculated on 01.04.2011 is less than the ARR value with present values calculated on 01.10.2011, the Yield Per Passenger corresponding to both the ARRs remain same.

- 23.5.** The Authority has noted that in the income recorded in HIAL's financial statements, there are receipts from its subsidiaries. Some of the subsidiaries are situated within the terminal building (for example, duty free shop). Such revenues are properly accounted in the ARR calculation under single till. However, revenues from subsidiaries situated outside the terminal building (for example, hotel, SEZ, MRO, etc), that HIAL has received, are also reflected in the income of HIAL in its financial statements.
- 23.6.** Under the general principles and framework of tariff determination adopted by Authority, it would first take into account HIAL as a standalone entity. It would also ring fence the Regulatory Asset Base (RAB) and fence out land given for activities like hotel, MRO, etc. In the normal course, therefore, the Authority would not have considered revenues from such fenced out activities in the calculation of ARR. However, it has noted that according to the covenant in the Land Lease Agreement signed between the Govt. of Andhra Pradesh and HIAL, the land that has been acquired by the Govt. of Andhra Pradesh for leasing out to HIAL has been done to make the airport project feasible. In Authority's view, the Govt. of Andhra Pradesh has contemplated the nexus between grant of land (including such lands that are in excess of airport requirement and on which real estate development was expected to be made by HIAL) and to lower the airport charges (including those directly impinging on the passengers). To operationalize such nexus one of the mechanisms that the Authority had proposed was to estimate the market value of such land development, comparing it with the premium lease that HIAL may have received in this behalf and subtract the higher of the two figures from RAB. The rationale of this mechanism has also been explained in Airport Order.
- 23.7.** If the RAB reduction have taken place in accordance with this mechanism, the Authority would not thereafter have considered the revenues received by HIAL from such other land development projects (generally, outside the terminal building). However, the Govt. of Andhra Pradesh, in their response dated 12th February, 2014, has stated that *"the non-aeronautical revenue generated through commercial activities through the development of real estate on airport land should be considered for cross-subsidising calculations of aeronautical tariffs."* The

Authority as in Para 10.39.3 above decided that it would obtain the amounts of such revenues and capital receipts that the Govt. of Andhra Pradesh considers appropriate for cross-subsidisation.

23.8. Moreover, the Authority has not considered dividend income of Rs 1.04 crore in 2011-12 and Rs 5.98 crore in 2012-13 received by HIAL from its subsidiary company namely, Hyderabad Menzies Air Cargo Private Ltd on HIAL's investment in this subsidiary. For the purposes of calculation of ARR, the Authority has taken into consideration only the RAB in the books of accounts of HIAL and has accordingly not reckoned the assets of Hyderabad Menzies Air Cargo Private Ltd. in RAB for the purposes of tariff determination.

23.9. Further, 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 HIAL is presented in the table below:

Table 76: Target Revenue Calculation under Single Till as considered by the Authority (including Fuel Farm calculations)

Values in Rs. Cr.	2011-12	2012-13	2013-14	2014-15	2015-16
RAB for calculating ARR	2,041.01	1,944.41	1,863.62	1,821.83	1,799.99
WACC	10.01%	10.01%	10.01%	10.01%	10.01%
Return on Capital Employed	204.34	194.67	186.58	182.40	180.21
Depreciation	110.62	113.24	113.95	97.11	92.73
Operation and Maintenance Expenditure (including Concession Fee)	243.76	250.93	267.30	270.74	291.96
Tax	8.96	30.99	33.96	-	-
Revenue from services other than aeronautical services	156.65	186.23	164.37	184.48	206.77
Average Revenue Requirement, (A)	411.02	403.59	437.43	365.76	358.12
Discounted ARR as on 01.04.2011	391.87	349.77	344.60	261.91	233.10

Values in Rs. Cr.	2011-12	2012-13	2013-14	2014-15	2015-16
Pre-Control Period losses as on 01.04.2011	40.25				
Total Present Value of ARR	1,621.51				
Aeronautical Revenues (excluding fuel farm cargo and GH)	376.25	454.31	473.70	84.79	95.85
Fuel Farm + Cargo + GH	90.81	90.28	90.84	97.13	102.68
Aeronautical Revenues (including fuel farm, cargo and GH), (B)	467.06	544.59	564.54	181.93	198.53
Discounted Aeronautical Revenues as on 01.04.2011	445.30	471.97	444.74	130.27	129.23
Total Present Value of Actual Revenues	1,621.51				

23.10. The Authority notes from the Table 76 that the actual / estimated Average Revenue Requirement (A) is less than the actual / estimated aeronautical revenues collected (B) for the first three years. Stated in another manner, the airport operator has over-recovered the ARR during the first three years as compared to what was due to him. Hence for the remaining two years of the current Control Period, the over-recovery has been adjusted / mopped-up, taking however, into account the overall ARR requirement over the current Control Period namely five years and the Pre-Control Period losses as estimated in the Table 76. The Authority also notes that the Pre-Control period losses as per the decision of the Authority are reckoned pro-rated for the period 01.09.2009 till 31.03.2011 (Refer Paras from 5.38 to 5.41 above). In the Consultation Paper No 09/2013-14 dated 21.05.2013, the Pre-Control Period losses were calculated for the period from the date of sanction of UDF by the then regulator, namely Government (23.04.2008 for international UDF) till 31.03.2011 calculated at Rs 260.68 crore. The Authority has given the analysis and reasoning for this change in Paras 5.29 to 5.42 above. This is one of the reasons that have impacted on ARR estimation (reduction from Rs 260.68 crore to Rs 40.25

crore). Accordingly the Authority determines YPP value as on 01.04.2014 to be Rs. 94.70.

Sensitivity Analysis

23.11. It would thus be seen that the YPP has reduced from its initial estimate of Rs 416.64 to Rs 94.70. This reduction is the cumulative impact of the Authority's review of its proposals as indicated in Consultation Paper 09/2013-14 and in view of stakeholder comments. The various components that have impacted on the reduction in YPP are given in Table 77.

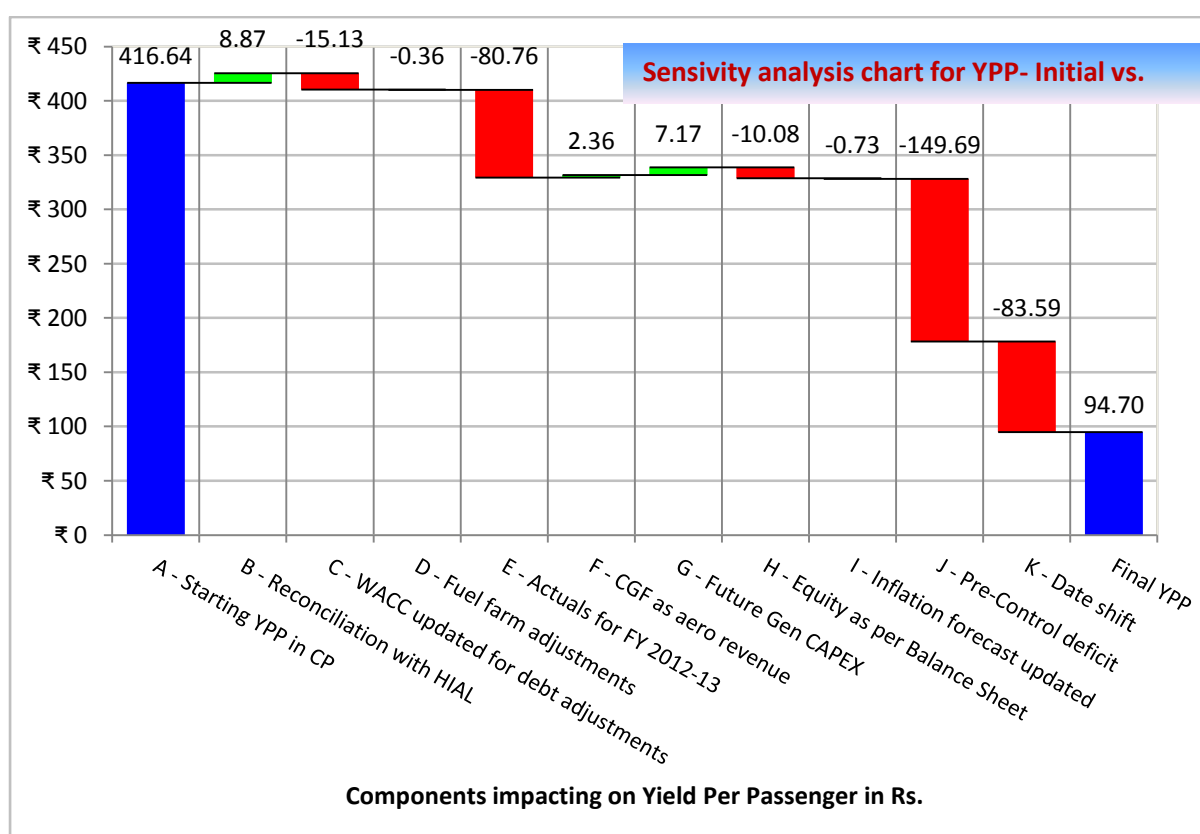
Table 77: Factors resulting in changes in the YPP from Rs 416.64 as considered by the Authority in Consultation Paper No 09/2013-14 to Rs 94.70 as considered under this Order

Sl. No.	Factors	Revised YPP
A	Starting YPP	416.64
B	Reconciliation with HIAL	425.51
C	WACC reduction on account of debt adjustment	410.38
D	Fuel Farm merged with MYTP	410.02
E	Actuals of FY 2012-13	329.26
F	CGF as aero	331.62
G	Future General Capex related	338.79
H	Equity based on Balance Sheet numbers	328.71
I	Inflation forecast updated	327.98
J	Pre-Control Period losses	178.29
K	Date shifted from 01.09.2013 to 01.04.2014	94.70
A - YPP considered by the Authority in Consultation Paper No 09/2013-14		
B – Reconciliation regarding (1) discounting factors applied on the target revenue and actual revenue (2) concession fee for non-aeronautical revenues		
C - Debt adjustments on account of Hotel Division and Debt repayment schedules		
D – Financials of Fuel Farm adjustments (asset base, revenue, expenses etc)		
E – YPP calculations based on actuals for FY 2012-13 (Refer Paras 1.41 and 1.42 above)		
F – Assets, revenues and expenses pertaining to Cargo, Ground handling and Fuel supply services in the books of accounts of HIAL are considered as aeronautical as against non-aeronautical considered earlier and reworking of the appropriate corresponding ratios for projections that has affected the ARR calculations.		
G – Consideration of Future Capital expenditure (Refer Paras 9.22 to 9.29 above)		

Sl. No.	Factors	Revised YPP
	and 16.39 to 16.43 above)	
	H – Accretion to Equity over the years based on Balance Sheet numbers (Refer Paras 14.23 to 14.27 above)	
	I – Updation of Inflation forecast from 6.5% to 5.9% (Refer Para 21.13 above)	
	J – Revision in consideration of Pre-Control Period deficit (losses) (Refer Paras 5.38 to 5.41 above)	
	K – Date of implementation of this Tariff Order has now been considered as 01.04.2014 as against 01.09.2013 considered at the Consultation stage.	

23.12. The above impact has been presented in the graphical form in Figure 2. It gives the individual contribution of different elements (A to K) in changes in YPP from Rs 416.64 at the stage of Consultation Paper No 09/2013-14 dated 21.05.2013 to Rs 94.70 as computed for the purposes of determination of aeronautical tariff effective 01.04.2014.

Figure 2: YPP Sensitivity for different components of ARR



23.13. The break-up of aeronautical revenue for HIAL in line with the above YPP is presented in Table 78.

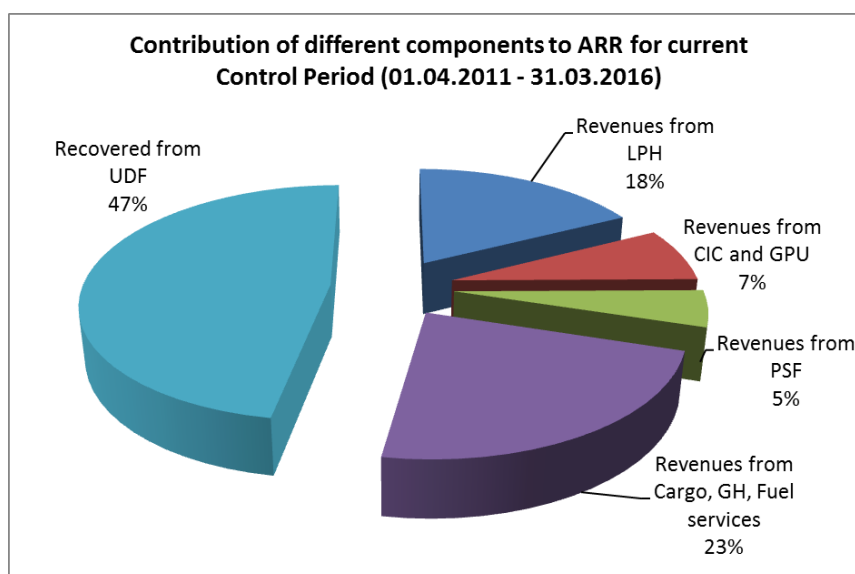
Table 78: Aeronautical Revenue Recoverable from UDF when considering the date of implementation as 01.04.2014

Values in Rs. Cr.	2011-12	2012-13	2013-14	2014-15	2015-16
Total Recoverable			451.64	84.79	95.85
Revenues from LPH	58.00	74.55	74.12*	76.57**	80.71**
Revenues from CIC and FEGP	26.85	32.40	32.21*	28.12**	29.93**
Revenues from PSF	28.01	32.60	32.40*	-	-
Shortfall in ARR (if any)				(19.90)	(14.79)
Recovered / Recoverable from UDF	263.39	314.76	312.90*	0**	0**
Present value of shortfall in ARR as on 01.04.2014				(18.97)	(14.79)
Aggregate Present value of shortfall in ARR as on 01.04.2014					(31.79)#

*For the purpose of tariff calculation, aeronautical revenue for FY 2013-14 on account of LPH, CIC and FEGP have been considered on pro-rata basis of traffic in FY 2013-14 w.r.t. traffic in FY 2012-13

**Aeronautical Revenue for LPH, CIC and FEGP for forecast years (FY 2014-15 and FY 2015-16) keeping LPH, CIC and FEGP rates unaltered

- The Aggregate present value of shortfall in ARR as on 01.04.2014 to be recovered from UDF is negative indicating over-recovery. Hence the UDF is determined at zero level and the future value as on 31.03.2016 of this estimated over-recovery (Rs 31.79 crore) works out to Rs 38.47 crore, that has been decided to be trued-up (clawed back) from the ARR computations for the next Control Period. (Refer Decision No 19.a.ii below)

Figure 3: ARR Pie-chart for current Control Period

23.14. If the existing rates of Landing, Parking and Housing charges are continued for the remaining years of the current Control Period namely FY 2014-15 and FY 2015-16, the UDF required to be levied to enable HIAL achieve the YPP will work out to be negative and hence zero UDF has been considered by the Authority with effect from 01.04.2014. The calculations in Table 78 show that HIAL is estimated to have made an over-recovery of Rs 31.79 crore on NPV basis as on 01.04.2014. Considering the estimated WACC at 10.01%, the over-recovery at the end of the Control Period would come to Rs 38.47 crore. This estimated amount would be trued-up (clawed back) from the ARR for the next Control Period.

23.15. As mentioned in the Para 23.14 above, the Authority notes that the decision of determination of UDF at zero for the remaining two years (FY 2014-15 and FY 2015-16) of the current control period is on account of over-recovery of ARR by HIAL in the first three years of the current control period (FY 2011-2012 to FY 2013-2014). The Authority also notes that as given in Figure 3 in Para 23.13 above, the contribution of UDF to the ARR over the entire five years of the current control period has been of the order of 47%. The average UDF for the entire Control Period (01.04.2011 to 31.03.2016) works out to approximately Rs 283 per embarking domestic passenger and Rs 1,120 per embarking international passenger (after taking into account the effect of zero UDF for the remaining 2 years of the current Control Period). The UDF as well as calculations for other aeronautical charges for the next Control Period commencing 01.04.2016 would depend upon the various building blocks considered by the Authority while determining aeronautical tariff for the next Control Period including the required true-ups.

Decision No. 19. Regarding calculations of Yield Per Passenger (YPP)

19.a. The Authority decides:

- i. To calculate the YPP at Rs. 94.70 under single till in respect of the current Control Period for RGI Airport, Hyderabad**
- ii. To true-up the above YPP based on truing-up of various building blocks impacting the calculation of the said YPP at the end of the**

current Control Period (including true-up of the over-recovery as indicated in Para 23.14 above) and to consider its effect in the next Control Period.

24. Tariff Structure/ Rate Card-

a HIAL Submission on Tariff Structure/ Rate Card-

24.1. In HIAL's submission of Annual Tariff Proposal for FY 2013-14 and FY 2014-15, the Yield per Pax (YPP) for Single Till and Dual Till was calculated to be Rs. 894.15 and Rs. 1,078.57 respectively. Also, the PSF-FC was proposed by HIAL to be merged with UDF. The UDF was proposed to be levied on both arriving and departing passenger except on transfer/transit passengers and infants. The domestic UDF was categorized to be levied under two bands i.e., metro and non-metro cities and International UDF was proposed to be levied under two bands, SAARC and Non SAARC countries.

24.2. HIAL submitted that the ATP was devised for the aforesaid YPP. Any variation to the aforesaid YPP, would change the ATP including changing the structure of charging methodology. Hence the Authority was requested to allow HIAL to resubmit the ATP (Including making changes in charging structure) in case of variation in YPP.

b Authority's Examination of HIAL Submissions on Tariff Structure/ Rate Card-

24.3. The Authority carefully considered the tariff card submitted by HIAL. The Authority observed that except UDF the other tariff items were the same both for single till and dual till. The Authority also noted that the UDF proposed by HIAL for FY 2013-14 is same as that for FY 2014-15. The following table indicates the proposals contained in HIAL's tariff card regarding UDF under both single and dual till.

Table 79: UDF proposed by HIAL for FY 2013-14 & FY 2014-15 for domestic passengers at the Consultation Stage

Domestic UDF				
	Metro Cities		Non Metro Cities	
	Single Till	Dual Till	Single Till	Dual Till
For tickets issued in Indian Rupees				
Departing Metro	Rs. 585.77	Rs. 737.76	Rs. 390.71	Rs. 491.84
Arriving Metro	Rs. 479.27	Rs. 603.62	Rs. 319.51	Rs. 402.41
For tickets issued in Foreign Currency				
Departing Metro	USD 10.70	USD 13.48	USD 7.13	USD 8.98

Domestic UDF				
	Metro Cities		Non Metro Cities	
	Single Till	Dual Till	Single Till	Dual Till
For tickets issued in Indian Rupees				
Arriving Metro	USD 8.76	USD 11.03	USD 5.84	USD 7.35

Table 80: UDF proposed by HIAL for FY 2013-14 & FY 2014-15 for International passengers at the Consultation Stage

International UDF				
	International (Excluding SAARC)		SAARC	
	Single Till	Dual Till	Single Till	Dual Till
For tickets issued in Indian Rupees				
Departing	Rs. 1757.31	Rs. 2213.27	Rs. 585.77	Rs. 737.76
Arriving	Rs. 1437.80	Rs. 1810.86	Rs. 479.27	Rs. 603.62
For tickets issued in Foreign Currency				
Departing	USD 32.10	USD 40.43	USD 10.70	USD 13.48
Arriving	USD 26.27	USD 33.08	USD 8.76	USD 11.03

24.4. The Authority noted from the table above that HIAL had proposed to levy UDF on both departing and arriving passengers. The Authority noted that HIAL's proposal of levying UDF on both departing and arriving passengers was at variance with the provisions of the Concession Agreement. The Authority therefore proposed to determine UDF only from the departing passengers as was indicated in the Concession Agreement.

24.5. The Authority, on account of its various proposals in respect of respective building blocks, had determined the Yield Per Passenger at Rs. 416.64 under single till and at Rs. 801.98 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 and Parking charges, Common Infrastructure Charges, Fixed Electricity Ground Power charges and Fuel Charges, the same as proposed by HIAL. The Authority noted that HIAL had

proposed an increase in these charges and had kept them same under both single and dual till. 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.

- 24.6.** The Authority further noted that YPP calculation by HIAL did not include inflation as submitted to the Authority in MYTP filing and that inflation needed to be factored in by the Authority. The Authority proposed to consider inflation in YPP. The Authority calculated YPP and UDF for both single and dual till in respect of departing domestic and international passengers.
- 24.7.** On working out, the Authority noted that the UDF for all balance years in the Control Period worked out to be different. The Authority proposed that the UDF for all the balance years in the current Control Period should remain the same and thus the Authority has considered the UDF numbers under single and dual till. The Authority was aware that going by this UDF number, the aeronautical revenue accruing to HIAL in a particular year may be more / less than the corresponding ARR for that year. However, on an NPV basis, the ARR and the aeronautical revenue actually received by the airport operator through constant UDF for the balance years of the current Control Period will be the same.
- 24.8.** The figures of UDF under single till for domestic and international passengers, as worked out by the Authority in the Consultation Paper No 09/2013-14 is presented in the table below (the ratio of UDF between domestic to international was kept the same as HIAL obtained today 1:3.95):

Table 81: UDF (in Rs.) in single till for departing domestic and international pax as per Authority (with enhanced LPH and other charges) as calculated in Consultation Paper No 09/2013-14

Passengers	UDF under Single Till
Domestic Departing	330.49
International Departing	1306.60
Weighted Average	558.05

- 24.9.** The UDF calculations in Table 81 were based on enhanced Landing, Parking and Housing, CIC, GPU and FEGP charges as proposed by HIAL in its tariff card. The

Authority had also calculated as to what would be the UDF if no increase was made in these charges from the current levels. The results were as follows:

Table 82: UDF (in Rs.) in single till for departing domestic and international pax as per Authority (keeping LPH etc. charges unchanged at current level) as calculated in Consultation Paper No 09/2013-14

Passengers	UDF under Single Till
Domestic Departing	402.33
International Departing	1590.61
Weighted Average	691.53

24.10. The current level of UDF at RGI Airport, Hyderabad is Rs. 430 per departing domestic passenger and Rs. 1,700 per departing international passenger (ad-hoc determination by the Authority in October 2010). Lowering of these figures to the values presented in Table 82 was on account of inter alia, reduction in RAB (on account of depreciation), estimate of cost of equity at 16%, lower depreciation, lower quantum of Pre-Control Period losses etc.

24.11. Based on the material before it and its analysis, the Authority had proposed in the Consultation Paper No 09/2013-14 dated 21.05.2013:

24.11.1. To consider the multi-year ATP(s) submitted by HIAL for RGI Airport, Hyderabad at the MYTP stage itself.

24.11.2. 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.

24.11.3. To calculate the YPP at Rs. 416.64 under single till and Rs. 801.98 under dual till and the UDF under single till as well as dual till as indicated in Table 81.

24.11.4. To consider the final UDF for domestic and international departing passengers based on any other proposals that may be submitted to the Authority in this behalf by HIAL.

24.11.5. 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 HIAL under single till and dual till.

c Stakeholder Comments on Issues pertaining to Tariff Structure/ Rate Card

24.12. Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the tentative proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its Consultation Paper No 09/2013-14 dated 21.05.2013. Stakeholders have also commented on Tariff Structure/ Rate Card in respect of RGI Airport, Hyderabad. These comments are presented below:

24.13. On the issue of increase in the landing fees and application of differential landing fees for domestic and international carriers, IATA stated that

“IATA is strongly opposed to the 100% 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.”

24.14. On the issue of the ratio considered while computing domestic and international UDF, IATA stated that

“IATA notes that the ratio of UDF between domestic to international has been kept the same as the existing rate of 1:3.95. IATA believes that this ratio is unfair. IATA urges the use of a more equitable ratio of 1:2 or lower.

24.15. On the issue of the charging UDF only on embarking passengers, IATA stated that

“IATA agrees with AERA’s rejection of charging UDF for arriving passengers.”

24.16. Further, IATA is of the view that the Common Infrastructure Charge proposed for RGIA Hyderabad should be disallowed for the sake of rate card simplicity and the revenue requirement should be merged into the UDF

24.17. Additionally, as mentioned in Para 19.27 above, IATA stated that the fuel throughput charge should be set at the correct level of Rs. 828.29 per kiloliter.

24.18. AAI on the issue of Tariff Structure/ Rate Card stated that

- *“AERA may specify the policy regarding revenue to be recovered from passenger through UDF and amount of revenue to be recovered from Airline through airport charges (Proportionate).*
- *AERA has not specified whether the Govt. directive/policy on Aeronautical charges like discount on small aircraft rates for Flying Club etc. will be applicable to the operator.”*

24.19. Blue Dart Aviation Ltd. on the issue of Tariff Structure/ Rate Card 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 Hyderabad International Airport Limited(herein after referred as “HIAL”). As per the Consultation Paper, the Landing, Parking and Housing (LPH) charges were taken as per existing rates for the year 2010-11 and the 10% escalation was considered, year on year, starting from 2011-12.

2. The said Consultation Paper broadly discusses only about the changes in UDF charges and other aeronautical charges have remained constant. The consultation Paper is silent on the basis of which 10% increase on the landing, Parking and Housing have been arrived and basis on which other aeronautical charges will be decided in the 1st Regulatory Period. The projected increase of 10% year over year seems arbitrary in nature and very high and is not in line with the current

inflation rate. Inflation should be linked to WPI Index and must have a scientifically tested formula.

Further increasing the already high charges will further cripple the financial health of the airlines operating at HIAL

As all the Airlines will be directly impacted due to any increase in aeronautical charges, we request HIAL to provide the basis on which the increase in aeronautical charges have been arrived and further request AERA to validate the increase on comparison with similar airports around the globe.

With the increase in volume, the cost actually should start going down. We do not see the benefits of economies of scale being built in the entire consultation paper”

d HIAL’s response to Stakeholder Comments on Issues pertaining to Tariff Structure/ Rate Card

24.20. Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 09/2013-14 dated 21.05.2013, the Authority forwarded these comments to HIAL seeking its response to these comments. HIAL has provided responses to the Stakeholders’ comments, which are presented below:

24.21. In response to AAI’s comments on Tariff Structure, HIAL has stated that:

“We have proposed such an innovative rate card so that it may boost traffic throughput from RGI Airport.

As regards to discount we will request Authority to have a relook at not allowing the same. A discount on timely payment and discounts to promote growth of traffic are for overall benefit to users.

Without these there is no innovation left in industry and finically also the industry may face problem of bad debts and industry getting into a sick mode.”

24.22. In response to Blue Dart’s comments on Tariff Structure/ Rate Card, HIAL has stated as under:

“There has been no major revision in Landing, Parking and Housing charges (except for a 10% increase in 2009) since commencement of operation at RGI Airport, Hyderabad.

This does not even cover inflation.

If we were to take the inflation since 2000 this will be as under:

<i>RATE OF INFLATION</i>	<i>CPI-IW%</i>	<i>Total</i>
<i>2000</i>	<i>4.02</i>	
<i>2001</i>	<i>3.77</i>	
<i>2002</i>	<i>4.31</i>	
<i>2003</i>	<i>3.81</i>	
<i>2004</i>	<i>3.77</i>	
<i>2005</i>	<i>4.25</i>	
<i>2006</i>	<i>6.16</i>	
<i>2007</i>	<i>6.38</i>	
<i>2008</i>	<i>8.32</i>	
<i>2009</i>	<i>10.83</i>	
<i>2010</i>	<i>12.11</i>	
<i>2011</i>	<i>8.87</i>	
<i>2012</i>	<i>9.30</i>	
<i>2013</i>	<i>11.04</i>	<i>96.94</i>

24.23. Further in response to Blue Dart’s comments on WPI index, HIAL has stated as under:

“This is the first time any increase is proposed in LPH charges at RGI Airport. (Except for 10% increase in 2009). There is a misconceived 10% increase being discussed. There is no 10% increase proposed by us.

WPI increase considered in the Consultation Paper is 6.5%.”

24.24. In response to IATA’s comments on the issues pertaining to Tariff Structure/Rate Card, HIAL has stated as under:

“Even with the proposed increase the landing and parking charges at GHIAL will be lower than those at Chennai and Kolkata.

As regards to the issues of differentiation of rates in domestic and international passengers are concerned, we state that MoCA did the fixation of rates of the original DF.

The current rates have also being determined by AERA.

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.

Also worthwhile is to mention that there has not been any major increase in landing and parking charges in almost last 10 years (except for a 105 increase in 2009) and even if we go by inflationary increase the current increase is justified. Passing on the entire burden on passenger charges is not justified.”

e HIAL’s own comments on Issues pertaining to Tariff Structure/ Rate Card

24.25. On the issue of Tariff Structure / Rate Card, HIAL stated as under

“We shall like to make the following submissions as regards to pricing structure:

The revised rate card can be submitted once the final YPP is finalized by Authority based on our current submissions.

Hyderabad airport proposes to increase the domestic landing rates by 10% and international by 25% instead of the rate card proposal in our filing at 40% and 100% respectively.

We shall like to retain the differential pricing amongst Metro and Non Metro Airports.

We shall like to retain the minimum charge for <80 seater aircrafts.

The detailed rationale for above is as under:

Differential UDF for Metro and Non metro cities

Hyderabad is best suited to become the South & Central India Hub because it has got all the right ingredients of a hub such as location, facilities, strong O&D traffic, strong economy, and tourism potential.

Hyderabad is strategically located within two hours flying time from any city in India and under 5 hours flying time from SE Asian and Middle East countries. Due to the location advantage and as part of the focused regional connectivity GHIAL identified 19 two & three tier cities which are the natural catchment areas of Hyderabad airport. These cities are identified based on the current traffic pattern, connectivity and the potential of developing transfers from these cities to other destinations via Hyderabad.

The next wave of growth for Indian aviation is envisaged from two & three tier cities and it is very essential that the passengers from these cities get the right connections and pricing to fly into a hub such as Hyderabad and get onward connections.

It will not be feasible for the airlines to connect directly with many smaller cities for example Rajahmundry with Delhi. In order to promote such transfer passengers as well as to promote O&D traffic from these smaller cities we would like to propose a differential UDF for passengers who are travelling from Non Metro cities and Metro's.

Our analysis shows that more than 60-70%% of metro traffic comprises of business passengers whereas the Non metro traffic is majorly contributed by Tourism and VFR traffic. Hyderabad airport tier 2-3 city pricing strategy is complementing the Government of India policy of not charging landing fees for less than 80 seats aircrafts which are suitable on the tier 2-3 city routes.

Conclusion:

In view of above we shall like to retain the differential pricing amongst Metro and Non Metro Airports.

To charge Rs 5000/Landing of <80 Seater Aircraft only on Metro Routes

In 2004, the Naresh Chandra Report on “A Road map of for the Civil Aviation Sector” had suggested to waive of Landing charges for less than 80 seater aircraft of scheduled Indian carriers and also to cap the ATF VAT at 4% all over India. This was proposed primarily to enhance the connections and encourage airlines to connect two and three tier cities in India. This proposal was attractive and majority of the carriers started operating ATR’s, Q400’s, ERJ’s etc. on these routes.

Even though the policy was introduced to attract connection between non metro cities, the airlines started deploying smaller aircraft on metro routes also, like Hyderabad – Chennai and Hyderabad – Bangalore thereby gaining an undue advantage which was not the intention of the Ministry of Civil Aviation policy. Hyderabad Airport proposal of charging landing for these types of aircrafts operating on metro routes is to mitigate the issue of airlines re deploying these less than 80 seater aircrafts from metro routes to the tier 2-3 cities as envisaged by the pricing policy.

Conclusion:

We would like to retain the minimum charge for <80 seater aircrafts.

To escalate Landing charges of Aircrafts only by 10% for Domestic Carriers and 25% for International Carriers

The provisions of the concession agreement between Government of India and GHIAL, the latter is entitled to levy AAI tariff effective 2001 duly increased with inflation index up to the airport opening date (23rd March, 2008) which amounted to 38% increase over the AAI tariff of 2001. However, keeping in view the unprecedented rise in ATF prices and the adverse financial pressures the airlines were undergoing at that juncture, GHIAL did not make any inflation adjustments and decided to stay with the AAI’s, 2001 rates for landing. In July, 2009 we have increased the landing charges by 10% after getting approval from MoCA.

Conclusion:

Hyderabad airport proposes to increase the domestic landing rates by 10% and international by 25% instead of the rate card proposal in our filing at 40% and 100% respectively.

The revised rate card can be submitted once the final YPP is finalized by Authority based on our current submissions.”

f Authority’s Examination of Stakeholder Comments on Issues pertaining to Tariff Structure/ Rate Card

24.26. The Authority has carefully considered the comments made by the stakeholders on Tariff Structure/ Rate Card in respect of HIAL. The Authority’s analysis of these comments is presented below:

24.27. The Authority has noted HIAL’s proposal to increase the domestic landing rates by 10% and international by 25% instead of increasing it by 40% and 100% respectively as proposed in their earlier filing. However the Authority, after considering the ARR requirement for the remaining years of the current Control Period, has decided to maintain the level of landing, parking and housing charges at their existing levels.

24.28. Further, the Authority notes that HIAL shall like to retain the differential pricing amongst Metro and Non Metro Airports. The Authority is of the view that only a single charge should be applicable for all domestic flights landing at RGIA, Hyderabad and similarly a single charge should be applicable for all international flights landing at RGIA, Hyderabad and there should be no segregation.

24.29. HIAL also stated that HIAL shall like to retain the minimum charge for less than 80-seater aircrafts. However, it is understood that in accordance with a directive from the Ministry of Civil Aviation, the landing fee for aircrafts with less than 80 seats have been waived off. Accordingly, the Authority has decided that charges for aircrafts with less than 80 seats should not be levied.

24.30. The Authority notes that IATA has stated that *“the ratio of UDF between domestic to international has been kept the same as the existing rate of 1:3.95. IATA believes that this ratio is unfair. IATA urges the use of a more equitable ratio of 1:2 or lower.”* However, the Authority has no set guidelines to determine the ratio. Accordingly, the Authority has continued with the ratio of UDF between domestic

to international as the same as is being levied by RGIA, Hyderabad currently i.e. the existing rate of 1:3.95.

24.31. The Authority further notes that IATA is in consonance with Authority's decision of rejection of charging UDF for arriving passengers.

24.32. On the issue of fuel charge, the Authority notes that IATA is of the view that the fuel throughput charge should be set at the correct level of Rs. 828.29 per kilolitre. However, the Authority is of the view that this is a business decision in the hands of HIAL and that these charges were set and are being paid even before the Authority came into existence. The Authority notes that though the fuel supply service is "material but not competitive", HIAL has entered into reasonable user agreements. Thus the Authority decides to determine these charges under light touch approach and to continue at the current levels of Rs 1,500/- per kilolitre for infrastructure charges and Rs 670/- per kilolitre as fuel throughput charges as per the submissions made by HIAL in the ATP submitted at the Consultation stage.

24.33. The Authority has noted that, presently, PSF being collected at RGI Airport, Hyderabad 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).

24.34. The Authority notes that the Schedule of Airport Charges as is available on HIAL's website does not include any charges on account of Fixed Electricity Ground Power (FEGP) Charges. However, the auditor certificate submitted by HIAL for the aeronautical revenue for the FY 2012-13 indicates revenue collected on account of levy of these charges. HIAL has projected collection of aeronautical revenue of Rs 1.42 crore each for FY 2014-15 and for FY 2015-16 on account of these charges. In the ATP submitted by HIAL at the Consultation stage, it had indicated the level of charges on this account as under,

"FEGP services can be availed by the Airlines/Operators to use electric ground power in place of APU (Auxiliary power unit) or a GPU (diesel

generator). Charges for FEGP usage are based on minimum half an hour usage and thereafter every 15 minutes based on the hourly charges. The following fixed ground power charges will be charged:

Table 83: Fixed Electricity Ground Power charges proposed by HIAL

Time Slot	1 plug (90 KV)	2 Plugs (180 KV)
First 30 minutes	Rs 500	Rs 875
Every additional 15 minutes	Additional Rs 250	Additional Rs 437.50

.”

24.35. The Authority has taken the above rates into account while calculating the ARR. The Authority, therefore, decides to determine the charges on account of Fixed Electricity Ground Power charges as per Table 83.

24.36. As far as the tariff structure / rate card is concerned, the Authority has gone through the existing Schedule of Airport Charges³³ for HIAL as was available on the website of HIAL (attached as Annexure – II to this Order for ready reference). The Authority’s determination of the various components mentioned therein is as under:

24.36.1. Landing and Parking charges remain unaltered at the current level including the conditions mentioned therein (including housing and parking charges as well as other terms and conditions) except that there will be no landing charge for aircrafts with less than 80 seats (Refer Para 24.29 above).

24.36.2. Passenger Service Fees (PSF): Passenger Service Fee will comprise only of the security component of Rs 130/- per embarking passenger. There shall be no facilitation component with effect from 01.04.2014. Exemptions in PSF as indicated in the current schedule would continue.

24.36.3. User Development Fee (UDF): There shall be Zero (0) UDF with effect from 01.04.2014, for both domestic and international embarking passenger.

³³ http://www.hyderabad.aero/filedownload.aspx?file=RGIA_Airport_Charges.pdf&type=pdf accessed on 22.02.2014

- 24.36.4. **Common Infrastructure Charges (CIC):** The Common Infrastructure Charges as indicated in the Schedule of Airport Charges would continue unaltered at the current level along with the conditions mentioned therein.
- 24.36.5. **Fuel Supply Charges:** These would continue unaltered at their current level of (i) Infrastructure Charges of Rs 1,500/- per Kiloliter and (ii) Fuel Throughput Charges of Rs 670/- per Kiloliter, both being regarded as aeronautical services.
- 24.36.6. **Collection charges:** Since there is no UDF, there would also correspondingly be no collection charge of Rs 5 per embarking passenger with effect from 01.04.2014. As regards other percentages of collection charges in respect of Common Infrastructure Charges and PSF – Security Component, the existing percentages as indicated in the Schedule of Airport Charges (currently indicated as 2.5% both for CIC as well as PSF) would remain unaltered.
- 24.36.7. **Fixed Electricity Ground Power (FEGP) Charges:** The Authority determines that these charges would continue unaltered at their current level as indicated in Table 83.
- 24.36.8. **Other Charges:** Reading of the description under this heading in the Schedule of Airport Charges indicates that these do not appear to be charges for aeronautical services. Hence the Authority is not determining charges for the same.

Decision No. 20. Regarding Tariff Structure / Rate Card

20.a. The Authority decides as under:

- i. To determine the tariff in respect of Landing, Parking and Housing charges, Fuel Supply Charges, Common Infrastructure Charges and Fixed Electricity Ground Power charges as presented in Para 24.36 above applicable with effect from 01.04.2014 till 31.03.2016.
- ii. Passenger Service Fee will now comprise only of the security component of Rs 130/- per embarking passenger with effect from 01.04.2014 and there will no facilitation component in the PSF

- iii. The Authority has also decided that the facilitation component of the PSF would now be merged with UDF. However in case of HIAL, the Authority has determined UDF as Zero (0) with effect from 01.04.2014 till 31.03.2016 for both domestic and international embarking passenger

25. Quality of Service

a HIAL Submission on Quality of Service

- 25.1.** HIAL in submission had requested that only those quality parameters were to be monitored by the Authority which were given in the Concession Agreement

b Authority's Examination on Quality of Service

- 25.2.** The Authority noted that Section 9 of the Concession Agreement for RGI Airport, Hyderabad lays down the performance standards to be followed in respect of the airport. The criteria used to measure the Airport's performance were the IATA Global Airport Monitor service standards set out in Schedule 9, Part 2. IATA surveys were to be conducted every year and the airport's performance was to be determined. Also, if the Airport's rating was lower than IATA standards (3.5/5) for three consecutive years then in order to improve the Airport's performance an action plan was to be propose by HIAL to be implemented within the next corresponding year.
- 25.3.** The Authority noted that in the scheme of the AERA Act, there were two mandates relating to quality of service – first, the quality of service for determination of tariff was to be considered and secondly, the set performance standards relating to quality of service were to be monitored. In the Airport Guidelines, a mechanism to consider reduced tariffs for under-performance was also adopted by the Authority. The Authority had specified that under-performance with respect to specified benchmark for each objective service quality measure was to have a monthly rebate incidence of 0.25% of aeronautical revenue, subject to an overall cap of 1.5%.
- 25.4.** The issue of specifying a transition period for implementation of the scheme of quality of service measurement was considered by the Authority and a period of six months from the date of tariff determination was considered appropriate for aligning their processes/ procedures. Also, the Authority noted that a period of two years and two months of the first control period had already elapsed and the implementation was to be applicable at the earliest only from the fourth tariff year of the Control period i.e., 2014-15. The Authority noted that it would be possible to

calculate the rebate for the year 2014-15 only in the tariff year t+2, viz., in 2016-17, which was 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 HIAL.

25.5. Based on the material before it and its analysis, the Authority had proposed in the Consultation Paper No 09/2013-14 dated 21.05.2013:

25.5.1. To use the rebate mechanism as indicated in the Airport Order and the Airport Guidelines for RGI Airport, Hyderabad.

25.5.2. 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.

c Stakeholder Comments on Issues pertaining to Quality of Service

25.6. Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the tentative proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its Consultation Paper No 09/2013-14 dated 21.05.2013. Stakeholders have also commented on Quality of Service to be considered in respect of RGI Airport, Hyderabad. These comments are presented below:

25.7. On the issue of Quality of Service, IATA stated that

“IATA agrees with the proposal for the rebate mechanism and the proposal for a transition period of six months for implementation but implementation should take place no later than 1 April 2014.”

25.8. On the issue of Quality of Service ACI stated that the Authority must monitor the performance standards. However, ACI further stated that the AERA Act contemplates monitoring of the performance standards with no penal provisions and thus suggested that in case of any violation of performance standards by HIAL, the Authority can report the same for penal provisions as signed with the state. Further, ACI also recommended an incentive scheme if the quality levels are exceeded.

25.9. ACI in its submissions related to Quality of Service stated that

“Price regulation, by itself, has the potential to result in degradation of service quality. When facing a price constraint, a firm with significant market power may be able to increase profits by decreasing costs via a reduction in service quality. As a result, some regulators have accompanied price regulation with regulation or guidelines regarding service quality.

A number of approaches have been suggested and attempted. These include quality monitoring without financial penalty, financial fines or user rebates for failing to meet certain service quality targets, or incorporating service quality into the price cap itself could be reduced by subtracting a service quality factor, q:

$$\text{Price cap} = \text{CPI} - X - q$$

The service quality factor q would be based on specified metrics regarding service quality (e.g., queue times, cleanliness, delays, etc.). Thus, the price cap would be adjusted downward in a later year if the airport failed to achieve to certain service quality targets in a given year (or possibly adjusted upwards if it exceeded the targets).

Issues Associated with Service Quality Regulation

There are a number of issues associated with the regulation of service quality within the broader economic regulation of an airport:

- *Targets and metrics are set by a regulator rather than the market. These targets and metrics are inflexible – the regulated entity cannot respond to changing market conditions or evolving customer needs and wants. In many cases, different customers have different needs and wants – service quality regimes typically do not have the ability to cater for different passenger groups.*
- *Service quality levels are often facilitated by allowed operating and capital costs, which within a regulatory determination are often influenced by airlines. This can lead to a tension between*

the requirement to meet certain service quality standards and the approval of the operating and capital resources required to reach these standards.

- The consequences of service quality schemes are not always symmetrical - if the airport underperforms it is penalised, but if it over performs it is not rewarded. The service quality regulation should to provide symmetrical incentives – rewarding overachievement as well as penalising under achievement.*
- Service quality at an airport depends upon cooperation between many different players – primarily airlines, airport and ground handlers, but also government services, surface transport providers, retailers, etc. Service quality regimes are generally imposed upon airports only, dulling the incentives of other parties to cooperate in improving the passenger experience. At a minimum, service quality schemes should only cover areas where the airport has direct control and responsibility (e.g., security screening queue times) and not areas where other parties have influence.*
- As service quality at an airport depends upon cooperation between different players, regulators should consider schemes such as at Copenhagen Airport, where the airport, airlines and handlers are incentivised to work together, with the airport shouldering most responsibility.*

We understand that the AERA act contemplates a monitoring of the performance standards with no penal provisions. As such AERA must monitor the performance standards and in case of any violations can report the same for penal provisions as signed with the state.

We shall also recommend for an incentive scheme if the quality levels are exceeded.”

25.10. APAO in its submissions related to Quality of Service stated that the quality adherence parameters mentioned in the Concession Agreement are stringent

enough and provide an adequate deterrent in case of the operator's non-compliance and imposition of additional penalties by the Authority would result in doubling the jeopardy for the operator. Further, APAO stated as under

“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.”

d HIAL’s response to Stakeholder Comments on Issues pertaining to Quality of Service

25.11. Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 09/2013-14 dated 21.05.2013, the Authority forwarded these comments to HIAL seeking its response to these comments. HIAL has provided responses to the Stakeholders’ comments, which are presented below:

25.12. In response to ACI's comments on quality of service, HIAL has stated as under:

"In terms of the AERA Act it is clear that the role and jurisdiction of the Authority is limited to monitoring compliance of the service quality standards prescribed under the concession agreement. The prescription of any new services standards is not envisaged. While Section 13(1)(a)(ii) of the AERA Act permits the Authority to consider the services provided, its quality and other relevant factors in determining the tariff, there is no explicit power vested with the Authority to prescribe any penalties under the AERA Act in the event of a failure to meet service quality requirements. In view of the Authority being required to take the terms of the concession agreement into consideration for determining tariff and in view of the concession agreement already providing for a mechanism for penalties for failure to achieve service quality requirements, the Authority should not only take into consideration the service quality requirements, but also the penalties for failure to meet service quality requirements as set forth therein. Any penalties prescribed by the Authority for failure to meet the said service quality requirements would effectively tantamount to the Authority not taking into consideration the terms (including penalties) of the Concession Agreements and therefore would not be consistent with the AERA Act Therefore, Authority is requested not to impose additional standards and penalties over and above those enumerated in the CA. Additional quality parameters, maintaining these standards, and monitoring requires additional capital and operating expenditure. The same needs to be allowed over and above the amounts allowed by Authority. As such the Authority is requested to continue with the methodology as prescribed under Concession Agreements for compliance, monitoring and penalties for non-conformity."

25.13. In response to APAO's comments on the issues pertaining to Quality of Services, HIAL has stated as under:

“In terms of the AERA Act it is earnestly submitted that the role and jurisdiction of the Authority is limited to monitoring compliance of the service quality standards prescribed under the concession agreement. The prescription of any new services standards is not envisaged. While Section 13(1)(a)(ii) of the AERA Act permits the Authority to consider the services provided, its quality and other relevant factors in determining the tariff, there is no explicit power vested with the Authority to prescribe any penalties under the AERA Act in the event of a failure to meet service quality requirements. In view of the Authority being required to take the terms of the concession agreement into consideration for determining tariff and in view of the concession agreement already providing for a mechanism for penalties for failure to achieve service quality requirements, the Authority should not only take into consideration the service quality requirements, but also the penalties for failure to meet service quality requirements as set forth therein. Any penalties prescribed by the Authority for failure to meet the said service quality requirements would effectively tantamount to the Authority not taking into consideration the terms (including penalties) of the Concession Agreements and therefore would not be consistent with the AERA Act Therefore, Authority is requested not to impose additional standards and penalties over and above those enumerated in the CA. Additional quality parameters, maintaining these standards, and monitoring requires additional capital and operating expenditure. The same needs to be allowed over and above the amounts allowed by Authority. As such the Authority is requested to continue with the methodology as prescribed under Concession Agreements for compliance, monitoring and penalties for non-conformity.”

25.14. In response to IATA’s comments on the issues pertaining to Quality of Services, HIAL has stated as under:

“In terms of the AERA Act it is earnestly submitted that the role and jurisdiction of the Authority is limited to monitoring compliance of the service quality standards prescribed under the concession agreement. The prescription of any new services standards is not envisaged. While Section 13(1)(a)(ii) of the AERA Act permits the Authority to consider the services provided, its quality and other relevant factors in determining the tariff, there is no explicit power vested with the Authority to prescribe any penalties under the AERA Act in the event of a failure to meet service quality requirements. In view of the Authority being required to take the terms of the concession agreement into consideration for determining tariff and in view of the concession agreement already providing for a mechanism for penalties for failure to achieve service quality requirements, the Authority should not only take into consideration the service quality requirements, but also the penalties for failure to meet service quality requirements as set forth therein. Any penalties prescribed by the Authority for failure to meet the said service quality requirements would effectively tantamount to the Authority not taking into consideration the terms (including penalties) of the Concession Agreements and therefore would not be consistent with the AERA Act. Therefore, Authority is requested not to impose additional standards and penalties over and above those enumerated in the CA. Additional quality parameters, maintaining these standards, and monitoring requires additional capital and operating expenditure. The same needs to be allowed over and above the amounts allowed by Authority. As such the Authority is requested to continue with the methodology as prescribed under Concession Agreements for compliance, monitoring and penalties for non-conformity.”

e HIAL’s own comments on Issues pertaining to Quality of Service

25.15. On the issue of Quality of Service, HIAL stated that

“AERA Act, 2008 in its preamble sets out the scope and coverage of the AERA Act, as also the scope of the Authority’s powers and functions thereunder. The preamble provides:

“An Act to provide for the establishment of an Airports Economic Regulatory Authority to regulate tariff and other charges for the aeronautical services rendered at airports and to monitor performance standards of airports and also to establish Appellate Tribunal to adjudicate disputes and dispose of appeals and for matter connected therewith or incidental thereto.”

Further, under Section 13(i) (d) of the AERA Act, the Authority has been vested with the function:

(d) to monitor the set performance standards relating to quality, continuity and reliability of service as may be specified by the Central Government or any authority authorised by it in this behalf;

From reading of the aforesaid provisions of the AERA Act, it is clear that the jurisdiction and functions of Authority is limited to monitoring the performance standards relating to quality, continuity and reliability of service as have been specified by the Central Government or any authority authorized by the Central Government in this behalf, including under the Concession Agreements. This position is also supported by the terms of the Concession Agreements between GHIAL and the Government of India.

“...in undertaking its role AERA will monitor, pre-set performance in respect to service quality performance as defined in the Operations Management Development Agreement (Concession Agreements) and revised from time to time.”

Accordingly, in terms of the AERA Act it is clear that the role and jurisdiction of the Authority is limited to monitoring compliance of the service quality standards prescribed under the concession agreement. The prescription of any new services standards is not envisaged.

While Section 13(1)(a)(ii) of the AERA Act permits the Authority to consider the services provided, its quality and other relevant factors in determining the tariff, there is no explicit power vested with the Authority to prescribe any penalties under the AERA Act in the event of a failure to meet service quality requirements.

In view of the Authority being required to take the terms of the concession agreement into consideration for determining tariff and in view of the concession agreement already providing for a mechanism for penalties for failure to achieve service quality requirements, the Authority should not only take into consideration the service quality requirements, but also the penalties for failure to meet service quality requirements as set forth therein. Any penalties prescribed by the Authority for failure to meet the said service quality requirements would effectively tantamount to the Authority not taking into consideration the terms (including penalties) of the Concession Agreements and therefore would not be consistent with the AERA Act. Further, the Concession itself contemplates the following mechanism of compliance and monitoring:

- Failure to achieve the rating as mentioned in the CA for three consecutive periods shall have to be explained and remedial actions proposed by way of action plan must be implemented within one year and the same procedure is repeated for another year.*
- Despite cure period, if GHIAL is still not able to achieve the designated rating, Gol shall have the right to impose liquidated damages.*
- If the GHIAL continues to be rated as lower than three and a half (3.5) (in the current IATA scale of 1 to 5) due to GHIAL's poor performance in the survey, unless caused due to Gol or Relevant Authority, conducted in respect of the two (2) years following the date that GHIAL first becomes liable to pay such liquidated damages, Gol shall have the right to terminate this Agreement.*

Therefore, Authority is requested not to impose additional standards and penalties over and above those enumerated in the CA. Additional quality parameters, maintaining these standards, and monitoring requires additional capital and operating expenditure. The same needs to be allowed over and above the amounts allowed by Authority. As such the Authority is requested to continue with the methodology as prescribed under Concession Agreements for compliance, monitoring and penalties for non-conformity.”

f Authority’s Examination of Stakeholder Comments on Issues pertaining to Quality of Service

25.16. The Authority has carefully considered the comments made by the stakeholders on Quality of Service in respect of HIAL. The Authority had an occasion earlier to consider such aspects and had presented its views on these aspects in its Order No 32/2012-13 dated 15.01.2013 in respect of tariff determination of Mumbai International Airport Limited. These views of the Authority are also presented below:

25.16.1. As per section 13 (1)(d) of the Act, the Authority shall monitor the set performance standards relating to quality, continuity and reliability of service as may be specified by the central government or any authority authorised by it in this behalf.

25.16.2. Besides these functions relating to monitoring of set performances standards the Authority is required to determine tariff, inter alia taking into consideration Section 13 (1)(a)(ii) “ ...the service provided, its quality and other relevant factors;.....”

25.16.3. Therefore, in the scheme of the Act, the Authority has two mandates relating to quality of service – first, to consider the quality of service for determination of tariff and secondly, to monitor the set performance standards relating to quality of service. These are two distinct functions - one relates to determination of tariff whereas another relates to monitoring of set performance standards.

25.17. The Authority has carefully considered the comments of the stakeholders in this regard. It has also noted the provisions of the Concession Agreement with respect to performance standards (particularly Article 9 and Schedule 9 Part 2 thereof). The Authority notes that these standards are 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 feels that the scheme of performance standards as indicated in the Concession Agreement would be reasonable for this purpose.

Decision No. 21. Regarding Quality of Service

21.a. The Authority decides that HIAL shall ensure that service quality at RGI Airport, Hyderabad conforms to the performance standards as indicated in the Concession Agreement.

26. Matters regarding Error Correction and Annual Compliance Statement

a Authority's Examination on Matters regarding Error Correction and Annual Compliance Statement

- 26.1.** The error correction mechanism was laid down by the Authority in its Airport Guidelines with reference to the adjustment to the Estimated Maximum Allowed Yield per passenger was calculated using the error correction term of Tariff Year $t-2$ and the compounding factor. The Airport Guidelines indicated the quantum of over-recovery or under-recovery as calculated in the error correction due to increase or decrease of the Actual Yield per passenger with respect to Actual Maximum Allowed Yield per passenger in the Tariff Year. In the case of HIAL, appropriate adjustments to the RAB at the beginning of the next Control Period in respect of actual investments were proposed to be made by the Authority. The depreciation calculated was also to be considered and the traffic projections were proposed to be trued up.
- 26.2.** Further, the Authority felt that in view of all the corrections/truing up to be carried out at the end of the Control Period there might not be any requirement for HIAL to submit Annual Compliance Statements etc., as per the timelines indicated in the Airport Guidelines. Instead, HIAL should submit the Annual Compliance Statements along with the MYTP for the next Control Period.
- 26.3.** Based on the material before it and its analysis, the Authority had proposed in the Consultation Paper No 09/2013-14 dated 21.05.2013:
- 26.3.1. That HIAL 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.
- 26.4.** The Authority has not received any comments / views from the stakeholders in response to the above proposal presented by the Authority in its Consultation Paper No 09/2013-14 dated 21.05.2013. Hence the Authority reiterates its earlier position.

Decision No. 22. Regarding Matters of Error Correction

- 22.a. The Authority decides that HIAL 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.**

27. Summary of Decisions (including True-ups)

Decision No. 1. Regarding Consideration of Regulatory Till in respect of RGI Airport, Hyderabad 219

- 1.a. *The Authority decides to adopt Single Till for determination of aeronautical tariff in respect of RGI Airport, Hyderabad for the current Control Period.219*

Decision No. 2. Regarding Consideration of Pre-Control Period deficit (losses) of HIAL 236

- 2.a. *The Authority decides to consider the Pre-Control Period deficit (losses) of Rs 40.25 crore, as on 01.04.2011, for the period 01.09.2009 to 31.03.2011 towards determination of aeronautical tariff for the current Control Period commencing from 01.04.2011.236*
- 2.b. *Accordingly the Authority decides to add Rs 40.25 crore to the ARR of the current Control Period while determining tariff in respect of RGI Airport, Hyderabad.....236*

Decision No. 3. Regarding Control Period 241

- 3.a. *The Authority decides to consider the First Control Period from 01.04.2011 to 31.03.2016 for determination of the aeronautical tariff in respect of RGI Airport, Hyderabad.....241*

Decision No. 4. Regarding Allocation of assets (Aeronautical / Non-aeronautical) 251

- 4.a. *The Authority decides to adopt the following approach for allocation of assets into aeronautical and non-aeronautical assets towards determination of tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:251*
- i. *To consider the asset allocation, as submitted by HIAL, for the determination of aeronautical tariff in respect of RGI Airport, Hyderabad251*
- ii. *To commission an independent study to assess the reasonableness of the asset allocation submitted by HIAL and will take corrective action, as necessary for determination of tariffs, at the commencement of the next Control Period commencing with effect from 01.04.2016. If upon analysis*

/ examination pursuant to such a study, the Authority concludes that the allocation of assets considered needs to be changed, the Authority would consider truing up the allocation mix at the commencement of the next Control Period, as may be relevant.251

Decision No. 5. Regarding Future Capital Expenditure including General Capital Expenditure 265

5.a. The Authority decides to adopt the following approach for consideration of Future Capital Expenditure including General Capital Expenditure towards determination of tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:265

- i. To include the General Capital Expenditure (Refer items in Group 2 in Table 18) as submitted by HIAL for the present, for the purpose of the determination of tariff for aeronautical services during the current Control Period.....265
- ii. Not to include projects under “Future Capital Expenditure in subsidiaries (assets not in the books of HIAL)” (Refer items in Group 3 of Table 18) for the purpose of the determination of tariff for aeronautical services during the current Control Period.265
- iii. To include projects under “Future Capital Expenditure (assets reflected in the books of HIAL)” (Refer items in Group 4 of Table 18) for the purpose of the determination of tariff for aeronautical services during the current Control Period.....265
- iv. To include selected projects namely, “Flood Control & Rainwater Harvesting” and “Sustainability through Renewable Energy (Solar)” out of the Future Capital Expenditure (Refer items in Group 1 of Table 18) for the purpose of the determination of tariff for aeronautical services during the current Control Period.266
- v. To note that the remaining items under Future Capital Expenditure (Refer items in Group 1 of Table 18 namely “Airport Connectivity from North”, “Water Supply capacity augmentation” and “Power Capacity Augmentation”) have not been considered by the Authority for

capitalization during the current Control Period. However, should HIAL capitalize any expenditure on these items, the Authority would reckon such capitalized expenditure towards RAB at the time of determination of aeronautical tariffs for the next Control Period commencing from 01.04.2016.	266
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ii. To take into account the treatment of commercial exploitation of land towards aeronautical tariffs after receipt of information from the Government of Andhra Pradesh (as indicated in Para 10.39.3.c and Para 10.39.3.d above) and to give effect to the same in the tariff determination in the next Control Period	294
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7.a. <i>The Authority decides to adopt the following approach for consideration of Regulatory Asset Base towards determination of tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:.....</i>	<i>309</i>
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ii. To disallow capitalization of the Forex Loss Adjustment	309

- iii. To calculate RAB for each year as the average of the opening and closing RAB and calculate the return for each year on the average RAB.....309
- iv. Accordingly to consider the value of RAB as per Table 24 for determination of aeronautical tariff under single till.....309
- v. To work out the difference between the value of Return on RAB calculated based on actual date of commissioning/ disposal of assets and that calculated considering such asset has been commissioned/ disposed half way through the tariff year. The Authority further decides to consider and adjust this difference at the end of the current Control Period while determining tariff for the next Control Period considering Future Value of these differences for each year in the current Control Period.....309
- vi. To note that certain assets with the airport namely, Power sub-station, water supply infrastructure and roads within the perimeter of the airport are being utilized by HIAL's subsidiaries namely, GHRL and GHASL (which do not form part of the stand-alone entity of HIAL and are not being considered by the Authority towards tariff determination for HIAL). The Authority would at the time of tariff determination in the next Control Period, based on auditor certificate, exclude such reasonable portion of such assets from the RAB of HIAL and true-up the RAB for the current Control Period and consequential changes to aeronautical tariff, taking these forward while determining aeronautical tariff for the next Control Period.....309

Decision No. 8. Regarding Cost of Debt 318

- 8.a. The Authority decides to adopt the following approach for consideration of cost of debt towards determination of tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:318*
 - i. To consider the actual cost of Rupee Term Loan and ECB Loan, paid by HIAL, for FY 2011-12 and FY 2012-13 towards the cost of debt for FY 2011-12 and FY 2012-13318

Summary of Decisions (including True-ups)

ii.	To consider a ceiling in respect of the cost of debt for rupee term loan availed by HIAL at 12.50%.	318
iii.	Not to accept the proposed increase of 0.5% in the rate of interest of rupee term loan for calculation of future cost of debt for the FY 2013-14, FY 2014-15 and FY 2015-16.	319
iv.	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 8.00% for the ECB Loan.....	319
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Summary of Decisions (including True-ups)

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ii.	To calculate WACC at 10.01% (based on 16% cost of equity) for the purpose of determination of aeronautical tariffs during the current Control Period.....	384
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iv.	To true-up WACC on account of the following:	384
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2.	Cost and level of debt (subject to Decision No. 8 above) as well as any other means of finance that HIAL may contract in this behalf	384
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11.a.	<i>The Authority decides to adopt the following approach for consideration of depreciation towards determination of tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:</i>	<i>393</i>
i.	To consider depreciation up to 100% of RAB.	393
ii.	Accordingly, to consider depreciation on RAB under single till as per Table 42.	393
iii.	To work out the difference between the amounts of depreciation calculated based on actual date of commissioning/ disposal of assets and the amount of depreciation calculated considering such asset has been commissioned/ disposed half way through the Tariff Year. To adjust this difference at the end of the current Control Period considering future value of the differences for each year in the current Control Period.	393
Decision No. 12.	Regarding Operating expense	413
12.a.	<i>The Authority decides to adopt the following approach towards operating expenses while determining tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:</i>	<i>413</i>

- i. To consider the operating expenses in respect of HIAL as a standalone entity (refer Para 3.4 above) as given in Table 51.413
- ii. Not to true-up the operating expenses as referred to in i above, except for the points mentioned in iii and iv below.413
- iii. To commission an independent study to assess the reasonableness of operation and maintenance costs. The Authority would consider the results of the study in its tariff determination for the next Control Period commencing on 01.04.2016, including truing up as may become necessary. However based on the experience gained on commissioning of such a study for this control period, the Authority would consider commissioning such studies in next Control Periods.413
- iv. To review and true up if necessary the following factors for the purpose of corrections (adjustments) while determining aeronautical tariffs for the next Control Period413
 1. Mandated costs incurred due to directions issued by regulatory agencies like DGCA;413
 2. Costs on actuals related to electricity and water charges;413
 3. Operating expenses pertaining to the selected projects (as indicated in items in Table 18), proposed by HIAL to be undertaken under the Future Capital Expenditure based on evidential submissions made by HIAL in this regard.....413
 4. All statutory levies in the nature of fees, levies, taxes and other such charges by Central or State Government or local bodies, local taxes/levies, directly imposed on and paid for by HIAL on final product/service provided by HIAL in the current Control Period, will be reviewed by the Authority for the purpose of corrections (adjustments) to tariffs in the next Control Period.413
 5. Furthermore, any additional payment by way of interest payments, penalty, fines and other such penal levies associated with such statutory levies, which HIAL has to pay for either any delay or non-compliance, the same will not be trued up. On the input side if HIAL has to pay higher

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i. To consider taxes paid on actuals in each year for the years 2011-12 and 2012-13 and the estimated tax liability for the remaining years 2013-14, 2014-15 and 2015-16. To note actual tax paid / payable is according to MAT on account of Section 80 IA benefit under Income Tax Act availed by HIAL as per the Concession Agreement terms.	420
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14.a. <i>The Authority decides to adopt the following approach for consideration of non-aeronautical revenue towards determination of tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:</i>	<i>432</i>
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Decision No. 15. Regarding Treatment of Revenue from Ground Handling, Fuel throughput and Cargo Services	468
15.a. <i>The Authority decides to adopt the following approach regarding treatment of Revenue from Ground Handling, Fuel throughput and Cargo</i>	

<i>Services towards determination of tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:</i>	<i>468</i>
i. To consider the cargo, ground handling and fuel supply services as aeronautical services	468
ii. To consider the assets, which are on the books of standalone entity of HIAL and are utilized in provision of cargo, ground handling and fuel throughput services, as aeronautical assets	468
iii. To treat the revenue from the cargo service (provided by third party concessionaires) accruing to HIAL as aeronautical revenue	468
iv. To consider the revenue from Ground Handling services (provided by third party concessionaires) accruing to HIAL as aeronautical revenue	469
v. To consider revenue from fuel farm service (including Fuel Through Charges) provided by HIAL as aeronautical revenue in the hands of HIAL and to note that assets of fuel farm are on the balance sheet of standalone entity of HIAL (refer Para 3.4 above) and have been given to M/s RIL under operations and maintenance agreement	469
Decision No. 16. Regarding Traffic forecast	477
<i>16.a. The Authority decides to adopt the following approach for consideration of traffic towards determination of tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:</i>	<i>477</i>
i. To consider the actual traffic numbers as provided by HIAL in respect of the years 2011-12 and 2012-13 and to consider the traffic forecast as submitted by HIAL for the balance years in the current Control Period.	477
ii. 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.	477
Decision No. 17. Regarding Inflation	481
<i>17.a. The Authority decides to adopt the following approach for consideration of inflation towards determination of tariffs for aeronautical services provided by HIAL at RGI Airport, Hyderabad:</i>	<i>481</i>

Summary of Decisions (including True-ups)

i.	To consider WPI at 5.9% for remaining years of the current Control Period based on the latest assessment by RBI.	481
ii.	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.	481
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18.a.	<i>The Authority decides:.....</i>	<i>484</i>
i.	To note that even after considering inflationary increase in the Yield Per Passenger for the balance period of the current Control Period, there would still be cumulative over-recovery on ARR (Refer Para 22.9 above)	484
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19.a.	<i>The Authority decides:.....</i>	<i>495</i>
i.	To calculate the YPP at Rs. 94.70 under single till in respect of the current Control Period for RGI Airport, Hyderabad	495
ii.	To true-up the above YPP based on truing-up of various building blocks impacting the calculation of the said YPP at the end of the current Control Period (including true-up of the over-recovery as indicated in Para 23.14 above) and to consider its effect in the next Control Period.	495
Decision No. 20.	Regarding Tariff Structure / Rate Card	511
20.a.	<i>The Authority decides as under:.....</i>	<i>511</i>
i.	To determine the tariff in respect of Landing, Parking and Housing charges, Fuel Supply Charges, Common Infrastructure Charges and Fixed Electricity Ground Power charges as presented in Para 24.36 above applicable with effect from 01.04.2014 till 31.03.2016.	511
ii.	Passenger Service Fee will now comprise only of the security component of Rs 130/- per embarking passenger with effect from 01.04.2014 and there will no facilitation component in the PSF	511

- iii. The Authority has also decided that the facilitation component of the PSF would now be merged with UDF. However in case of HIAL, the Authority has determined UDF as Zero (0) with effect from 01.04.2014 till 31.03.2016 for both domestic and international embarking passenger512

Decision No. 21. Regarding Quality of Service 524

- 21.a. *The Authority decides that HIAL shall ensure that service quality at RGI Airport, Hyderabad conforms to the performance standards as indicated in the Concession Agreement.....524*

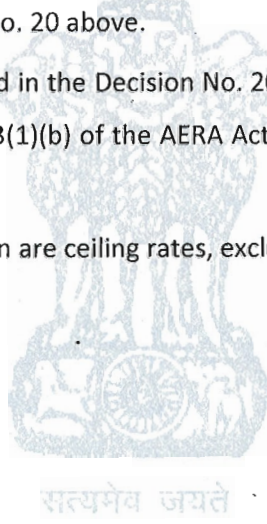
Decision No. 22. Regarding Matters of Error Correction 526

- 22.a. *The Authority decides that HIAL 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.526*

Order

28. Order

- 28.1. In exercise of powers conferred by Section 13(1)(a) of the AERA Act, 2008, the Authority hereby determines the aeronautical tariffs to be levied at RGI Airport, Hyderabad for the first Control Period (i.e. FY 2011-12 to 2015-16) with effect from 01.04.2014 as at Decision No. 20 above.
- 28.2. The rate of UDF as indicated in the 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.
- 28.3. 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
Alok Shekhar
Secretary

To,

GMR Hyderabad International Airport Limited
Shamshabad,
Hyderabad - 500409
(Through Shri Srinivas Bommidala, Chairman-Airports)

भा.वि.आ.वि.प्रा.
AERA



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