

Bangalore International Airport Limited
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Ref: AERA/Finance/2013-14/13

March 28th, 2014

The Chairman
Airports Economic Regulatory Authority of India
AERA Building, Administrative Complex,
Safdarjung Airport,
New Delhi - 110 003

Sir,

Kind Attention: Shri Alok Shekar, Secretary

Sub : Reg. Comments of stakeholders in response to Consultation Paper No. 22/2013- 14
dated 24.01.2014 in respect of determination of aeronautical tariffs of Kempegowda
International Airport, Bangalore
Ref: Email dated 21st March 2014 on above subject

Kindly refer above subject and find enclosed herewith our submissions on each stakeholder's
response as listed below for favorable consideration at your end.

Government

1. Government of Karnataka

Airlines & Associations

1. British Airways (BA)
2. International Air Transport Association (IATA)
3. Federation of Indian Airlines (FIA)
4. Lufthansa German Airlines
5. Cathay Pacific

Cargo, Fuel Supply & Ground Handling Companies

1. Indian Oil Corporation Ltd. (IOCL)
2. Lufthansa Cargo AG

Others

1. Sanjeev V Dyamannavar
2. Bangalore Political Action Committee (B.PAC)

Thanking you,

Yours Sincerely,

For Bangalore International Airport Limited,

A handwritten signature in black ink, appearing to read "B. Bhaskar".

B. Bhaskar
Sr. Director Finance & Support Services

**BANGALORE INTERNATIONAL AIRPORT
LIMITED**

**SUBMISSIONS IN RESPONSE TO COMMENTS
OF MR. SANJEEV DYAMANNAVAR REGARDING
CP NO.22/2013-2014**

The response to consultation paper is issued by Mr. Dyamannavar, an individual and hence, he does not fall within the definition of 'stakeholder' as defined in Section 2(o) of the Airports Economic Regulatory Authority of India Act, 2008 ("Act") read with the AERA's Guidelines on Stakeholder Consultation dated December 14, 2009 (as amended on March 24, 2011). However, without prejudice, BIAL submits as under:

BIAL has made detailed submissions to AERA *inter alia vide* response dated March 19, 2010 to Consultation Paper No.3/2009-10. BIAL had thereafter denoted some of its concerns in Appeal No.2/2011 and Appeal No.7/2011. Upon disposal of Appeal No.7/2011, BIAL had submitted detailed submissions dated April 8, 2013. BIAL has also submitted its responses to CP No.14/2013-14 and CP No.22/2013-14 *vide* responses dated September 22, 2013 and February 28, 2014 respectively. Copies of submissions dated April 08, 2013; September 22, 2013; and February 08, 2013 are incorporated by reference. BIAL has also made multiple submissions in the course of the consultation process, on which it relies. For the sake of brevity, the previous submissions are incorporated herein by reference and not repeated.

Paragraph wise comments are set out below.

1(A) and (B) Trumpet

BIAL is not privy to the details of the NHAI project and is thus not in a position to comment upon the same. Since the airport opening date was fast approaching, BIAL was forced to

undertake development of trumpet interchange. The toll collection by NHAI is not in respect of trumpet interchange but in respect of the road to Hyderabad.

2. (A) and (B) and (C): BIAL reiterates its submissions made in this regard earlier *inter alia* in Appeal No.2/2011, Appeal No.7/2011, responses dated April 08, 2013, September 22, 2013 and February 28, 2014. BIAL submits that real estate development is a part of the 30 year master plan for environmental clearance purposes and appropriate investments will be made keeping in mind market conditions and regulatory clarity. BIAL however reiterates that 'real estate' activities are beyond the purview of regulation by AERA.
3. Development of VIP Terminal is mandated under the Concession Agreement.
4. Bad Debts
As submitted in response to CP No.14 and CP No.12, bad debts are to be provided for by the AERA. BIAL has filed a suit in respect of corporate guarantee issued by United Breweries (Holdings) Limited for a sum of Rs.14,00,00,000/- (Rupees Fourteen Crore Only). The said corporate guarantee was issued by United Breweries (Holdings) Limited guaranteeing debts to be paid by Kingfisher Airlines Limited. BIAL has initiated legal proceedings against Kingfisher Airlines Limited, as well as the principal officers of Kingfisher Airlines Limited.

BIAL supports AERA's view that bad debts that are written off would be reimbursed.

BIAL craves leave to submit additional responses, at a later point in time, should the need to do so arise.

**BANGALORE INTERNATIONAL AIRPORT
LIMITED**

**SUBMISSIONS IN RESPONSE TO COMMENTS
OF GOVERNMENT OF KARNATAKA
REGARDING CP NO.22/2013-2014**

This is in response to Government of Karnataka (GoK) letter No. IDDS 19 DIA 2014 dated 6th March, 2014.

BIAL has made detailed submissions to the AERA inter alia vide response dated March 19, 2010 to Consultation Paper No.3/2009-10. BIAL had thereafter denoted some of its concerns in Appeal No.2/2011 and Appeal No.7/2011. Upon disposal of Appeal No.7/2011, BIAL had submitted detailed submissions dated April 8, 2013. BIAL has also submitted its responses to CP No.14/2013-14 and CP No.22/2013-14 vide responses dated September 22, 2013 and February 28, 2014 respectively. Copies of submissions dated April 08, 2013; September 22, 2013; and February 28, 2014 are incorporated by reference. BIAL has also made multiple submissions in the course of the consultation process, on which it relies. For the sake of brevity, the previous submissions are incorporated herein by reference and not repeated.

At the outset, BIAL submits that GoK has reiterated its disinclination to infuse any fresh equity capital into the company which is to be noted.

In relation to utilization of land towards Real estate activities, it is submitted that the GoK is of the view that the guiding principles for utilization of land are contained in the Land Lease Deed, Concession Agreement and the State Support Agreement. It is reiterated that, under Clause 4.1 of the Land Lease Deed, BIAL is permitted to use the Site for purposes mentioned at (a) to (h) therein. However, only under Clause 4.2 of the Land Lease Deed, BIAL may, with prior approval utilize the leased land for any of the purposes, including that improves the commercial viability of the project and /or facilitates substantial further investment in or around the airport.

The aforesaid position was clarified by GoK to Gol in the meeting held on July 16, 2013. Hence it can be inferred from the above that BIAL is free to utilize the land towards Non Airport activities / commercial purposes.

As regards the Contention of GoK that revenue generated from commercial exploitation of excess land should be utilized for development of the project and that Real estate income should not be considered for cross subsidizing aeronautical charges by way of reduction from RAB, BIAL submits that the above approach is appropriate. We also agree with view of GoK that passengers should enjoy world-class facilities. All our efforts are towards creating world-class facilities.

We note that GoK concur with plea of BIAL that incremental amount generated because of adoption of Shared Revenue Till should not be reduced from RAB at the end of the current control period as it tantamount to making it a Single Till, thereby constraining the cash flow and exposing the airport to enormous operational risks including the risk of plummeting standards

of maintenance and inability to meet debt repayment covenants. In relation to deduction from RAB, we would like to submit that any deduction from a given value, where such value was never added, is uncalled for, unjustified and unacceptable.

It can be observed that GoK, along with MoCA, supports the Shared Revenue Till as clearly mentioned in the concluding part of the letter.

Regarding GoK's view on appointment of professional agency for monitoring land transactions, BIAL submits that the Land Lease Deed has clear provisions in terms of utilization of land for Non Airport activities / commercial purposes. Hence, there is no additional need of appointing any agency for monitoring land transactions which would in any case, be transparent and compliant with good governance.

BIAL craves leave to submit additional responses, at a later point in time, should the need to do so arise.

**BANGALORE INTERNATIONAL AIRPORT
LIMITED**

**SUBMISSIONS IN RESPONSE TO COMMENTS
OF BANGALORE POLITICAL ACTION
COMMITTEE REGARDING CP NO.22/2013-
2014**

BIAL's comments are in **red font** below.

To,

Shri Alok Shekhar
Secretary, Airports Economic Regulatory Authority of India
AERA Building, Administrative Complex,
Safdarjung Airport, New Delhi- 110003
Tel: 011-24695040
Fax: 011-24695039

Sub: Comments/observations to the Consultation Paper No. 22/ 2013-14 -
Addendum to Consultation Paper No. 14/ 2013-14 dt, 26th June 2013
concerning BIAL

Dear Sir,

On behalf of citizens of Bangalore, truly in perspective of the passengers using KIA, WE, **Bangalore Political Action Committee (BPAC)** would like to submit the following observations and comments on the consultation paper referred above for your knowledge and kind consideration while determining the User Development Fees (UDF) against the claims submitted by BIAL and under consideration by AERA.

BIAL has made detailed submissions to the AERA *inter alia vide* response dated March 19, 2010 to Consultation Paper No.3/2009-10. BIAL had thereafter denoted some of its concerns in Appeal No.2/2011 and Appeal No.7/2011. Upon disposal of Appeal No.7/2011, BIAL had submitted detailed submissions dated April 8, 2013. BIAL has also submitted its responses to CP No.14/2013-14 and CP No.22/2013-14 *vide* responses dated September 22, 2013 and February 28, 2014 respectively. Copies of submissions dated April 08, 2013; September 22, 2013; and February 28, 2014 are incorporated by reference. BIAL has also made multiple submissions in the course of the consultation process, on which it relies. For the sake of brevity, the previous submissions are incorporated herein by reference and not repeated.

1. At the outset, BIAL submits that B.PAC is not a 'stakeholder' as defined in Section 2(o) of the Airports Economic Regulatory Authority of India Act, 2008 ("**Act**") read with the AERA's Guidelines on Stakeholder Consultation dated December 14, 2009 as amended on March 24, 2011. BIAL submits that the objectives of B.PAC, as available on its website at <http://www.bpac.in/objectives/>, do not specifically denote that B.PAC represents the interests of passengers or cargo facility users of the airport. B.PAC is therefore not a stakeholder and consequently, they are not at liberty to submit any comments with regard to the consultation process initiated by the AERA.
2. BIAL submits that B.PAC's submissions are undated, unsigned and consequently, no cognizance should be taken thereof by the AERA.

3. Without prejudice and despite B.PAC not qualifying to be a stakeholder and the factum that it would have no opportunity to participate in consultative process, BIAL proceeds to meet various contentions and allegations that have been made by B.PAC.
4. At the outset, BIAL submits that B.PAC has made submissions on the basis of conjectures and surmises that appear to be not borne out of facts.

Proposal No 1. Regarding Pre-control period shortfall claim and Proposal No 2. Regarding Asset and Expenditure Allocation [Aeronautical / Non Aeronautical].

- a. Overall cost bifurcation between aero and non-aero (91%-9%) is not in comparison with any of the International airports of similar capacity, worldwide. Need to be benchmark with other airports and compared with the cost allocation principles followed in aviation sector elsewhere. Proper justification for a dissimilar allocation to be sought.
- b. The allocation of expenses on aero and non-aero operations must be based on activity based costing.

a & b: BIAL has already submitted details of asset allocation to AERA *vide* letter dated January 30, 2014 and has further submitted the details in its response to CP No.22 and the same are incorporated herein by reference. B.PAC has made bald allegations without indicating whether the asset allocation is different in other airports and if so, whether such airports are similarly placed as compared to BIAL.
- c. Employee costing need to be properly bifurcated between aero and non-aero. The engagement of common employees for various projects within BIAL and projects elsewhere need to be identified and proper cost bifurcation to be ensured.

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

- d. Why the passengers have to bear the lease cost of land lying idle, when BIAL failed to utilize it for commercial development?

BIAL has submitted detailed responses in this regard in response to CP No.22 and CP No.14 and the same are incorporated herein by reference. In addition, the commercial development of the land is awaiting regulatory clarity. BIAL reiterates that 'real estate' activities are beyond the purview of regulation by AERA.

- e. There appears to be a discrepancy in utility cost allocation. The rate paid by BIAL to the utility suppliers and the rate recovered from the consumers seems different, the second being around 50% higher side after incorporating capital investment costing and overhead charges. This leads to double recovery of capital cost, from passengers and form utility consumers, and also converting a portion of it as non-aero revenue. Also the

allocation of the capital cost on utilities under aero and non-aero in line with the revenue allocation need to be ensured.

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

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

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

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

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

Proposal No 2. Regarding Asset and Expenditure Allocation [Aeronautical /Non Aeronautical] and
Proposal No 3. Regarding Future Capital Expenditure

- a. T1 expansion cost of **1545** Cr looks extremely inflated and would add unsolicited burden to passengers. In this regard the following points need to be scrutinized, investigated and audited by third party appointed by the Authority keeping public interest in consideration:

1. Expansion cost of T1 be thoroughly audited and benchmarked in comparison with the similar airport expansion projects recently completed in Chennai and Kolkata.
2. Cost per sq. ft. of **Rs. 11744** is too high. It also raises doubts about the method adopted for the area of footprint calculation. The bifurcation of area and costing between the actual building (covered, facilitated and effectively used) and the roofed structure (open and only covered with canopy/roofing/facia) need to be properly evaluated and bench marked in comparison with the cost of similar projects.

1 & 2: Aspects regarding expansion cost etc., have gone through consultative process. The costs incurred for Terminal expansion and justifications therefor have been provided to AERA and the same are incorporated herein by reference.

3. The service levels in consideration for designing and execution of the terminal need to be verified for its appropriateness. It appears that building is designed keeping in a higher standards of service level compared to what level is being assured to AERA vide the document under reference, This results in higher (undesired) capital cost, but not adding desired value to the travellers.

This issue is being raised belatedly by B.PAC. All aspects pertaining to this issue have been duly deliberated and addressed in the previous consultation process and are at present not germane for further consideration. The high ASQ ratings that BIAL has received is a clear indication of the high quality of service provided by BIAL.

4. In view of the use of common contractors, consultants, employees and suppliers by the promoters having multiple airport projects and non-airport projects across the country and abroad, the cost allocation need a thorough auditing to confirm the work/supplies billed for T1 project is actually used here or elsewhere.

It is more in the nature of unsubstantiated allegation rather than a response to the consultation process.

5. It is understood from reliable sources that employees in BIAL payroll is executing projects elsewhere and also the employees actually working for the project elsewhere are charged to BIAL projects, resulting misrepresentation of the BIAL revenue. Hence it is felt necessary to undertake a thorough audit of payroll of top 20% category of employees and if found them shared resources in multiple projects, care should be taken to allocate only relevant costs to BIAL.

BIAL strongly disputes and denies the allegation. BIAL has a very robust HR and payroll accounting process and consequently the allegations are devoid of merits. BIAL further submits that the same are also subject to regular statutory audits and internal audits carried out by internationally reputed audit and accountancy firm(s).

6. It is also understood that there is huge variation of completion cost (around 300 Cr) from the original scope. This need proper justifications if those expenditures were actually necessary to be executed as the burden of this straight away falls on the users.

The allegation is baseless and vexatious. AERA has taken note of the specific cost for the project and exact information regarding expenditure that has been submitted by BIAL.

7. There was no public consultation involving the pretentious stakeholders — passengers. Why the citizen forums and industry bodies were not involved for consultation? Also, It is unclear from the consultation paper, if BIAL had made available the cost estimation of the project during the stakeholders' consultation. Any consultation without revealing the projected expenditure and its impact on stakeholders is incongruous and would allow the airport operator free to draw and deviate the lines wherever they desire during execution and by the end of the project.

The allegation that no effective public consultation was conducted is once again devoid of merits. BIAL has complied with all thresholds regarding public consultation from time to time.

Details regarding public consultation process adopted by BIAL, have already been submitted to AERA and are available on its website. Further, the cost estimates of the project have been shared with stakeholders as part of the consultation process.

8. Threats of conflict of interest and its probable impact in inflated project cost:

1. We see that one of the shareholder having multiple interests in allied businesses such as airport hotel, construction contracts within BIAL, projects at another airport and elsewhere has engaged a common contractor for all these works, raising concerns over the misrepresentation of cost over the transaction through this common conduit.

Allegations are frivolous and vexatious. Further, the responses in para 8 are extraneous to the present consultation process.

2. The contractor for T1 expansion is an ex-stakeholder of BIAL, having sold their 17% of their stake to the present major stakeholder who in turn awarded the contract back to the ex — stakeholder.

Terminal expansion project was awarded to M/s. L&T as a contractor through an open global competitive bid/tender process. The factum of L&T having been a shareholder of BIAL at a prior point in time, has no relevance whatsoever to the tender process and at any event, has no relevance to the present consultative process.

3. Since the same contractor is involved in handling many projects of the major stakeholder of BIAL and also in the sale of Airport hotel, there is a possibility that the fund allocation for various activities and the source of funding could have undergone adjustments to match the final 'give and take', If the dues of the project elsewhere got adjusted in the project cost of BIAL, this would result in high capital expenditure, and hardship to the passengers.

Allegations raised herein are based purely on conjectures and surmises, and extraneous to the consultation process.

4. The method of award of contract, the criteria adopted, transparency in dealing public money, approval process etc. need to be thoroughly investigated and audited.

BIAL has in place robust processes and contracts are awarded on competitive basis and after due tendering process, as applicable.

- b. It is necessary to ensure that the capital expenditure on aero operations is not overstated and non-aero operations are not understated. Need detailed scrutiny to overcome this risk.

Complete details of capital expenditure on aero and non-aero operations have already been submitted to AERA.

- c. The projections for immediate future capital expenditure (**over 10,000 Cr**) for second terminal, second runway and allied facilities looks too much inflated. The projected cost must be, based on reliable and systematically fit to **India costing** and not based on **dollar conversion** of the similar projects in US or Europe as projected by a foreign consultant.
 - d. The cost of site preparation work for the second runway amounting to **1000 Cr** is

unjustifiable and raises the doubts about the suitability of site for building a runway. There are many airports (with complete infrastructure and facilities) in India which were built with a total cost much lesser the site preparation cost alone for a runway in BIAL. May please seek clarification from AAI In this regard.

- e. It Is felt necessary that the operator discloses the details of design, service levels in offer and cost along with the probable impact of UDF at the initial stage with the representatives of major stakeholders — passengers. Before freezing the scope and costing of the project, an independent detailed scrutiny of proposal to be made mandatory and the projected cost to be disclosed to the public.

c-e: Capital expenditure for aeronautical future expansions will have to go through a consultative process. At that point in time, the stakeholders would be entitled to participate in such consultation processes.

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

The basis on which B.PAC's comment has been made is not provided and in any event, necessary details have been furnished to AERA.

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

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

Proposal No 4. Regarding Regulatory Asset block and Depreciation

- a. For non-development of committed assets like hotel etc. on time, why not a penalty be imposed?

The averments are extraneous to the present consultation process. BIAL reiterates its position that real estate activities are outside the purview of regulation.

- b. Regarding consideration of depreciation on 100% of the asset values (without considering any salvage value), we have concerns as it would lead to higher expenditure and lesser profitability. May please reconsider.

BIAL submits that, as per Companies Act and Income Tax Act, 100% depreciation is permissible and 100% depreciation is also an accepted practice as per general accounting and auditing practices (GAAP). BIAL submits that this issue has been considered by AERA at length in CP No.14 and CP No.22 and AERA has proceeded to provide for 100% depreciation in acceptance of BIAL's submissions

- c. We understand that the arbitration process on hotel is over now and hence the current status including the change of ownership if any need to be considered. Or else, the amount of security deposit to be transferred to an ESCROW account.

The arbitration process regarding the hotel and the subsequent process before the court of District Judge at Devanhalli have culminated in a settlement between the parties, including treatment of the security deposit. Information regarding the settlement is being submitted to AERA, as a part BIAL's response in the present consultation process.

- d. Commitment on commercial exploitation of land may be made time bound and appropriate penalty be imposed on failure to adhere to such commitments.

BIAL submits that real estate activities are outside the purview of regulation. Without prejudice, BIAL submits that commercial exploitation of land has to be evaluated on the basis of investments, return and market conditions.

Proposal No 5. Regarding Traffic Projections

- a. Traffic projections once frozen for deciding investments should not be reworked or manipulated to justify the variations in Investment without undergoing an approval process and consultation process.

BIAL submits that there are specific methodologies and approaches have been in practice so as to capture and evaluate the traffic projections and investment planning. Sufficient data is available in public domain and apprehensions of manipulation are misplaced.

Proposal No 6. Regarding Cost of Debt,

- a. Regarding ceiling in respect of the cost of debt for rupee term loan availed by BIAL at 12.50% and considering interest for Foreign Currency loan at 10.15%, it may be explored if a Government guarantee will reduce the cost of debt.
- b. Regarding the proposed increase of 1% in the rate of interest of rupee term loan, a benchmark could be established and if the interest rates stay above that benchmark then 1% hike could be agreed.
- b. Regarding weighted average Cost of debt, flexibility may be provided by pegging to a benchmark interest rate index.

Proposal No 7. Regarding Cost of Equity and

Proposal No 8. Regarding Weighted Average Cost of Capital

- a. We have the following concerns with regards to the Computation of cost of capital:
 - 1. While the Equity risk premium could be computed in many ways, we would like to suggest that the computation methodology used should be forward looking, for the benefit of passengers.
 - 2. Is the rate obtained from the Indian term structure of interest rate and ratified by SBI?
 - 3. Cost of Debt could be brought lower if GoK or GOI can give counter guarantee,
 - 4. Cost of Debt should be accurately reflected in the financial projection in each control period.
 - 5. Cost of capital must transparently reflect the interest cost deducted from the Income statement in the business plan.
 - 6. Cost of equity must reflect forward looking equity risk premium and not historical risk premium.
 - 7. Beta Calculation seems right but it must be levered for the changing debt ratio each year of the project life and average gearing must be avoided.

Response to B-PAC comments to Proposal No.6 to 8:

BIAL has already submitted its detailed views and responses to AERA on the issues pertaining to cost of debt; cost of equity; and WACC. Averments of B.PAC regarding exploration of government guarantee are extraneous to the present consultation process.

Proposal No 9. Regarding Taxation

- a. BIAL must enjoy the tax holiday and maximum marginal rate of tax and not effective rate to be considered.

BIAL has submitted relevant details to AERA for its consideration.

Proposal No 11. Regarding Operating and Maintenance Expenditure

- a. Maintenance Capex over the life of the project must be monitored since it reduces cash flow over the project life if left unmonitored.
- b. Break up for the maintenance capital expenditure must be obtained and it must corroborate with what's being presented in the business plan.
- c. Maintenance cost need to be bench marked with reference to the service levels in offer and the similar capacity airports.

The comments appear to be in the nature of suggestions and not in relation to the present consultation process. However, all requisite details have been submitted to AERA as part of consultation process and the same are available in the public domain.

Proposal No 12. Regarding Revenue from Services Other than Aeronautical Services

- a. We understand that UDF driven revenues is expected to contribute about 90% of the total estimated revenues for the FY 2014-2015 & 2015 — 2016. Obviously there are many other sources of aeronautical revenue. Why is UDF forming the bulk of the source of revenue generation? It must be residual. The distribution and source of aeronautical revenue should be proactively made available to the public.

Detailed process and computation for UDF have already been considered by AERA through a defined consultation process. B.PAC raises this issue without having examined the previous consultation process and position adopted by AERA.

- b. We feel the necessity for the revenue sources that are currently classified into aero and non-aero to be reclassified keeping in view of prudential accounting norms. For instance, Advertising revenue, commercial activities happening in the terminal etc, are purely the earning due to travelling public and therefore need to be considered Aero.
- c. The activities of flight catering, landside traffic, terminal entry, retail, F&B, advertisement etc. are purely traffic driven revenues based on the principle of '**zero traffic, zero revenue**' and hence illogical to be classified under non-aero.
- d. ICT investment is classified under aero or non-aero? Need clarity.

- e. Interest income: 60% to be considered under aero and 40% under non-aero.

b, c, d & e: BIAL reiterates its submissions made to AERA in this regard, which are available in public domain.

- f. Revenue break up from various sources earned till date must be obtained to know if the forecasts are too optimistic.

Relevant details have been submitted to AERA and they are in public domain.

- g. Today the non-aero revenue is too small compared to aero revenue due to the fact that the land allocated to BIAL by GoK for development of non-aero business is laying idle earning no revenue, even after 6 years. We would like to bring forward the following submissions for the review of AERA in this regard:
 - a. State government extended the patronage, purely for the benefit of the passengers and public interest, in the form of:
 - i. Rs. 350 Crore Cash
 - ii. 4008 acres valued at 175 in 1999 with a 3% annual lease rental. If the lease rental value is revised as per the capital gains indexation valuing today, the land would cost at 353 crores. $(175 \times 785 / 389)$
 - b. The chunk of GoK land, just other side of the KIA wall, has already been developed by the GoK for Aerospace Industries and SEZ. Many business units have already started functioning there. Therefore, the inability of BIAL to develop around 1000 acres of land meant purely for non-aero business development is beyond the logic and hence looks deliberate.
 - c. If BIAL fails to develop the land and the revenue thereof generated is not contributing for the benefit of travelling public, GoK should take over the surplus land with BIAL to develop Airport City, SEZ, Aero Space Park, MRO etc. in line with the state government's activities and business plans happening at next plot of KIA and the revenue thus generated from those activities should be used for cross-subsidizing the User Fees.
 - d. Since BIAL enjoys all concessions from GoK to develop various sources of non-aero revenue, intending for the sole benefit of passengers, there is no reason why the non-traffic revenue to be treated separately by the promoters. Hence we are of the opinion and conclusion that single tilt is the only option to be considered for tariff determination for BIAL.
 - e. The views of GoK on this issue, considering the larger interest of people of Karnataka and to safeguard the public investment from being misused and misinterpreted by the promoters to be sought before finalizing the method of tariff determination.

BIAL has provided relevant details to AERA. BIAL has also made detailed submissions in this regard in its submissions dated April 08, 2013; its responses to CP No.14 and CP No.22 and the same are incorporated herein by reference. BIAL reiterates that real estate activities are beyond the purview of tariff determination.

Proposal No.13. Regarding treatment of Cargo, Ground Handling and Fuel Revenues

- a. While noticing with great appreciation, the decision of AERA to reallocate the revenue from fuel farm, cargo, GHA and into place services, we would also like to request AERA to apply same logic and accounting principles for the sources of revenues from flight catering, land side traffic, terminal entry, retail, F & B, advertisement etc, since all these revenues are purely passenger driven.

BIAL submits that all CGF revenue be treated as non-aeronautical. All requisite details and views have been provided to AERA and they are in public domain.

Proposal No.14. Regarding inflation

- a. May please ensure that RBI data at what inflation risk premium bonds of duration matching the remaining length of the concession period are yielding is compared.

B.PAC needs to clarify its comments.

Proposal No. 17. Regarding quality of service

- a. It is noted with great concern that while making investment decision BIAL promises quality of services at par with best of the airports internationally whereas during actual delivery of service and evaluation process the commitment in concession agreement are brought in. AERA may please note that the volume of capital investment largely depends on the service level for while the facilities are designed. In case of BIAL insisting to stick only to the concession agreement clauses, all future investments and projects also need to be designed and delivered in line with the commitments of service quality in concession agreement only. This will largely bring down the project cost and thereby the burden of travelling public.
- b. The declared service levels to be shared and displayed from the knowledge of users for assessing their travel experience.
- c. The UDF charged from the passengers to be reimbursed in case of reduction in declared service levels, such as failure of air conditioning, delayed delivery of baggage etc, are experienced.

All requisite details and views of BIAL in this regard have been submitted to AERA and are available in public domain.

BIAL craves leave to submit additional responses, at a later point in time, should the need to do so arise.

**BANGALORE INTERNATIONAL AIRPORT
LIMITED**

**SUBMISSIONS IN RESPONSE TO COMMENTS
OF BRITISH AIRWAYS REGARDING CP
NO.22/2013-2014**

BIAL is submitting its responses in **red font** below.

BIAL has made detailed submissions to the AERA inter alia vide response dated March 19, 2010 to Consultation Paper No.3/2009-10. BIAL had thereafter denoted some of its concerns in Appeal No.2/2011 and Appeal No.7/2011. Upon disposal of Appeal No.7/2011, BIAL had submitted detailed submissions dated April 8, 2013. BIAL has also submitted its responses to CP No.14/2013-14 and CP No.22/2013-14 vide responses dated September 22, 2013 and February 28, 2014 respectively. Copies of submissions dated April 08, 2013; September 22, 2013; and February 28, 2014 are incorporated by reference. BIAL has also made multiple submissions in the course of the consultation process, on which it relies. For the sake of brevity, the previous submissions are incorporated herein by reference and not repeated.

17 February 2014

Shri Alok Shekhar
Secretary
Airports Economic Regulatory Authority of India
AERA Building, Administrative Complex
Safdarjung Airport New Delhi
110003 India

British Airways Plc
Waterside
PO Box 365
Harmondsworth
Middlesex
UB7 0GB
United Kingdom

Sent by email to ski_shekhargaera.gov.in

Dear Mr Shekhar

Re: Consultation Paper In the matter of Determination of tariffs for Aeronautical Services in respect of Kempegowda International Airport (Earlier Bengaluru International Airport), Bengaluru for the first control period (01.04.2011 — 31.03.2016)

Thank you for opportunity to respond to Consultation Paper No. 22/2013-14 dated 24 January 2014, addendum to Consultation Paper No. 14/2013-14 dated 26 June 2013 in relation to the Determination of tariffs for Aeronautical Cotookkin' Services in respect of Kempegowda International Airport, Bengaluru for the first control period (01.04.2011 — 31.03.2016).

British Airways continues to support the determination of the Aeronautical Tariffs at Kempegowda International Airport under Single Till. British Airways believes that if the Concession Agreement had meant for regulation based on any other form of till, it would have been explicit in stating so in that agreement. The Concession Agreement clearly states that tariffs would be determined by the Independent Regulatory Authority (which is AERA) and AERA

has been bestowed the authority under the AERA Act to regulate in the manner that best serves the interests of the passengers.

British Airways believes that 'single till' is in the best interest of the passengers and should therefore be used for regulation of tariffs at Kempegowda. We do not believe that the use of single till would cause any injury to the airport operator.

British Airways outlined the rationale for our position on this matter in our letter to you in relation to the determination of these charges dated 19 August 2013.

British Airways has failed to understand the benefits to the interests of the passengers that has caused AERA to propose that you shall calculate the Aeronautical Tariffs and UDF under a 40% Shared Revenue Till.

In the event that Kempegowda International Airport were to be regulated on a Shared Revenue Till basis British Airways endorses the moves that you have made, to widen the definition of aeronautical revenue, since the last consultation, but would encourage you to further widen this to include revenue generated from airline lounges, operation and maintenance of passenger boarding and disembarking systems, hangers, heavy maintenance services for aircraft, and flight catering services.

In response to submissions of British Airways regarding regulatory till, BIAL reiterates its submissions made in reply to CP No.14/2013-2014, wherein BIAL had stated the reasons and its requests for non-adoption of a single till regime. MoCA had received expert advice from M/s. Bridgeline Advisors who had recommended a hybrid till model as most suitable for greenfield airports like BIAL. Further, MoCA itself had used 30% shared till as a yardstick to determine domestic UDF and had applied dual till yardstick for determination of international UDF on ad hoc basis pending finalization of capex. BIAL reiterates its submissions made in response to CP No.14 and CP No.22 in this regard.

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

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

We continue to support the commissioning of an independent study of the asset allocation to ensure that Aeronautical Assets are properly classified; as it would be our contention that infrastructure such as lifts, escalators and passenger conveyors in the terminal building, policing and general security, infrastructure and facilities for post office and public telephones, toilets and nursing mother's room, waste and refuse treatment and disposal should probably be considered common assets.

Details of asset and expenditure allocation are provided inter alia in response to proposal no.3 in CP No.22/2013-2014 and are incorporated herein by

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

British Airways supports the ICAO principle for cost reflective and transparent pricing and as such cannot see any justification for the considerable difference between the rates of UDF in respect of Domestic and International passengers under all of the various Till' scenarios. The current 1:4 ratio between the two charges is horrendously unjustifiable as it is surely not reflective of actual costs, and as such is seen as discriminatory. These charges should be cost-based and therefore differential pricing, at least to this extent, is not justifiable.

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.

British Airways is also extremely keen to ensure that any changes in the rate of UDF that is determined by you are not implemented without an appropriate time lag, such as to allow us time to properly introduce this fee and collect it from our customers. It would be usual to have a minimum of two months notice of a change in the tariff.

Our understanding of the way in which you propose to utilise at least a proportion of the UDF charges is that some of the UDF would effectively be a pre-funding, (i.e. getting passengers to pay upfront for use of facilities that do not exist yet) financing method. We do not support pre-funding financing by passengers or airlines, as charging them for services that will not be delivered until some time in the future is not fair. The airport should be able to raise private funding on the open market to fund capital infrastructure development projects and the costs of such funding should be recovered only once the benefits of the capital programmes have been delivered.

BIAL submits that the AERA Act mandates that the tariff determination exercise of a particular airport has to give due consideration for the viable operations of the airport as well as timely investment in the airport facilities. BIAL is the fastest growing airport in the country and is continuously investing in expansion of the airport. Hence, 30% SRT as proposed by BIAL needs to be considered by AERA. This will assuage cash flow problems in terms of operational and future expansion requirements.

On the subject of unjustifiable, non-transparent or non-cost-reflective charges we also do not understand the substantial difference in landing charges between international and domestic flights and would request that these are harmonised to a level that is cost reflective of the actual costs involved in providing the necessary runway, taxiway and apron infrastructure. The differentiated landing charges are a gross contravention of ICAO principles and it is a highly unfair situation to have one airline subsidising another airline for the same usage of facilities merely because of the flights' origins. The proposal to not charge certain types of smaller aircraft is also discriminatory and unfair, creating cross subsidisation issues that will disadvantage a certain proportion of passengers.

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.

In common with our previous response British Airways continues to believe that it is critical that any capital investments made by the airport have been properly and thoroughly consulted upon with stakeholders, to ensure that airline customers endorse the airport's spending plans. It must be remembered that when the airport is considering spending capital expenditure that it is effectively spending airlines' money. There must be no ability for the airport to just spend freely and then collect the costs incurred from its customers after the fact.

BIAL submits that consultation process will be followed and aeronautical capital expenditure will be due for detailed stakeholder's consultation. It is not correct for British Airways to submit that airport is spending money of the airlines.

Airlines are committed to delivering for customers, and recognise that we must do so at a price that they can afford to pay. Consequently for us and for them, affordability and value for money are paramount, especially when making investment decisions. Within our own businesses, particularly in the light of weak demand and high fuel costs, this means strict controls on cost so that we can deliver efficiently for the passenger. We would like AERA to ensure that they allow the airlines the opportunity to try and ensure that Kempegowda International Airport focus on efficient delivery for our customers with the same intensity as we do. Simply truing up costs incurred after the fact with no scrutiny of efficiency is a recipe for grossly inefficient spending by a bloated and insulated airports at the expense of the airline customers.

BIAL submits that it is a developing airport and has expanded its capacity considerably during the control period. Hence, past expenses cannot be considered as the basis for estimating expenses in the coming years. However, BIAL has done bottom up projections while arriving at the cost estimates and detailed submissions have been made earlier in response to CP No.14 and CP No.22.

British Airways would welcome the addition by AERA of strict terms and obligations on Kempegowda International Airport to ensure that proper consultation has taken place prior to capital investments.

Beyond a requirement for full and thorough properly conducted consultations with airlines prior to commitment of future capital expenditure, it will also be necessary, in the case of AERA proposing to true-up the difference between the Capital Expenditure considered at this time and those that were actually incurred (based on evidential submission), to ensure that the airport cannot interpret this to mean that they are in anyway insulated from ensuring ongoing efficient project management. Kempegowda International Airport must be certain of the need to manage their capital project costs well. It is not right that we, as an airline customer of the airport, should be made to pay for the failure of the airport to control project costs. The airport needs to have some risk associated with their project management; it cannot be fully insulated from the cost over-runs associated with poor management discipline and practice. It would be usual for the regulator to form an independent view of the effectiveness of the airport's performance in this regard, maybe through the use of independent auditors, and then disallow that proportion of the project costs that were avoidable. The RAB could then be adjusted downward to ensure the airlines are not funding inefficiency and bad practice. British Airways would urge AERA to adopt these

principals when considering any future true up of the actual future capital expenditure spend.

BIAL submits that consultation process will be followed and aeronautical capital expenditure will be due for detailed stakeholder's consultation and there is no need for further processes.

British Airways would like to endorse the position that AERA proposes in regards to dealing with pre-control period losses and Quality of Service. In regards to service standards British Airways would welcome clear and targeted service measures with appropriate incentives that impact on the airport in the near-term.

BIAL submits that the present tariffs were approved by MoCA on ad hoc basis subject to finalization of project cost and to be finalized by the Independent Regulatory Authority (AERA). BIAL reiterates its submissions made in response to CP No.22/2013-2014 that pre-control period shortfall, including losses as on AOD, be allowed. BIAL submits that tariff determination exercise does not contemplate laying down of quality standards.

Thank you again for the opportunity for us to express our thoughts to you on your impending determination. We remain open to any further questions that you may have of us and wait with anticipation for the publication of your findings.

Yours sincerely



Peter Jukes
Manager User Charges

cc: Andy Lord, Director of Operations
Steve Clark, Head of CS + OPS NA and Asia Pacific
Pankaj Mehta, VP South Asia



Callum Currin
Procurement Executive

BIAL craves leave to submit additional responses, at a later point in time, should the need to do so arise.

**BANGALORE INTERNATIONAL AIRPORT
LIMITED**

**SUBMISSIONS IN RESPONSE TO COMMENTS
OF CATHAY PACIFIC REGARDING CP
NO.22/2013-2014**

BIAL is submitting its responses in **red font** below.

Response of Cathay Pacific Airways Limited to the Consultation paper No. 14/2013-14 and the Addendum to Consultation paper No. 14/2013-14 (Consultation paper No. 22/2013-14) published by the Airports Economic Regulatory Authority of India on Multi Year Tariff Proposal and Annual Tariff Proposals in respect of Bengaluru International Airport, Bengaluru for the first Control Period (01.04.2011 — 31.03.2016)

BIAL has made detailed submissions to the AERA *inter alia vide* response dated March 19, 2010 to Consultation Paper No.3/2009-10. BIAL had thereafter denoted some of its concerns in Appeal No.2/2011 and Appeal No.7/2011. Upon disposal of Appeal No.7/2011, BIAL had submitted detailed submissions dated April 8, 2013. BIAL has also submitted its responses to CP No.14/2013-14 and CP No.22/2013-14 *vide* responses dated September 22, 2013 and February 28, 2014 respectively. Copies of submissions dated April 08, 2013; September 22, 2013; and February 28, 2014 are incorporated by reference. BIAL has also made multiple submissions in the course of the consultation process, on which it relies. For the sake of brevity, the previous submissions are incorporated herein by reference and not repeated.

1. PREAMBLE

Cathay Pacific Airways welcomes the opportunity to provide comments on the Consultation Paper No. 14/2013-14 and the Addendum to Consultation paper No. 14/2013-14 (Consultation paper No. 22/2013-14) issued by the Airports Economic Regulatory Authority of India in the matter of Determination of tariffs for Aeronautical Services in respect of Bengaluru International Airport, Bengaluru, for the first Control Period (01.04.2011 - 31.03.2016).

The Consultation paper and the Addendum suggest increasing the aeronautical tariff by a very significant level. This is of grave concern to us.

Since we have expressed the difficulties that we are facing as an airline in previous consultations, we will not repeat again here. However, we do hope that our comments are being taken into consideration so as to keep the competitive edge of BIAL and the profitability of airline so as to support the sustainable development and to maintain the prosperity of the economy of India.

2. COMMENTS ON THE PROPOSAL IN GENERAL

It is our view that the time allowed for parties who are interested in the subject to

provide inputs to the Consultation Paper is inadequate. The consultation period of both the Consultation Paper and the Addendum is less than a month. Given the complexity of the issue, the amount of documents to be perused, the need to meet with the Authority concerned to understand the issue and the need to seek opinions from advisors on the subject, the allowed time is grossly insufficient. In other countries where similar consultation process is conducted, a period of at least three months would be given and the process would start six to eight months in advance. In this respect, it would appear that the whole consultation exercise is not meaningful at all since in-depth analysis of the proposals cannot be conducted within the short time-frame. In any case, we are providing our comments to the documents to meet the deadline in good faith and it is probable that supplements may be provided when we have the time to more thoroughly review the issues within our organisation.

It is noted that the aeronautical charges, be it User Development Fee and Landing Charge, are vastly different for domestic carriers and international carriers. We understand these charges are the same for the same group of users. However, in accordance with the principle of nondiscriminatory application of charges, these charges and in particular the Landing Charge should be the same for both domestic and international carriers. Charges for using such services and facilities should be worked out on basis of the efforts related to their usage, not on basis of domestic or international operation, or stage length of the flights as it bears no correlation at all.

The differentiation in rates is a worldwide phenomenon and almost all airports in the 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.

3. COMMENTS ON IMPACT OF THE PROPOSED TARIFF ADJUSTMENT

The proposed increase in Aeronautical Tariff put forward by BIAL is astoundingly exorbitant. It is a very drastic increase of 131% in international landing, parking & housing charges. This will inevitably cause a very huge financial impact to the airlines.

It is apparent that charge increase at such a drastic level will only serve to further dampen demand, compel airlines to review the commercial viability of the route, or choose other airports as transit stops. Airports play a very critical role in the economy of India. If there were further reduction of services and traffic, the consequence would be a move backward in the public good role of the airport thus affecting the economic development of India, lowering regional prosperity to the benefit of competing airports and cities.

BIAL would like to mention that there has not been any increase in landing and parking charges in almost last 10 years and even if we go by inflationary increase the current increase is justified.

4. COMMENTS ON PRE-CONTROL PERIOD SHORTFALL CLAIM

We fully support AERA's proposal of not to consider pre-control shortfall for the purpose of determination of aeronautical tariffs for the current control period.

BIAL submits that the present tariffs were approved by MoCA on ad hoc basis subject to finalization of project cost and to be finalized by the Independent Regulatory Authority (AERA). BIAL reiterates its submissions made in response to CP No.22/2013-2014 that pre-control period shortfall, including losses as on AOD, be allowed.

5. COMMENTS ON ALLOCATION OF ASSETS AND EXPENDITURES

BIAL has changed the cost allocation ratios as compared to its original submission, stating that it benefited from AERA approach for MIAL and DIAL. AERA already justified the difference in approach for MIAL/DIAL and BIA and Cathay Pacific supports the fact that approaches for greenfield and Brownfield airports must remain distinct. Therefore we oppose defining the cost allocation ratio using DIAL/MIAL approach.

Nonetheless, we supports AERA's proposition to commission an independent study to assess the reasonableness of assets allocation, and proposes to hold any decision on the appropriate allocation of assets until such study is released. We are also in favour of truing up the assets allocation ratios each year based on the results of independent audits of yearly space allocation.

Reasons for alteration in the asset and expenditure allocation are detailed *inter alia* in response to proposal no.3 in CP No.22/2013-2014 and are incorporated herein by reference. Further, BIAL submitted all necessary details with regard to clarifications sought by AERA while determining asset allocation ratios.

6. COMMENTS ON THE EXAMINATION OF THE PROJECT COST

The details of the project costs were not included in the consultation paper. This makes the justification difficult as no detail background to consider if those costs involved are entitled to be included in the airport project.

There is no prior detailed and public discussion or consultation among the airport users about the project cost, who eventually are the stakeholders that need to bear the costs.

In the proposed Master Plan, a new runway, new terminal (T2) and associated airfield and apron works would be needed in 2017/18. While we support the need for

continual investment in airport infrastructure to meet growth, such investment should be timely and not carried out ahead of actual needs. With the airport's projections on air traffic movement in the past 5 years, we doubt if these new facilities are in need to be included in the project costs. More detailed study would be needed before these new facilities to be determined.

BIAL refers to various details furnished to AERA in response to clarifications sought with regard to requirement for future capex and are available in public domain. BIAL submits that consultation process will be followed and aeronautical capital expenditure will be due for detailed stakeholder's consultation

7. COMMENTS ON CORRECTION OF VARIOUS COSTS AND REVENUE

Cathay Pacific does not agree with AERA's proposal to accept BIAL's proposal to true up Operating and Maintenance expenditure based on actual costs because there is absolutely no incentive for the airport to try to contain its expenditure. We suggest that AERA should cap the expenditure at the approved level and only do truing up if the actual expenditure is lower than the approval levels.

BIAL submits that it is a developing airport and has expanded its capacity considerably during the control period. Hence, past expenses cannot be considered as the basis for estimating expenses in the coming years. However, BIAL has done bottom up projections while arriving at the cost estimates and detailed submissions have been made earlier in response to CP No.14 and CP No.22.

Furthermore we do not support to include bad debts as part of O&M expenditure and strongly objects to the proposal to admit the bad debt of Rs47.51 crores due from Kingfisher to the airport on account of it being a one-off event. It is clearly wrong to make other airlines pay for the failures of their competitor.

As submitted in response to CP No.14 and CP No.12, bad debts are to be provided for by the AERA. In that light, submissions of Cathay Pacific are devoid of merits. BIAL has filed a suit in respect of corporate guarantee issued by United Breweries (Holdings) Limited for a sum of Rs.14,00,00,000/- (Rupees Fourteen Crore Only). The said corporate guarantee was issued by United Breweries (Holdings) Limited guaranteeing debts to

be paid by Kingfisher Airlines Limited. BIAL has initiated legal proceedings against Kingfisher Airlines Limited, as well as the principal officers of Kingfisher Airlines Limited. BIAL supports AERA's view that bad debts that are written off would be reimbursed.

8. COMMENTS ON THE CHOICE OF TILL

The independent economic regulator established under the AERA Act is empowered to determine tariffs for major airports in India (including BLR) and has, through its Order. 13/2010-11 dated 10 January 2011, determined after extensive consultation and sound analysis that single till approach would be most appropriate in the Indian context. CX is in full agreement with AERA on the use of single till approach for the tariff determination in respect of BLR.

Cathay Pacific reiterates that it is inappropriate for the Addendum to re-open the debate on the type of till for BIAL as AERA has released Consultation paper 14/2013-14 in which it proposes a single till regulation that meets regulator's general methodology of tariffs determination.

BIAL reiterates its submissions made in reply to CP No.14/2013-2014, wherein BIAL had stated the reasons and its requests for non-adoption of a single till regime. MoCA had received expert advice from M/s. Bridgelink Advisors who had recommended a hybrid till model as most suitable for greenfield airports like BIAL. Further, MoCA itself had used 30% shared till as a yardstick to determine domestic UDF and had applied dual till yardstick for determination of international UDF on *ad hoc* basis pending finalization of capex. BIAL reiterates its submissions made in response to CP No.14 and CP No.22 in this regard.

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

9. COMMENTS ON REVENUE FROM OTHER THAN AERONAUTICAL SERVICE

Cathay Pacific agrees to consider Aerobridge charge and Common Infrastructure Charge as aeronautical charges for computation of yield.

Details of ICT Charges have been submitted to the AERA. AERA has considered ICT revenue as aeronautical revenue and consequently, as part of ARR in CP No.22. However, BIAL has requested AERA to consider ICT revenues as non-aeronautical revenue *vide* its responses to CP No.22.

We support AERA proposal to consider revenue from cargo, ground handling, fuel supply (fuel throughput charge, fuel into plane charge, etc) as aeronautical revenues as well as to consider the throughput fee revenue from fuel farm service concession out by BIAL as aeronautical revenues in the hands of BIAL.

We also support AERA's proposal to consider the revenue from cargo facility, ground handling and into plane services (provided by third party concessionaries) accruing to BIAL as Aeronautical revenue for determination of tariffs of aeronautical services for the current control period.

BIAL submits that revenue from CGF services be treated as non-aeronautical. BIAL reiterates its submissions made in this regard in response to CP No.14 and CP No.22.

SUMMARY

The absence of data details has precluded a more in-depth analysis to be conducted on the various levels of increases proposed. It is suggested that apart from observing the principles as enshrined in the price regulation framework, the ICAO recommendations such as transparency, non-discrimination and adequate consultations in respect of airport charges setting should also be followed. In addition due cognizance has to be taken in respect of the strategic value of BIAL and its contribution to the economy of India.

We believe only through a complete review and revision by the Government of India of the terms in the pre-defined framework upon which price determination of aeronautical tariff in respect of BIAL is constructed would ensure a right balance is struck between the investors of BIAL and the users. If not, the competitiveness of BIAL will be severely weakened thereby adversely affecting the growth being planned for and ultimately the economic development of India at large.

On basis of the aforementioned comments, and a fair account of charges to the users of BIAL could be maintained, we urge the Government of India to:

- I. Make visible the financial performance of BIAL preferably in the form of a business plan of BIAL for a **reasonably lengthy period** in the life span of the project;

BIAL submits that details have been furnished by BIAL to AERA in the prescribed forms and formats within prescribed timelines. BIAL has also submitted detailed business plan for 10 years and the same has been examined by AERA. However, BIAL strongly urges that the business plan of the organization needs to be considered as confidential matter and not to be put in the public domain.

2. There should be **NO** discriminatory charge on rates for international and domestic flights, in particular, the landing fees where the use of the same runway for international and domestic carriers.

BIAL reiterates its submissions in response to Para 2.

3. Single Till should be adopted as AREA Act suggested.

BIAL reiterates its submissions in response to Para 8.

4. Cargo, Ground Handling and Fuel revenue should be treated as aeronautical revenue.

BIAL reiterates its submissions in response to Para 9.

Cathay Pacific Airways strongly requests that the proposals be reconsidered in light of the comments made in this submission.

BIAL craves leave to submit additional responses, at a later point in time, should the need to do so arise.

**BANGALORE INTERNATIONAL AIRPORT
LIMITED**

**SUBMISSIONS IN RESPONSE TO COMMENTS
OF FEDERATION OF INDIAN AIRLINES
REGARDING CP NO.22/2013-2014**

BIAL is submitting its responses in **red font** below.

A. BACKGROUND

BIAL has made detailed submissions to AERA *inter alia vide* response dated March 19, 2010 to Consultation Paper No.3/2009-10. BIAL had thereafter denoted some of its concerns in Appeal No.2/2011 and Appeal No.7/2011. Upon disposal of Appeal No.7/2011, BIAL had submitted detailed submissions dated April 8, 2013. BIAL has also submitted its responses to CP No.14/2013-14 and CP No.22/2013-14 *vide* responses dated September 22, 2013 and February 28, 2014 respectively. Copies of submissions dated April 08, 2013; September 22, 2013; and February 08, 2013 are annexed hereto for immediate reference. BIAL has also made multiple submissions in the course of the consultation process, on which it relies. For the sake of brevity, the previous submissions are incorporated herein by reference and not repeated.

1. On 26.06.2013, Authority had issued the Consultation Paper No.14/2013-14 ("**CP No.14/2013-14**") in respect of determination of aeronautical tariff of Kempegowda International Airport (Earlier Bengaluru International Airport), Bengaluru, which has been developed and being maintained and operated by Bangalore International Airport Limited ("**BIAL**"). On behalf of its member airlines, Federation of Indian Airlines ("**FIA**") had submitted its detailed Written Submissions under its cover letter dated 19.09.2013 in response to the CP No.14/2013-14. On 24.01.2014, Consultation Paper No.22/2013-14 ("**CP No.22/2013-14**") has been issued as an addendum to the CP No.14/2013-14. In the said CP No.22/2013-14, it has been revealed that on 19.08.2013, BIAL had submitted to the Authority, its Multi Year Tariff Proposal ("**MYTP**") under the Single Till, Dual Till and Shared Revenue till mechanism. Following the Shared Till model, BIAL has submitted its MYTP on the basis that where 30% of Gross Revenues from Non-Aeronautical Services has been set off from the Aggregate Revenue Requirement ("**ARR**") computed for the Aeronautical

services, without taking into account the costs associated with providing these Non-aeronautical services.¶

¶. Furthermore, in the CP No.22/2013-14, it has revealed that in response to CP No.14/2013-14, Ministry of Civil Aviation ("**MoCA**") has in its letter dated 24.09.2013 suggested Shared Till approach be adopted as MoCA felt that the requirement of capital for the expansion during the current control period would be difficult to be met under Single Till approach. Therefore 40% of gross revenue generated by BIAL from Non-Aeronautical Services may be reckoned towards subsidizing aeronautical charges.

3. On 10.02.2014, a Stakeholders Consultation meeting was organized by the Authority, which was duly attended by the representatives of FIA. During the meeting, it was pointed out that various links to the documents *inter alia* the revised submissions of BIAL are apparently uploaded on the website which is not accessible. After this was pointed out in the Stakeholder Consultation, the links were made accessible. On accessing the annexures/documents uploaded on the website, on 13.02.2014, FIA requested the Authority for extension of time to submit its Written Submission as the annexures/documents were voluminous and perusal was a time consuming exercise. The said request was accepted on 17.02.2014 (the last date of filing) and the date was extended to 28.02.2014.

4. It is submitted that the present submissions may be read along with the FIA's Written Submissions dated 19.09.2013 in response to CP No.14/2013-14 for the purpose of determining the aeronautical tariff of BIAL. FIA is submitting its revised submissions as the Authority's Proposals to various issues have undergone several changes by way of the present Consultation Paper. In the context of BIAL's revised submissions on Shared Till basis, Authority ought to have ignored such submission of BIAL and followed the Single Till model as the Single Till model is the most appropriate model for Indian scenarios as per Authority's Order No. 13/2010-11 dated 12.01.2011.

5. At the outset, it is noteworthy that the Authority is under a bounden duty to determine the tariff in terms of:-

- (a) Statutory provisions laid under the of the Airports Economic Regulatory Authority of India, Act, 2008 ("**AERA Act**");
- (b) AERA (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines, 2011 ("**AERA Guidelines**");
- (c) 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;

- (d) 'Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Services Provided for Cargo Facility, Ground Handling and Supply of Fuel to the Aircraft) Guidelines 2011' ("**CGF Guidelines**"); and
- (e) Regulatory jurisprudence and settled principles of law creating a level playing field to foster competition, plurality and private investments in the civil aviation sector.

Paragraphs 1 to 5: BIAL refers to the order dated 15.02.2013 passed by the Hon'ble Airports Economic Regulatory Authority Appellate Tribunal ("**Appellate Tribunal**"), wherein the AERA had submitted that Order No.13, Order No.14 and Direction No.5 are only indicative of the mind of the AERA, prima-facie. The Appellate Tribunal disposed of the appeals by keeping all contentions and issues open. In view of the same, BIAL submits that AERA is not bound by Order No.13, Order No.14 and Direction No.5 and at any event, the contents thereof are not final and binding.

BIAL submits that, likewise, in view of the aforesaid order dated 15.02.2013 passed by the Appellate Tribunal, all issues including applicability of the CGF Guidelines to BIAL are open and AERA is not bound to act in accordance with the same.

B. CONTEXT OF THE CONSULTATION

6. To assist the Authority in appreciating these submissions on the CP Nos. 14 and 22 of 2013-14, members of FIA deem it necessary to place on record the following set of material facts:-

- 6.1 Under the Concession Agreement (Clause 5.2), BIAL has been guaranteed exclusivity by Government of India ("**Gol**") as no new or existing airport shall be permitted by Gol to be developed as, or improved or upgraded into an international or domestic airport within an aerial distance of 150 kilometers of the Kempegowda International Airport for 25 years from the date of its opening.

6.2 Pursuant to the enactment of the AERA Act, the Authority has been established to perform the functions vested under the AERA Act including Section 13 of the Act, which includes determination of tariff for aeronautical services, viz.-

- (a) Section 2(a) of the AERA Act defines aeronautical services.
- (b) Section 13 (1)(a) of the AERA Act provides that the tariff for such aeronautical services at a major airport is to be determined by the Authority after taking into consideration various factors, being:-
 - (i) The capital expenditure incurred and timely investment in improvement of airport facilities;
 - (ii) The service provided, its quality and other relevant factors;
 - (iii) The cost for improving efficiency;
 - (iv) Economic and viable operation of major airports;
 - (v) **Revenue received from services other than the aeronautical services;**
 - (vi) The concession offered by the Central Government in any agreement or memorandum of understanding or otherwise;
 - (vii) Any other factor which may be relevant for the purposes of the AERA Act.

6.3 'Determination' by the Authority:

- (a) Section 13(1)(a) of the AERA Act requires the Authority to 'determine' the tariff for aeronautical services. Any 'determination' by a statutory authority must clearly show the application of mind and analysis carried out by the Authority. However, in the present case, the Authority has proposed to allow various expenditures like Operating Expenditure, General Capital Expenditure, Tariff Rate Card, etc. merely on the basis of BIAL's submissions and but has failed to provide any justification of its own or analysis for the same. In this regard judgment of the Hon'ble Supreme Court in the case of Ashok Leyland Ltd. vs. State of Tamil Nadu & Anr. reported as (2004) 3 SCC 1 (FB)(at Paragraph No. 94)¹ is noteworthy. Hon'ble Supreme Court has held that the word 'Determination' must also be given its full effect to, which pre-supposes application of mind and expression of the conclusion. It connotes

¹Annexure F-1: Ashok Leyland Ltd. vs. State of Tamil Nadu & Anr. Reported as (2004) 3 SCC 1 (FB)

the official determination and not a mere opinion or finding.² The Hon'ble Telecom Dispute Settlement Appellate Tribunal ("TDSAT") has also held that determination requires application of mind in the Judgment dated 16.12.2010 in Appeal No. 3(C) of 2010 titled as **ZEE Turner Ltd. vs. TRAI & Ors.** (at Paragraph No. 150)³.

- (b) Section 13(1)(4)(c) of the AERA Act mandates that any decision by the Authority must be fully documented and explained.

6.4 To the dismay of the Stakeholders (including airlines), the Authority vide the present Consultation Paper has *simpliciter* accepted BIAL's claims (including the inputs of BIAL's consultants) without conducting its own prudence check or commissioning experts. In the CP No. 14/2012-13 and present CP No. 22/2013-14, the Authority has accepted BIAL's submissions and indicated that the tariff is subject to truing up in next control period with respect to following components:-

- (a) Asset Allocation
- (b) Future Capital Expenditure
- (c) Cost of Debt
- (d) Operating Expenditure
- (e) Taxation
- (f) Non-aeronautical revenue
- (g) Traffic forecast
- (h) Working Capital Interest Expenditure
- (i) WPI Index

6.5 The following table indicates the experts engaged by BIAL and whose views have been as it is accepted by the Authority:

²Oxford Advanced Learners Dictionary of Current English (Eighth Edition), 2010

"Determine: 1. To discover facts about something; to calculate something exactly 2. To establish: 3. An inquiry was set up to determine the cause of accident. 4. To make something happen in a particular way or be of a particular type: Age and experience will be determining factors in our choice of candidate, upbringing plays an important part in a person's character. 5. To officially decide and/arrange sth: 6. Date of for a meeting sth as yet to be determined. 7. To decide definitely to do sth something: They determined to start early"

Black's Law Dictionary (Eighth Edition)

"Determination: 1. Final decision by a court or administrative agency 2. The court's determination of the issue"

³Annexure F-2: TDSAT's Judgment dated 16.12.2010 in Appeal No. 3(C) of 2010 titled as **ZEE Turner Ltd. vs. TRAI & Ors.**

TABLE A: List of Consultants engaged by BIAL

| S. No. | Consultant engaged by BIAL | Particulars |
|--------|--|-----------------------|
| 1. | BSR & Company | Assets Allocation |
| 2. | BSR & Company | Operating Expenditure |
| 3. | Engineers India Limited ("EIL") (EIL was appointed by AAI, which is 13% shareholder of BIAL. Hence cannot be termed as independent opinion) | Capital Expenditure |
| 4. | Landrum & Brown | Traffic Projections |

Paragraph 6: BIAL has submitted detailed justifications in response to CP No.14, CP No.22 and through separate responses issued to AERA as a part of the consultative process and the same are incorporated herein by reference. BIAL's submissions matters set out in paragraph 6.4 above are appropriate and may kindly be accepted by AERA. At any event, FIA has not pointed out any infirmity in BIAL's submissions. It is incorrect to say that AERA is not empowered to take cognizance of submissions of BIAL when the same are backed by appropriate justifications.

7. It is regrettable that the Authority in the year 2012 i.e. at the time of issuance of DIAL Tariff Order (No.3/2012-13) had decided to commission its own experts has failed to do so till now.

Paragraph 7: Concerns raised herein pertain to DIAL and needs no response from BIAL.

8. It is also noteworthy that though the Authority has stated in the CP No.22/2013-14 that on 19.08.2013, BIAL has submitted its revised MYTP-2013 and Business plans under Single Till, Dual Till and Shared Revenue Till. However, in the CP No.22/2013-14, Authority has indicated that BIAL has not:

- (a) Firmed up the Real Estate Business Plan. In absence of Real Estate Business Plan, the land that is in excess of airport requirements and BIAL wishes to commercially exploit, cannot be determined. Hence,

- (i) Such land value has not been reduced from RAB by the Authority.
 - (ii) Cash flows from monetisation of land and real estate deposits are not considered which could have been used as source of financing the funding gap.
 - (iii) Interest free real estate deposits have not been factored which would have impacted determination of Fair Rate of Return ("FRoR").
 - (iv) Excess land could also have been used for Non-aeronautical activities and such non-aeronautical revenues would have reduced the Target Revenue to be achieved from aeronautical charges.
- (b) As per Paragraph No. 14.12 of the CP No.22/2013-14, the ICT charges (proposed to be collected) has not been factored in the business plan and accordingly has not been factored in by the Authority while computing ARR. Hence, it is submitted that the Authority should obtain the details of these charges from BIAL and accordingly include the same in computing the ARR as the same would result in reduction in target revenue

It is beyond reasonable understanding as to how the Business Plan of BIAL can be taken into account when the crucial elements of its operations and undertakings have not been firmed up and included for tariff determination.

Paragraph 8: The detailed response provided hereinbelow to paragraphs 13-19 is incorporated by reference herein.

9. In the CP No.14/2013-14 (Paragraph No.1.20), Authority had indicated that the Concession Agreement, State Support Agreement ("SSA") and the Land Lease Agreement paved the way for BIAL to achieve Financial Close by June, 2005 and the construction work commenced thereafter. However, as per both the CP No.14/2013-14 and the CP No.22/2013-14, Financial Close was not achieved for future expansion of Rs. 4,027 crores as there is funding gap due to inability of BIAL's shareholder to infuse additional equity. It is glaring as in absence of Financial Close, there is no certainty to the expansion plans of the airport and the provisions for financing such expansion. Such uncertainties by the Authority are contrary to established regulatory practice and exercise of tariff determination.

Paragraph 9: The detailed response provided hereinbelow to paragraph 27 is incorporated by reference herein.

C. ISSUES FOR CONSIDERATION OF THE AUTHORITY

10. In the above context, it is submitted that the present consultation process raises the following important and critical questions for consideration of the Authority:-

- (a) Whether the claim of BIAL for increase in aeronautical tariffs is justifiable on legal, financial/economic basis?
- (b) What was the business and financial model of BIAL at the time of the execution of Concession Agreement⁴ and State Support Agreement⁵ ("SSA")?
- (c) What is the commercial/financial/economic impact of BIAL's failure to firm up its Real Estate Business Plan and in the facts of the case, should the consumers be made to suffer in the current control/regulatory period?
- (d) What is the legal basis for adopting 40% Shared Till Model for determination of aeronautical tariff of Kempegowda International Airport, Bengaluru?
- (e) Can the Authority overlook the prevalent legal framework and determine the aeronautical tariff on any other model besides Single Till?
- (f) Can the late submission of relevant information for determination of aeronautical tariff by BIAL be ignored which has essentially diminished the effective control period to 24 months from 5 years (60 months)?
- (g) Should tax savings in cost of debt be not factored for the purpose of reducing Weighted Average Capital Cost ("WACC")?
- (h) Is it justified to forecast the future capital expenditure, operating expense, non-aeronautical revenue, traffic projections and working capital interest without evaluating the same in detail?
- (i) Can the acceptance of various claims of BIAL without any independent analysis by the Authority is justifiable in view of Sections 13 and 14 of the AERA Act, 2008?
- (j) Can the proposed aeronautical tariffs (increase of 76% to 160% on aeronautical

⁴Dated 05.07.2004 entered into between Ministry of Civil Aviation (Government of India) and BIAL.

⁵Dated 20.01.2005 entered into between Government of Karnataka and BIAL.

- charges)⁶ be considered as a fair, just or reasonable claim of BIAL in a prudent, regulated, price cap mechanism as envisaged under the AERA Act read with the AERA Guidelines?
- (k) Should BIAL be allowed to claim the enhanced project cost which is on the higher side than the indicative past cost of construction of other Airports Terminals at Chennai, Kolkata, Cochin, Goa etc.?

D. ISSUEWISE SUBMISSIONS

I. Authority ought to follow Single Till Model for determination of Aeronautical Tariff

11. FIA had welcomed Authority's proposal to determine the tariff on Single Till model in CP No.14/2013-14. However, in the CP No.22/2013-14, Authority has proposed to follow the Shared Till model for the current control period.

12. In this context, the following facts are noteworthy:

- (a) By way of the Public Notice No. 6/2013-14 dated 19.08.2013, that BIAL had proposed to approach the Authority with a separate MYTP modeled on 30% Shared Till basis. At this juncture itself, the Authority should not have allowed repeated revised BIAL's submissions⁷ as it has led to delay in determination of aeronautical tariff which eventually tantamounts to burdening the airlines and passengers with increased aeronautical tariff. The revision from CP No. 14/2013-14 to CP No.22/2013-14 has reduced the recovery period by a substantial margin of 8-9 months and the overall tariff determination exercise is delayed by 36 months.
- (b) MoCA in its response to the CP No.14/2013-14 suggested that Shared Till approach be adopted i.e.,40% of Gross revenue generated by BIAL from non-aeronautical services may be reckoned towards subsidising aeronautical charges and the UDF.

The aforesaid facts indicate that the Authority had not proposed Shared Till but Single Till in view of the applicable legal framework in the CP No.14/2013-14. In the context of MoCA's said letter, it is submitted that the Authority being an independent statutory auditor ought

⁶Annexure F-3: A Comparative Chart Indicating the Percentage Change in Existing Aeronautical Charges vis-à-vis Proposed Aeronautical Charges.

⁷First Submission was filed by BIAL on 1.07.2011. Thereafter, Submissions have been revised/updated several times.

to act within the four corners of the law and not on the basis of suggestions of MoCA. It is noteworthy that in a matter pending adjudication⁸ before the Hon'ble Airports Economic Regulatory Authority Appellate Tribunal ("AERAAT"), MoCA had submitted by way of its Counter-Affidavit that the Authority is an independent regulator and suggestions of Government of India/MoCA are not legally binding on it. Further, it has submitted that MoCA has no role to play with respect to determination of aeronautical tariff. The Authority being a party to the said matter is aware of the contents of MoCA's Counter Affidavit in the said matter.

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

⁸Appeal No.6/2012: FIA vs. AERA & others: FIA's challenge to BIAL's tariff order (No.3/2012-13)

- (c) Concluded that the Single Till is the most appropriate for the economic regulation of major airports in India.
- (d) The criteria for determining tariff after taking into account standards followed by several international airports (United Kingdom, Australia, Ireland and South Africa) and prescribed by ICAO.

16. The Authority in its AERA Guidelines (Clause 4.3) has followed the Single Till approach while laying down the procedure for determination of ARR for Regulated Services. In this respect, the matter must be dealt with by the Authority considering the ratio pronounced by the Constitutional Bench in the Hon'ble Supreme Court Judgment in PTC vs. CERC reported as (2010) 4 SCC 603⁹ wherein it is specifically stated that regulation under an enactment/statute, 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.

18. It is to be noted that Authority has indicated that part of the Non-aeronautical revenue which would remain in the hands of BIAL under 40% Shared Revenue Till would be used by BIAL for Capital Expenditure which is required towards airport expansion during the current control period. However, during the Stakeholders Consultation Meeting held on 10.02.2014, representatives of BIAL objected to such condition (on using this revenue only for capex) being put for treatment of its Non-Aeronautical revenue. It may be noted that until 27.02.2014, Minutes of the Stakeholders Meeting has not been uploaded on the website of AERA. Without prejudice, it is submitted that determination of aeronautical tariff on Shared Till basis for the first control period would set the tone and precedent for determination of aeronautical tariff in subsequent control periods contrary to the applicable legal framework. Thus, it is submitted that Authority should discard the option of determination of aeronautical tariff on Shared Till and follow Single Till scrupulously.

19. FIA therefore submits as under:

- (a) Single Till Model ought to be applied to ALL the airports regulated by the Authority regardless of whether it is a public or private airport or works under the PPP model and in spite of the concession agreements as the same is mandated by the statute.

⁹Annexure F-4: PTC vs. CERC Reported as (2010) 4 SCC 603 Paragraph Nos. 38 to 44 at Page Nos. 39 to 641).

- (b) Single Till is in the public interest and will not hurt the investor's interest and given the economic and aviation growth that is projected for India, Fair Rate of Return alone will be enough to ensure continued investor's interest.
- (c) MoCA's view(s) with respect to any issue at best can be considered as that of a Stakeholder and by no means are binding to Authority's exercise of determination of aeronautical tariff as is admitted by MoCA itself before the AERAAT.

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

Paragraphs 12-16,18 and 19: BIAL submits that the Airports Economic Regulatory Authority of India Act, 2008 ("**Act**") does not envisage Single Till. Additionally, the Act accords primacy to agreements executed and concessions granted to the airport operator prior to the enactment of the Act and therefore, there exists a statutory obligation to consider such agreements/concessions, rather than otherwise. BIAL has therefore submitted its request for 30% SRT as a workable solution and requests that the same be considered.

Moreover, as submitted by FIA, the business and financial model of BIAL at the time of execution of the Concession Agreement and State Support Agreement is a relevant factor and the financial model was arrived at on the basis of 21.66% IRR and dual till model.

In this regard, BIAL refers to and relies upon its detailed submissions made earlier in response to CP No.14 and CP No.22 as well as the submissions dated April 08, 2013. BIAL also incorporates by reference grounds urged in Appeal No.2/2011 and Appeal No.7/2011. BIAL submits that AERA is not bound by its previous orders namely Order No.13, Order No.14, Direction No.5, Order No.5, Order No.12 or Direction No.4 and in this regard, BIAL refers to the order dated 15.02.2013 passed by the Hon'ble Appellate Tribunal wherein AERA had submitted that Order No.13, Order No.14 and Direction No.5 are only indicative of the mind of AERA, prima-facie. The Appellate

Tribunal disposed of the appeals by keeping all contentions and issues open. In view of the same, BIAL submits that AERA is not bound by Order No.13, Order No.14 and Direction No.5 and at any event, the contents thereof are not final and binding.

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

Paragraph 17: The alleged reasoning is hypothetical and is clearly in the realm of speculation.

II. Re. Capital Expenditure claimed by BIAL

II.A. Authority should ensure that the project cost is in check and gold plating is avoided

20. The Authority in the CP No.22/2013-14 has noted that the cost of construction of T1A and associated works appear to be high compared with the indicative past cost of construction of other Airports Terminals at Chennai, Kolkata, Cochin, Goa etc. It is submitted that though there may be marginal deviations owing to the specification and design elements but Authority should not allow the cost which are attributable to gold-plating by BIAL to keep the project-cost in check. It is noteworthy that project cost is taken into account for determination of aeronautical tariff by way of RAB factor. Therefore, any cost which is not mandatory or beyond the pre-determined scope of work should be disallowed. As per the CP No.14/2013-14 (Paragraph No.1.21), the total project cost has been revised from Rs. 1411.79 crores to Rs. 2470.29 crores. Further, the BIAL has indicated to expansion of the airport for an estimated amount of Rs.4,027 crores.

Paragraph 20: Clarifications as regards details of project cost and benchmarking of costs have already been submitted. [Please refer to page 757 of Annexure I of CP No.22]

II.B. BIAL's inordinate delay in firming up Real Estate Business Plan

21. Government of Karnataka ("GoK") has given 4008 acres of land to BIAL on lease which, as per Clause 4.2 of the Land Lease Agreement can be used for inter alia *"improving the commercial viability of the Project"*. No details are provided about usage of such land parcel. BIAL has submitted that it has yet not firmed up the Real Estate Business Plan to monetize the land in excess of Airport requirements. BIAL's inability to firm up the Real Estate Business Plan has not been backed by substantial rationale. It appears that Real Estate Business Plan has not been planned/provided to avoid the regulatory assessment by the Authority which in turn helps BIAL to project higher tariffs:-

- (a) **Regulatory Asset Base**-In absence of Real Estate Business Plan, the land that is in excess of airport requirements and BIAL wishes to commercially exploit, cannot be determined. Hence, such land value has not been reduced from RAB by the Authority.
- (b) **Financial Close for future expansion**— As per the CP No.14/2013-14, Financial Close was not achieved for future expansion of Rs. 4,027 crores as there is funding gap due to inability of BIAL's shareholder to infuse additional equity. As per the CP No. 22/2013-14, funding gap still persists as BIAL's shareholders have confirmed their inability to infuse additional equity and Real Estate Business Plans have not been firmed up yet. In absence of Real Estate Business Plan, cash flows from monetisation of land and real estate deposits are not considered which could have been used as source of financing the funding gap.
- (c) **Determination of Fair Rate of Return ("FRoR")** —As the Real Estate Business Plan is not firmed up, interest free real estate deposits have not been factored which would have impacted determination of FRoR. Also, Authority without its own independent exercise of determination has assumed the gearing ratio at 70% only on the basis of BIAL's submission that the Financial Close has been achieved. This approach of the Authority is not acceptable as the FRoR determined in this approach remains tentative. The entire exercise cannot be undertaken on 'tentative' basis.

- (d) **Non-aeronautical revenue** –Excess land could also have been used for Non-aeronautical activities and resulting non-aeronautical revenues would have reduced the Target Revenue to be achieved from aeronautical charges.

22. It is submitted that the Authority should stipulate the time limit within which BIAL has to submit its Real Estate Business Plan for commercial exploitation of land so that it can be appropriately factored in determining aeronautical tariffs (including UDF) for the control period. The impact of non-monetisation of land or the lack of Real Estate Business Plan is discussed in detail in the succeeding paragraphs.

II.B.1 Determination of RAB

23. The Authority has provided, in Clause 7.7 of the Single Till Order and Clause 5.2.4 of AERA Guidelines, that it will *make an adjustment in respect of any land associated with an asset excluded from the scope of RAB by reducing from RAB the value of such land being the higher of (i) prevailing market value of such land, or (ii) book value of such land*. As per the CP No. 14/2013-14, to which CP No.22/2013-14 is an addendum, it is understood that the Authority has also proposed to commission experts to independently determine and review the market value in respect of such land. It is submitted that the Authority ought to commission an expert study for determination of fair value of the land, so that it could have been deducted from RAB. BIAL's failure to market/monetise the land cannot work to BIAL's own advantage. The benefit of awarding land to BIAL ought to have been made available to the Stakeholders including the passengers.

24. As per Paragraph No. 6.20 and Proposal No. 4 (a)(i) of CP No.22/2013-14, for the purpose of commercial exploitation of excess land, BIAL has undertaken construction activity of only one hotel which is also under arbitration. , The Authority has proposed not to reduce market value of Hotel land from RAB. Also, as per CP No.14/2013-14, BIAL had submitted that it has not yet firmed up the Real Estate Business Plan with respect to monetization of the lands, hence the fair market value of the land that it wishes to commercially exploit should not be reduced from RAB. In the CP No.22/2013-14 (at Paragraph No. 6.7), BIAL has reiterated that neither real estate activity nor investment is envisaged as the Real Estate Business Plan has not yet been firmed up and no investment has been made as on date. Hence, real estate business scenario has not been considered by BIAL even in its revised MTYP which is reflected in the CP No.22/2013-144 and BIAL's approach has been accepted by the Authority

25. The Authority, while standing on its view of land value adjustment, has not made any land value adjustment which is in contravention of the AERA Guidelines (Clause 5.2.4) and

Single Till Order (Clause 7.7 of Single Till Order) and implies huge burden on passengers and airlines. Such a casual approach by the Authority contrary to its own Single Till Order and the AERA Guidelines is unacceptable.

Paragraphs 21-25: BIAL reiterates its submissions made in this regard earlier *inter alia* in Appeal No.2/2011, Appeal No.7/2011, responses dated April 08, 2013, September 22, 2013 and February 28, 2014. In the absence of regulatory clarity, BIAL has submitted its views on real estate as part of its submissions. BIAL however reiterates that 'real estate' activities are beyond the purview of regulation by AERA.

II.B.2. Re. Financial Close ure for future expansion

26. As per the CP No.14/2013-14, BIAL is undertaking a substantial expansion of the airport on the cost estimate of Rs. 4,027 crores for which the equity contribution is a pre-requisite¹⁰ as the entire expansion cannot be funded by debt. Hence, the Authority has assumed a Debt -Equity ratio of 70:30, which implies an equity requirement of Rs. 649 crores as per the table below:-

TABLE B: Recomputed Capital financing model based on the revised Yield¹¹

| | | (Rs. Crores) | | | | | |
|---------|---|--------------|------|------|------|-------|-------|
| S. No. | Particulars | FY12 | FY13 | FY14 | FY15 | FY16 | Total |
| A | Capex cost including Interest During Construction | 293 | 803 | 780 | 539 | 1,611 | 4,027 |
| C | Debt | - | 799 | 582 | 22 | 1,381 | 2,783 |
| D | Internal Resource Generation | 293 | 4 | 199 | 23 | 75 | 594 |
| E | Additional Equity Financing | - | - | - | 495 | 155 | 649 |
| F=C+D+E | Means of financing | 293 | 803 | 780 | 539 | 1,611 | 4,027 |

¹⁰ Acknowledged by the Authority in CP 22.

¹¹ Based on Table 35 at Page No. 290 of the CP No. 14/2013-14

27. The CP No.22/2013-14 does not provide capital financing model based on revised capex cost and sources of financing such revised cost of capex. However, as per the CP 14/2013-14 and Paragraph No.10.9 of the CP No.22/2013-14, BIAL's shareholders¹² have expressed their inability to bring in additional equity which would result in a funding gap depending on the additional loan that BIAL can mobilize from the lenders. Despite of funding gap, BIAL has not firmed up its Real Estate Business Plan since 5 years of airport operations and 8 years of Land Lease Agreement. Since, BIAL has not submitted any concrete proposals for bridging the funding gap through monetization of land, real estate deposits or any other instrument, the aeronautical tariffs (including UDF) cannot be determined for capex funding and the whole exercise is reduced to determining estimates. Leaving almost every element of tariff for truing up is contrary to the established regulatory jurisprudence.¹³ Hence, the aeronautical tariffs determined by the Authority in the CP No. 22/2013-14 is on the basis of the hypothetical assumption that the Financial Close for future expansion has been achieved and this approach of the Authority is not acceptable as the UDF determined under this approach is merely tentative. The Authority would appreciate that passenger base in an airport is dynamic. It would be impossible to refund any amount if such recovery of UDF is later found to be unnecessary. It is submitted that Authority should direct BIAL to raise the required funds through debt and equity at the earliest to finance the expansion of Airport Project and not unnecessarily burden the passengers.

Paragraphs 26 to 27: BIAL submits that the estimation of future capex is a major element of the regulatory building blocks. As part of AERA's consultation process, details were submitted on the requirement of future capex and its impact on the proposed tariff. However, BIAL submits that entire aeronautical capital expenditure will be due for detailed stakeholder's consultation and informed decision will be taken as per the consultation process. It is relevant to submit that the private promoters as well as government promoters have made it abundantly clear that they would not be able to infuse any additional equity.

II.B.3. Re. Determination of FRoR

¹² K's letter dated 26.08.2013 in response to CP 14/2013-14

¹³ The submission using the tool of truing-up is used sparingly as detailed in Paragraph Nos. 107 to 109

28. Since BIAL has not finalised Real Estate Business Plan yet, interest free real estate deposits has not been factored for determination of FRoR. In case, the interest free real estate deposits is factored, this would reduce overall FRoR and would result in lower return on RAB to BIAL and lower aeronautical tariffs. Also, Authority has assumed the gearing ratio at 70% on the basis of hypothetical assumption that the Financial Close has been achieved despite the fact that BIAL's shareholders have expressed their inability to infuse additional equity and this gearing ratio might change significantly depending upon final source of funding. Hence, this approach of the Authority is not acceptable as the FRoR determined in this approach is tentative. Therefore, Authority ought to have directed BIAL to firm up its Real Estate Business Plan and provided accurate sources of revenue to correctly identify and determine the Target Revenue and FRoR.

Paragraph 28: BIAL refers to submissions made hereinabove in response to paragraphs 21 to 25 in this regard and incorporates the same herein by reference.

III. Regulatory Period and Recovery of ARR ought to be determined prospectively

29. In the CP No.14/2013-14, the Authority had tentatively decided the tariff for the 5 years control period starting from 01.04.2011 which is likely to come into effect from 01.10.2013. In the CP No.22/2-13-14, Authority has not clearly indicated as to from what prospective date the aeronautical tariff will come into effect. However, Authority has indicated in Table No.62 of the CP No.22/2013-14 to reckon the date of 01.04.2014 in its computation of UDF. It does not indicate the effective date of aeronautical tariff.

30. It is submitted that in determining the tariff in the year 2014 for the control period of 01.04.2011 to 31.03.2016, the Authority will be compressing the recoverable period of legitimate 60 months to merely 24 months.

31. The Authority is overlooking that the BIAL has caused inordinate delay in submitting its tariff proposals (thereafter revising the proposal from time to time) and relevant information for determination of aeronautical tariff which has:

- (a) Diminished the effective Control Period to 24 months from 5 years (60 months);
- (b) Led to exponential increase (76% to 160% on a component to component basis) in aeronautical tariffs of Kempegowda International Airport with the past charges of

last 48 months recoverable in the next 24-26 months from the future passengers and consumer. This approach is unacceptable as it would increase the operational expenditure of the airlines and render its operations economically unviable. It is noteworthy that airlines cannot recover such past-cost from its passengers who have travelled in the period gone by.

32. It is settled position of law that future consumers cannot be burdened with additional costs as there is no reason as why they should bear the brunt. Such quick-fix attitude is not acceptable. As such, the approach in the CP No. 14/2013-14 and CP No.22/2013-14 does not appear to deal with the present economic realities and interests of consumers while proposing the tariff in its present form. Authority being a creature of statute is under a duty to balance the interest of all the stakeholders and consumers, which it is mandated to do under the AERA Act. Authority's proposal for tariff determination for the period of 5 years and compressing the recovery in 2 years is imprudent and detrimental to the interests of Stakeholders including the airlines and the passengers.

Paragraphs 29-32: BIAL has made submissions within prescribed timelines. The regulatory philosophy has made it clear that any shortfall / excess in a given control period will be trued up for the next control period. Considering that development of Greenfield airport is capital intensive and the varying user base, truing up is only balancing mechanism in the current regulatory framework.

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

IV. Depreciation up to 100% is contrary to the AERA Guidelines

33. As per the AERA Guidelines (Clauses 5.3.1 and 5.3.3), depreciation is allowed up to a maximum of 90% of the original cost of the asset on straight line basis. BIAL had followed the said Guideline in its depreciation calculation (Table No.22, Paragraph No.10.3 of CP No.14/2013-14) in its MYTP-2012. However, in the CP No.14/2-13-14, the Authority had recomputed the 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. Consequent to the changes proposed by the Authority in the CP No.14/2013-14, BIAL in its revised MYTP-2013, has also computed depreciation on assets without taking any salvage value (refer Paragraph No, 6.4 of CP No.22/2013-14). The Authority has also proposed to accept this methodology adopted by BIAL [refer Proposal No.4 (a) (iv)] in the CP No.22/2013-14.

34. 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. Authority should consider 10% residual value as mentioned in the Clause 5.3.3 of the AERA Guidelines. FIA's sensitivity analysis indicate that reduction in depreciation rate from 100% to 90% will reduce ARR by Rs.53 crores and Rs. 47 crores under Single Till and 40% Shared Till respectively (approximately 2% of Total ARR in both the cases).¹⁴

Paragraphs 33 and 34: BIAL submits that, as per Companies Act and Income Tax Act, 100% depreciation is permissible and 100% depreciation is also an accepted practice as per general accounting and auditing practices (GAAP). BIAL submits that this issue has been considered by AERA at length in CP No.14 and CP No.22 and AERA has proceeded to provide for 100% depreciation in acceptance of BIAL's submissions. The objections by FIA are belated.

V. Authority is statutorily mandated to scrutinize the claims of BIAL

35. It is submitted that the Authority is statutorily mandated under Sections 13 and 14 of the AERA Act to scrutinize each claim/projection of the Airport operator/service provider (in the present case BIAL) instead of merely accepting such claims. If required, the Authority can even engage consultants or experts to perform such exercise on its behalf. However, simply accepting the claims/projections of BIAL reflects casual approach of the Authority. It is noteworthy that in the CP No. 14/2013-14 and also on CP No. 22/2013-14, Authority has proposed to accept most of the claims/forecast of BIAL with respect to:

- (a) Assets Allocation
- (b) Allocation of Expenditure

¹⁴ Tabulated Chart Indicating the Impact of Reduction in Depreciation Rate from 100% to 90% is Annexed hereto and marked as **Annexure F-5.**

- (c) Future Capital Expenditure of BIAL to be capitalized during review period
- (d) Operating Expenditure
- (e) Traffic Projections
- (f) Working capital loan and interest *vis-à-vis* working capital requirements
- (g) Assessment of Non-aeronautical revenue

Paragraph 35: Necessary clarifications have been provided *vide* BIAL's response to CP No.22 and *vide* BIAL's specific responses to the AERA *vide* letter dated January 30, 2014 and the same are incorporated herein by reference.

V.A. Re. Assets Allocation

36. In the CP No.14/2013-14, the Authority has accepted BIAL's allocation of assets (approximately 82% : 18%) submitted in its MYTP-2012 and had considered the same for the purpose of computation of ARR under Dual Till . Authority in the CP No. 22/2013-14 (Paragraph No.4.8) has noted that report submitted by BIAL is from BSR & Company and not from KPMG. The Authority however, has referred to this report of BSR & Company as "KPMG Report" since BIAL has in its MYTP-2013 submission termed it as "KPMG Report". FIA however has deemed it proper to refer to the report in question as BSR Report. In its MYTP-2013, BIAL has revised its submission with respect to asset allocation on the basis of BSR Report on ***"agreed upon procedures related to the Statement of allocation of fixed assets into Aeronautical and Non-Aeronautical"*** and the allocation was increased towards Aeronautical assets (approximately 91% : 9%) and the same is beneficial for airport operator (BIAL in the present case) in case of the Hybrid Till/Shared Till.

37. It is to be noted that as per Paragraph No. 4.14 of CP No.22/2013-14, the Authority has noted that BSR & Company appear to have merely carried out a check of the principles / methodology already established by BIAL for asset and cost allocation and have only validated the same with the financials and not carried out any independent study to classify the assets between aeronautical and non-aeronautical services. We understand from Paragraph No.4.18 of the CP No.22/2013-14 that the Authority has recomputed the asset allocation percentage submitted by BIAL. However, the Authority has accepted BIAL's submission with respect to asset allocation for Apron Extension and Airfield related

maintenance expenditure. Also, in the CP No.22/2013-14, the Authority has made upward revisions to the allocation of Opening RAB and Terminal 1 Expansion proposed in CP No. 14/2013-14 (which was based on BIAL's submission in MYTP-2012) which has resulted in increase in asset allocation towards aeronautical assets.¹⁵ Hence, the Authority has essentially relied on basic assumptions of BIAL for the purpose of computing allocation of assets into Aeronautical and Non-Aeronautical.

38. It is submitted that the Authority ought to conduct/commission its own study not accept BIAL's submission on as it is basis. The Authority has been contemplating to commission its own study since April, 2012 when it first issued the DIAL Tariff Order (No.3/2012-13). It is regrettable that the Authority has yet again adopted the stance of commissioning its independent study at a later date. It is to be noted that in the Appeals¹⁶ pending before the Hon'ble AERAAT, 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.

39. It is submitted that purpose of appointing an independent external consultant is to enhance the credibility of data being relied upon by obtaining written reasonable assurance from an independent source. However, such objective will not be met if such external consultant can be influenced by other parties. In addition to technical competence, independence is the most important factor in establishing the credibility of the opinion. To bring independence and objectivity to the process, the Authority should directly engage external consultants in order to obtain reasonable assurance on the data being relied upon.

40. Without prejudice, it is submitted that allocation of the airport assets between Aeronautical or Non-Aeronautical categories is critical under Shared Till approach, hence, the same should be carried out on the basis of independent assessment conducted/commissioned by the Authority rather than merely adopting broad view on the basis of assumptions/submissions of BIAL. It is the settled position of law that the sectoral regulators *inter alia* act like an internal audit and while doing so, they may, interfere with the existing rights of the licensees¹⁷. Also, it has been judicially recognised that regulator in

¹⁵Tabulated Chart depicting the Asset Allocation Ratio as per CP No.14/2013-14 and CP No.22/2013-14 is annexed hereto and marked as Annexure F-6.

¹⁶Appeal No.6/2012 titled Federation of Indian Airlines vs. AERA & Others' Against the AERA's Order No.03/2012-13 (DIAL Tariff Order)
Appeal No.5/2013 titled Federation of Indian Airlines vs. AERA & Others' Against the AERA's Order No.29/2012-13 (MIAL Tariff Order)
Appeal No.11/2013 titled Federation of Indian Airlines vs. AERA & Others' Against the AERA's Order No.32/2012-13 (MIAL Tariff Order)

¹⁷Cellular Operators Association & Others vs. Union of India & Others Reported As (2003) 3 SCC 186.

balancing the interests of utilities and interests of consumers is not bound by the reports of the auditors of the utilities.¹⁸ Further, the Authority has left the exercise for truing up the allocation mix at the beginning of the next regulatory control period. It is submitted that the Authority ought to pass reasoned order on issues like 'bifurcation of assets into aeronautical & non aeronautical' instead of leaving it for truing up to be taken up for next control period without assigning any cogent reasons.

41. FIA has computed Target Revenue for change due to share of aeronautical vis-à-vis non-aeronautical assets. Without prejudice, it is submitted that the Sensitivity analysis indicates that if ratio of aeronautical to non-aeronautical expenditure changes to:

- (a) 70:30, then the Target Revenue will reduce by 14%;
- (b) 82:18 (allocation ratios proposed by the Authority in the CP No.14/2013-14), then the Target Revenue will reduce by 5%.¹⁹

Paragraphs 36-41: BIAL submits that AERA had sought details on various occasions from BIAL in relation to asset allocation and BIAL has submitted the same. Upon consideration of information submitted, AERA has revised the asset allocation ratio and the revised ratio is set out in CP No.22. BIAL has, in its response to CP No.22, made submissions in relation to asset allocation requesting certain revisions and the same is incorporated herein by reference.

V. B. Re. Allocation of Expenditure

42. In the CP No.14/2013-14, the Authority has accepted BIAL's allocation of expenditure (approximately 80% : 20%) submitted by way of its MYTP-2012 and had considered the same for the purpose of computation of ARR under Dual Till. In its MYTP-2013, BIAL has revised its submission with respect to expenditure allocation on the basis of BSR Report on '*Agreed upon procedures related to the Statement of allocation of operating expenses into Aeronautical and Non-Aeronautical*' and the allocation has been increased towards

¹⁸ West Bengal Electricity Regulatory Commission Vs. T.E.S.C. Ltd. & Others Reported As (2002) 8 SCC 715 (FB) (Paragraph No.95),

¹⁹ For details regarding the Sensitivity Analysis depicting the Impact of Target Revenue Due to Change in ratio of Allocation of Assets, Refer to Annexure F-7.

aeronautical expenditure (approximately 90% : 10%) and the same is beneficial for BIAL under the proposed Shared Till approach.

43. As per Paragraph No. 4.15 of the CP No. 22/2013-14, the Authority has noted that BIAL's auditor namely, BSR & Company has not carried out any evaluation on the estimate of the percentage allocable to aeronautical and non-aeronautical services and the scope of work performed by BSR & Company was not to carry out a detailed independent evaluation of the BIAL's estimate of allocation of expenditure but a restricted one of validating the numbers based on the inputs of BIAL.

44. As per the Paragraph No. 4.28 the CP No. 22/2013-14, the Authority has requested BIAL to provide the detailed breakup of the costs identified towards aeronautical and non-aeronautical services and same has not been provided yet. For the purpose of computation of ARR under Shared Till in CP No.22/2013-14, the Authority has accepted BIAL's submissions with respect to expenditure allocation in spite of:

- (a) Acknowledging that BSR Report cannot be considered as an independent evaluation; and
- (b) Non-availability of detailed breakup of costs identified towards aeronautical and non-aeronautical services.

45. Acceptance of BIAL's submission by the Authority has resulted in increase in allocation towards Aeronautical expenditure in the CP No. 22/2013-14 as compared to the CP No.14/2013-14. Expenditure allocation ratio as per CP No. 22/2013-14 and CP No.14/2013-14 are depicted below:

TABLE C: Expenditure allocation ratio as per CP No. 22/2013-14 and CP No.14/2013-14

| Aeronautical and non-aeronautical expenses as provided in the CP No.14/2013-14 | | | | | | |
|---|------------|------------|------------|------------|------------|--------------|
| Reference to Table Nos. 88 & 89 on Page 155 of CP No. 14/2013-14 (BIAL MYTP) | | | | | | |
| Particulars | FY12 | FY13 | FY14 | FY15 | FY16 | Total |
| Aeronautical OPEX | 157 | 229 | 217 | 281 | 321 | 1,205 |
| Non-Aeronautical OPEX | 42 | 46 | 57 | 74 | 85 | 304 |
| Total OPEX | 200 | 275 | 275 | 355 | 405 | 1,509 |
| Percentage to Total OPEX | | | | | | |
| Aeronautical OPEX | 79% | 83% | 79% | 79% | 79% | 80% |
| Non-Aeronautical OPEX | 21% | 17% | 21% | 21% | 21% | 20% |
| Aeronautical and non-aeronautical expenses as provided in the CP No.22/2013-14 | | | | | | |
| Reference to Table Nos. 41 & 42 on Page No. 78 of CP No. 22/2013-14 (BIAL MYTP) | | | | | | |
| Particulars | FY12 | FY13 | FY14 | FY15 | FY16 | Total |

| <i>Written Submissions of FIA: Authority's Consultation Paper Nos.14/2013-14 & 22/2013-14 titled "Determination of Aeronautical Tariffs in respect of Kempegowda International Airport for the 1st Regulatory Period (01.04.2011-31.03.2016)"</i> | | | | | | |
|--|-----|-----|-----|-----|-----|--------------|
| Aeronautical OPEX | 180 | 248 | 238 | 313 | 360 | 1,340 |
| Non-Aeronautical OPEX | 19 | 22 | 27 | 34 | 40 | 142 |
| Total OPEX | 199 | 270 | 265 | 348 | 399 | 1,481 |
| Percentage to Total OPEX | | | | | | |
| Aeronautical OPEX | 90% | 92% | 90% | 90% | 90% | 90% |
| Non-Aeronautical OPEX | 10% | 8% | 10% | 10% | 10% | 10% |

46. In the CP No.22/2013-14, the Authority has proposed to commission an independent study to assess the reasonableness of the expenditure allocation. However, the Authority has not thrown any light on the status of independent study i.e. the agency appointed, time frame in which the report is to be submitted, etc. Also, the Authority has proposed to true up the allocation expenditure between Aeronautical and Non-Aeronautical services based on cost accounting principles.

47. FIA has computed Target Revenue with respect to change in allocation of aeronautical vis-à-vis non-aeronautical expenditure. Without prejudice, it is submitted that sensitivity analysis indicates that if ratio of aeronautical to non-aeronautical expenditure changes to 80:20 (as per the CP No.14/2013-14), Target Revenue will reduce by 5%.²⁰

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

Paragraphs 42-48: BIAL submits that it has furnished necessary information to AERA including details referred to in paragraph 44. BIAL has additionally submitted information as and when sought by AERA. Further, the current expenditure ratio is proposed to be trued up at the time of the next control period on cost accounting principles.

²⁰ A detailed computation sheet is annexed hereto and marked as Annexure F-8.

BIAL therefore submits that expenditure allocation submitted by it is reasonable.

V.C. Re. Future Capital Expenditure

49. Future capital expenditure of BIAL to be capitalised during the control period pertains to two categories:

- (a) Additional capital expenditure – for expansion projects; and
- (b) General capital expenditure – for maintenance of existing assets.

As per the Paragraph No.5.45.1 of the CP No.22/2013-14, Authority has proposed to consider actual capital expenditure incurred during FY 2011-12 and FY 2012-13 (as per audited financial statements) and has accepted BIAL's projection with respect to future capital expenditure for the remaining three years of control period subject to shifting the maintenance capital expenditure proposed during FYs 2013-14 to 2014-15. Also, the Authority has proposed to commission an independent study on the reasonableness of the cost incurred and capitalized by BIAL and to carry out adjustments, if any, by truing up the RAB for current control period at the time of determination of tariff of next control period. Following table depicts the breakup of future capital expenditure proposed by the Authority to be added to RAB:

TABLE D: Revised Capital Expenditure Projects proposed to be added to RAB during the current control period as per Authority²¹

| Project | Date of Capitalisation | Base Cost & Charges (Rs. in Crores) | Financing Allowance (Rs. in Crores) | Total Cost (Rs. in Crores) |
|--|------------------------|--|--|-------------------------------|
| Terminal 1 Expansion | 31.03.2014 | 1,338 | 174 | 1,512 |
| Other Projects | 31.03.2014 | 38 | 12 | 49 |
| Apron Extension | 31.03.2014 | 111 | 23 | 135 |
| Expansion Projects Capitalised (A) | | 1,487 | 209 | 1,696 |
| Maintenance Capex Projects | 31.03.2012 | 15 | - | 15 |
| | 31.03.2013 | 23 | - | 23 |
| | 31.03.2014 | 0 | - | 0 |
| | 31.03.2015 | 340 | - | 340 |
| | 31.03.2016 | 62 | - | 62 |
| Maintenance Capital Expenditure (B) | | 439 | - | 439 |
| Total Capitalisation | | 1,926 | 209 | 2,135 |

²¹ Table No. 2 at Page 7 of CP No. 22/2013-14 (BIAL MYTP)

| Written Submissions of FIA: Authority's Consultation Paper Nos.14/2013-14 & 22/2013-14 titled "Determination of Aeronautical Tariffs in respect of Kempegowda International Airport for the 1 st Regulatory Period (01.04.2011-31.03.2016)" | | | | |
|--|------------------------|--|--|-------------------------------|
| Project | Date of Capitalisation | Base Cost & Charges (Rs. in Crores) | Financing Allowance (Rs. in Crores) | Total Cost (Rs. in Crores) |
| (A)+(B) | | | | |
| Maintenance capital expenditure for 2011-12 and 2012-13 given net of disposals * Earlier proposed to be capitalised by 30.09.2013 | | | | |

V.C.1. Additional capital expenditure – Expansion projects

50. As per Paragraph Nos. 5.19 and 5.23 of the CP No.22/2013-14, Authority has proposed to take the completion cost indicated by BIAL as allowable project cost as the same is based on engineering consultant workings. It is to be noted that:-

- (a) At the total cost of approximately Rs. 1,512 crores and total area of approximately 85,000 square meters, cost per square meter of Terminal-1 expansion is approximately Rs.1,78,000. It is noteworthy that such average cost per square meter is 50% higher than cost per square meter of Terminal-2 of CSI Airport, Mumbai, being operated by the Mumbai International Airport Limited ("MIAL") which is ~ Rs. 1,16,000 per square meter.²²
- (b) In the Paragraph No. 5.22 of the CP No.22/2013-14, the Authority has noted that the cost of construction of T1A and associated works appears to be high as compared with the indicative past cost of construction of other Airport terminals e.g. Kolkata, Chennai, Goa, etc.

It is submitted that the Project Cost to be allowed should be in accordance with the independent study rather than placing reliance on BIAL's submissions. Meanwhile Terminal-1 expansion cost should be added to RAB on basis of benchmark costs of other airports and to be true up according to the findings of the study rather than making additions of higher costs (as per BIAL's submission) to RAB at the time of tariff determination and truing up at later stage.

As per the Table D above, the financing allowance with respect to Terminal-1 expansion of Rs. 174 crores has been allowed by the Authority. However the same was Rs.147 crores in the CP No. 14/2013-14. The incremental financing allowance is due to delay in capitalization from 30.09.2013 (proposed in the CP No. 14/2013-14) to 31.03.2014. The Authority has accepted incremental financial allowance of Rs. 27 crores which has resulted in higher additions to RAB. It is to be noted that CP No. 22/2013-14, does not contain any details for

²²As per Authority's Order No.32/2012-13, Terminal-2 of CSI Airport, Mumbai was constructed at total cost of Rs.5,083 crores and total area is 4,39,512 square metres, resulting in per square meter cost of approximately Rs.1,16,000/-.

allowing this increment. Further, there is one year delay in capitalization of Apron Extension and two years delay in other projects. It is submitted that Authority should look into this aspect to avoid the inflationary impact on the aeronautical tariff to avert burdening the passengers due to delay in capitalization by BIAL.

Paragraphs 49 and 50: BIAL has furnished details of expenses incurred towards capital expenditure for Terminal-1 expansion as sought by AERA and relevant details are part of Annexure 1 to CP No.22 and the same are incorporated herein by reference.

V.C.2. *General capital expenditure -Maintenance of existing assets*

51. In the CP No.22/2013-14, maintenance capex of Rs. 439 crores has been considered by the Authority as against BIAL's submission of Rs. 432 crores. It is submitted that the Authority should scrutinize the incremental capex before adding it to RAB. Maintenance capital expenditure of Rs. 402 crores projected by BIAL to be incurred in 2014-15 and 2015-16 are allowed by the Authority despite the fact that the Authority:

- (a) Has requested BIAL to review the maintenance capital expenditure projections; and
- (b) Does not have complete list of the key costs.
- (c) Has noted that approximately 42 crores proposed by BIAL towards strengthening of Airfield pavement should have been carried out as part of initial project itself.

52. As per the Paragraph No. 9.12 of the CP No.14 /2013-14, the Authority has assumed that the overall business plan of BIAL would have been approved by the Board of the company and that the expenditures proposed would be in line with the long term requirements of the airport, which is a casual approach for determining the future capital expenditure and the same assumption is being followed in the CP No.22/2013-14. It is submitted that rather than relying completely on BIAL's submissions, the Authority should conduct an independent technical evaluation and an in-depth scrutiny of:-

- (a) Future capital expenditure (both expansion capital expenditure and maintenance capex) and
- (b) Financing allowance (projected and incremental) as submitted by BIAL.

53. Without prejudice, it is submitted that the, sensitivity analysis indicates that if the cost of BIAL's Terminal-1 expansion is computed in accordance with per square meter cost

of Terminal-2 expansion of MIAL, there is reduction in the Target Revenue by 8% and 7% under Single Till and 40%-Shared Till respectively.²³ It is submitted that FIA has even challenged the project cost of MIAL²⁴ which is pending adjudication before Hon'ble AERAAT.

Paragraphs 51-53: BIAL submits that necessary details have been furnished *vide* BIAL's response to CP No.22 and *vide* letter dated January 30, 2014 and the same are incorporated herein by reference.

V.D. Authority ought to independently scrutinise the Operating Expenditure claimed by BIAL

54. As per Proposal No.12 (i) of CP No. 14/2013-14, the Authority has included BIAL's projection for FY 2011-12 and FY 2012-13 with actual operating expenditure as per audited financial statements and for remaining three years of control period, it has accepted BIAL's submissions. No change in the operating expenditure has been proposed by the Authority in the CP No.22/2013-14 except utilities wherein the cost is net off with the utilities revenue accordingly the cost is reduced to the extent of the revenue.²⁵

55. As per clause 5.4.2 of AERA Guidelines, while reviewing forecast of operating expenditure the Authority has to assess:

- (a) Baseline operation and maintenance expenditure based on review of actual expenditure indicated in last audited accounts and check for underlying factors impacting variance over the preceding year; and
- (b) Efficiency improvement with respect to such costs based on review of factors such as trends in operating costs, productivity improvements, cost drivers as may be identified, and other factors as maybe considered appropriate.

It seems that the Authority has not carried out any independent review in order to evaluate the efficient expenditure related to FY 2011-12 and FY 2012-13 and rather considered the BIAL's submissions in this regard.

²³ Detailed computation of reduction in Target Revenue of cost per square meter applicable to Terminal-2 of MIAL as applied to Terminal-1 of BIAL is annexed hereto and marked as Annexure-9.

²⁴ *Vide* its Appeal No.5/2013 of FIA vs. AERA & others and Appeal No.11/2013 of FIA vs. AERA & others.

²⁵ Revised table as per CP No.22/2013-14 (both for Single Till and Share Till) has been annexed as Annexure-10.

Paragraphs 54 and 55: BIAL submits that necessary details have been provided to AERA *vide* BIAL's response to CP No.22 and *vide* letter dated January 30, 2014 and the same are incorporated herein by reference.

56. Further, with regard to projected expenses from FY 2013-14 to FY 2015-16 in the CP No.14/ 2013-14, the Authority had accepted the basis for majority of the key expenses (like concession fees, general administration costs, etc.) as forecasted by BIAL and has made certain modifications with respect to some of the key operating expenses (i.e. personnel expenses and operation & maintenance expenses) without considering past trends, productivity improvements, cost drivers. The Authority has maintained its view with respect to the operating expenditure in the CP No.22/2013-14.

57. It is discernible that 19 % and 31% year on year increase has been proposed by the Authority in FY 2013-14 and FY2014-15 respectively due to terminal expansion. However no technical evaluation has been done to ascertain the impact of terminal expansion on operating expenses. It is pertinent to note that BIAL has included additional headcount expense starting from FY 2012-13. The Authority should have evaluated the efficient utilization of current headcount in order to justify the additional need for the headcount.

58. Also, it has been noted that BIAL has incurred loss of approximately Rs 6.4 crores on disposal of assets and it is glaring that the Authority has considered the same as part of operating expenditure. It is submitted that the Authority should provide the rationale for including the said loss since the depreciation charge on such asset is already included in determining ARR.

59. It is noteworthy that Operating expenditure is one of the major components for determining ARR (approximately 53% of ARR in Single Till approach and 46% of ARR in case of Shared Till). Hence, the Authority should have evaluated these expenses in detail rather than broadly relying on projections and basis provided by BIAL. It is submitted that the approach of the Authority for reviewing the operating expenditure is not in line with provision of the AERA Guidelines and in order to assess efficient operating expenditure, the Authority should conduct independent study.

60. **Issue of Truing up of Operating Expenditure:** As per Proposal No.12 (iii) of the CP No.14/2013-14 and as per Truing up for Proposal No.11 (a) (i) of CP No.22/2013-14, the Authority has considered the proposal of BIAL to true up operating expenditure based on

the actual costs incurred by BIAL during the current control period, at the beginning of the next control period. In this regard, following points are noteworthy:

- (a) As per the AERA Guidelines, the Authority has to assess efficient operating and maintenance costs. It is submitted that Authority is cognizant of the fact that price cap determination would lead to the efficiency as BIAL would make efforts to contain the costs within prescribed price cap. However, the Authority in CP 14/2013-14 has proposed to accept BIAL's proposal to true up expenditure stating that *"this being the first control period and the price cap regime is in the evolution stage, there may not be ready comparisons available to benchmark the costs"*. The same view has been maintained by the Authority in the CP No. 22/2013-14 and hence, there is no price capping in the operating expenditure which does not incentivize operators for efficient and prudent expenditure. .
- (b) The Kempegowda International Airport, Bengaluru has already completed 5 years of operations. Hence, benchmarking the costs should not be difficult for the Authority. It is submitted that rather than truing up, price cap should be mandated by the Authority for each of the operating expenditures depending on the evaluation of past trends, cost drivers, productivity movements, future expansions; otherwise the airport operator (BIAL in the present case) would not make palpable efforts to contain the costs. This would lead to additional burden on the passengers for the next control period.

Paragraphs 56-60: The airport is on an expansion phase and the past costs cannot be relied upon for the future. However, details have been provided *vide* BIAL's response to CP No.22 and *vide* letter dated January 30, 2014 and the same are incorporated herein by reference.

61. **Bad Debts:** As per Proposal No. 11 (a)(iii) of the CP No.22/2013-14, the Authority had included the bad-debts of approximately Rs. 48 crores (dues from Kingfisher Airlines) written off by BIAL in FY 2012-13. These bad debts were also allowed by the Authority in CP 14/2013-14 considering it as one of event and also has proposed to consider the bad debts actually written off as part of operating expenditure subject to comments from Stakeholders. In absence of details, it is not clear as to what steps have been taken by BIAL to recover the amount of Rs. 48 crores from the Kingfisher Airlines. It is submitted that the Authority should ensure that bad debts have been actually written off as irrecoverable in

the accounts of the BIAL.²⁶ The Authority should not allow such losses to be recovered through operating expenditure as it will burden the consumers (airlines as well as the passengers). It is submitted that *arguendo* (without conceding) if such bad debts are to be considered, it should not be allowed to be recovered in remaining period of the present control period but should be recovered over 5 years period (one full control period).

Paragraph 61: BIAL has filed Summary Suit No.8306/2012 in respect of corporate guarantee issued by United Breweries (Holdings) Limited for a sum of Rs.14,00,00,000/- (Rupees Fourteen Crore Only). The said corporate guarantee was issued by United Breweries (Holdings) Limited guaranteeing debts to be paid by Kingfisher Airlines Limited. BIAL has initiated appropriate legal action against Kingfisher Airlines Limited, as well as the principal officers of Kingfisher Airlines Limited. BIAL supports AERA's view that bad debts that are written off would be reimbursed.

V.E. Traffic projections submitted by BIAL has been accepted by the Authority without conducting any independent study

62. The airport operator is required to submit traffic forecasts as part of the MYTP submissions and that the Authority reserves the right to review such forecast assumptions, methodologies and processes and to determine the final forecast to be used for the determination of tariffs.

63. As per the CP No. 14/2013-14, BIAL had submitted traffic study by Landrum & Brown ("L&B") as requested by the Authority. The Authority found that the final traffic projections of BIAL are more or less in line with L&B study. Therefore, it has accepted the projections of BIAL in the CP No. 14/2013-14 as is for the period FY 2013-14 to FY 2015-16 without conducting any independent study. However, it must be emphasized here that the BIAL engaged L&B to conduct the traffic study and the Authority had used this study to benchmark the traffic projections of BIAL which is a clear case of conflict of interest. This also implies that L&B traffic projections cannot be considered to be an independent study. As per the CP No.22/2013-14, BIAL has revised its projections in MYTP-2013 which are in line with

²⁶Annexure F-11: Catholic Syrian Bank Ltd. Vs. Commissioner of Income Tax, Thrissur, Reported As (2012) 338 CCR 84 (FB)

projections except cargo accepted by Authority in CP No.14/2013-14. The Authority has again accepted BIAL's projections and proposed the same in CP 22/2013-14 without conducting independent study. The Authority should take note of this fact and conduct/commission its own assessment of traffic forecasts as the same are the base for determining ARR and UDF.

Paragraphs 62 and 63: BIAL submits that its traffic study has been conducted by internationally reputed and independent consultant(s) who are known for their expertise and integrity. Further, as per CP No.22, any variation from traffic projections are proposed to be trued up. BIAL's submissions made in response to CP No.14 and CP No.22 are incorporated herein by reference.

V.F. Working capital loan and interest vis-à-vis working capital requirements

64. BIAL has submitted that working capital facility to be availed from FY 2013-14 at the interest rate of 14%. As per Clause 5.4.3 of the AERA Guidelines '*the Authority shall review and assess the levels of projected working capital requirements and shall consider cost of working capital loans as deemed appropriate*'. Authority noted in the CP No.14/2013-14 that working capital loan has been sanctioned to BIAL at interest rate of Bank PLR minus 1% (i.e. 13.5% as SBI PLR is 14.5%) but the facility has not been availed yet. Authority also stated in Paragraph No. 16.8 of CP No.14/2013-14:

"... while there may be requirement to avail a working capital facility, as proposed by BIAL, as the facility has not been available by BIAL as yet, the details of the same and the actual quantum of loan that may be availed by BIAL is not clear. Hence this expenditure, while may be allowed based on the projections made by BIAL, will require truing up based on the actual facility availed, Interest rate on the loan and the actual cost paid."

Also, as per Paragraph No. 12.4 of CP No.22/2013-14, the Authority has proposed to include the working capital requirements as submitted by BIAL in the model for the purposes of payment of interest on the same as a revenue expenditure and the actual interest paid by BIAL on Working Capital would alone be taken into account at the time of truing up during the next control period.

65. It is evident that in absence of the details and quantum of the working capital loan (still to be provided by BIAL²⁷) the Authority has not been able to assess the level of working capital requirements and has considered working capital interest of Rs. 27 crores and Rs. 24 crores for Single till and Shared Till respectively on basis of the projections made by BIAL (as per tables below), however, this approach of the Authority is not in line with AERA Guidelines. As per clause 5.4.3 of the AERA Guidelines, the Authority shall review and assess the levels of projected working capital requirements and shall consider cost of working capital loans as deemed appropriate.

66. As per table below, the rate of interest on the facility in Single Till is higher by 1 per cent as compared to Shared Till. The rationale of the same has not been provided by the Authority in the CP No.22/2013-14.

TABLE E: Working Capital Interest computed by Authority²⁸

| Under Single Till | | | | |
|------------------------------------|----------------|------|------|--------------------------|
| Particulars | FY14 | FY15 | FY16 | Total (Rs. in Crores) |
| | Single till | | | |
| Working capital facility balance | 50 | 65 | 75 | |
| Interest considered as part of ARR | 7 | 9 | 11 | 27 |
| Interest % | 14% | 14% | 14% | |
| Under Shared Till | | | | |
| Particulars | FY14 | FY15 | FY16 | Total (Rs. in Crores) |
| Working capital facility balance | 50 | 65 | 76 | |
| Interest considered as part of ARR | 6 | 8 | 10 | 24 |
| Interest % | 13% | 13% | 13% | |

67. Authority's acceptance of BIAL's projection of the working capital requirements is contrary to the AERA Guidelines (Clause 5.4.3), which requires the Authority to make its own assessment. It is submitted that the Authority should not consider the working capital interest of Rs. 27 crores merely on the basis of BIAL's projections without assessing the working capital requirements in the garb of truing up of the same during the next control period.

²⁷ Neither AERA nor BIAL has provided any reason for not providing such details.

²⁸ Extracts of Table Nos. 37 and 38 on Page No. 752

Paragraphs 64-67: Any variation in the total fund requirement and interest is proposed to be trued up in the next control period. BIAL has adequately demonstrated the requirement of working capital as part of tariff determination exercise and that interest of the same is to be considered as part of operating and maintenance expenditure.

BIAL further submits that there is difference in interest amount mainly due to fact that Shared Till considers only working capital cost related to aeronautical services, whereas Single Till considers working cost related to both aeronautical services and non-aeronautical services. AERA has noted this requirement of BIAL and has proceeded to allow working capital interest in CP 14 and CP 22.

V.G. Re. Evaluation of Non-aeronautical Revenue

68. As per the Proposal No.12 (a)(iv) in CP No.22/2013-14, the Authority has proposed to consider actual non-aeronautical revenue for FY 2011-12 and FY 2012-13 (as per audited financial statements) and projections for the balance three years period as per the table as under:-

TABLE F: Recomputed revenue for Non-Aeronautical services as proposed by the Authority

| As per the Table No. 45 on Page 84 of CP No. 22/2013-14 | | | | | | | | | (Rs. in Crores) |
|---|-------------------------|------|------|------|------|------|-------|------------|---|
| Nature | Particulars | FY12 | FY13 | FY14 | FY15 | FY16 | Total | % of Total | Remarks |
| Aviation concessionaries | Cargo | - | - | - | - | - | - | - | Proposed as aeronautical revenue in the CP No.22/2013-14 |
| | Fuel Throughput Charges | - | - | - | - | - | - | - | Proposed as aeronautical revenue in the CP No.22/2013-14 |
| | Flight Catering | 5 | 6 | 6 | 7 | 7 | 30 | 3% | BIAL's MYTP-2012 submission accepted as proposed in the CP No. 14/2013-14 |
| | Ground Handling | - | - | - | - | - | - | - | Proposed as aeronautical revenue in the CP No.22/2013-14 |
| | (A) | 5 | 6 | 6 | 7 | 7 | 30 | 3% | |
| Other Non- | Retail | 29 | 34 | 39 | 47 | 55 | 203 | 23% | BIAL's submission as |

**Written Submissions of FIA: Authority's Consultation Paper Nos.14/2013-14 & 22/2013-14 titled
"Determination of Aeronautical Tariffs In respect of Kempegowda International Airport for the 1st Regulatory
Period (01.04.2011-31.03.2016)"**

| As per the Table No. 45 on Page 84 of CP No. 22/2013-14 | | | | | | | | | (Rs. in Crores) |
|---|---|------|------|------|------|------|-------|------------|--|
| Nature | Particulars | FY12 | FY13 | FY14 | FY15 | FY16 | Total | % of Total | Remarks |
| aeronautical revenue | | | | | | | | | per MYTP 2013 is accepted |
| | Advertising and Promotion | 34 | 37 | 33 | 37 | 45 | 186 | 21% | BIAL's submission as per MYTP 2013 is accepted |
| | Rent and Land Lease | 26 | 27 | 27 | 40 | 46 | 165 | 18% | CPI based increase proposed by Authority in CP 22 on BIAL's submission |
| | Landside Traffic | 23 | 29 | 32 | 36 | 41 | 162 | 18% | CPI based increase proposed by Authority in CP 22 on BIAL's submission |
| | Food & Beverage | 13 | 14 | 16 | 19 | 23 | 86 | 10% | BIAL's submission as per MYTP 2013 is accepted |
| | Information, Communication and Technology charges | - | - | - | - | - | - | - | Proposed as aeronautical revenue in the CP No.22/2013-14 |
| | Utility Charges | - | - | - | - | - | - | - | Proposed to be net off against utility expenses in CP No. 22/2013-14 |
| | Others | 2 | 2 | - | - | - | 4 | 0.4% | |
| | (B) | 126 | 143 | 147 | 179 | 210 | 806 | 90% | |
| Interest income | Interest on Cash (C) | 23 | 10 | 14 | 13 | 4 | 64 | 7% | 5% interest on cash balance has been considered by AERA |
| | Total (D) = (A)+(B)+(C) | 154 | 159 | 167 | 199 | 221 | 900 | 100% | |
| | YoY change in Total | | 3% | 5.5% | 19% | 11% | | | |
| 40 % of (D) above for purpose of cross subsidization in case of Shared Till | | 62 | 63 | 67 | 79 | 89 | 360 | | |

Also, BIAL's proposal of truing up the revenue based on actual revenue of control period while determining tariffs for the next control period has been accepted.

69. The Authority has considered mere increase of approximately 19% and 11% increase in FY 2014-15 and FY 2015-16 respectively in spite of the fact that the terminal expansion is scheduled to be completed in FY 2013-14. Authority should reasonably estimate or appoint a consultant to

determine revenue from new premises as it may not be appropriate to burden the airlines and passengers with higher tariff in this control period

70. In the CP No.22/2013-14 (Paragraph No.14.7), with respect to revenue from Retail, Food and beverage and Advertising & Promotion the Authority has accepted the BIAL's submission as per its MYTP-2013 and no detailed evaluation has been made by the Authority to consider the impact of terminal expansion, inflationary increase and real increase while projecting these non-aeronautical revenues. As per Paragraph No.14.9 of the CP No.22/2013-14, with respect to revenue from Rent and Landslide traffic, the Authority has considered CPI based increase in per-pax revenue in terms of BIAL's submissions. Hence, the ^{real increase} has not been factored under the said heads. Hence, it is submitted that the Authority should reasonably estimate real increase and consider the same in projecting these Non-aeronautical revenues.

Paragraphs 68-70: BIAL submits that it has considered *inter alia* bottom up projections, potential for growth and increase in area while arriving at projections for non-aeronautical revenues. BIAL had further submitted necessary details to AERA for necessary consideration and evaluation. BIAL submits that non-aeronautical services and revenues are beyond the purview of regulation and reiterates its comments made in this regard in its responses to CP No.14 and CP No.22.

71. As per Paragraph No. 14.12 of the CP No.22/2013-14, the ICT charges (proposed to be collected) has not been factored in business plan by BIAL and accordingly, has not been factored in by the Authority while computing ARR. Hence, it is submitted that the Authority should obtain the details of these charges from BIAL and include the same in computing the ARR as the same would result in reduction of the Target Revenue.

Paragraph 71: Details of ICT Charges have been submitted to the AERA. AERA has considered ICT revenue as aeronautical revenue and consequently, as part of ARR in CP No.22. However, BIAL has requested AERA to consider ICT revenues as non-aeronautical revenue *vide* its responses to CP No.22.

72. In both CP No.14/2013-14 and CP No.22/2013-14, the Authority has considered nominal interest @ 5% p.a. on the cash balance, however the rationale / basis for 5% rate has not been mentioned. It is submitted that the justification and reasonable analysis should be provided for considering such a nominal rate of interest.

73. It is noteworthy that Non-aeronautical revenue is one of the major components for determining ARR (approximately 32% of ARR in Single Till and 12% in 40%- Shared Till). Thus, it is imperative that the Authority should have evaluated in detail rather than broadly relying on projections and submissions of BIAL. In this regard, Authority should conduct or commission its own independent study with respect to impact on revenue from terminal expansion, inflationary increase and real increase.

74. As noted above, in CP No. 22/2013-14, the Authority has proposed 'Shared Till' approach which is against its own Single Till proposal in CP No.14/2013-14. However, FIA has carried out sensitivity analysis to understand the impact of change in share of Non-aeronautical revenue on Target Revenue. Without prejudice, it is submitted that the analysis indicates that if the 50-% Shared Till is followed instead of 40%-Shared till, then the Target Revenue will reduce by 3%.²⁹

Paragraphs 72-74: BIAL reiterates its requirement of 30% SRT to substantiate the cash flow requirements, as indicated in its letter dated 30th July, 2013 and in response to CP No.22.

VI. Authority's consideration of Net Block as on 31.03.2011 as Initial/Opening RAB is contrary to the AERA Guidelines

75. As per Clause 5.4.3 of AERA Guidelines for inclusion of an asset into Initial RAB, the Authority has to consider not just the original cost of fixed asset as indicated in the last audited accounts, but also assess the cost by considering evidence of :-

- (a) Competitive procurement for investments of more than 5% of the opening RAB of the first tariff year;
- (b) Investment, which was made in accordance with the approved plan; and

²⁹ Tabulated Chart detailing impact of change in Non-aeronautical revenue from 40% to 50% Target Revenue is annexed hereto and marked as Annexure F-12.

(c) Investment (if any), over and above the approved investments, was necessary for providing better services or on account of requests from users or stakeholders.

76. As per Paragraph No. 10.24 of the CP No. 14/2013-14, the Authority has considered the "Net Block" as per the audited financial statements of BIAL for the year ended 31.03.2011 as the Initial RAB. In the CP No.22/2013-14 (at Paragraph No.6.10), Authority has also taken note of the final report by Engineers India Limited ("EIL") titled "Construction of International Airport facilities at Devanahalli, Bangalore by BIAL". In this context, it is noteworthy that EIL was commissioned by the Airports Authority of India ("AAI"), which is a 13% Shareholder in BIAL. Therefore, this exercise has been carried out by the Authority without independently assessing the cost of assets by considering the evidences of competitive procurement and such other aspects as may be necessary to judge the appropriateness of such an investment as per the AERA Guidelines. ^{Such approach adopted by the Authority is in contravention of the methodology prescribed in the AERA Guidelines for valuation of Initial RAB.}

Paragraphs 75 and 76: BIAL has submitted a detailed response to EIL's Report *vide* its letter dated January 30, 2014. Further, even AAI has submitted that it has no comments to offer on EIL's report and therefore, BIAL submits that EIL's report cannot be considered.

77. Authority's casual approach is also highlighted by the fact that while accepting the Net Block as Initial RAB, Authority assumed that:

- (a) As BIAL is a Board Management Company with the Chief Secretary of GoK as the Chairman of the Board, expenditure incurred in acquiring the assets would have been approved by the Board; and
- (b) The initial project has been commissioned long back in 2008.

78. Thus, it is hereby requested that the Authority should ensure that only the fair costs (rather than historical costs) are taken into consideration and BIAL is remunerated only such investments/costs which have incurred in accordance with accepted business practices. In this regard, ^{Authority ought to commission an independent study for valuation} of Initial RAB in accordance with the AERA Guidelines.

Paragraphs 77 and 78: Relevant details have been submitted to AERA for its consideration.

VII. Analysis of Increase in various building blocks (Return on RAB, Operating Expenditure and Depreciation) under 40%-Shared Till Model

79. FIA has analysed key building blocks (Return on RAB, Operating Expenditure and Depreciation) under Single Till/Dual Till as proposed in CP No.14/2013-14 and compared these blocks as proposed in CP No.22/2013-14 (both under Single Till and Shared Till). Following table depicts the comparison of key building blocks under the CP No. 14/2013-14 and the CP No.22/2013-14 (Under both the Tills) and change in each of the building block and its impact on ARR:

TABLE G: Comparison of Key Building Blocks in CP No.14/2013-14 & CP No. 22/2013-14³⁰

| | Particulars | CP No. 14/2013-14 | | | CP No. 22/2013-14 | | | Increase/(Decrease) (Rs. in Crores) | |
|--|-----------------------|-------------------|-----------------|---------------|-------------------|-----------------|-----------------|--|---------------------|
| | | Allocation Ratio | Single Till (A) | Dual Till (B) | Allocation Ratio | Single Till (C) | Shared Till (D) | Single Till (C)-(A) | Shared Till (D)-(B) |
| A | Return on Average RAB | RAB Ratio 82%:18% | 1,338 | 1,098 | RAB Ratio 88%:12% | 1,256 | 1,111 | (82) | 13 |
| B | Depreciation | RAB Ratio 82%:18% | 890 | 736 | RAB Ratio 88%:12% | 883 | 795 | (7) | 59 |
| C | Operating Expenditure | 80%:20% | 1,510 | 1,205 | 90%:10% | 1,481 | 1,340 | (29) | 135 |
| Impact on ARR in CP No. 22/2013-14 with respect to these blocks | | | | | | | | (118) | 207 |

80. It is to be noted that Return on RAB, Depreciation and Operating Expenditure under Single Till in CP No. 22/2013-14 have collectively declined by Rs. 118 crores as compared to CP No.14/2013-14 under Single Till. However, there is increase in these blocks by Rs. 207 crores under Shared Till in the CP No.22/2013-14 as compared to the CP No.14/2013-14. Thus, it is clear that the allocation ratios proposed in CP No.22/2013-14 tilts in favour of BIAL as a result of which benefit of reduction aggregating to Rs. 118 crores in the said building blocks under Single Till in CP No.22/2013-14 is not being passed on proportionately in case of the Shared Till approach. In fact, there is addition aggregating to Rs. 207 crores in these blocks in case of Shared Till approach under CP No.22/2013-14 as *inter alia* evident from the following

- (a) **Return on Average RAB:** Decline in Return on RAB by **Rs. 82 crores** under the Single Till is primarily due to reduction in WACC from 11.82% in CP 14 to 11.71% in the CP

³⁰Reference from Table No. 23 and Table No. 24 of CP No. 14/2013-14 & Table No. 35 and Table No. 36 of CP No. 22/2013-14

- No.22/2013-14 and marginal reduction in RAB. On the contrary, Return on RAB is increased by Rs.13 crores in case of Shared Till in the CP No.22/2013-14 due to increase in Asset allocation ratio from 82% to 88% for the aeronautical assets.
- (b) **Depreciation:** Decline in depreciation by Rs. 7 crores under Single Till is primarily due to marginal reduction in RAB. On the contrary, depreciation is significantly increased by Rs. 59 crores in case of 40%-Shared Till in the CP No.22/2013-14 due to increase in asset allocation ratio from 82% to 88% for aeronautical assets.
- (c) **Operating Expenditure:** Decline in operating expenditure by Rs.29 crores under Single Till is primarily due to netting off utilities revenue from the expenditure. Hence, on gross basis there is no reduction in expenditure in the CP No.22/2013-14. On the contrary, there is significant increase of Rs. 135 crores under the 40%-Shared Till as reflected in the CP No.22/2013-14 due to change in allocation ratio from 80% to 90% with respect to aeronautical expenditure.

Paragraphs 79 and 80: The reasons for revised allocation ratio as well as request for 30% SRT have been detailed *inter alia* in BIAL's letter dated 30/07/2013 and in response to CP No.22 and the same are incorporated herein by reference.

VIII. Levy of User Development Fee at Kempegowda International Airport has no statutory basis

81. In the CP No.14/2013-14, Authority had proposed to allow UDF on embarking passengers based on the Clause 10.2 read with Clause (iii) of Schedule 6 of the Concession Agreement. The same is reproduced below for ease of reference:

"(iii) User Development Fee (UDF) (domestic and international):

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

82. As per Paragraph No. 22.17 of the CP No. 22/2013-14, the Authority has indicated the financial impact of different regulatory approaches on the ARR as well as the resultant aeronautical tariffs and UDF. While calculating the UDF, the Authority proposes to accept

the Landing, Parking and Housing Charges (LPH) as submitted by BIAL which according to FIA is proposed to be increased ranging between 76% to 160%. As per Paragraph No. 22.18, the Authority is of view that 40%-Shared Revenue strikes a proper balance between the requirement of funds for the Capital Expansion and keeping the user charges at reasonable level. Hence, the Authority has proposed 40%-Shared Revenue Till approach for the purpose of tariff determination.

83. As per the Proposal No. 20 (a) (iv) of the CP No.22/2013-14, the Authority has calculated that the difference between the UDF collected under 40% Shared Revenue Till and Single Till during the remaining part of current control period is currently estimated at Rs. 160 crores. Further, as per Authority this represents the transfer of resources from the passengers to BIAL to facilitate the expansion of airport facilities by BIAL. Hence, the Authority has proposed to allow utilization of UDF towards capital expenditure for the airport expansion.

84. It is to be noted that Clause 6.8.5 of AERA Guidelines in no uncertain terms provides that UDF is a revenue enhancing measure to allow FRoR to the Airport Operator. It is not clear as on what basis the Authority has proposed to levy UDF at Kempegowda International Airport for the purpose of development and expansion work undertaken in the past. In a long term PPP project, it remains unclear as to how the Authority can allow the funding to be borne by the tax payers, whereas the equity holders are in control of the assets. It is imperative to note that inability to fund the project or any other reason for lack of funds cannot lead to the detriment of the consumers at large. It is well recognised regulatory position that the Regulator may disallow cases of utility where investments are prudent though recognising that such investments are their internal matter. It is for the utility to bear the brunt of such wrong investments and it cannot pass it on to consumers.³¹

85. It may be noted that the Authority is allowing the tariff increase as proposed by BIAL and UDF. It may be clarified as to how, in the tariff determination exercise, is UDF coming into picture? If at all, there is a claim for UDF, BIAL should approach by way of a separate petition. It may be noted that neither AAI Act, Aircraft Act, nor AERA Act nowhere provide for provision of determination or levy of UDF on passengers. Authority neither in the CP No. 14/2013-14 nor in the CP No.22/2013-14 has deliberated upon the rationale for levying UDF. According to FIA, there is no need to levy UDF and burden the passengers

³¹Annexure F-13: KPTCL vs. KERC and others Reported As 2007 ELR (APTEL) 223

Annexure F-14: Mula Pravar Electric Co-operative Society Ltd. vs. Maharashtra Electricity Regulatory Commission and others 2008 ELR (APTEL) 35

unnecessarily.

86. It is submitted that Authority is bound under Section 13(4)(c) of the AERA Act to fully document and explain its decision. The Authority must explain the reason of allowing levy of UDF by BIAL.

87. It is noteworthy that the Hon'ble Supreme Court in the judgment of **Consumer Online Foundation vs. Union of India & Others** reported as **(2011) 5 SCC 360³²** 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 charges being levied on the passengers. Those passengers who embark at the airport after the airport is upgraded, expanded or developed will only avail the facilities and services of the upgraded, expanded and developed airport. Similarly, there can be no contractual relationship between the airport operator and passengers embarking at an airport for establishment of a new airport in lieu of the existing airport or establishment of a private airport in lieu of the existing airport. Thus, it is submitted that in the absence of such contractual relationship, the liability of the embarking passengers to pay UDF has to be based on a statutory provision. At this juncture, it is to be noted that UDF has no statutory foundation and at Kempegowda International Airport has been levied and further proposed to be levied on the basis of Concession Agreement.

88. In fact, the UDF which is being levied at the Kempegowda International Airport towards development and expansion of the airport facilities is in the nature of cess or tax. It is settled position of law that any levy or compulsory exaction which is in the nature of tax/cess cannot be levied without a statutory foundation/charging section, as laid down in a catena of judgements by the Hon'ble Supreme Court. It is submitted that no tax, fee or any compulsory charge can be imposed by any bye-law, rule or regulation unless the statute under which the subordinate legislation is made specifically authorises the imposition. There is no room for intendment.

89. It is also noteworthy that UDF is recovered from each traveling passenger through the air-ticket as a component of the price of such air-ticket and the same is payable by the airlines to the airport operator (BIAL in the present case). It is reiterated that any increase on fees payable directly by passengers ultimately affects the interests of airlines. It is submitted that any passenger is concerned with the total cost of his travelling and not with the specific break-up of charges. Such enhancement in the cost of the air-ticket not only

³²Annexure F-15: Consumer Online Foundation vs. Union of India & Others Reported as (2011) 5 SCC 360

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.

Paragraphs 81-89: AERA has power to levy user development fee in view of Section 13(1)(b) of the Act read with Rule 89 of the Aircraft Rules, 1937. AERA has already considered this issue in paragraphs 3.50 to 3.57 of the Hyderabad Tariff Order. The comments of FIA therefore, arise from a misconception of legal position.

IX. Tax savings should have been considered for determining Cost of Debt

90. As per Proposal No. 7 of the CP No. 14/2013-14, cost of debt for the control period has been considered as follows:

- (a) **FY 2011-12 and FY 2012-13** -To consider the actual cost of Rupee Term Loan and ECB Loan, paid by BIAL, for FY-2011-12 and FY-2012-13 towards the cost of debt for FY 2011-12 and FY 2012-13
- (b) **FY 2013-14 to FY 2015-16** - To true-up the cost of debt for the current control period with actual values (determined as weighted average rate of interest for the individual tranches of loan drawn within the control period) subject to the ceiling of 12.50% for the Rupee Term Loan and 10.15% for the ECB Loan.

Authority has maintained its view on cost of debt in CP No.22/2013-14 and has reiterated the same vide the Proposal No.6 therein.

91. In both the CP No.14/2013-14 and CP No.22/2013-14, Authority has not provided a breakup of the Rupee Term Loan and ECB Loan over the historic period and forecast period to calculate the actual cost of debt. Cost of debt is the effective rate that a company pays on its current debt post adjustment for tax savings. However, based on aforementioned decision taken by the Authority and review of consultation paper, it appears that cost of debt has not been adjusted for any tax savings. Post adjustment of such tax savings (assuming tax rate at 30%) in cost of debt, FRoR will reduce from 11.71% to 9.63%. It is submitted that the Authority should factor such tax saving for computing FRoR of BIAL. As

per FIA's sensitivity analysis, reduction in FRoR from 11.71% to 9.63% will reduce ARR by 8% in Single Till and by 7% in 40% Shared Till.³³

Paragraphs 90 and 91: BIAL submits that actual tax is proposed to be allowed as a separate reimbursement and the treatment of tax component has been discussed extensively as part of various consultation processes. In addition, BIAL has also raised additional concerns as part of its submissions to CP No.22.

X. Re. Security deposit received from Bangalore Airport Hotels Limited ("BAHL")

92. In the CP No.22/2013-14, BIAL has submitted that *"a framework agreement for design, construction and operation of Business Hotel Facility at BIAL was entered into with EIH Limited and L&T Limited on 16.11.2006"*. The consortium incorporated a joint venture Company namely Bangalore Airport Hotels Limited ("BAHL") under the Companies Act, 1956. In this regard, it is reflected from both the CP No.14/2013-14 and the CP No.22/2013-14 that BIAL had received interest free security deposit of Rs. 76.5 crores from BAHL in December, 2006 and had received interest of Rs. 43 crores on this deposit till 31.03.2013 out of which, Rs. 6.89 crores per annum has been received in FY 2011-12 and FY 2012-13.

93. On 14.11.2008, AAI issued a no-objection certificate with a height clearance of 30.36 meters only, as against the proposal of the consortium for 45 meters. The consortium then expressed its inability to continue to develop and operate and sought certain additional concession from BIAL or for a settlement of cost incurred and this is currently under dispute and under arbitration proceedings.

94. As per the Paragraph No. 6.20 and Proposal No. 4 (a)(i) of the CP No. 22/2013-14, the Authority has proposed not to carry any adjustment to RAB on account of monetization of land owing to the development of the Hotel during the current control period. It is submitted that such proposal (No.4(a)(i) of the CP No.22/2013-14) is not in accordance with the land value adjustment as prescribed by Clause 7.7 of the Single Till Order and Clause 5.2.4 of AERA Guidelines wherein the market value of the land on which Hotel is developed needs to be reduced from RAB. In the CP No. 14/2013-14 (Paragraph No. 10.16), the Authority indicated its view on the land value adjustment prescribed in the AERA Guidelines.

³³ Tabulated Chart detailing the impact of change in FRoR on ARR is annexed hereto and marked as Annexure F-16.

Thus, it is submitted that the same approach should be adopted in case of the adjustment of RAB on account of monetization of land owing to the development of Hotel.

95. As per the Proposal No. 4(a)(v) of the CP No.22/2013-14, Authority has proposed to not take the interest free security deposit of Rs. 76.5 crores and the interest on the same of Rs. 43 crores (including Rs. 6.89 crores per annum received in FY 2011-12 and FY 2012-13) for the purpose of tariff determination during current control period, pending final outcome of the arbitration proceedings. However, at the same time, as per the Paragraph No. 13.10 of the CP No.22/2013-14, the Authority has included the cost that has been / may be incurred towards negotiating and handling this agreement, along with cost of arbitration, legal fee etc. in the operating expenditure as submitted by BIAL in its MYTP. It is glaring that Authority has accepted such expenses even though the details of such expenditure has not been provided by BIAL. The Authority has indicated that upon submission of the details by BIAL, the Authority would adjust the same at the time of issuing the tariff order or at the time of determination of tariff of next control period in case the details are not available at the time of the proposed order. The Authority for purpose of determining ARR has adopted contrary approach with respect to Hotel project by exclusion of security deposit & interest income and inclusion of legal expenses. Moreover, its affect in pre-control period cannot be undermined either. It is submitted that the Authority ought to include the security deposit & interest income and with respect to the expenses:

- (a) Timeline should be prescribed by the Authority for submission of details of expenses, as passengers cannot be penalized for delay made by BIAL and
- (b) The same should be excluded from operating expenditure while computing ARR.

The aforementioned treatment of interest income, legal expenses, security deposit and land by the Authority in its proposals would lead to higher tariff and additional burden on customers during the present control period.

96. The Authority for purpose of determining ARR has adopted contrary approach with respect to Hotel project by proposing to exclude the security deposit and interest income and including of expenses related thereto. Moreover, its affect in Pre-control period cannot be undermined either.

97. It is submitted that Authority ought to:

- (a) Include the Security Deposit received from BAHN and interest income; and
- (b) Prescribe timeline for submission of details of expenses, as passengers cannot be penalized for delay made by BIAL; and

- (c) Exclude the expenses should be excluded from operating expenditure while computing ARR.

Paragraphs 92-97: BIAL submits that the arbitration proceedings were concluded and an award dated April 20, 2013 was passed. BIAL had subsequently filed A.S. No.15001/2013 challenging the said arbitral award in the court of the Hon'ble District Judge at Devanahalli. During the pendency of A.S. No.15001/2013, the parties have entered into a settlement agreement and subsequently, pursuant to the settlement agreement, A.S. No.15001/2013 was withdrawn vide memo of withdrawal dated March 12, 2014.

BIAL reiterates its submissions made in this regard and in relation to real estate activities earlier *inter alia* in Appeal No.2/2011, Appeal No.7/2011, responses dated April 08, 2013, September 22, 2013 and February 28, 2014. BIAL reiterates that 'real estate' activities are beyond the purview of regulation by AERA.

XI. Re. Exclusion of Pre-control Period Losses in current control period for the purpose of determining ARR

98. In the CP No. 14/2013-14, Authority had proposed to include the Pre-control Period losses of Rs.18.29 crores (present value of Rs.33.17 crores as on 31.03.2011) for the period from 24.05.2008 to 31.03.2011. FIA in its written response had questioned the reasonableness of including such Pre-control period losses *inter alia* on the basis that levying such Pre-control Period losses in current control period would unreasonably burden the prospective passengers travelling from 01.10.2013. However, in the CP No.22/2013-14, the Authority has proposed to not to consider Pre-control period shortfall for the purpose of determination of Aeronautical Tariffs for the current control period. It is pertinent to note that Authority in its CP No.22/2013-14 has clearly noted that for the period 2009-10 and 2010-11, BIAL has not posted any losses in its Profit and Loss statements.

99. In this regard, FIA welcomes Authority's final proposal to not include the Pre-control period losses claimed by BIAL. It is settled position of law that future consumers cannot be burdened with the past burdens of the utility.³⁴

Paragraphs 98 and 99: BIAL requests for consideration of pre-control period losses and detailed submissions have been made in response to CP No.22 and the same are incorporated herein by reference.

XII. Treatment of Revenue from Aeronautical services as Aeronautical Revenue is in the right direction in terms of legal framework

100. In the CP No. 14/2013-14, Authority had noted that cargo service and ground-handling are aeronautical services and had contemplated that revenue arising from cargo service and ground-handling will be treated as aeronautical, if the services are being provided by BIAL itself and Non-aeronautical if the services have been concessioned out to the third parties. In the CP No.22/2013-14, the Authority seems to have reconsidered and proposed that revenue from Cargo Facility, Ground Handling and Into Plane services (provided by third party concessionaires) accruing to BIAL as aeronautical revenue for determination of tariffs of aeronautical services for the current control period. FIA welcomes the approach of the Authority in view of the prevalent legal framework which does not distinguish between the treatment of revenue received from the aeronautical services being provided by the airport operator (BIAL in the present case) or the by third party concessionaires. FIA further appreciates Authority's proposal to consider the Fuel Throughput Fee revenue from fuel farm service concessioned out by BIAL as aeronautical revenue in the hands of BIAL.

Paragraph 100: BIAL requests that CGF revenue be treated as non-aeronautical and reiterates its submissions made in response to CP No.22.

XIII. Re. Treatment of Independent Services Providers ("ISPs")

³⁴Annexure F-17: PPCL Vs. NTPC (2009) 6 SCC 235 (Paragraph Nos. 63 and 65)

101. In the CP No.14/2013-14, Authority had sought the view from the Stakeholders whether ISPs providing services related cargo, ground-handling, fuel throughput, etc. should be treated as agents of BIAL or third party concessionaires. In this context, FIA had submitted *inter alia* that Authority has laid down the CGF Guidelines with the intent to regulate tariff(s) of ISPs on stand-alone basis and not as agents of the airport operator (in the present case BIAL). The CGF Guidelines still hold the ground as far as determination of tariff(s) of aeronautical services of ISPs are concerned and has not been set aside under any legal proceedings.

102. Now in the CP No.22/2013-14, it is stated that BIAL in its subsequent submissions dated 06.09.2013 has accepted that the CGF Service providers are not its agents. The Authority has also noted that BIAL in its letter has stated that *"As long as the service providers render the services within the framework of SPRH agreement, such service provider has freedom to operate its business and carry out the provisioning of services independently. Hence they are not agents as understood under legal parlance"*. The Authority on reading the relevant clauses of the SPRH agreements felt that apart from the "legal parlance" CGF concessionaires cannot be regarded as agents of BIAL even in a financial sense in as much as BIAL does not appear to have made any payments in terms of reimbursement of costs etc. to the CGF Service providers for the services provided by them. The Authority, therefore, has proposed to consider the CGF Service providers as Independent Service Providers (ISPs) and treat them as such.

103. In the event of CGF service providers being treated as ISPs, it will be within the purview of Authority's jurisdiction to determine the tariff of such CGF service providers within the regulatory framework.

Paragraphs 101-103: BIAL submits that its revenue share received from ISPs be treated as non-aeronautical revenue and reiterates its submissions made in response to CP No.22.

XIV. Re. BIAL's monopolistic approach and 'Doctrine of Essential Facilities'

104. It is submitted that under the competition law, an enterprise is under an obligation to extend its essential infrastructural facility at a reasonable cost. BIAL's control over Kempegowda International Airport renders it a monopolist having control over 'essential

infrastructural facility' of the airport in the city Bangalore.³⁵ 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)³⁶. Under the principles of access to essential facility, the following four factors must be proven:-

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

105. It is submitted that to seek access to essential facility, the asset in question also must not be available from other sources or capable of duplication by the firm seeking access. Reliance is placed on the case of Apartment Source of Pennsylvania vs. Philadelphia Newspapers, reported as 1999 WL 191649³⁷. In view of the foregoing judicial precedents, it is submitted that BIAL assumes the position of a monopolist since it exercises control over Kempegowda International Airport which is a crucial infrastructural facility for a city like Bangalore due to its financial and economic significance at both national and international levels. Airport is an essential facility, and thus, per this doctrine, the monopolist should not be allowed to charge an exorbitant price for accessing its facility.

106. It is submitted that such enormous hike in tariff by a monopolist BIAL may be viewed as 'abuse of its dominance' and accordingly liable under section 4 of the Competition Act, 2002 ("**Competition Act**"). The Competition Act promulgates the "economic development of the country" by establishment of a Commission to, amongst other things, protect the interests of the consumers. Levy of such exponential charges by a monopolist is clearly against consumer interests, and thus, is against the basic premise of competition law in India.

Paragraphs 104-106: BIAL submits that, on account of competition offered by airports in the vicinity coupled with alternative means of transport and competition in other segments of the airport business by other service providers, BIAL cannot be considered as a monopoly.

³⁵ This fact is highlighted by the fact that under the Concession Agreement, BIAL has been guaranteed exclusivity to operate an airport in the city of Bangalore.

³⁶ Annexure F-18: United States of America v. United States vs. Terminal Railroad Assn, reported as 224 U.S. 383 (1912).

³⁷ Annexure F-19: Apartment Source of Pennsylvania vs. Philadelphia Newspapers, reported as 1999 WL 191649.

BIAL submits that, neither the Competition Act nor the principles pertaining to monopolies are applicable to BIAL.

XV. Re: True-up exercise

107. In the CP No. 14/2012-13 and present CP 22/2013-14, the tariff plan is subject to truing up in next control period with respect to following components:

- (a) Asset Allocation
- (b) Future Capital Expenditure
- (c) Cost of Debt
- (d) Operating Expenditure
- (e) Taxation
- (f) Non-aeronautical revenue
- (g) Traffic forecast
- (h) Working Capital Interest Expenditure
- (i) WPI Index

108. It is submitted that in the present case Authority should not leave aforementioned components for future in the garb of truing up exercise during next control period. In this context, judgment of APTEL in the case of **BSES Rajdhani Power Limited vs. Delhi Electricity Regulatory Commission** reported as **2009 ELR (APTEL) 880**³⁸ is extracted below:

"116. Before parting with the Judgment we have to remind the Commission of the observations in our Judgment in Appeal No. 265 of 2006, 266 of 2006 and 267 of 2006 in the case of North Delhi Power Ltd. v. Delhi Electricity Regulatory Commission in which we said the following:

Before parting with the Judgment we are constrained to remark that the Commission has not properly understood the concept of truing up. While considering the Tariff Petition of the utility the Commission has to reasonably anticipate the Revenue required by a particular utility and such assessment should be based on practical considerations. ...The truing up exercise is meant (sic) to fill the gap between the actual expenses at the end of the year and anticipated expenses in the beginning of the year. When the utility gives its

³⁸Annexure F-20: BSES Rajdhani Power Limited vs. Delhi Electricity Regulatory Commission reported as 2009 ELR (APTEL) 880

own statement of anticipated expenditure, the Commission has to accept the same except where the Commission has reasons to differ with the statement of the utility and records reasons thereof or where the Commission is able to suggest some method of reducing the anticipated expenditure. This process of restricting the claim of the utility by not allowing the reasonably anticipated expenditure and offering to do the needful in the truing up exercise is not prudence.

117. All projections and assessments have to be made as accurately as possible. Truing up is an exercise that is necessarily to be done as no projection can be so accurate as to equal the real situation. Simply because the truing up exercise will be made on some day in future the Commission cannot take a casual approach in making its projections. We do appreciate that the Commission intends to keep the burden on the consumer as low as possible. At the same time one has to remember that the burden of the consumer is not ultimately reduced by under estimating the cost today and truing it up in future as such method also burdens the consumer with carrying cost."

The said judgment has been followed by APTEL in various other cases like NDPL vs. Electricity Regulatory Commission reported as 2010 ELR (APTEL) 891³⁹.

109. In view of the foregoing, it is submitted that Authority should not leave everything to true up and attempt to make all the projections and assessments as accurately possible on the basis of available data.

Paragraphs 107 to 109: BIAL submits that the required details and clarifications regarding all regulatory building blocks have been submitted to AERA during the consultation process. Further during the process of tariff determination various details were submitted in response to clarifications sought by AERA.

XVI. Discrepancies in the CP No.14/2013-14 and CP No.22/2013-14:

110. It is striking that no detailed tariff model has been made available in both the CP No. 14/2013-14 and CP No.22/2013-14. Absence of adequate information makes it difficult to verify the proposals made by the Authority. Following are some instances where information is not adequately provided or discrepancies are noticeable:-

³⁹Annexure F-21: NDPL vs. Delhi Electricity Regulatory Commission reported as 2010 ELR (APTEL) 891

- (a) **Cost of debt:** The CP does not provide the breakup of the rupee term loan and ECB loan over the historic period and forecast period to calculate the actual cost of debt.
- (c) **Key Operating expenses:** The Authority has not provided the details of the basis which operating expenses like Personnel expenses, Operation & Maintenance, Concession Fees and OMSA fees has been computed and considered for determining ARR.
- (d) **Non-aeronautical Revenue items:** No details have been provided for computing the CPI base increase under select Non Aero revenue heads in both CP No.14/2013-14 and CP No.22/2013-14.
- (e) **Delay in tariff fixation burdening passengers:** There is an inordinate delay in tariff fixation which has diminished the effective Control Period to 24 months from 60 months leading to burdening of future passengers with past period losses.

Paragraph 110: Details have been furnished by BIAL to AERA in the prescribed forms and formats within prescribed timelines. BIAL has also submitted detailed business plan for 10 years and the same has been examined by AERA.

111. In addition to the above submissions, it is respectfully submitted that airlines and consequently, passengers will have to bear the burden of increase in Aeronautical Tariffs as proposed by BIAL and the Authority. It is noteworthy that Airlines and passengers must not be burdened with any tariff to be collected to fund the capital investments of a private concessionaire.

112. The Authority is aware that airlines have been going through difficult times with high prices of crude oil. Increase in aeronautical tariff as proposed by the Authority will erode airlines capabilities to increase fares to sustain its operational capabilities. It is submitted that it would be unfair to allow such increase to fund the gap of the private airport operator especially after the privatization has taken place. Any additional funding gap should be bridged through debt-financing, subsidy by Government, or additional equity. It seems that increase in aeronautical tariff is a means to avoid any of the said options to burden the passengers.

113. It is pertinent to note that the Authority must also take into account the difficulties being faced by the airlines and passengers before granting levies to the airport operators. Considering the fragile financials of the Airlines, UDF will inhibit Airlines' ability to raise

fares. As Airlines have suffered losses significantly in the last two years due to high ATF and recent depreciation of the rupee, there is a need for Airlines to raise fares to recoup the past losses, rather than fund the Airport development program which is the responsibility of the airport operator. BIAL by way of its present proposal is acting to the detriment to airlines and the passengers.

Paragraphs 111 to 113: As submitted by FIA, airlines propose to recoup alleged losses by increase of fares. The Act, likewise, permits an increase in aeronautical tariffs to meet the needs of the airport.

114. Annual concession fee is being paid by the BIAL to Gol as a part of its costs which it willingly agreed to incur to win the concession under a competitive bidding process. As such, this would have been factored in the bid financial model and must not be a source of additional risk or financial burden being transferred to users. Revenue that is earned by the airport has already factored in it a fair return on investment.

115. FIA reiterates its submission that there is a critical relationship between passenger traffic and growth of the civil aviation sector. What would benefit both the airport operator as well as the airlines is a reasonable and transparent passenger tariff, both direct and indirect – since then the airlines will be able to attract more passengers and the airports would benefit both through higher collection of aeronautical charges as also enhanced non-aeronautical revenue at the airports. In FIA's view, the airport should be regarded as a single business as its aeronautical and non-aeronautical revenues are intertwined. In this backdrop, **FIA endorses the "Single Till" as the basis for determining airport revenue, without any carve-outs whatsoever.** It is submitted that the Shared Till Model adopted by the Authority in the CP No.22/2013-14 ought to be discarded. The Authority must bear in mind the interest of airlines and the passengers which is of paramount importance for the aviation industry.

116. It is submitted that order passed by an administrative authority, affecting the rights of parties, must be a speaking order supported with reasons. It is well settled position of law⁴⁰ that:

⁴⁰**Annexure F-22:** Kranti Associates Private Limited & Another vs. Masood Ahmed Khan & Others reported as (2010) 9 SCC 496

- (a) Reasons ought to be recorded even by a quasi-judicial authority.
- (b) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- (c) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- (d) Insistence on reason is a requirement for both accountability and transparency.
- (e) Reasons in support of decisions must be cogent, clear and succinct.
- (f) A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.
- (g) Requirement of giving reasons is virtually a part of 'Due Process'.

117. In view of the foregoing submissions, it is submitted that the Authority ought to pass reasoned order on issues *inter-alia* like 'bifurcation of assets and expenditure' 'allowance of operating expenditure', 'allowance of future capital expenditure', etc.

118. In view of the above, it is respectfully prayed that the Authority keeps in mind the interests of the airlines and civil aviation sector before finalizing any decisions regarding increase in Aeronautical Tariffs and other charges. BIAL's proposal, if accepted, will have cascading impact on the airlines and consequently, on the civil aviation industry.

Paragraphs 114 to 118: BIAL reiterates its request for a 30% SRT model, as a workable solution, to substantiate the cash flow requirement as indicated in its letter dated 30th July, 2013 and in response to CP No.22.

BIAL, without prejudice to its contentions regarding dual till, submits that the 30% SRT model will considerably (but not completely) help BIAL tide over its cash flow and expansion needs and will be in the interest of aviation sector.

BIAL craves leave to submit additional responses, at a later point in time, should the need to do so arise.

**BANGALORE INTERNATIONAL AIRPORT
LIMITED**

**SUBMISSIONS IN RESPONSE TO COMMENTS
OF INTERNATIONAL AIR TRANSPORT
ASSOCIATION REGARDING CP NO.22/2013-
2014**

Comments of BIAL are provided in **red font** below.

IATA's COMMENTS ON CONSULTATION PAPER No.22/2013-14 – IN THE MATTER OF DETERMINATION OF TARIFFS FOR AERONAUTICAL SERVICES INRESPECT OF KEMPEGOWDA INTERNATIONAL AIRPORT (EARLIER BENGALURUINTERNATIONAL AIRPORT), BENGALURU, FOR THE FIRST CONTROL PERIOD (01.04.2011 – 31.03.2016)

(to be read in conjunction with IATA's Comments on Consultation Paper No.14/2013-14 but IATA's Comments on CP No.22/2013-14 takes precedence)

BIAL has made detailed submissions to the AERA *inter alia vide* response dated March 19, 2010 to Consultation Paper No.3/2009-10. BIAL had thereafter denoted some of its concerns in Appeal No.2/2011 and Appeal No.7/2011. Upon disposal of Appeal No.7/2011, BIAL had submitted detailed submissions dated April 8, 2013. BIAL has also submitted its responses to CP No.14/2013-14 and CP No.22/2013-14 *vide* responses dated September 22, 2013 and February 28, 2014 respectively. Copies of submissions dated April 08, 2013; September 22, 2013; and February 28, 2014 are annexed hereto for immediate reference. BIAL has also made multiple submissions in the course of the consultation process, on which it relies. For the sake of brevity, the previous submissions are incorporated herein by reference and not repeated.

| Subject | IATA's Comments |
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| 1. Background for the current | <ul style="list-style-type: none">It is unclear why AERA needed to issue this consultation paper (No. 22/2013-14) as an addendum to CP No. 14/2013-14 since the airport operator had already submitted |

position paper
(pages 6-12 of CP
No. 22/ 2013-14)

proposals based on single till and dual till. BIAL's subsequent letter of 30 July 2013 to AERA where it stated that *'However, in order to reach a workable solution, BIAL intends to agree with the tariff on hybrid till model'* seems to suggest that the issue of till is a negotiable element between the airport and the regulator. AERA's approach and philosophy for tariff determination had been comprehensively researched, argued and consulted with the industry before the decision was arrived at to adopt the single till approach as the one most appropriate for determining tariffs at major airports in the Indian context. AERA has an obligation to consistently apply its adopted single till approach for tariff determination at all major Indian airports as it had done at CCU, MAA, GAU and HYD.

- Concerning the letter from the Ministry of Civil Aviation dated 24 September 2013, the Ministry as a stakeholder of the industry was expressing a view and not issuing a policy directive. IATA considers AERA's independence to be of paramount importance and trusts that AERA would consider the Ministry's view in a balanced manner together with the views of other stakeholders as well as consider the consonance of that view with AERA's adopted single till approach.
- Allowing the requirement of capital for airport expansion to drive the type of till to use is a dangerous precedent to set that will breach the sanctity of AERA's published approach and philosophy. In the first place, it is the responsibility of the airport to provide the financing for airport expansion. Refusal of the shareholders of the airport to inject additional equity to fund the airport's expansion does not mean that the burden of

financing should then automatically fall onto the airlines and passengers through adjustment of the revenue till. It is also not obvious that the airport had considered other financing options such as issuance of bonds, monetization of land etc.

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

BIAL reiterates its submissions made in reply to CP No.14/2013-2014, wherein BIAL had stated the reasons and its requests for non-adoption of a single till regime. MoCA had received expert advice from M/s. Bridgelink Advisors who had recommended a hybrid till model as most suitable for greenfield airports like BIAL. Further, MoCA itself had used 30% shared till as a yardstick to determine domestic UDF and had applied dual till yardstick for determination of international UDF on *ad hoc* basis pending finalization of capex. BIAL reiterates its submissions made in response to CP No.14 and CP No.22 in this regard.

BIAL further submits that the AERA Act mandates that the tariff determination exercise of a particular airport has to give due consideration for the viable operations of the

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| | <p>airport as well as timely investment in the airport facilities. BIAL is the fastest growing airport in the country and is continuously investing in expansion of the airport. Hence, 30% SRT as proposed by BIAL needs to be considered by AERA.</p> |
| <p>2. Pre-control period shortfall claim (pages 15-22 of CP No. 22/2013-14)</p> | <ul style="list-style-type: none"> For the reason expressed in IATA's comments on CP No 14/2013-14, IATA supports the Authority's proposal to not consider pre-control shortfall for the purpose of determination of aeronautical tariffs for the current control period. <p>BIAL submits that the present tariffs were approved by MoCA on ad hoc basis subject to finalization of project cost and to be finalized by the Independent Regulatory Authority (AERA). BIAL reiterates its submissions made in response to CP No.22/2013-2014 that pre-control period shortfall, including losses as on AOD, be allowed.</p> |
| <p>3. Allocation of assets and expenditures (pages 23-31 of CP No. 22/2013-14)</p> | <ul style="list-style-type: none"> IATA maintains that the single till approach should be used and recognizes that allocation of assets and expenditures to aeronautical and non-aeronautical activities would only be critical in the event that an approach other than single till should apply. The fact that BIAL was able to significantly alter the cost allocation ratios to its favor in just four months provides clear evidence in support of the crucial need for an independent study commissioned by AERA on allocation of asset and expenditures. While the appropriate allocation ratios to be confirmed by an independent study are pending, AERA should reject BIAL's revised allocation ratios that would clearly benefit the airport in the current control period at the expense of the airlines and passengers notwithstanding that truing up is proposed in the next control period. Instead AERA |

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| | <p>should use the original allocation ratios submitted by BIAL as reflected in CP No.14/2013-14.</p> <ul style="list-style-type: none"> Nonetheless, IATA supports AERA's proposal to commission an independent study to assess the reasonableness of allocation of assets and expenditures. IATA also supports truing up the asset allocation ratios for each year based on the results of independent audits of yearly space allocation. <p>Reasons for alteration in the asset and expenditure allocation are detailed <i>inter alia</i> in response to proposal no.3 in CP No.22/2013-2014 and are incorporated herein by reference. Further, BIAL submitted all necessary details with regard to clarifications sought by AERA while determining asset allocation ratios.</p> |
| 4. Future capital expenditure including general capital expenditure (pages 32-48 of CP No. 22/ 2013-14) | <ul style="list-style-type: none"> IATA agrees that the airport should hold detailed discussion and consultations with stakeholders on its Master Plan with respect to the options, detailed design and detailed cost estimates etc. in conformance with the Airport Guidelines. IATA looks forward to participating in such consultations organized by the airport. IATA supports AERA's proposal for an independent study on the appropriateness of the capital expenditure incurred by BIAL during the current control period and to true up any difference in the next control period. IATA supports timely investment in airport infrastructure to meet future growth. The airport's ATM projection suggests that a second runway would be needed in 2017/18. |

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| | <p>This appears to be optimistic given that ATMs was at 105,000 in 2012/13 and had been fluctuating between 105,000 and 120,000 in the past 5 years. To hit the maximum capacity for a single runway of 172,000 ATMs growth will need to be very robust over the next 4 years and certainly will have to be supported by an efficient cost environment that is conducive for airlines to grow their services to BLR. IATA looks to consult extensively with the airport to see if the 2017/18 planning timeframe for a second runway should remain or needs to be adjusted.</p> <p>BIAL refers to various details furnished to AERA in response to clarifications sought with regard to requirement for future capex and are available in public domain. BIAL submits that consultation process will be followed and aeronautical capital expenditure will be due for detailed stakeholder's consultation.</p> |
| 5. Debt and cost of debt (pages 62-64 of CP No. 22/ 2013-14) | <ul style="list-style-type: none"> • IATA supports the Authority's proposal to cap the interest rate for Rupee term Loan at 12.50% and for ECB Loan at 10.15%. This will provide motivation for the airport operator to seek out the most efficient debt financing. • IATA supports AERA's revised proposal in CP No. 22/ 2013-14 to consider the Weighted Average Cost of debt at 9.89%. <p>BIAL reiterates its detailed submissions regarding debt, cost of debt and WACC in response to CP No.14 and CP No.22.</p> |
| 6. Cost of equity | <ul style="list-style-type: none"> • IATA is of the view that the risk to the airport operator is relatively low considering that |

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| (pages 65-66 of CP No. 22/ 2013-14) | <p>any revenue shortfall against the aggregate revenue requirement in a given control period can be fully claimed back in the subsequent control period. Unlike any business in a competitive environment, the airport is practically assured of getting its fair rate of return over the long term. The asset beta of 0.4 suggested by NIPFP is more appropriate in reflecting this mitigated risk.</p> <ul style="list-style-type: none"> • IATA believes that NIPFP's range of Cost of Equity of 11.04% to 11.91% is an acceptable estimate for BIAL. IATA therefore disagrees with AERA's proposal to significantly raised the Cost of Equity to 16%. An average of NIPFP's range (11.5%) should be used instead. <p>BIAL submits that, even at the cost of equity proposed by AERA, there will be severe cash constraints for regular operations and for future expansion as well. Hence, BIAL submitted to AERA to consider higher cost of equity. BIAL reiterates its detailed submissions regarding cost of equity in response to CP No.14 and CP No.22.</p> |
| 7. Weighted average cost of capital (WACC) / Fair rate of return (pages 67-70 of CP No. 22/ 2013-14) | <ul style="list-style-type: none"> • Based on Cost of Equity of 11.5%, weighted average cost of debt of 9.89% and weighted average gearing of 70.16%, the re-computed WACC under single till should be 10.37%. <p>BIAL reiterates its detailed submissions regarding WACC in response to CP No.14 and CP No.22.</p> |
| 8. Operating and | <ul style="list-style-type: none"> • IATA believes that the approved operating and maintenance expenditure for the control |

maintenance expenditure (pages 76-80 of CP No. 22/ 2013-14)

period must be sufficiently tight to challenge the airport to achieve greater cost efficiency. It is therefore important for the Authority to have carried out a more extensive scrutiny of the proposed future O&M expenditure to ensure that BIAL's proposal is realistic. Under the single till scenario, the proposed increases in personnel expenses (three straight years of 20+ % increases from 2013-14 to 2015-16) and operation and maintenance expenses (61% increase in 2014-15) do not augur confidence that reasonable levels of projected expenditure have been set.

- IATA does not support AERA's proposal to accept BIAL's proposal to true up O&M expenditure based on actual costs because there is absolutely no incentive for the airport to try to contain its expenditure. IATA proposes that the Authority should cap the expenditure at the approved level and only do truing up if the actual expenditure is lower than the approved levels.
- IATA does not support the inclusion of bad debts as part of O&M expenditure and strongly objects to the proposal to admit the bad debt of Rs47.51 crores due from Kingfisher to the airport on account of it being a one-off event. It is clearly wrong to make airlines pay for the failure of their competitor and the airport's failure to manage its credit risks.

BIAL submits that it is a developing airport and has expanded its capacity considerably during the control period. Hence, past expenses cannot be considered as the basis for estimating expenses in the coming years. However, BIAL has done bottom up projections

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| | <p>while arriving at the cost estimates and detailed submissions have been made earlier in response to CP No.14 and CP No.22.</p> <p>As submitted in response to CP No.14 and CP No.12, bad debts are to be provided for by the AERA. In that light, submissions of IATA are devoid of merits. BIAL has filed a suit in respect of corporate guarantee issued by United Breweries (Holdings) Limited for a sum of Rs.14,00,00,000/- (Rupees Fourteen Crore Only). The said corporate guarantee was issued by United Breweries (Holdings) Limited guaranteeing debts to be paid by Kingfisher Airlines Limited. BIAL has initiated legal proceedings against Kingfisher Airlines Limited, as well as the principal officers of Kingfisher Airlines Limited. BIAL supports AERA's view that bad debts that are written off would be reimbursed.</p> |
| 9. Revenue from other than aeronautical service; and Treatment of revenue from cargo, ground handling and fuel into place services & fuel throughput charge (pages | <ul style="list-style-type: none"> • IATA agrees with the Authority's proposal to consider Aerobridge charge and Common Infrastructure Charge as aeronautical charges for computation of yield. • IATA supports AERA proposal to consider revenues from cargo, ground handling, fuel supply (fuel throughput charge, fuel into plane charge, etc.) as aeronautical revenues as well as to consider the throughput fee revenue from fuel farm service concession out by BIAL as aeronautical revenues in the hands of BIAL. • IATA supports AERA's proposal to consider the revenue from cargo facility, ground handling and into plane services (provided by third party concessionaires) accruing to BIAL as Aeronautical revenue for determination of tariffs of aeronautical services for the current control period. |

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| 81- 86 and 87-90 of CP No. 22/ 2013-14) | BIAL submits that revenue from CGF services be treated as non-aeronautical in line with the Concession Agreement. BIAL reiterates its submissions made in this regard in response to CP No.14 and CP No.22. |
| 10. Annual tariff proposals: proposals of BIAL and computation of the Authority (pages 104-110 of CP No. 22/ 2013-14) | <ul style="list-style-type: none"> • In line with IATA's overall position, IATA supports a tariff computation under single till. Table 63 of CP No. 22/ 2013-14 clearly shows that the use of hybrid till would not be in the interest of passengers. Single till better serves the interests of passengers while ensuring that the airport gets its fair rate of return. • IATA is strongly opposed to the 137% increase in landing fee for international flights as that would present a significant shock to airlines' operating costs. IATA urges a significantly more moderate increase, if need be, that will support a cost environment more conducive for airlines to operate in and be able to grow services. From international experience, a 10% increase in landing fee would already be considered as at the high end. • IATA reiterates its rejection of a differential in landing fee between international and domestic flights as this is in gross contravention of ICAO principles and a highly unfair situation to have one airline subsidizing another airline for the same usage of facilities on account of the flights' origins. • IATA notes that AERA has proposed to use a ratio of 4:1 for setting international and domestic UDF in perpetuation of the unfair ratio that exists in the current UDF split. The airport operator itself had proposed a more reasonable ratio of 1:1.6 in its application to |

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| | <p>the Ministry in 2008. As mentioned in IATA's submission in the Mumbai tariff determination, MIAL's proposal of 1:2 converges towards what would be a fairer ratio. IATA therefore urges a more equitable ratio of 1:2 or lower to be applied at BLR.</p> <ul style="list-style-type: none"> • IATA agrees with the Authority's proposal to merge the Common Infrastructure Charge with UDF. This will simplify the rate card. <p>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 it is worthwhile to mention that there has not been any increase in landing and parking charges in almost last 10 years and even if we go by inflationary increase the current increase is justified.</p> |
| 11.BIAL's submission on regulatory approach and till and Authority's analysis thereof (pages 111-121 of CP No. 22/ | <ul style="list-style-type: none"> • IATA agrees with AERA that if the Concession Agreement had meant for regulation based on dual till, it would have been explicit in stating so in the text of the agreement. The CA clearly states that tariffs would be determined by the Independent Regulatory Authority (which is AERA) and AERA has been bestowed the authority under the AERA Act to regulate in the manner that best serves the interests of the passengers. AERA had determined through a comprehensive study and extensive consultation that the appropriate approach in the context of India is the single till approach and this should be used for regulation of tariffs at BLR. AERA has also correctly observed that single till does not cause any injury to the airport operator except by not allowing it to obtain more than the fair rate of return, which cannot be termed an injury. Any business operating in a |

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| 2013-14) | <p>competitive environment (which economic regulation is trying to mimic for the case of a monopoly) would have satisfactorily met its financial target if it were able to achieve its fair rate of return.</p> <ul style="list-style-type: none"> • IATA considered that the arguments put forth by the regulator in CP No 14/2013-14 on its tentative decision to adopt single till for tariff determination at BLR were sound. Submissions by various stakeholders expressing different positions on the till issue did not warrant a fresh discussion especially in the absence of any new policy directive from the government. BIAL's financing needs should not be extracted from airlines and passengers by a blatant change in the type of revenue till used for tariff determination. Therefore, IATA does not think that the switch in AERA's tentative decision to determine the aeronautical tariffs in respect of BLR from single till to 40% shared revenue till is justifiable. • The AERA Act clearly describes UDF as a revenue enhancing measure to enable the airport operator to earn a fair rate of return. There is no mention of UDF being used as a pre-financing mechanism. The statement in the CA which states that UDF will be used for the development, management, maintenance, operation and expansion of the facilities at the airport should be read in harmony with the AERA Act. The statement in the CA should not be taken to mean that UDF can be used as a pre-financing mechanism. When read in harmony with the AERA Act, it should be interpreted that the fair rate of return that the airport earns as a result of implementation of UDF could be ploughed back for the |
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development, management, maintenance, operation and expansion of the facilities.

User Development Fee has been defined in the Concession Agreement to read as *“means a fee collected from embarking passengers for the provision of passenger amenities, services and facilities and will be used for the development, management, maintenance, operation and expansion of facilities at the Airport.”* UDF should be construed such that the concessions provided in the Concession Agreement and provisions of AERA Act are honoured. BIAL’s submissions in response to CP No.14 and CP No.22 are incorporated by reference.

BIAL craves leave to submit additional responses, at a later point in time, should the need to do so arise.

**BANGALORE INTERNATIONAL AIRPORT
LIMITED**

**SUBMISSIONS IN RESPONSE TO COMMENTS
OF INDIAN OIL CORPORATION LIMITED
REGARDING CP NO.22/2013-2014**

Comments of BIAL are provided in **red font** below.

Dear Sir,

This has reference to letter No. D.O.
AERA/20010/MYTP/BIAL/2011-12No1-11/5325 dt. 29-01-2014, on
the subject.

It is noted that the AERA proposes to determine the tariffs in respect of throughput charges and into-plane charges for the consultation paper for the first Control Period (01-04-2011 to 31-03-2016), as follows :-

- i) the fuel farm facility is operated by IOSL and the assets of this facility are also on the balance sheet of IOSL. To further note that IOSL is paying fuel throughput charges of Rs.1067/KL to BIAL. The Authority thus proposed to consider the Throughput Fee revenue from fuel farm service concessioned out by BIAL to IOSL as aeronautical revenue in the hands of BIAL.
- ii) To consider the revenue from Cargo Facility, Ground handling and into-plane services (provided by third party concessionaires) accruing to BIAL as aeronautical revenue for determination of tariffs of aeronautical services for the current control period.

Indian Oil welcomes the proposed decision of the Authority for considering Fuel Throughput charges/into-plane services as Aeronautical charges for determination of tariffs.

BIAL has made detailed submissions to AERA *inter alia vide* response dated March 19, 2010 to Consultation Paper No.3/2009-10. BIAL had thereafter denoted some of its concerns in Appeal No.2/2011 and Appeal No.7/2011. Upon disposal of Appeal No.7/2011, BIAL had submitted detailed submissions dated April 8, 2013. BIAL has also submitted its responses to CP No.14/2013-14 and CP No.22/2013-14 *vide* responses dated September 22, 2013 and February 28, 2014 respectively.

Copies of submissions dated April 08, 2013; September 22, 2013; and February 08, 2013 are incorporated by reference. BIAL has also made multiple submissions in the course of the consultation process, on which it relies. For the sake of brevity, the previous submissions are incorporated herein by reference and not repeated.

BIAL submits that revenue from CGF services, including throughput charges, be treated as non-aeronautical. BIAL reiterates its submissions made in this regard in response to CP No.14 and CP No.22.

BIAL craves leave to submit additional responses, at a later point in time, should the need to do so arise.

BANGALORE INTERNATIONAL AIRPORT
LIMITED

SUBMISSIONS IN RESPONSE TO COMMENTS
OF LUFTHANSA CARGO AG REGARDING CP
NO.22/2013-2014

BIAL's comments are in **red font** below.

From: vipan.jain@dlh.de [<mailto:vipan.jain@dlh.de>]

Sent: Friday, March 07, 2014 6:03 PM

To: alok.shekhar@gov.in

Cc: sarika.gandhi@dlh.de; tanjcm@iata.org

Subject: FW: New Consultation Paper on Tariff Determination for BLR - deadline extension

Dear Sir,

We thank you for extending the deadline to 10Mar2014 for submission with respect to the Consultation Paper No. 22/2013-14 on tariff determination for BLR.

We are concerned about proposed increase in landing charges for our **technical and transit cargo flights** which at times carries No load or as low as 10-20 tons of cargo and has a direct impact on cost analysis of that particular flight. We therefore would like you to consider following points.

1) Transit cargo flights are different from Turn around flight and Technical flight.

2) As Transit flight are sharing flights with other airports the load depends on space allocated to BLR airport.

3) In case of transit flight if load is restricted to 10 tons or so, it is not economical to operate freighter with such a low load as per kg costs becomes very high and not viable to operate flight.

4) Similar way Technical flights for fuel or other reasons do not carry any load so it should be kept under separate category.

Under these circumstances, we request you to kindly exclude considering increase of landing charges for cargo flights as it will defeat our purpose to create BLR as cargo HUB for South India and India as a whole.

We would also like to share with you the incentive scheme introduced by Changi Airport for cargo flights with introduction of 50% rebate for entire 2013 and 30% during 1st half of 2014. We kindly request you to consider such scheme at all the airports in India to develop cargo HUB concept. For your information such a scheme was introduced in Mar13 on fast track when SIN realised a dip of just 3.2% in 2012 and continue decline in 2013 by 5%.

BIAL submits that at present there is no differential tariff for technical and transit cargo flights in light of the maturity and volume of business. Further, BIAL is focusing on creating additional infrastructure such as Perishable Cargo Centre etc, so as to enable further cargo business. Hence, BIAL would like to continue with the present system of cargo charges and has accordingly submitted draft ATPs. BIAL is also of the view that the above recommendations can be relooked into by AERA, while determining tariffs for second control period.

We thank you in advance and hope to hear from you favourably.

With kind regards,
Vipin Jain

Regional Manager - Logistics South
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**BANGALORE INTERNATIONAL AIRPORT
LIMITED**

**SUBMISSIONS IN RESPONSE TO COMMENTS
OF LUFTHANSA REGARDING CP NO.22/2013-
2014**

BIAL is submitting its responses in **red font** below.

BIAL has made detailed submissions to the AERA inter alia vide response dated March 19, 2010 to Consultation Paper No.3/2009-10. BIAL had thereafter denoted some of its concerns in Appeal No.2/2011 and Appeal No.7/2011. Upon disposal of Appeal No.7/2011, BIAL had submitted detailed submissions dated April 8, 2013. BIAL has also submitted its responses to CP No.14/2013-14 and CP No.22/2013-14 vide responses dated September 22, 2013 and February 28, 2014 respectively. Copies of submissions dated April 08, 2013; September 22, 2013; and February 28, 2014 are incorporated by reference. BIAL has also made multiple submissions in the course of the consultation process, on which it relies. For the sake of brevity, the previous submissions are incorporated herein by reference and not repeated.

Stakeholder comments to Consultation Paper No.22/2013-14 for Multi Year Tariff Proposal and Annual Tariff Proposal in respect of Kempegowda International Airport (earlier Bengaluru International Airport) for the First Control Period (01.04.2011 to 31.03.2016)

1 Regulatory Approach and Till

AERA is empowered to determine Tariff for aeronautical services under Section 13(1)(a) of AERA Act. Sub clause (a) lays down the factors to be taken into consideration for determining the tariff.

In view of the growing competition and to promote healthy competition it is imperative to ensure a level playing field amongst different categories of airports. To achieve the object of ensuring a level playing field, AERA is mandated to determine tariff for all major airports in terms of Section 13(1)(a). Tariff may be different for different airports on account of any or all considerations in (i) to (vi) of Sub clause(a) of Section 13(1). Meaning thereby AERA is mandated to follow a uniform policy for all airports for tariff determination. Tariff structure for an airport could vary on account of any of the considerations in (i) to (vi). Thus AERA cannot adopt different formulas/methodology for different airports.

The aforesaid submission is not clear and is contradictory and the conclusion drawn above is erroneous in view of the proviso to Section 13 (1)(a).

The Authority had, vide its order No 13/2010-11 dated 12th January considered all aspects of regulatory till and had also considered in clause 5.136 the legislative intent of adding clause "(v) revenue received from services other than aeronautical services" and had said that *"in the absence of an explicit provision that even part of the revenue received from services other than aeronautical services could be considered, as is the case under a hybrid till, the Authority believes that the legislature did not contemplate regulation under a hybrid till"*. Thereafter the authority came to a conclusion that the *"Single Till is most appropriate for the economic regulation of major airports in India"*.

Under the Single Till Model, airport charges 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. Recognising this principle, the Legislature has laid down the principle of 'Single Till' in terms of Section 13(1)(a)(v) of the AERA Act.

The Authority had vide its Direction No. 5/ 2010-11 dated 28th February 2011 ("Airport Guidelines") and Order No. 13 / 2010-11 dated 12th January 2011 ("Airport Order") also determined the Single Till methodology for tariff determination.

Even in the Consultation Paper No. 14/ 2013-14 dated 26th June 2013 the authority after detailed analysis come to the conclusion that in the Indian context Single Till is the most appropriate approach in determination of Aeronautical Tariffs. Accordingly, the Authority had proposed to adopt Single Till in its exercise of Aeronautical Tariff determination for BIAL, in respect of the current Control period. (see para 22.3 of the consultation paper)

It is submitted 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 AERA has failed to acknowledge.

It is pertinent to point out that AERA has proceeded to deviate from the Single Till Order and the AERA Guidelines while adopting such Shared Till methodology, without providing the stakeholders any reasons for the same. The Single Till Order passed by AERA mandates a comprehensive evaluation of the economic model and realities of the airport – both capital and revenue elements and also lays down the criteria for determining aeronautical tariff after taking into account the standards followed by several international airports. It is submitted that AERA has erroneously proceeded on Shared Till Model after giving its tentative views on the Single Till.

It is submitted that the order of Hon'ble AERAAT pursuant to appeal of BIAL challenging the Airport Guidelines is dated 15th February 2013, and BIAL had submitted its first MYTP in April 2013 which is much after the passing of this order.

The stakeholder consultation meeting was held on 22nd July 2013. BIAL has on

30.07.2013 for the first time indicated its intention of making submission under shared till which it termed as "workable solution". No reasons have been given by the Authority as to why it is considering the shared till MYTP of BIAL at such belated stage.

The unwillingness of the other stakeholders of BIAL to bring in additional equity for the expansion of the airport is not an acceptable justification for considering the shared till model as proposed by BIAL. Authority cannot burden the users of the airport viz passengers and the airlines for the benefit of the operator and its shareholders. Even as per ICAO guidelines airlines and their passengers are only charged for the cost of services actually provided. It is unfair to place additional burden on airlines and passengers to pay for facilities that they are not using.

The Concession Agreement clearly states that tariffs would be determined by the Independent Regulatory Authority. AERA under the Act has to regulate in the manner that best serves the interests of the passengers.

AERA is an independent and autonomous body which and one of the functions of AERA is to see the economic and viable operations of the airports. It must consider the interest of passengers and the survival of the industry in determining the tariffs. The independent economic regulation of the airports improves efficiency and productivity throughout the industry. It encourages cost effective new investment and benefits all stakeholders.

AERA should not come under the influence of any of the stakeholders. Re doing the entire exercise of consultation after taking its position and giving its tentative decisions pursuant to due deliberations and analysis in the garb of giving a last opportunity to BIAL is illegal.

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

BIAL reiterates its submissions made in reply to CP No.14/2013-2014, wherein BIAL had stated the reasons and its requests for non-adoption of a single till regime. MoCA had received expert advice from M/s. Bridgelink Advisors who had recommended a hybrid till model as most suitable for greenfield airports like BIAL. Further, MoCA itself had used 30% shared till as a yardstick to determine domestic UDF and had applied dual till yardstick for determination of international UDF on *ad hoc* basis pending finalization of capex. BIAL reiterates its submissions made in response to CP No.14 and CP No.22 in this regard.

BIAL further submits that the AERA Act mandates that the tariff determination exercise of a particular airport has to give due consideration for the viable operations of the airport as well as timely investment in the airport facilities. BIAL is the fastest growing airport in the country and is continuously investing in expansion of the airport.

Hence, 30% SRT as proposed by BIAL needs to be considered by AERA.

2 Allocation of Assets and Expenditure – Aeronautical / Non-Aeronautical

BIAL has changed the cost allocation ratios as compared to its original submission. Authority proposes to consider the revised allocation of assets, costs and expenditure between Aeronautical and Non-Aeronautical Assets and true up the same in the next control period. Whereas under the CP 14/2013-14 it proposed ratios comprised between 81.5:18.5 and 82.4:17.6. The authority noted that the auditors of BIAL appear to have merely carried out a check of the principles / methodology already established by BIAL for asset and cost allocation and have only validated the same with the financials and not carried out any independent study to classify the assets between Aeronautical and Non-Aeronautical Services. The Authority also notes that in relation to segregation of expenditure also, the auditors have not carried out any evaluation on the estimate of the percentages allocable to Aeronautical and Non-Aeronautical services that were presented to it by BIAL.

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

Details regarding asset and expenditure allocation are provided *inter alia* in response to proposal no.3 in CP No.22/2013-2014 and are incorporated herein by reference. Further, BIAL submitted all necessary details with regard to clarifications sought by AERA while determining asset allocation ratios.

3 Future capital expenditure including general capital expenditure

We do not agree with the proposal of Authority to consider Capital Expenditure as per Table 12 for addition to RAB during the current control period, for the present purpose of the determination of tariff for aeronautical services during the current control period and to true-up the difference between the Capital Expenditure considered now and that actually incurred based on evidential submissions along with auditor certificates and to true up the additions to RAB based on the results of the independent study proposed by the Authority as detailed in Para 5.31 at the time of determination of aeronautical tariff for the next control period.

User cannot be burdened with costs of services not made operational and/ or available to the user. This is contrary to AERA Guidelines 2011 and the provisions of Section 13(2) of

the AERA Act which provides for revision of tariff in public interest during the control period itself.

BIAL refers to various details furnished to AERA in response to clarifications sought with regard to requirement for future capex and are available in public domain. BIAL submits that consultation process will be followed and aeronautical capital expenditure will be due for detailed stakeholder's consultation.

It is further submitted that as part of regulatory mechanism for tariff determination only assets that are getting capitalized during respective control period will form part of RAB.

4. Cost of Debt

In the present consultation paper the Authority has proposed Weighted average Cost of debt at 10.04% both under Single and Dual Till. However in CP No. 22/ 2013-14 it had proposed the same as 9.84%. We support the calculation of the CP No. 22/ 2013-14 and request AERA to consider Weighted average Cost of debt at 9.84%.

BIAL reiterates its detailed submissions regarding debt, cost of debt and WACC in response to CP No.14 and CP No.22.

5. Cost of Equity

The Authority has proposed to consider the Cost of Equity at 16%. Whereas we believe that NIPFP's range of Cost of Equity of 11.04% to 11.91% is an acceptable estimate for BIAL. Since the risk to the airport operator is relatively low considering that revenue shortfall against the aggregate revenue requirement in a given control period can be fully claimed back in the next control period. An average of NIPFP's range (11.5%) is reasonable

BIAL submits that, even at the cost of equity proposed by AERA, there will be severe cash constraints for regular operations and for future expansion as well. Hence, BIAL submitted to AERA to consider higher cost of equity. BIAL reiterates its detailed submissions regarding cost of equity in response to CP No.14 and CP No.22.

6. Operating and maintenance expenditure

Section 14(1)(a) and (b) of the AERA Act clearly provides for engaging professionals or its own staff by AERA. However AERA has relied on submissions of BIAL and has proposed to true up these expenses in the next control period. The proposed increase in the Personnel expenses and other operating and maintenance expenses in the financial years 2013-14 to 2105 – 16 is too high. The inclusion of bad debts in Operating and maintenance expenses is not correct.

BIAL submits that it is a developing airport and has expanded its capacity considerably during the control period. Hence, past expenses cannot be considered as the basis for estimating expenses in the coming years. However, BIAL has done bottom up projections while arriving at the cost estimates and detailed submissions have been made earlier in response to CP No.14 and CP No.22.

As submitted in response to CP No.14 and CP No.12, bad debts are to be provided for by the AERA. In that light, submissions of Lufthansa are devoid of merits. BIAL has filed a suit in respect of corporate guarantee issued by United Breweries (Holdings) Limited for a sum of Rs.14,00,00,000/- (Rupees Fourteen Crore Only). The said corporate guarantee was issued by United Breweries (Holdings) Limited guaranteeing debts to be paid by Kingfisher Airlines Limited. BIAL has initiated legal proceedings against Kingfisher Airlines Limited, as well as the principal officers of Kingfisher Airlines Limited. BIAL supports AERA's view that bad debts that are written off would be reimbursed.

7. Regarding Tariff Structure/ Rate Card

ICT charges - namely CUTE and BRS – have so far (since airport opening) been part of the UDF and is part of the CIC component of UDF. This has been confirmed to all airlines by BIAL at the time of airport opening. BIAL now proposes to take out these charges from UDF and charge them separately (USD0.9/per pax and USD0.35/per pax resp.). These should not be now taken out from UDF and charged separately. 21.1.2 pg 104)

Details of ICT Charges have been submitted to the AERA. AERA has considered ICT revenue as aeronautical revenue and consequently, as part of ARR in CP No.22. However, BIAL has requested AERA to consider ICT revenues as non-aeronautical revenue *vide* its responses to CP No.22.

UDF is a revenue enhancing measure to enable the airport operator to earn a fair rate of return. There is no mention of UDF being used as a pre-financing mechanism. It is levied by the authority under the same provision as development fees.

User Development Fee has been defined in the Concession Agreement to read as *“means a fee collected from embarking passengers for the provision of passenger amenities, services and facilities and will be used for the development, management, maintenance, operation and expansion of facilities at the Airport.”* UDF should be construed such that the concessions provided in the Concession Agreement and provisions of AERA Act are honoured. BIAL's submissions in response to CP No.14 and CP No.22 are incorporated by reference.

We strongly oppose the 137% increase in landing fee for international flights as this would affect the sustainability of airlines in such difficult times and significantly increase the operating costs.

BIAL submits that there has not been any increase in landing and parking charges in almost last 10 years and even if we go by inflationary increase the current increase is justified.

There is so much information that authority still awaits from BIAL and proposes to consider at the time of passing the order. Eg Aerobridge Charges. There will be no transparency and stakeholders will not be consulted for the same.

All the required details have been submitted by BIAL to AERA.

BIAL craves leave to submit additional responses, at a later point in time, should the need to do so arise.
