

November 18, 2013

DIAL/ Fin-Acc/2013-14/3916

Ms. Radhika. R

Jt. GM

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

Madam,

Sub: Response to comments submitted by various stakeholders on Consultation Paper 09/2013-14 FY 2012-13

This is in reference to your letter no. AERA/20010/MYTP/HIAL/2011-12/VOL_IV/5091 dated 6th November, 2013 seeking response of GHIAL to various comments submitted by the stakeholders on Consultation Paper 09/2013-14.

Enclosed is our detailed response to comments of stakeholders forwarded by the Authority.

Please let us know if you need any further information or clarification.

Yours Sincerely,

For GMR Hyderabad International Airport Limited



Sidharath Kapur

[President & CFO – Airports]

Jt GM (R)

The comments of HIAL have been shared with Debitte. Further, the same has also been put up on file along with additional Certification required from HIAL for

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18/11/13



Enclosed are our responses to the comments/submissions from the following stakeholders:

1. Airport Authority of India (AAI)
2. Airport Council International (ACI)
3. Associated Chambers of Commerce and Industry of India (ASSOCHAM)
4. Association of Private Airport Operators (APAO)
5. Blue Dart Aviation Ltd.
6. Confederation of Indian Industry (CII)
7. Federation of Indian Airlines (FIA)
8. Federation of Indian Chamber of Commerce and Industry (FICCI)
9. International Air Transport Association (IATA)
10. Joint representation of Indian Oil Corp. Ltd. (IOCL), Bharat Petroleum Corp. Ltd. (BPCL) and Hindustan Petroleum Corp. Ltd. (HPCL)

	AAI Comments	GHIAL Response
	Comments of AAI are not final comments.	These do not seem to be final comments of AAI as they were sent to MoCA for the final viewpoint to be taken by MoCA before being forwarded to AERA. However we have responded to these draft comments/queries.
2	Investment and guiding principle of AERA AERA has proposed to determine the tariff taking the Airport only as the single entity without taking into account its subsidiary in SEZ and hotel considering them as Non Airport activity. AERA need to define the airport activity and Non airport activity in view that the entire land has been acquired for airport.	We had made filing wherein the subsidiaries were also included. However AERA has taken a viewpoint relating to exclusion of subsidiaries from tariff filing. As regards to land, the airport and Non airport activity is already defined in concession: <ul style="list-style-type: none"> • on a conjoint reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement and not regulate any Other Charges in respect of the facilities and services provided at the Airport nor using the revenue therefrom to subsidize the Aero Charges. • The value of the land earmarked for Non-Airport Activities (market or notional) cannot be included in nor deducted from the RAB and accordingly the revenue generated therefrom cannot be taken into account for cross subsidizing aeronautical tariff at airport. • In fact the GoAP had given the land on lease for two independent purposes i.e. (i) for Airport and (ii) For development of non-airport activities. <p>The Section 13 of AERA Act defines the role of the Authority The scope is to regulate the Airport charges only not the Non-Airport activities.</p> <p>The list of Airport and non-airport activates are clearly listed out in the Schedule 6 of the Concession agreement.</p>

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Response to Comments of Airports Authority of India (AAI)

	AAI Comments	GHIAL Response
	It has not been stated whether HIAL has received any interest free security deposit from its concessionaire, which has been used in the Project.	The project being greenfield there were no deposits available at time of the construction of project. As such no deposit can be used for the project.
3	Consideration of pre control period loss.	
	AERA has proposed to consider the carryover loss for the past period while calculating the tariff for the first control period 2011-16.	This is on account of the shortfall of previous ad-hoc determination by AERA.
	AERA has to spell out the policy regarding carryover of loss from previous control period or period prior to affective control period.	AAI has concessioned the airports as PPPs and is under an obligation to ensure that the PPPs run on a viable and profitable basis and the terms of the concession are adhered to.
	It is felt that AERA should consider actual operational loss for the previous periods instead of calculating it on ARR method.	Consideration of only actual loss and not ARR means that no return will be allowed to the airport operator. This is a wrong methodology and this will mean the airport operator will be not be entitled to any return on its investments. The pre control period losses are owing to the lower tariff w.r.t the eligibility in terms of ARR in the previous period. The charges were set on Adhoc terms only and were not a permanent feature for the control period.
	The consideration of loss effective 2008 on ARR method implies shifting of control period effective 2008.	During the Ad-hoc UDF Order AERA has laid down as under: <i>"The detailed comments of the Authority on the issues raised by HIAL (as indicated in Para 18.1 above) are given in Annexure-II. Broadly, it is the Authority's understanding that the aforesaid differences are arising mainly as HIAL is taking 2010-11 estimates as firm figures. It is reiterated that the figures of 2010-11 are only estimates and therefore, Authority proposes to continue with its approach of taking actuals of 2009-10 to estimate the figures in respect of 2010-11 and 2011-12 and 2012-13. After reconciliation the UDF rate has been worked out as Rs-430/-per domestic passenger and Rs.1700/-per international passenger, exclusive of service tax, on an ad-hoc basis w.e.f, 01.11.2010 (details at Annexure III). Authority is conscious that on a detailed assessment, including bottoms up analysis of all revenues and expenditures, the UDF rates presently determined may need to be altered. This exercise will be undertaken at the final determination stage."</i>


	AAI Comments	GHIAL Response
		Accordingly this is in continuation of the earlier order of the Authority
6	Allocation of Asset	
	AERA has agreed to accept the principle proposed by HIAL to bifurcate the assets between Aeronautical and Non aeronautical asset. But it has stated that it proposed to undertake a study regarding the policy proposed by HIAL.	<p>In proposal no. 3 of the CP 09/2013-14 the Authority has stated that it proposed to commission an independent study on allocation. Following is the extract from the CP:</p> <p><i>"The Authority also tentatively proposes that it will commission an independent study to assess the reasonableness of the asset allocation submitted by HIAL and would take corrective action, as may be necessary for determination of tariffs under dual till, at the commencement of the next control period commencing with effect from 01.04.2016."</i></p> <p>Our analysis is based on scientific methodology adopted by us and we are open to its review by Authority. The classification methodology has been very clearly drafted vide a Concept Note and submitted to AERA.</p>
	It is not clear whether the security assets procured through PSF (SC) have been excluded both from the aeronautical as well as non-aeronautical assets.	No assets procured from PSF funds are there in GHIAL books. A certificate from Auditors in this respect is already submitted to Authority
	It is also not clear whether the portion of the asset like electrical installation, water supply, roads etc. which also catered to its subsidiaries (non-Airport Activity) have been apportion to its subsidiary and deleted from the Airport list.	<p>No assets which are capitalized in GHIAL RAB are exclusively used for subsidiaries.</p> <p>An Auditors certificate in this regard is already submitted to Authority</p>
	It needs to be determined whether asset like ATC Tower, Technical Block has been funded through Government grant. If so, the effect has to be given in RAB on this asset. Moreover, in case Dual Till is considered, the classification of this asset in aeronautical or non-aeronautical is to be determined.	There is no grant received form Govt exclusively for ATC. Auditor's Certificates requested by AERA for the ATC assets and usage of assets have been provided.
7	Future Capital Expenditure	

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	The general capital expenditure proposed during the period of 5 years seems to contain a number of works like modification of security hold area, modification of old duty free space which are revenue in nature and if so, needs to be deleted from the capital expenditure and RAB	The items being listed as capital in nature are capital assets and not revenue assets as being referred herein. Capitalization will be scrutinized by Auditors before they allow the same to be approved. Modification does not mean that this is opex. If any item is considered as opex the same will be allowed as opex by Statutory Auditors and will accordingly be trued up.
	The Govt. of Andhra Pradesh (GoAP) has given the land at concessional rate and no rent is to be paid during first 8 years. It needs to be examined whether the cost of the land in respect of Airport is to be included in the RAB for the first control period.	The cost of the Land is not part of GHIAL's RAB.
	Some of the assets at the Airport may be utilized for subsidiary like SEZ or hotel (non-Airport Activity). All such assets should be identified and deleted (100 % or proportionately) as utilized for the subsidiary.	No assets which are capitalized in GHIAL RAB are exclusively used for subsidiaries. Also the allocation methodologies of common areas (where common areas are allocated based on pure aero and non-aero areas) ensure that the proportionate allocation amongst aero and non-aero is there for common assets. A certificate from Statutory auditors in this regard has already been furnished to Authority.
	All assets created out of nonrefundable grant given by GoAP should be identified and deleted from RAB. Further depreciation on such assets is to be adjusted. In case it cannot be identified the same has to be deleted proportionately over all assets.	It is not possible to identify specific assets funded through Advance Development fund grant (ADFG) of Rs. 107 Crores given by GoAP. However, value of Rs. 107 Crores has been excluded from the gross assets base of GHIAL for calculation of Yield Per Pax. RAB and the corresponding depreciation also have been reduced accordingly.
9	Cost of Debt	
	The rate in respect of debt needs to be analyzed and fixed with reference to present interest rate with option of truing up the rate.	Truing up of cost of debt leaves no scope for operator to innovate and make saving in the interest cost, whereas the upper cap makes the business riskier. We request the Authority to approve an interest cost on RTL borrowings @ 12.5% and ECB @ 8.68% with no true up. RBI also has recently hiked the key interest rate

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	AAI Comments	GHIAL Response
		<p>FINANCIAL TIMES</p> <p>October 29, 2013 11:31 am India raises interest rates to combat inflation By Amy Kazmin in New Delhi India's central bank has raised its key interest rates by 25 basis points to 7.75 per cent in an effort to tackle rising inflation, a move that Raghuram Rajan, the governor, said was critical to maintain the stability needed for faster growth. http://www.ft.com/cms/s/0/da22f582-4060-11e3-a39b-00144feabdc0.html#axzz2jpx2SLIJ</p> <p>Further in future also RBI is likely to hike rates in view of the current inflation. A report from standard chartered bank in this regards confirms our stand of interest rate hike in future:</p>  <p>Economic Alert 29 October 2013 India – RBI likely to hike more</p> <ul style="list-style-type: none"> • RBI hikes repo rate, cuts MSF and announces liquidity-enhancing measures, in line with expectations • Given RBI's focus on inflation, we expect another 25bps repo rate hike at the next policy meeting.
10	Cost of Equity	
	<p>GMR, Hyderabad has stated that cost of equity should be determined taking into account the concession agreement rate of minimum 18.5 % and risk involved. AAI feels that there are various methods and policies to determine the cost of capital. AERA has to take its decision on this matter.</p>	<p>There cannot be two principles one used for privatization and the second to be applied after he has invested in project.</p> <p>Government of AP has clarified to the Authority and has reiterating clause 2.3 (b) (i) of the SSA which mandates maintaining minimum internal rate of return on equity at 18.33%.</p> <p>As per the study conducted by us on Cost of Equity, the return allowed should be 24%</p> <p>The rates proposed by MoCA were in range of 18.5% to 20.5% for Indian airports.</p>

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	AAI Comments	GHIAL Response
	It is felt that the cost of equity should be more or less same for all the airports due to the fact that at all places there is only one Airport and economic scenario and factors affecting the Aviation Industry is almost the Same at all places.	<p>It will not be correct to assume that the cost of equity to be same at all airports as there is only one airport. By this logic the return across the world also should be one only. The cost of equity may or may not be same for all the major airports as the risk profile is different of all airports.</p> <p>SBI CAPS has proposed a range (of cost of equity) between 18.5% to 20.5% for airports in India. This goes on to show that the rate of return could be in a range but not same for all.</p> <p>Risk profile of government owned airports and PPP airports may be quite different.</p>
	It is not specified whether any internal accrual has been utilized for construction of the project.	Wherever internal accrual will be available the same are considered for funding the future Capex.
11	WACC	
	WACC needs to be determined after taking into account the amount of debt utilized by HIAL towards formation of SEZ and Hotel business. The HIAL has stated that the SEZ and Hotel has mainly been finalized through debt and internal accrual.	The debts of GHIAL and debts of subsidiaries are different. The Authority has taken into consideration of this fact and accordingly has adjusted debt for determination of tariff.
	The amount of internal accrual (which has the same nature of equity) needs to be determined and decided whether to reduce it from the equity involved in the Airport.	<p>Internal accrual to the extent used for project need to get return equivalent to equity return.</p> <p>There is no logic of the same being excluded from equity.</p>
12	Depreciation	
	The AERA has proposed to charge depreciation on 100 % of the asset. It is not clear that the treatment given in respect of scrap /residual value of the asset after the life time.	<p>The scrap whenever sold will be netted off from asset value.</p> <p>The Depreciation allowed by AERA is primarily for the purpose of Building Blocks and not for the Books.</p>
13	Operating Expenses	
	Any operating expenses relating to the common asset used by the non-airport services and security is to be proportionately deleted.	<p>The Authority has taken into consideration of this fact and accordingly has adjusted expenses for determination of tariff. The opex is classified amongst Aero and Non Aero. However in single till all expenses are to be allowed.</p> <p>In case of Dual Till the appropriate allocation exercise has been done.</p>

	AAI Comments	GHIAL Response
		<p>All Users of Common Assets have a business relationship with the Airport either directly or indirectly. The Users pay either directly/ indirectly for such usage in the medium of charges, rents etc. This income is accounted in GHIAL's books and the same is considered during the tariff determination.</p>
14	Taxation and non-aeronautical revenue	
	<p>The treatment of commercial revenue inside the Terminal Building should be treated as aeronautical revenue as Terminal Bldg. is mostly treated as aeronautical asset .</p>	<p>This statement is not based on rationale.</p> <p>The commercial revenue generated within the terminal building cannot be classified as aero just because it is being earned within the terminal building.</p> <p>The portion of building used for non-aero is classified as non-aero and as such the non-aero revenue will remain to be non-aero.</p> <p>It will be wrong to treat commercial revenue inside the terminal as aeronautical revenue on plea that terminal building is mostly aeronautical.</p> <p>The Terminal Building is not treated completely as an aeronautical asset. The area has been split into non-aeronautical asset also based on floor space usage as explained in the Concept Note of Asset allocation methodology.</p>
15	Treatment of Cargo, ground handling and Fuel	
	<p>The AERA has proposed to include the cargo and Fuel dispenses activity in the aeronautical services. However, it has proposed to treat ground handling as non-aeronautical services, This aspect needs to be re-examined.</p>	<p>Cargo and Fuel are not regulated activities as per the concession agreement.</p> <p>Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement.</p>
	<p>In the Consultation Paper ground handling has been treated as non-aeronautical revenue. In case of Single Till there is no effect on this subject. However, in case of Dual Till, the classification of some assets Like Conveyor Belt, Baggage Claim Area used for ground handling activity into</p>	<p>As such the Authority is not mandated to regulate any Other Charges in respect of the facilities and services provided at the Airport.</p> <p>Cargo, Fuel and Ground Handling should be outside the regulations.</p> <p>GoAP also has clarified that Cargo, Ground Handling and Fuel should not be regulated. GHIAL has accordingly classified Cargo assets as non-aero and the revenue</p>

	AAI Comments	GHIAL Response
	aeronautical and non-aeronautical needs to be determined.	<p>therefrom also has been classified as non-aero. In our view this is what is contemplated under the Concession Agreement and the same is requested to be accepted by the Authority.</p> <p>As regards to the baggage claim area etc. it is wrongly being termed as ground handling assets as these are pure aero assets and in books of GHIAL.</p> <p>The assets such as Conveyor Belt and Baggage Claim Area are not Ground Handling assets. They are aeronautical assets and the same will not impact the Dual Till calculations.</p> <p>The Auditor's certificate has been provided clarifying the same.</p>
16	Traffic forecast.	
	The HIAL had projected a negative growth in aircraft movement and passenger movement for 12-13 and nil growth for 13-14. The growth of 13-14 needs to be analyzed with respect to the aircraft movement and passenger movement with reference to the first quarter of 13-14.	This will have no bearing while tariff determination as the Authority has proposed to allow complete true up for traffic
17	Inflation and calculation of WPI -No comments.	
18	Sensitivity analysis.	
	The AERA has calculated YPP in respect of Hyderabad Airport with the various policies and conditions stated by them in the consultation paper. We are unable to comment in absence of detailed traffic statistics and factors considered for calculation of YPP.	no comments
19	Tariff structure	
	HIAL has proposed UDF both for domestic and international arrival and the departing passengers. It has also proposed different rates for metro cities and non metro cities in respect of domestic passengers and SAARC countries and other countries in	<p>We have proposed such an innovative rate card so that it may boost traffic throughput from RGI Airport.</p> <p>As regards to discount we will request Authority to have a relook at not allowing the same. A discount on timely payment and discounts to promote growth of traffic are for overall benefit to users.</p>

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AAI Comments		GHIAL Response
	respect of international passengers.	Without these there is no innovation left in industry and finically also the industry may face problem of bad debts and industry getting into a sick mode.
	AERA in its consultation paper had stated that it proposed to levy UDF only on departing passengers, domestic and international as the concession agreement between HIAL and Govt . of Andhra Pradesh specifies UDF only on departing passengers which seems to be in order.	
	AERA has proposed UDF under two conditions -(i) with existing airport charges and (ii) with increase in airport charges as proposed by HIAL.	
	AERA may specify the policy regarding revenue to be recovered from passenger through UDF and amount of revenue to be recovered from Airline through airport charges (Proportionate).	
	AERA has not specified whether the Govt. directive/policy on Aeronautical charges like discount on small aircraft rates for Flying Club etc. will be applicable to the operator.	
20	Till System	
	It is felt that the till method should be determined taking the following factors into consideration:	
	i) Economy of the aviation sector.	The concession agreement is the most sacrosanct based on which all the developments and investments were made. Concession also predates the AERA Act. The Concession Agreement mandates regulating the
	ii) The load/burden on Air passengers.	
	iii) The return to be provided to the operator.	
	iv) Any agreement between G.O.I and the Airport Operator, if methodology is specified in the agreement.	

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AAI Comments	GHIAL Response
<p>v) Exclusivity provision reduces risk in operation/revenue generation. vi) Existing Airport closed for Commercial operation in public interest and benefit must accrue to public at large by lowering charges</p>	<p>Regulated Charges as defined in the Concession Agreement and not regulates any Other Charges in respect of the facilities and services provided at the Airport nor using the revenue therefrom to subsidize the Aero Charges.</p> <p>So, TILL envisaged in the Concession Agreement is Dual Till and we earnestly request the Authority to abide by the Concession Agreement</p>
<p>AAI has been following the principles of Single Till due to following factors:</p>	<p>The provisions of the Concession Agreement cannot be denied on the grounds that it is difficult to allocate capital expenditure and operating expenditure.</p> <p>We had presented to Authority at various forums the fact that the privatization and single till do not go hand in hand</p> <p>Various examples in this regard have also been submitted to Authority.</p>
<p>i) Difficulty in allocation of asset between aero and non aero activity. It is also difficult to classify some assets between ANS and aero activities.</p>	
<p>ii) Single till is more simplified and transparent. iii) It harmonizes the Revenue & Expenditure of Aero and non aero activities avoiding confusion and avoid various assumptions.</p>	
<p>iv) It helps to keep the aero and non aero charges lower and thereby helping the passenger and Airlines in the present socio-economic condition of India.</p>	
<p>v) It also follows the principles of cross subsidizing the aero charges and development of Airport through non-aero activities. vi) The rate fixed for aero charges are on cost plus basis.</p>	
<p>Previously there was no fixed policy/formulae for determining the Aeronautical charges . The charges were low and stress/incentive was given on non-aeronautical Revenue to make the Airport viable .</p>	

ACI comments	GHIAL Response
Form of regulation:	
AERA has mandated single till regulation as the preferred mode of regulation for Hyderabad Airport. The most controversial decision on part of regulators worldwide is the treatment of non-aeronautical revenues. In particular, whether those revenues, or at least the profit from those revenues, should contribute to aeronautical costs. This is commonly referred to as single till vs. dual till regulation.	We appreciate the detailed analysis carried by ACI and shall request the Authority to adopt a Dual Till Regulation for GHIAL based on the principles contemplated in concession agreement.
ACI believes that the dual till principle is the most economically sound argument in the regulatory till debate.	
The main arguments put forward in favour of dual till are:	
Regulation should be applied only to those areas of airport activity where there is the potential for excess market power. This is not the case in regards to non-aeronautical revenues, where airport can face competition from a wide of alternative providers (e.g., "high street" shops and restaurants for retail and food & beverage, third party parking providers near airports, etc.).	
Niemeier (2009) argues that it is passenger spending and not airlines that create non-aeronautical revenues and therefore the airlines have no automatic entitlement to benefit from these revenues. Furthermore, while dual till may result in higher aeronautical charges, regulation should not try to regulate profits directly as this reduces incentives for cost savings from which the airlines also gain, especially in the long run.	
Starkie (2001) argues that dual till significantly reduces the likelihood that airports will exploit any market power they may have, as airports will be incentivised to keep aeronautical charges lower in order to maximise unregulated commercial revenues (airports as two-sided platforms – see Section 2.4).	
Dual till pricing increases incentives to invest in airport facilities, thereby encouraging investment and increasing capacity. Under single till, any gains in non-aeronautical revenues flow through to reductions in aeronautical charges. Therefore, airports have little incentive to invest in capacity either to increase traffic (as aeronautical investment would do) or increase non-aeronautical revenues (through investment in commercial capacity). Dual till avoids this distortion. However, the UK Competition Commission considered the application of dual till for regulated London airports (Heathrow, Gatwick and Stansted), and determined that there was no evidence of under-investment that resulted due to the single till method applied to the London airports. The Commission also stated that it was unclear whether dual till would lead to better aeronautical investment in the future. In their view, dual till could be inferior to single till, unduly favouring commercial investment	

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ACI comments	GHIAL Response
<p>where financial constraints exist.³ Starkie (2002) criticised the logic of the Competition Commission decision, as well as its failure to fully consider congestion issues at the London airports.</p>	
<p>Another limitation of the single till approach is that aeronautical charges are not set according to economic principles when there are congested conditions. This can increase congestion at an airport that is nearing capacity. Since aeronautical fees are reduced by net non-aeronautical revenues, the prices charged to airline users for landing and the use of the terminal are lower than their economic and social costs. Starkie and Yarrow (2001) argue that single till exacerbates this problem of stimulating more congestion - as greater numbers of passengers are squeezed into congested facilities, commercial revenues will rise, resulting in further declines in aeronautical fees (all else being equal), which encourages more airline service to the now lower priced airport. So under conditions whereby rising charges should be required in order to ration capacity and incentivise investment, the exact opposite occurs. Thus, dual till is preferable at airports under conditions of congestion. Yang and Zhang (2011) also argues that dual till regulation yields higher welfare at significantly congested airports.</p>	
<p>The additional income from non-aeronautical revenue is essential for favourable credit ratings and the airport's ability to attract investors, private or public (and the associated financing of large infrastructure projects). Without control over these revenues, airports would be considered less attractive investments, reducing their ability to obtain low cost financing. Ultimately, this benefits airlines, at it reduces the costs of capital improvements.</p>	
<p>Bel and Fageda (2010), based on airport charges at 100 airports in Europe, found <u>no statistical difference between the single till and dual till on the overall level of charges.</u></p>	
<p>Adler and Liebert (2012) examined the cost efficiency and charges of European and Australian airports over a 10 year period.⁸ The analysis found <u>that dual till produced greater cost efficiencies than single till</u> and that dual till results in higher charges at congested airport (than single till) but lower charges at uncongested airports, the latter result supporting the arguments of Starkie (2001) regarding dual till restraining market power.</p>	
<p>The issue of single till vs. dual till continues to generate considerable debate However the empirical evidence suggests that the conception that single till airports are cheaper do not entirely hold true.</p>	

ACI comments	GHIAL Response
Also important is the fact the state had contemplated a Dual Till regulation of Hyderabad in the concession agreement. As such the regulator must respect the concession agreement and adopt a Dual Till form of regulation rather than a single till regulation.	
ICAO's Stance on Till	
The International Civil Aviation Organization (ICAO) is a United Nations agency responsible for promoting the safe and orderly development of international civil aviation throughout the world. It sets standards and regulations necessary for aviation safety, security, efficiency and regularity, as well as for aviation environmental protection.	We appreciate the detailed analysis carried by ACI and shall request the Authority to adopt a Dual Till Regulation for GHIAL. This is based on the principles contemplated in concession agreement.
ICAO's recommended policies for airport pricing are set out in "ICAO's Policies on Charges for Airports and Air Navigation Services", Document 9082, Ninth Edition, 2012.9 The document does not recommend that economic regulation of airports be always applied nor does it specify a particular format of regulation. It does state that any such economic regulation (referred to as economic oversight) should match the specific circumstances in each country state, including degree of competition, balance of cost and benefits of oversight and institutional framework, and should be clearly separated from the operation and provision of airport (and air navigation) services. This economic oversight should seek to minimise the risk of market power abuses, ensure transparent and non- discriminatory pricing, encourage cost-effective investment, and balance the interests of passengers and other users with those of the airport (or air navigation provider).	
In regards to the setting of airport charges, Document 9082 encourages States to incorporate in their national legislation the four key charging principles of: non- discrimination, cost-relatedness, transparency, and consultation. However, it is neutral as to whether non-aeronautical revenues should subsidize aeronautical charges:	
"The cost to be allocated is the full cost of providing the airport and its essential ancillary services, including appropriate amounts for cost of capital and depreciation of assets, as well as the costs of maintenance, operation, management and administration. Consistent with the form of economic oversight adopted, these costs may be offset by non- aeronautical revenues." (Page II-1; emphasis added).	
In other words, ICAO does not provide a recommendation for the application of single or dual till pricing.	
In case of Hyderabad since the agreement signed with state stipulate a Dual till and the act puts responsibility on the regulator to abide by the concession a Dual Till need to be adopted.	

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ACI comments	GHIAL Response
Cost of Capital	The 18.33% was the minimum Equity IRR (equivalent to Cost of Equity of 24%) promised at time of award of concession.
The rate of return on capital needs to be sufficient to maintain adequate investment in the airport over the life time of the assets, and results in airport charges which further users' reasonable interests. ¹¹	
One common approach is to estimate the Weighted Average Cost of Capital	Non Adherence to this leads to a noncompliance to a sovereign agreement.
(WACC) which involves weighting together the cost of debt and cost of equity:	
	As such it is earnestly requested that a minimum Equity IRR of 18.33% is maintained
$(Pre-tax) WACC = g \times rd + (1 - g) \times re$	
Where g is the gearing ratio (net debt/total value), rd is the return required on debt; and re is the return required on equity. The required return on debt is generally assessed based on the airport's credit rating (i.e., the typical interest rate charged to companies with similar credit ratings and debt levels).	
Another common approach to determining the return on equity is via using the Capital Asset Pricing Model (CAPM), which is based on the risk free rate, the equity risk premium (ERP) for the market as a whole, and the company-specific risk parameter (the beta): ¹²	
$re = \text{Risk Free Rate} + \text{beta} \times \text{ERP}$	
The beta in this equation is a measure of the riskiness of the firm in question relative to some asset benchmark (e.g., the stock market). Firms that exhibit a beta of more than 1 can be considered more risky than the asset benchmark, while a beta of less than 1 are less risky than the asset benchmark. The riskier an asset, the higher return that investors will require on their investment. In the case of airports, the beta involves considerations not only of how risky the airport industry is relative to other industries, but also how risky a particular airport is relative to its peers, often based in part on the volatility of traffic at the individual airport. The decision of the regulator on the appropriate beta for a particular airport can significantly affect the return charged on capital investments, and the ability of the airport to raise financing.	

ACI comments	GHIAL Response
<p>Given their importance, the calculation of the WACC and its constituent parts can require considerable analysis and research. <u>A permitted WACC set too low can result in delayed or inadequate investment, as investors seek higher returns elsewhere</u>, while a WACC set too high can result in customers paying prices higher than would occur in a competitive market.</p>	
<p>The values are normally set at the start of the regulatory period based on market conditions at the time, and remain fixed throughout. This can result in the airport achieving returns above or below the WACC (for example if market interest rates decline or increase after the regulatory decision). Airports can also potentially attempt to achieve higher return by selecting a gearing ratio different to the regulator's which provides a lower cost of capital. To avoid perceived "windfall" gains from such activities, some regulators have sought to address this by selecting a projected or optimal gearing ratio rather than relying on historical values.</p>	
<p>The concession agreement of Hyderabad airport contemplates an Equity IRR of minimum of 18.33%. This should be the minimum that the regulator must allow for Hyderabad airport to ensure:</p>	
<p>1 The sovereign agreement is honored</p>	
<p>Service Quality</p>	<p>In terms of the AERA Act it is clear that the role and jurisdiction of the Authority is limited to monitoring</p>
<p>A number of approaches have been suggested and attempted. These include quality monitoring without financial penalty, financial fines or user rebates for failing to meet certain service quality targets, or incorporating service quality into the price cap itself could be reduced by subtracting a service quality factor, q:</p>	
<p>Price cap = CPI – X – q</p>	
<p>The service quality factor q would be based on specified metrics regarding service quality (e.g., queue times, cleanliness, delays, etc.). Thus, the price cap would be adjusted downward in a later year if the airport failed to achieve to certain service quality targets in a given year (or possibly <i>adjusted upwards if it exceeded the targets</i>).</p>	
<p>Issues Associated with Service Quality Regulation</p>	
<p>There are a number of issues associated with the regulation of service quality within the broader economic regulation of an airport:</p>	
<p>Targets and metrics are set by a regulator rather than the market.</p>	

ACI comments	GHIAL Response
These targets and metrics are inflexible – the regulated entity cannot respond to changing market conditions or evolving customer needs and wants. In many cases, different customers have different needs and wants – service quality regimes typically do not have the ability to cater for different passenger groups.	compliance of the service quality standards prescribed under the concession agreement. The prescription of any new services standards is not envisaged.
Service quality levels are often facilitated by allowed operating and capital costs, which within a regulatory determination are often influenced by airlines. This can lead to a tension between the requirement to meet certain service quality standards and the approval of the operating and capital resources required to reach these standards.	While Section 13(1)(a)(ii) of the AERA Act permits the Authority to consider the services provided, its quality and other relevant factors in determining the tariff, there is no explicit power vested with the Authority to prescribe any penalties under the AERA Act in the event of a failure to meet service quality requirements.
The consequences of service quality schemes are not always symmetrical - if the airport underperforms it is penalised, but if it over performs it is not rewarded. The service quality regulation should to provide symmetrical incentives – rewarding overachievement as well as penalising under achievement.	In view of the Authority being required to take the terms of the concession agreement into consideration for determining tariff and in view of the concession agreement already providing for a mechanism for penalties for failure to achieve service quality requirements, the Authority should not only take into consideration the service quality requirements, but also the penalties for failure to meet service quality requirements as set forth therein. Any penalties prescribed by the Authority for failure to meet the said service quality requirements would effectively tantamount to the Authority not taking into consideration the terms (including penalties) of the Concession Agreements and therefore would not be
Service quality at an airport depends upon cooperation between many different players – primarily airlines, airport and ground handlers, but also government services, surface transport providers, retailers, etc. Service quality regimes are generally imposed upon airports only,	
dulling the incentives of other parties to cooperate in improving the passenger experience. At a minimum, service quality schemes should only cover areas where the airport has direct control and responsibility (e.g., security screening queue times) and not areas where other parties have influence.	
As service quality at an airport depends upon cooperation between different players, regulators should consider schemes such as at Copenhagen Airport, where the airport, airlines and handlers are incentivised to work together, with the airport shouldering most responsibility.	
We understand that the AERA act contemplates a monitoring of the performance standards with no penal provisions. As such AERA must monitor the performance standards and in case of any violations can report the same for penal provisions as signed with the state.	

CP 09/2013-14 (01.04.2011 – 31.03.2016)

Determination of Aeronautical Tariff of Rajiv Gandhi International Airport, Shamshabad, Hyderabad

ACI comments	GHIAL Response
We shall also recommend for an incentive scheme if the quality levels are exceeded.	consistent with the AERA Act Therefore, Authority is requested not to impose additional standards and penalties over and above those enumerated in the CA. Additional quality parameters, maintaining these standards, and monitoring requires additional capital and operating expenditure. The same needs to be allowed over and above the amounts allowed by Authority. As such the Authority is requested to continue with the methodology as prescribed under Concession Agreements for compliance, monitoring and penalties for non-conformity.
Land usage and the treatment	
AERA has contemplated a unique model of the treatment of land at Hyderabad airport. This kind of treatment has never been contemplated in any of the regulatory regimes in world.	ACI has very well pointed out the lacuna in the proposed treatment of land by the Authority. This kind of mechanism is not followed anywhere across the globe.
The reduction of market value of Land from RAB, (when it's not existing in the	
RAB at first place) is a treatment never done in any regulatory regime.	
AERA itself has confirmed that in normal course the land should be outside the regulation:	On a conjoint reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement and not regulate any Other Charges in respect of the facilities and services provided at the Airport nor using the revenue therefrom to subsidize the Aero Charges.
<i>"3.9. The real estate development by the airport operator through commercial exploitation of land leased or granted to it, which is in excess of the airport requirement, would normally be outside the RAB boundary. This means that the revenues from commercial exploitation of such lands would, in normal course, not enter into the calculation of revenues required for aeronautical tariff determination."</i>	
This is a clear admittance on part of AERA that the Land should be outside the regulations.	
The concession agreements signed by Hyderabad airport also did not contemplate this kind of treatment and we understand that since this land is outside the airport it is also outside the regulatory jurisdiction of AERA.	The value of the land earmarked

ACI comments	GHIAL Response
As such we shall request AERA to keep the land outside regulation. AERA should not reduce market value of land from RAB nor do cross subsidize revenues accruing thereto.	for Non-Airport Activities (market or notional) cannot be included in nor deducted from the RAB and accordingly the revenue generated therefrom cannot be taken into account for cross subsidizing aeronautical tariff at airport.

Rajiv Gandhi International Airport, Shamshabad, Hyderabad
Response to Comments of ASSOCHAM

ASSOCHAM Comments	GHIAL Response
<p><u>Regulatory decisions must take a Macro View and think of long term benefit of airlines and passengers:</u></p> <p>Better infrastructure has many advantages. In airports, lower turnaround time and fuel saving at better airports have far greater saving than lowering airport charges. Investments in capacity constrained airports result in several benefits for the airlines.</p> <p>Better airports will result in lesser delays in landing and taking off and ensuring quicker turnarounds, which in return reduces manpower and fuel costs for airlines. This in turn will mean a lower cost to consumer.</p> <p>However low charges (by inadequate return to investor) will result in lower investment by private sector. This will lead to capacity constraints and inefficient operations.</p> <p>The quality of service and efficiency of Indian airports now is a benchmark for the world. London Mayor had visited India and was all praise for Hyderabad Airport. To quote a news article on this (Source: Hindu)</p> <p>Hyderabad, Delhi airports floor London Mayor Boris <i>Hyderabad and Delhi airports are top class. Waxing eloquent on the Rajiv Gandhi International Airport in the city, London Mayor Boris Johnson said a similar airport would be built in East London. He said London needed to catch up with India when it comes to aviation capacity.</i></p> <p>India now is on world stage and the next era belongs to India. Let this start not be nipped in bud.</p>	<p>We are of the view that the short term vision wherein the charges will get lowered by strangulating the investor can be counterproductive to the end user in long term.</p> <p>An unattractive return will mean that the investor will not be interested in investing in the infrastructure of airport. The investor has many parallel investment opportunities and a lower return means that he will avoid investing in this sector.</p> <p>This will mean that the quality level will suffer at airport.</p> <p>This will mean that traveller will be subject to poor infrastructure.</p> <p>Airlines will get congested airports leading to huge waiting and hovering time adding to their costs.</p> <p>The economy of the country will suffer because of above.</p>

ASSOCHAM Comments	GHIAL Response												
<p><u>Nurturing of Industry</u></p> <p>Airport regulatory oversight will decide on whether industry is nurtured or killed. Given proper incentives Indian airports will become hubs. Airport hubs development will mean greater traffic and lower cost to consumer-One of the first results of privatization will be in developing international airports as hubs, modeled around successful commercial airports like Changi, Dubai and Frankfurt. Uncompetitive charges can deflect traffic to neighboring hubs, thereby causing more harm than good to the operator. Thus, an airport operator will systematically mind the prices on the aeronautical side. Development of hubs is also likely to benefit the airlines in the future.</p> <p>The race to create hub will itself ensure competitive pricing: The percentage of nonaeronautical revenues in Indian airports is extremely low (around 30%), whereas developed airports around the world earn a high percentage of revenues from this category. Indian airports are vying to be international hubs. However if the non-aerorevenue is regulated it will result in killing of the segment. While, India had witnessed a period of high passenger growth, the economic recession that followed has imposed severe risks on the investors.</p>	<p>There is a support needed from the Govt and the regulators to ensure that India do not lose out on the opportunities.</p>												
<p><u>Airports are lumpy investment and lack flexibility and this special characteristic should be kept in mind</u></p> <p>Airports are for long term and sunk costs with no flexibility available. Airports, as lumpy investments can only be forward-looking and need to plan for the future which is very uncertain. In the Indian scenario, airport supply had always lagged demand, causing severe constraints in service quality and therefore, adequate capacity planning should be seen as a welcome change. Airport planning is not only governed by demand, but also by the specific elements in the concession agreements that have been signed with the authorities that mandate stringent capacity requirements, meeting which involves heavy investments that are in-eversible.</p> <p>With such uncertainties in mind there are a lot of risks and uncertainties associated with this sector compared to other utility sectors such as electricity. As such the investor in segment needs to be adequately compensated to remain invested in the sector.</p>	<p>Following are results of some of the studies carried out by various experts on cost of equity. These are very established organizations of national and international repute. These studies were carried out on behalf of the Airports, the industry associations as well as MoCA, GOI. However the report of NIPFP relied by Authority have no such experience. The resultant number of NIPFP is nowhere near the estimates of these reports.</p> <table> <tr> <td colspan="2">Cost of Equity</td></tr> <tr> <td>Jacobs</td><td>24%</td></tr> <tr> <td>KPMG (for APAO)</td><td>20%-25%</td></tr> <tr> <td colspan="2">based on debt equity ratio.</td></tr> <tr> <td>SBI Caps (For MoCA/AAI)</td><td>18.5% to 20.5%</td></tr> <tr> <td>CRISIL (For MIAL)</td><td>18.16 to 20.44 %</td></tr> </table>	Cost of Equity		Jacobs	24%	KPMG (for APAO)	20%-25%	based on debt equity ratio.		SBI Caps (For MoCA/AAI)	18.5% to 20.5%	CRISIL (For MIAL)	18.16 to 20.44 %
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ASSOCHAM Comments	GHIAL Response
	<p>based on debt equity ratio. NIPFP 13.2%</p> <p>Cost of Equity proposed by the Authority is very low and we request the Authority to reconsider the same.</p>
<p><u>Planning Commission</u></p> <p>Indian Infrastructure sector required USD 1 trillion of investments in the 12th Five-Year Plan. The Finance Minister has sought a greater degree of involvement of foreign investors in his meeting with the leaders of Fortune 500 companies at a meet recently. The Minister has assured foreign investors that India has evolved a transparent and stable regulatory regime across various sectors including airports.</p> <p>Planning commission expects USD 500 bn (or 50% of total) capital from private players in next 5-year plan period (12th Plan). In sectors such as aviation, the contribution is expected to be even higher at approximately 75%. Estimates received from AAI and the industry indicate that the Indian airports would require an investment of about Rs.67,500 crores during the 12th Five Year Plan of which around Rs.50,000 crores is likely to be contributed by the private sector.</p> <p>Hence preserving the interest of investors becomes the prime importance, to achieve future growth in Infrastructure which is a key enabler for all other industries.</p>	<p>The investment envisaged by Planning commission could be met only with right kind of incentive to the sector.</p> <p>Its earnestly requested that the Authority must:</p> <ol style="list-style-type: none"> 1. Allow a Dual Till 2. Allow a return on Equity of 24% 3. Keep Regulating charges as contemplated in concession 4. Keep the incentives given in the concession intact including treatment of land.

ASSOCHAM Comments	GHIAL Response																
<p>Return on Equity One of the most critical aspects that would define success of the ambitious plan would be the rate of return on the capital deployed by private players on their investments across different sector, commensurate to the risk taken. Any indication that the returns to the investors in the future would be sub-optimal will be disastrous for the investment climate for private participation in PPP. Government will need to ensure a fair return, especially in sectors that are regulated. Specifically on airports, they are often perceived as more risky than other infrastructure sectors like power, ports, roads, etc. Aviation sector is cyclical in nature and the degree of severity or volatility in cash flows is higher. We understand that the concession agreement envisaged a minimum IRR of 18.33% on equity. This minimum should not be breached as proposed by Authority.</p> <p>Even Ministry of Civil Aviation (MoCA) has recommended return on equity in the range of 18.5% to 20.5% based on the report of SBI Caps. Current proposed rate of 16% in the consultation paper is lower than the recommendation of MoCA.</p>	<ol style="list-style-type: none"> 1. The minimum equity IRR of 18.33% promised under the GO No.130 dated July 26, 2013 issued by GoAP and the State Support Agreement is integral to the concession 2. The Authority is requested not to alter or vary the assurance of minimum 18.33% Equity IRR granted to GHIAL. 3. Also the following are results of some of the studies carried out by various experts on cost of equity. These are very established organizations of national and international repute. These studies were carried out on behalf of the Airports, the industry associations as well as MoCA, GOI. However the report of NIPFP relied by Authority have no such experience. The resultant number of NIPFP is nowhere near the estimates of these reports. <p>Cost of Equity</p> <table> <tr> <td>Jacobs</td><td>24%</td></tr> <tr> <td>KPMG (for APAO)</td><td>20%-25%</td></tr> <tr> <td colspan="2">based on debt equity ratio.</td></tr> <tr> <td colspan="2">SBI Caps</td></tr> <tr> <td>(Study for MoCA/AAI)</td><td>18.5% to 20.5%</td></tr> <tr> <td>CRISIL (For MIAL)</td><td>18.16 to 20.44%</td></tr> <tr> <td colspan="2">based on debt equity ratio.</td></tr> <tr> <td>NIPFP</td><td>13.2%</td></tr> </table>	Jacobs	24%	KPMG (for APAO)	20%-25%	based on debt equity ratio.		SBI Caps		(Study for MoCA/AAI)	18.5% to 20.5%	CRISIL (For MIAL)	18.16 to 20.44%	based on debt equity ratio.		NIPFP	13.2%
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<p>Concession Agreement Concession agreement is the prime agreement based on which all the business decision were made at the time of taking up the project. Any change in interpretation of the concession document post facto will send wrong signal to the investor community and will be impediment in growth in the aviation sector. Concession agreements should be complied in totality. The concession agreements formed the basis of extended international bidding processes followed by major private</p>	<p>The concession agreement laid down certain incentives and assurances based on which the investment was made into the sector.</p> <p>The said promises need to be adhered.</p> <p>Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the</p>																

ASSOCHAM Comments	GHIAL Response
<p>sector investment in airports. The terms under which the airports would be regulated were a central component of both bidding and investment decisions. The extent to which they are abided by therefore is a key indicator of whether similar agreements entered into by the Government of India (GOI) could reasonably be Concession Agreement</p> <p>Concession agreement is the prime agreement based on which all the business decision were made at the time of taking up the project. Any change in interpretation of the concession document post facto will send wrong signal to the investor community and will be impediment in growth in the aviation sector. Concession agreements should be complied in totality. The concession agreements formed the basis of extended international bidding processes followed by major private sector investment in airports. The terms under which the airports would be regulated were a central component of both bidding and investment decisions. The extent to which they are abided by therefore is a key indicator of whether similar agreements entered into by the Government of India (GOI) could reasonably be expected to be followed. In other words it will form the basis of investors' assessment of Indian sovereign risk.</p> <p>The provisions of the concession agreements could not be worsened without significant collateral damage. Such damage would include:-</p> <ol style="list-style-type: none"> Triggering a demand on the Government for a compensation and or renegotiation of the concession terms Creating doubts in the minds of Indian and international equity investors and debt providers over the sovereign risks associated with future private public partnerships leading to reluctance to invest and/or higher costs. 	<p>Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement. As such Authority is not mandated to regulate any Other Charges in respect of the facilities and services provided at the Airport.</p> <p>This clarifies that Cargo, Ground Handling and Fuel services should be kept outside the regulation.</p> <p>The rationale of the same is as under:</p> <p>Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement.</p> <p>Section 13 of the AERA Act states as under:</p> <p>“13. Functions of authority- (1) The Authority shall perform the following functions in respect of major airports, namely:-</p> <ol style="list-style-type: none"> (a) to determine the tariff for the aeronautical services taking into consideration- <ol style="list-style-type: none"> (i) the capital expenditure incurred and timely investment in improvement of airport facilities; (ii) the service provided, its quality and other relevant factors; (iii) the cost for improving efficiency; (iv) economic and viable operation of major airports; (v) revenue received from services other than aeronautical services (v) revenue received from services other than the aeronautical services;
<p>Indian airports have done India proud. They are rated amongst the best airports in world. Passenger for the first time has seen world class infrastructure. Regulatory decisions will go a long way in deciding on the way this journey will continue in future. The concession agreement was signed much prior to existence of the AERA Act hence the Authority should adhere to the concession agreement as it was the basic agreement on basis of which investment was made. After enactment of the act the basic premise contained in concession cannot be taken away.</p>	

ASSOCHAM Comments	GHIAL Response
	<p>(vi) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise;</p> <p>(vii) any other factor which may be relevant for the purposes of this Act: Provided that different tariff structures may be determined for different airports having regard to all or any of the above considerations specified at sub-clauses (i) to (vii)" (...emphasis added)</p> <p>A perusal of Section 13 of the AERA Act makes it clear that while determining tariff for aeronautical services, AERA is statutorily obligated to consider the concession offered to the Airport Operators by the Central Government and the other agreements which form an integral and inalienable part of such concession.</p> <p>Reading of Section 13(1)(a)(vi) indicates that the concession granted by the Central Government has to be read into the AERA Act and all its provisions as well as limitations contained therein have to be considered by AERA while determining tariff including while deciding which services in a particular case and in terms of the relevant Concession, can be regulated by AERA.</p> <p>This is further confirmed by a reading of the proviso to Section 13(1)(a) of</p>

ASSOCHAM Comments	GHIAL Response
	<p>the AERA Act which states that "different tariff structures may be determined for different airports having regard to all or any of the considerations specified at sub-clauses (i) to(vii)" in the said section. In other words, the AERA Act recognizes that a straightjacket applicability of its provisions to all major airports is not intended and grants flexibility to AERA to determine tariff structures to different airports having regard to various considerations including the concession granted by the Central Government.</p> <p>Thus, even though the AERA Act empowers AERA to regulate tariff for Aeronautical Service as defined in Section 2(a) of the AERA Act, in case any concession has already been granted by the Central Government, AERA is statutorily mandated to consider such concession.</p> <p>In the case of RGIA, since one of the concession granted by the Central Government is that save for the 'Regulated Charges', the GHIAL shall be free without any restriction to determine all Other Charges. Thus, on a reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement, AERA is only empowered to regulate the Regulated Charges as defined in the Concession Agreement (as an exception to the mandate of the Act</p>

ASSOCHAM Comments	GHIAL Response
	<p>which is recognized and allowed by the Act itself) and cannot regulate any Other Charges in respect of the facilities and services provided at the Airport including the other Aeronautical Services as defined in Section 2(a) of the AERA Act.</p> <p>As such Authority is not mandated to regulate any Other Charges in respect of the facilities and services provided at the Airport.</p> <p>This clarifies that Cargo, Ground Handling and Fuel services should be kept outside the regulation.</p> <p>GoAP:</p> <p>GoAP also has clarified that Cargo, Ground Handling and Fuel should not be regulated. GHIAL has accordingly classified Cargo assets as non-aero and revenue from Cargo, Ground Handling and Fuel services has been classified as non-aero. In our view this is what is contemplated under the Concession Agreement and the same is requested to be accepted by the Authority.</p> <p>The Authority should abide by the Concession Agreement otherwise this will send negative signals to the investor community.</p>

	APAO Comments	GHIAL Response
4.1	<p>APAO submits that it is important that AERA reconsiders its approach of imposition of Single Till, since India could become something of an international outlier, with detrimental effects on its ability to attract major investment. It is clear that ICAO policies encompass the possibility of Dual Till and that one of the grounds that AERA has previously adduced for Single Till does not therefore stand. In these circumstances, AERA needs to reconsider whether Single Till is the most appropriate system for regulation of RGIA. As identified above, Single Till is neither the system most commonly applied to major private international airports, nor that which is most likely to generate the investment that the Indian aviation sector requires.</p>	<p>We appreciate the views of APAO.</p> <p>The concession agreements of GHIAL clearly mandates an implied dual Till and the same needs to be adopted for GHIAL.</p>
4.2	<p>It is evident from Articles 10.2 and 10.3 that the Concession Agreement has clearly defined as to which charges would be regulated and which charges would be free from regulation.</p> <p>The Authority's view conflicts with the Concession Agreement which clearly bifurcates the regulated and other charges. Bringing the other charges under the ambit of regulation by imposing the Single Till approach goes against the letter and spirit of the Concession Agreement. As per APAO's understanding, the GoAP has written a letter to the Authority wherein it has clarified that Article 10(3) of the Concession Agreement gives the right to HIAL to set tariffs for non-airport facilities and services and that the concession does not envisage cross subsidy from non-aeronautical revenues to defray aeronautical charges.</p>	<p>A conjoint reading Concession Agreement, State Support Agreement and the Land lease Agreement indicates that the following concessions and assurances have been granted to the GHIAL at the time of the grant of the right/concession to develop the Airport, namely:</p> <p>The Concession Agreement defines and differentiates between mandatory 'Airport Activities' consisting of aeronautical as well as non-aeronautical activities at the Airport and non-mandatory 'Non-Airport Activities' which the GHIAL is entitled to undertake at the Land (as defined under the Land Lease Agreement).</p> <p>Thus, in addition to the rights granted to the GHIAL for setting up and operating the RGIA, certain additional rights have been granted for the purpose of development of the additional land. In this regard, the Concession Agreement also makes a distinction between "Airport Activities" and Non-Airport Activities". While Airport Activities has been defined under</p>

APAO Comments	GHIAL Response
	<p>Article 1.1 of the Concession Agreement to mean “the provision, at or in relation to the Airport, of the activities set out at Schedule 3, Part 1 as amended from time to time, pursuant to ICAO guidelines, provided that any activities that are not materially similar to those contemplated in Schedule 3, Part 1 shall require the mutual agreement of the Parties”, Non-Airport Activities means “the provision, at or in relation to the Airport, of the services set out at Schedule 3, Part 2”.</p> <p>Schedule 3, Part 2 of the Concession Agreement provides for the Non-Airport activities which consist of real estate activities.</p> <p>In view of the above, it is pertinent to note that the land earmarked for development of Non-Airport Activities as well as the cost of setting up and carrying out the Non-Airport Activities is not to be considered for the purpose of arriving at ‘total project costs’ of the Airport. GHIAL is permitted to utilize the said land parcel out of the total Land for carrying out Non-Airport Activities totally unconnected with the Airport business.</p>

APAO Comments	GHIAL Response
<p>4.3 The ICAO policy does not specifically endorse Single Till regulation and leaves the choice of till to the member states based on their local conditions and circumstances. It also states that costs may be offset by revenues depending upon the form of economic oversight adopted. It is APAO's view that it would be essential for the Authority to ensure that the till approach sought to be made applicable to RGIA is also in line with the Concession Agreement which does not seek to regulate the 'Other Charges' nor does it contemplate any cross subsidization either from non-airport revenues or from Other Charges as envisaged in concession. In light of this, APAO humbly submits that the Authority's proposition to undertake such cross subsidization is not acceptable.</p>	<p>The Authority's earlier adoption of Single Till was based on the inference of ICAO principles supporting a Single Till.</p> <p>Since the above no more hold true it is earnestly requested that Authority does a rethink on the adoption of Single Till</p>
<p>4.4 Under Section 13 of the AERA Act, the Authority is statutorily required to consider the concession offered to the airport operators by the Central Government, as well as the other agreements which form an integral and inalienable part of such concession.</p> <p>Section 13(1)(a)(vi) of the Act requires the Authority to consider the concession granted by the Central Government while determining the tariffs.</p> <p>The proviso to Section 13(1)(a) of the Act states that "different tariff structures may be determined for different airports having regard to all or any of the considerations specified at sub-clauses (i) to (vii)". In other words, the Act recognizes the flexibility given to AERA to determine tariff structures for different airports having regard to various considerations including the concession granted by the Central Government.</p> <p>So even though the AERA Act empowers AERA to regulate tariff for Aeronautical Services as defined in Section 2(a) of the AERA Act, in case any concession has already been granted by the Central Government, AERA is required to consider the terms of such concession. This is an exception to the mandate of the Act which is recognized and allowed by</p>	<p>It's earnestly requested that Cargo, ground handling and Fuel should not be regulated by Authority.</p> <p>The rationale of the same is as under:</p> <p>Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement.</p> <p>Section 13 of the AERA Act states as under:</p> <p>"13. Functions of authority- (1) The Authority shall perform the following functions in respect of major airports, namely:-</p> <ul style="list-style-type: none"> (a) to determine the tariff for the aeronautical services taking into consideration- (i) the capital expenditure incurred and timely investment in improvement of airport facilities; (ii) the service provided, its quality and other relevant

APAO Comments	GHIAL Response
<p>the Act itself.</p> <p>In the case of RGIA, the concession granted by the Central Government states that apart from the 'Regulated Charges', the Airport shall be free without any restriction to determine all Other Charges. This implies that AERA is only empowered to regulate the Regulated Charges as defined in the Concession Agreement.</p>	<p>factors;</p> <p>(iii) the cost for improving efficiency;</p> <p>(iv) economic and viable operation of major airports; (v) revenue received from services other than aeronautical services</p>
<p>4.5 The Authority's contention that, as per the Act, it is required to taken into consideration agreements only with the Central Government is contrary to the MoCA's approach which does take into account the provisions of all associated agreements. The Authority also considered all associated agreements in the course of the tariff fixation of Delhi and Mumbai airports.</p> <p>APAO is of the view that all agreements associated with the concession should be taken into consideration by the Authority for RGIA too. The Authority has considered the Interest Free Loan, the Grant, the land given for the airport usage etc. in the State Support Agreement in determining the tariffs for RGIA. It therefore also needs to take into consideration the other critical aspect stated in this agreement, namely, the equity internal rate of return. APAO understands that the equity internal rate of return of 18.33% mentioned in the State Support Agreement is based on the business plan and the financial and feasibility projections in respect of the airports viability submitted to the State Government with the concurrence of the MoCA. The Authority should take this factor into account in determining the till.</p>	<p>(v) revenue received from services other than the aeronautical services;</p> <p>(vi) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise;</p> <p>(vii) any other factor which may be relevant for the purposes of this Act:</p> <p>Provided that different tariff structures may be determined for different airports having regard to all or any of the above considerations specified at sub-clauses (i) to (vii)"</p> <p>(...emphasis added)</p> <p>A perusal of Section 13 of the AERA Act makes it clear that while determining tariff for aeronautical services, AERA is statutorily obligated to consider the concession offered to the Airport Operators by the Central Government and the other agreements which form an integral and inalienable part of such concession.</p> <p>Reading of Section 13(1)(a)(vi) indicates that the concession granted by the Central Government has to be read into the AERA Act and all its provisions as well as limitations contained</p>

APAO Comments	GHIAL Response
	<p>therein have to be considered by AERA while determining tariff including while deciding which services in a particular case and in terms of the relevant Concession, can be regulated by AERA.</p> <p>This is further confirmed by a reading of the proviso to Section 13(1)(a) of the AERA Act which states that “different tariff structures may be determined for different airports having regard to all or any of the considerations specified at sub-clauses (i) to(vii)” in the said section. In other words, the AERA Act recognizes that a straightjacket applicability of its provisions to all major airports is not intended and grants flexibility to AERA to determine tariff structures to different airports having regard to various considerations including the concession granted by the Central Government.</p> <p>Thus, even though the AERA Act empowers AERA to regulate tariff for Aeronautical Service as defined in Section 2(a) of the AERA Act, in case any concession has already been granted by the Central Government, AERA is statutorily mandated to consider such concession.</p> <p>In the case of RGIA, since one of the concession granted by the Central Government is that save for the ‘Regulated Charges’, the GHIAL shall be free without any restriction to determine all Other Charges. Thus, on a reading of Section</p>

	APAO Comments	GHIAL Response
		<p>13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement, AERA is only empowered to regulate the Regulated Charges as defined in the Concession Agreement (as an exception to the mandate of the Act which is recognized and allowed by the Act itself) and cannot regulate any Other Charges in respect of the facilities and services provided at the Airport including the other Aeronautical Services as defined in Section 2(a) of the AERA Act.</p> <p>As such Authority is not mandated to regulate any Other Charges in respect of the facilities and services provided at the Airport.</p> <p>This clarifies that Cargo, Ground Handling and Fuel services should be kept outside the regulation.</p> <p>GoAP: GoAP also has clarified that Cargo, Ground Handling and Fuel should not be regulated. GHIAL has accordingly classified Cargo assets as non-aero and revenue from Cargo, Ground Handling and Fuel services has been classified as non-aero. In our view this is what is contemplated under the Concession Agreement and the same is requested to be accepted by the Authority.</p>
4.6	It is understood that the Planning Commission has written a letter dated October 6, 2010 to the Authority in which it has stated that the choice of economic regulation is an important factor in attracting private sector	Even the Planning Commission is not in favor of Single Till. We request the Authority to reconsider its stand taken for regulatory till.

APAO Comments	GHIAL Response
<p>investment. It has also opposed the Single Till approach. The private sector would only be willing to invest in the airport sector provided it is incentivized in a manner which is attractive and at the same time affords the user, better air connectivity at an affordable price. In the 12th Five Year Plan (2012-2017), the Planning Commission has projected an investment of Rs.710 billion for the development of airport infrastructure in the country. Of this, Rs.570 billion is expected to be invested by the private sector. It is therefore imperative that the regulatory framework is investor friendly. A case in point is that though as per the Government's liberalized policy, 100% Foreign Direct Investment (FDI) is allowed for the development of Greenfield airports, the airport sector hasn't managed to attract FDI. This situation underscores the need for a predictable and conducive regulatory environment which creates confidence in, and attracts, investors. It is particularly important to note this in light of the Prime Minister and Planning Commission Chairman both announcing over Rs. 20,000 Crore investment in airports through PPP mechanisms in June 2013. In addition, given the 'lumpy' nature of Airport CapEx and investment, it is unusual that the Authority has taken the opaque view in the Consultation Paper as stated in 4.6.1.1 that the meaning implied is that the target amount of money is 'invested as equity'. Globally, airport infrastructure investment has been historically based on funding through debt and equity and the policies followed by Indian operators including HIAL, is no different. There is little to no chance that investors will fund airport investments through a majority equity infusion given typical size of investments, especially of the quantum required in India and particularly on greenfield airport projects. This to us seems a wholly unreasonable and unrealistic assumption by the Authority and one that we believe should be reconsidered.</p>	

APAO Comments	GHIAL Response
<p>Similar to the CC's observation in 4.7.(.1 above, the circumstances in respect of RGIA would be completely different from the three London airports. The setting up of RGIA in particular was unique because it was the first Greenfield airport which was developed using the PPP model. Accordingly , it may not be appropriate to compare the facts and circumstances in respect of India, which belongs to an emerging market, to those of the UK which is in a mature market, in deciding the applicable regulatory approach. For example , the requirements of India for investment are likely to be greater and the risks for investors greater - both factors which should influence the choice of till. It is also notable, as identified above, that the regulatory arrangements in the UK are under review in ways which may place less emphasis on cost based regulation.</p>	<p>We appreciate APAO for highlighting the fact that setting up of GHIAL was unique because it was the first Greenfield airport developed under PPP model.</p>
<p>APAO is strongly of the view that the Dual Till approach, which has found acceptance and application globally amongst regulators, be made applicable to HIAL.</p>	<p>We appreciate the view of APAO</p>
<p>Recital E of both the Land Lease Agreement and the State Support Agreement clearly outline the fact that the project would be feasible only with provision of State Support in the form of resources (finance, land etc.) to build, own and operate the Airport which includes non-aeronautical activities as stated in 4.9.1.2 and 4.9.1.3 above. The recommendation of the Authority in the Consultation Paper would go against the spirit of the State Support Agreement and the Land Lease</p>	<p>On a conjoint reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement and not regulate any Other Charges in respect of the facilities and services provided at the Airport not using the revenue therefrom to subsidize the Aero Charges.</p>

APAO Comments	GHIAL Response
<p>Agreement which lay down that the very purpose of providing the various resources including land was to make the project feasible. The Authority seems to have taken a narrow view of the term 'project' to mean only the airport as opposed to the definition in the Land Lease agreement which defines the project to include aeronautical and nonaeronautical activities as stated in 4.9.1.1 above. Further, it also seems to have considered that financial support in the form of Advance Development Fund Grant (ADFG) and the Interest Free Loan (IFL) combined with use of land only for aeronautical activities would end up making the project feasible. It therefore does not take into consideration the fact that the use of land for non-aeronautical activities was integral to the case for developing the airport and making it financially feasible. We understand that the GoAP has written a letter to the Authority clarifying that the land was given for the socio-economic benefit of the state and that subtracting its market value from the RAB will mean that the desired benefit will not be achieved.</p> <p>The development of a Greenfield airport is a risky undertaking. It involves the construction of significant infrastructure before even a single plane can fly. There are therefore very high fixed lip front costs which are very difficult for an investor to justify. The provision of land for commercial exploitation for the period of the concession was therefore intended to provide the investor with additional sources of revenue to enable returns on the airport project to be sufficient to remunerate the capital employed . Nevertheless, the Operator also has to bear the risks associated with the various businesses forming a part of the nonaeronautical activities. And the land provided for commercial exploitation is not for perpetuity, but for the life of the concession only. The proposed deduction of the market value of such land from the RAB runs counter to</p>	<p>The value of the land earmarked for Non-Airport Activities (market or notional) cannot be included in nor deducted from the RAB and accordingly the revenue generated therefrom cannot be taken into account for cross subsidizing aeronautical tariff at airport.</p>

APAO Comments	GHIAL Response
<p>the whole purpose for which it was provided. It would mean that it is effectively being used to reduce aeronautical revenues rather than to augment the returns to the Operator from the investment made in the project. By significantly reducing the overall returns to the project, this would reduce returns of the developer/operator and negatively impact its financial viability and in a way that does so retrospectively contrary to natural justice and the principles of good regulation.</p> <p>In view of the above discussion, it is APAO's view that assigning a value to the land and subtracting the same from the RAB is not consistent with the Concession Agreement.</p> <p>The treatment proposed by the Authority also gives rise to a question whether by way of a corollary, the market value of land used for the airport business should be added to the RAB for tariff determination. It is also worth noting that the proposed treatment of non-aeronautical land is neither consistent with the theory of single till, nor with international precedents. First, in so far as there is an economic rationale for single till, it is that all the revenues attributable to airport-related activities should be taken into account. There is no good reason why this should encompass land and activities outside the airport boundary which do not arise directly from operation of the airport.</p> <p>Second, to the extent that values and/or revenues are moved into and out of the RAB, account needs to be taken of the total ity of the financial flows involved. In this case, that would mean the costs of developing any land, not just the revenues or market value.</p> <p>Based on a review ofthe practices at several global airports, it is apparent that real estate is kept outside the regulatory till and not used to cross subsidize airport charges. This practice is followed at the Belgium (Bruxelles), France (Charles de Gaulle, Orly), Germany (Frankfurt, Hamburg), Italy (Rome, Milan and Venice), Australia (Adelaide, Brisbane, Melbourne, Perth and Sydney) and New Zealand (Auckland, Christchurch</p>	

APAO Comments	GHIAL Response
<p>and Wellington) airports.</p> <p>In short, AERA's proposal is in principle inconsistent with the agreements on which the airport's development was based and investment attracted (representing a substantial retrospective adjustment to those terms) and is in practice inconsistent with regulatory best practice. Non-airport related activities should not feature in the single till and to the extent adjustments to the till are made, they need to take account of all the financial flows involved.</p>	

APAO Comments	GHIAL Response																
<p>In determining the CoE, the Authority needs to pay regard to the outcome it wishes to incentivize, in particular, the availability of investment in a fast growing aviation sector. The losses to consumers from delay in capacity being brought on stream due to lack of investment, and resulting higher fares charged by airlines, are likely to outweigh shorter term benefits from keeping the cost of equity too low. Against this background, it is crucial that the CaE provides an assurance to current -and prospective investors that returns on their investment are commensurate with the risks they have borne. The absence or adequate returns risks disincentivizing investment as investors pursue more remunerative opportunities both in India and more widely. The importance of this dimension is underlined by the potential for (and lack of success so far in attracting) FDI to Indian airports. The regulator 's judgment needs to take full account of this need to attract investment into the sector. This is not so much an issue of balancing investor interests against those of passengers but more of balancing the short term interests of passengers in low prices against their longer term interests in enhanced capacity and connectivity in a situation where high rates of growth mean that the longer term is actually not that far into the future. It is also submitted that as against the returns to equity investors in the power sector which are allowed on the equity infused, in the airports sector such return is allowed on the RAB. Since the RAB depreciates over the concession period, this means that the effective returns are lower for the operator. The CoE allowed by the regulator therefore needs to compensate the operator to make up for the lower returns by allowing a suitably higher CoE.</p>	<p>The minimum equity IRR of 18.33% promised under the GO No.130 dated July 26, 2013 issued by GoAP and the State Support Agreement is integral to the concession itself being a fundamental premise of the said concession and cannot be read in isolation or disregarded/ varied once the Parties to the concession have recognized, accepted and acted on the same. In view of the above, the Authority is requested not to alter or vary the assurance of minimum 18.33% Equity IRR granted to GHIAL.</p> <p>Also the following are results of some of the studies carried out by various experts on cost of equity. These are very established organizations of national and international repute. These studies were carried out on behalf of the Airports, the industry associations as well as MoCA, GOI. However the report of NIPFP relied by Authority have no such experience. The resultant number of NIPFP is nowhere near the estimates of these reports.</p> <table> <tr> <td>Cost of Equity</td><td></td></tr> <tr> <td>Jacobs</td><td>24%</td></tr> <tr> <td>KPMG (for APAO)</td><td>20%-25%</td></tr> <tr> <td>based on debt equity ratio.</td><td></td></tr> <tr> <td>SBI Caps (For MoCA/AAI)</td><td>18.5% to 20.5%</td></tr> <tr> <td>CRISIL (For MIAL)</td><td>18.16% to 20.44%</td></tr> <tr> <td>based on debt equity ratio.</td><td></td></tr> <tr> <td>NIPFP</td><td>13.2%</td></tr> </table> <p>We therefore request the Authority to reconsider Cost of Equity</p>	Cost of Equity		Jacobs	24%	KPMG (for APAO)	20%-25%	based on debt equity ratio.		SBI Caps (For MoCA/AAI)	18.5% to 20.5%	CRISIL (For MIAL)	18.16% to 20.44%	based on debt equity ratio.		NIPFP	13.2%
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APAO Comments	GHIAL Response
In view of the discussions, APAO wishes to submit that the beta estimate relied upon by the Authority is flawed and that the beta of 0.75 originally proposed by HTAL be considered in determining its CoE.	Same concern is raised by other airport operators. We request the Authority to reconsider the same.
<p>APAO submits that the report relied upon by NIPFP should be reconsidered due to the following factors:</p> <ul style="list-style-type: none"> • The analyst seems to have estimated a probable regulatory outcome to determine the market value leading to circularity in the approach adopted • Estimates of market value of equity by analysts can have a wide range, and are unlikely to serve as a reliable basis for tariff estimation. 	GHIAL and various other private operators have raised their concerns regarding the Cost of Equity report prepared by NIPFP. We appreciate the concern raised by APAO and request the Authority to reconsider Cost of Equity.
<p>APAO submits that the Authority should allow the foreign exchange variations as a pass through cost in its determination of tariff for aeronautical services on account" of the following reasons:</p> <ul style="list-style-type: none"> • HIAL chose to borrow funds by way of ECB due to the cheaper borrowing cost. It has passed on the entire benefit arising on such saving to the end user and as such the associated risk also needs to be passed on to the end user. If I-HAL had chosen to borrow by way of a domestic loan, there would have been an additional cash outflow of approximately Rs.211 million per annum 011 account of interest costs [arrived at by considering a differential interest rate of 4.17% [11.85% on Rupee Loan - 7.68% on ECB Loan] on a borrowing of Rs.5.07 billion. • The foreign exchange loss is not notional, but an actual loss • The borrowing was finalized prior to AERA's proposition of disallowing the forex loss adjustment in the Consultation Paper. Hence, there is no way that this borrowing can be reversed by Airport Operator . • The foreign exchange loss would adversely impact HIAL's profitability, 	<p>The Authority should not penalize GHIAL by not allowing foreign fluctuations. Cost of debt has reduced considerably because of ECB.</p> <p>The sourcing of funds at a lower rate in foreign exchange is for the benefit to the passenger / other stakeholders by way of a lower WACC.</p> <p>However this means of funding also carries the inherent risk of foreign exchange fluctuations. Taking the benefit of a lower interest rate but not allowing the resultant Forex fluctuation goes against the principles of natural justice.</p> <p>The fluctuation need to be incorporated as part of RAB because of following reasons:</p> <p>(1) The level of Forex borrowing is not excessive. The level of borrowing is at level generally accepted to be normal in the industry.</p> <p>(2) This borrowing was availed before the Authority's current stand was finalized. The borrowing structure cannot be</p>

	APAO Comments	GHIAL Response
		<p>amended now.</p> <p>The Authority should appreciate the fact that the Company has not retained the benefits of cheaper borrowing cost and is passed on to the passenger in the form of lower WACC.</p> <p>If the Company had taken Domestic Loan instead of the ECB equivalent amount, the outflows of cash towards interest costs would have been much more. Also, it should be noted that the loss of Forex fluctuation on interest payments & principal repayments is real in nature and not a notional loss.</p> <p>GHIAL has taken the hit of the Forex fluctuations in actuals of FY 2011-12 and FY 2012-13 owing to interest and repayments servicing the ECB loan to the extent of Rs 34.46 Crs. This loss is not included in the computations of WACC.</p> <p>Therefore, Authority is requested to allow the Loss on impact of Forex Fluctuations by Inclusion of same in RAB.</p> <p>We request the Authority either to allow Forex fluctuation or treat ECB as if it were RTL.</p>
	<p>APAO wishes to submit that Clause 9.2 of the Concession Agreement in respect of ' Monitoring of Performance Standards' lays down the performance standards and penalties for not conforming to the standards. We believe these provisions are stringent and provide an adequate deterrent in case of the operator's non-compliance. Therefore, the imposition of additional penalties by the Authority would result ill doubling the jeopardy for the operator. APAO therefore requests the Authority to reconsider its decision of imposing a rebate mechanism as it</p>	<p>In terms of the AERA Act it is earnestly submitted that the role and jurisdiction of the Authority is limited to monitoring compliance of the service quality standards prescribed under the concession agreement. The prescription of any new services standards is not envisaged.</p> <p>While Section 13(1)(a)(ii) of the AERA Act permits the Authority to consider the services provided, its quality and</p>

APAO Comments	GHIAL Response
<p>would impose additional onerous penalties on the operator for the same default.</p> <p>The operations of any airport involve participation of various external agencies for air traffic control, security etc. Hence, the efficient functioning of an airport is also dependent upon such agencies. These agencies are independent and not under the control and supervision of the airport operator. Therefore, it may be inappropriate to penalize the airport operator alone for service quality discrepancies as some of such discrepancies may have occurred due to factors which are completely beyond the operator's control.</p> <p>Several private airports in India have been adjudged as the best airports in the world in their respective categories. It may therefore be appropriate for the Authority to consider a mechanism which recognizes awards and incentivizes superlative performance by airports.</p>	<p>other relevant factors in determining the tariff, there is no explicit power vested with the Authority to prescribe any penalties under the AERA Act in the event of a failure to meet service quality requirements.</p> <p>In view of the Authority being required to take the terms of the concession agreement into consideration for determining tariff and in view of the concession agreement already providing for a mechanism for penalties for failure to achieve service quality requirements, the Authority should not only take into consideration the service quality requirements, but also the penalties for failure to meet service quality requirements as set forth therein. Any penalties prescribed by the Authority for failure to meet the said service quality requirements would effectively tantamount to the Authority not taking into consideration the terms (including penalties) of the Concession Agreements and therefore would not be consistent with the AERA Act</p> <p>Therefore, Authority is requested not to impose additional standards and penalties over and above those enumerated in the CA. Additional quality parameters, maintaining these standards, and monitoring requires additional capital and operating expenditure. The same needs to be allowed over and above the amounts allowed by Authority. As such the Authority is requested to continue with the methodology as prescribed under Concession Agreements for compliance, monitoring and penalties for non-conformity.</p>

S. No.	Blue Dart Comments	GHIAL Response																																													
1	In the said Consultation Paper, AERA is proposing to consider final User Development Fee (UDF) for domestic and international departing passengers and proposes to determine the other charges in the tariff card, namely Landing and Parking Charges, Common Infrastructure Charges, Fixed Electricity Ground Power Charges and Fuel Charges as proposed by HIAL. As per the Consultation Paper, the Landing, Parking and Housing (LPH) charges were taken as per existing rates for the year 2010-11 and then 10% escalation was considered, year on year, starting from 2011-12.	<p>There has been no major revision in Landing, Parking and Housing charges (except for a 10% increase in 2009) since commencement of operation at RGI Airport, Hyderabad.</p> <p>This does not even cover inflation.</p> <p>If we were to take the inflation since 2000 this will be as under</p> <table> <tr> <th>RATE OF INFLATION</th><th>CPI-IW %</th><th>Total</th></tr> <tr><td>2000</td><td>4.02</td><td></td></tr> <tr><td>2001</td><td>3.77</td><td></td></tr> <tr><td>2002</td><td>4.31</td><td></td></tr> <tr><td>2003</td><td>3.81</td><td></td></tr> <tr><td>2004</td><td>3.77</td><td></td></tr> <tr><td>2005</td><td>4.25</td><td></td></tr> <tr><td>2006</td><td>6.16</td><td></td></tr> <tr><td>2007</td><td>6.38</td><td></td></tr> <tr><td>2008</td><td>8.32</td><td></td></tr> <tr><td>2009</td><td>10.83</td><td></td></tr> <tr><td>2010</td><td>12.11</td><td></td></tr> <tr><td>2011</td><td>8.87</td><td></td></tr> <tr><td>2012</td><td>9.30</td><td></td></tr> <tr><td>2013</td><td>11.04</td><td>96.94</td></tr> </table>	RATE OF INFLATION	CPI-IW %	Total	2000	4.02		2001	3.77		2002	4.31		2003	3.81		2004	3.77		2005	4.25		2006	6.16		2007	6.38		2008	8.32		2009	10.83		2010	12.11		2011	8.87		2012	9.30		2013	11.04	96.94
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S. No.	Blue Dart Comments	GHIAL Response
2	<p>The said Consultation Paper broadly discussed only about charges in UDF charges and other aeronautical charges have remained constant. The Consultation Paper is silent on the basis of which 10% increase on LPH have been arrived and basis on which other aeronautical charges will be decided in the 1st Regulatory Period. The projected increase of 10% year over year seems arbitrary in nature and very high and is not in line with the current inflation rate. Inflation should be linked to WPI Index and must have a scientifically tested formula. Further increasing the already high charges will further cripple the financial health of the airlines operating at HIAL.</p> <p>As all the Airlines will be directly impacted due to any increase in aeronautical charges, we request HIAL to provide the basis on which the increase in aeronautical charges have been arrived and further request AERA to validate the increase on comparison with similar airports around the globe.</p> <p>With the increase in volume, the cost actually should start going down. We do not see the benefits of economies of scale being built in the entire consultation paper</p>	<p>This is the first time any increase is proposed in LPH charges at RGI Airport. (Except for 10% increase in 2009). There is a misconceived 10% increase being discussed. There is no 10% increase proposed by us.</p> <p>WPI increase considered in the Consultation Paper is 6.5%.</p>
3	<p>As AERA rightly pointed out in the Consultation Paper, as long as fair rate of return is given to Airport Operator, he should be indifferent to regulatory till. Hence as an Airport user, we recommend AERA to determine the aeronautical tariffs under single till to avoid substantial increase in the aeronautical charges. Any increase in aeronautical charges will substantially affect the bottom line of already beleaguered airline companies operating out of HIAL.</p>	<p>A conjoint reading of the following documents i.e. Concession Agreement, State Support Agreement and The Land lease Agreement indicates that the following concessions and assurances (relevant for the present queries) have been granted at the time of the grant of the right/concession to develop the Airport, namely:</p> <p>(i) Under Clause 10.2 read with Schedule 6 of the Concession Agreement, only Airport Charges defined as the 'Regulated Charges' are to be regulated by the IRA (i.e. AERA).</p> <p>(ii) Under Clause 10.2.4 of the Concession Agreement, the Regulated Charges shall be approved in consonance with ICAO Policies until the earlier of (a) the date that outstanding Debt in respect of the Initial Phase has been repaid and (b) fifteen (15) years from the Airport Opening Date.</p> <p>(iii) In view of Clause 10.3 of the Concession</p>

S. No.	Blue Dart Comments	GHIAL Response
		<p>Agreement, the GHIAL shall "be free without any restriction" to determine all Other Charges which are levied in respect of all other facilities and services at the Airport.</p> <p>(iv) The Concession Agreement defines and differentiates between mandatory 'Airport Activities' consisting of aeronautical as well as non-aeronautical activities at the Airport and non-mandatory 'Non-Airport Activities' which GHAIL is entitled to undertake at the Land (as defined under the Land Lease Agreement).</p> <p>The Concession Agreement (in terms of Article 10.2 and 10.3) has classified only two types of charges at RGIA i.e. Regulated Charges and Other Charges for the Airport Activities carried out at the Airport by the GHIAL consisting of both aeronautical as well as non-aeronautical activities. The Concession Agreement also defines "Regulated Charges" under Article 10.2.1 to mean only such Airport Charges as specified in Schedule 6 of the Concession Agreement and thus in terms of Schedule 6, Regulated Charges means the following charges i.e.</p> <p>(i) Landing Housing and Parking charges, (ii) Passenger Service Fee and (iii) User Development Fee.</p> <p>While Article 10.2 read with Schedule 6 of the Concession Agreement mandates that the IRA i.e. AERA (pursuant to being empowered for the purpose) shall approve/determine the Regulated Charges, Article 10.3 states unequivocally that except the Regulated Charges mentioned in Schedule 6, the GHIAL shall "be free without any restriction" to determine all Other Charges which are levied in respect of the activities defined as the Airport Activities at the Airport. Other Charges have been defined in Article 10.3 to include all facilities and services provided at the Airport except facilities and services in respect of which Regulated Charges are levied. In other words, the Concession Agreement provides that while AERA shall be empowered to regulate all Regulated Charges mentioned in Schedule 6.</p>

S. No.	Blue Dart Comments	GHIAL Response
4	<p>GHIAL has proposed 24% as return of equity. AERA has appointed National Institute of Public Finance and Policy(NIPFP) to estimate the cost of equity. NIPFP has arrived at a cost of equity of 13.2% considering asset beta 0.4% and debt equity ratio of 1.17:1. However, AERA has considered asset beta 0.5% and debt equity ratio of 1.5:1 and arrived at 16% as cost of equity. As NIPFP has determined 13.2% to be the cost of equity after detailed analysis, we request AERA to consider 13.2% as the final return on equity.</p>	<p>GHIAL has proposed 24% return on equity based on the report submitted by Jacobs, an international expert and the same is submitted to the Authority.</p> <p>The Authority has appointed NIPFP to determine cost of equity for private major airports in India. There are many lacunas in the report of NIPFP and the same have been pointed out at the time of consultation of Delhi and Mumbai airport.</p> <p>Also the mandated minimum return in the concession also needs to be considered as the minimum return which needs to be allowed.</p>
5	<p>The Regulatory Asset Base (RAB) has been arrived at without subtracting the fair market value of real estate development (outside the terminal building). The land outside the terminal building was given to GHIAL to make the project viable, hence, we request AERA to reduce the fair market value of land from RAB. This will result in the reduction of Aeronautical charges to Airport User.</p>	<p>The methodology being suggested has no legal standing. Neither the concession, nor the AERA act has laid down any such methodology of removal of value of land.</p> <p>This kind of treatment has never been seen in any regulatory tariff determination anywhere in world.</p> <p>A conjoint reading of Concession Agreement, State Support Agreement and the Land lease Agreement indicates that the following concessions and assurances have been granted to the GHIAL at the time of the grant of the right/concession to develop the Airport, namely:</p> <ul style="list-style-type: none"> • The Concession Agreement defines and differentiates between mandatory 'Airport activities' consisting of aeronautical as well as non-aeronautical activities at the Airport and non-mandatory 'Non-Airport Activities' which the GHIAL is entitled to undertake at the Land (as defined under the Land Lease Agreement). • Thus, in addition to the rights granted to the GHIAL for setting up and operating the RGIA, certain additional rights have been granted for the purpose of development of the additional land for purely commercial purposes not relating to the airport activity. • In this regard, as noticed hereinabove, the

S. No.	Blue Dart Comments	GHIAL Response
		<p>Concession Agreement also makes a distinction between "Airport Activities" and Non-Airport Activities". While Airport Activities has been defined under Article 1.1 of the Concession Agreement to mean "the provision, at or in relation to the Airport, of the activities set out at Schedule 3, Part 1 as amended from time to time, pursuant to ICAO guidelines, provided that any activities that are not materially similar to those contemplated in Schedule 3, Part 1 shall require the mutual agreement of the Parties", Non-Airport Activities means "the provision, at or in relation to the Airport, of the services set out at Schedule 3, Part 2". Schedule 3, Part 2 of the Concession Agreement provides for the Non-Airport activities which consist of real estate activities. These activities are totally unconnected with the Airport Activities.</p> <p>In view of the above, it is pertinent to note that the land earmarked for development of Non-Airport Activities as well as the cost of setting up and carrying out the Non-Airport Activities is not to be considered for the purpose of arriving at 'total project costs' of the Airport.</p> <ul style="list-style-type: none"> GHIAL is permitted to utilize the said land parcel out of the total Land for carrying out Non-Airport Activities which are purely commercial, real estate and totally unconnected with the Airport business. <p>Conclusion: On a conjoint reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement and not regulate any Other Charges in respect of the facilities and services provided at the Airport nor using the revenue therefrom to subsidize the Aero Charges. The value of the land earmarked for Non-Airport Activities (market</p>

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S. No.	Blue Dart Comments	GHIAL Response
		or notional) cannot be included in nor deducted from the RAB and accordingly the revenue generated therefrom cannot be taken into account for cross subsidizing aeronautical tariff at airport.

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Response to Comments of CII

S.No.	CII Comments	GHIAL Response
1	<p>On a conjoint reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement and not regulate any Other Charges in respect of the facilities and services provided at the Airport nor using the revenue therefrom to subsidize the Aero Charges.</p> <p>The value of the land earmarked for Non-Airport Activities (market or notional) cannot be included in nor deducted from the RAB and accordingly the revenue generated therefrom cannot be taken into account for cross subsidizing aeronautical tariff at airport.</p> <p>Any change in interpretation of the concession document post facto will send wrong signal to the investor community and will be impediment in growth in the aviation sector. Therefore, Concession Agreements should be complied in totality.</p> <p>This becomes even more pertinent as altering the provisions of Concession Agreement might cause the following:</p> <p>a) Triggering a demand on the Government for a compensation and or renegotiation of the concession terms (as witnessed in many Sectors of the economy)</p> <p>b) Creating doubts in the minds of Indian and International equity investors and debt providers over the sovereign risks associated with future private public partnerships leading to reluctance to invest and/or higher costs</p>	<p>We appreciate that CII has highlighted an important aspect.</p> <p>Concession Agreement is the most sacrosanct because that is the basis on which the bidding was done by GHIAL.</p> <p>GHIAL had made investment based on the concession agreement and material shift in the conditions means that the investor is called in to invest based on certain promise and the same is not honored later.</p> <p>This can at best be termed as trapping of the investor.</p> <p>This is against the healthy growth of sector and this will result in a poor infrastructure and inefficient operations.</p>
2	<p>One of the most critical aspects that would define success of any ambitious plan would be the Rate of Return on the Capital deployed by private players on their investments across different sectors, commensurate to the risk taken. Any indication that the returns to the investors in the future would be sub-optimal would be disastrous for the investment climate and consequently private participation in PPP. Therefore, Government needs to ensure a fair return, especially in sectors that are regulated.</p>	<p>The minimum equity IRR of 18.33% (which is equivalent to approx. 24% return on Equity) promised under the GO No.130 dated July 26, 2013 issued by GoAP and the State Support Agreement is integral to the concession.</p> <p>This is a fundamental premise of the said concession.</p> <p>In view of the above, the Authority is earnestly requested to abide by minimum 18.33% Equity IRR granted to GHIAL under concession.</p>

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Response to Comments of CII

S.No.	CII Comments	GHIAL Response
	This becomes even more pertinent for Airports Sector as they are often perceived as riskier when compared to other Infrastructure Sectors like power, ports, roads, etc. Further, Aviation Sector is cyclical in nature and the degree of severity or volatility in cash flows is higher. We are of the view that the IRR on Equity should not be lowered below the percentage envisaged in the Concession Agreement.	
3	<p>GHIAL (GMR Hyderabad International Airport Limited) has been leased approx, 5500 acres of land by Govt. of Andhra Pradesh. The lease deed permits GHIAL to undertake Airport and Non-Airport activities and GHIAL has to pay nominal annual lease rent as per the lease deed. Now AERA has taken a view that since land lease agreement has been signed with the State Government and not the Central Government, the Authority is not bound to consider them for tariff determination.</p> <p>As this goes against the very purpose of awarding the concession, we request the Authority to review its opinion.</p>	<p>CII has very well pointed out the lacuna in the proposed treatment of land by the Authority.</p> <p>On a conjoint reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement and not regulate any Other Charges in respect of the facilities and services provided at the Airport nor using the revenue therefrom to subsidize the Aero Charges.</p> <p>The value of the land earmarked for Non-Airport Activities (market or notional) cannot be included in nor deducted from the RAB and accordingly the revenue generated therefrom cannot be taken into account for cross subsidizing aeronautical tariff at airport.</p>

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Sl.No.	FIA COMMENTS	GHIAL RESPONSE
	Without prejudice to the above, it is respectfully submitted that even if the claim of HIAL with respect to the Pre-control period losses be treated as valid and admissible, the Authority must consider and decide:-	Introductory Para, no comments.
	What was the Return on Equity claimed by HIAL during the FY 2008-09 and 2009-10?	The cost of equity claimed by GHIAL is same for the entire control period including 2008-09 and 2009-10. GHIAL has filed for 24% cost of equity. However the cost of equity considered by Authority is 16%.
	What was the scheme of regulatory approval granted to HIAL for levy of aeronautical tariffs in the FYs 2008-09 and 2009-10?	AERA to respond
	What was the Business Model adopted by HIAL during the FY 2008-09 and 2009-10 which led to allegedly such huge losses?	The losses were for the period before AERA gave adhoc approval of tariff. Therefore the Capex and opex remained under remunerated leading to losses which need to be recouped.
	Whether any shortfall during the Pre-control period should not be borne by HIAL, especially in absence of any scrutiny by the Authority?	There is no logic in the statement as the Capex and Opex of GHIAL needs to be adequately remunerated. There cannot be any investment without the same being remunerated. Also the entire control period including the earlier control period has been under the scrutiny of Authority. The interim tariff also was approved after proper user consultation in 2010.
I	Inclusion of Pre-control Period Losses in current control period for the purpose of determining target revenue is fallacious	The logic of inclusion of past losses (entitlement) is that any Capex and Opex spent by airport operator need to be remunerated in full.
	What is the legal basis for inclusion of such Pre-control period losses?	The Authority can include the historical shortfall of entitlement for fixing the charges of the current control period. There is fair and logical approach to take to ensure the airport gets due returns. The earlier losses are the shortfall of earlier tariff determination (vide order number 06/2010-11 dated

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		26th October 2010) after AERA came into existence. These are not pre-control losses.
	When the regulatory period is being computed from 01.04.2011 to 31.03.2016, how does the question arise of inclusion of losses prior to such control period?	The earlier shortfall of the period prior to 1 st April 2011 was mandated by AERA to be reviewed during the current determination. GHIAL's tariff was first approved vide order number 06/2010-11 dated 26th October 2010.
	Under what circumstances, whether legally/economically/financially, can the present consumers (including passengers or airlines) be burdened with the past burden of the utility?	<p>GHIAL was granted inadequate interim UDF which has resulted in losses at airport. There has been a severe downturn in economy resulting in dip in air traffic since start of airport operations.</p> <p>However, despite incurring these losses, GHIAL did not compromise on meeting its performance standards and enhancing infrastructure to the benefit of airlines and passengers. In order to enable GHIAL to continue to maintain globally benchmarked performance standards enhancement of UDF is critical.</p> <p>Since financial and operational viability of the airport needs to be ensured which is an enshrined objective of AERA under its guiding legislation, he requested to consider the request made by GHIAL.</p> <p>The earlier determination had laid down that the determination will be reviewed at the time of final determination. The earlier order laid down as under:</p> <p><i>"After reconciliation the UDF rate has been worked out as Rs-430/-per domestic passenger and Rs.1700/-per international passenger, exclusive of service tax, on an ad-hoc basis w.e.f, 01.11.2010 (details at Annexure III). Authority is conscious that on a detailed assessment, including bottoms up analysis of all revenues and expenditures, the UDF rates presently determined may need to be altered. This exercise will be undertaken at the final determination stage."</i></p>

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		As such the inclusion is justified.
	Has the Authority verified the losses as claimed by HIAL?	<p>Entire data has been under scrutiny of the Authority.</p> <p>This earlier adhoc determination also was scrutinized and based on the determination of Authority.</p> <p>The earlier period also went through consultation vide consultation paper number 07/2010-11 dated 23rd September 2010.</p> <p>As such Authority has scrutinized the past losses.</p>
	Is there any legal basis for allowing the carrying cost (Rs.73 Crores) over and above the Pre-control Period losses to the detriment of passengers/consumers?	<p>Money has a time value and this needs to be taken into consideration.</p> <p>A rupee paid now or after 10 years has inherent difference and need to be recognized.</p>
	A perusal of the Consultation Paper No. 07/2010-11 dated 23.09.2010 and Order No.06/2010-11 dated 26.10.2010 indicates that UDF was allowed to HIAL merely by placing reliance on the Concession Agreement and without analyzing the legal and economic impact of such levy on passengers/consumers. It is also glaring that earlier Ministry of Civil Aviation and later Authority allowed the levy of UDF without conducting any prudence check exercise and was solely based on HIAL's submissions.	This is incorrect. Authority had done a detailed analysis earlier as well in current determination of tariff of GHIAL. The entire process has been put up for public consultation as well.
	It is pertinent to note that in the Stakeholders' Meeting conducted on 29.09.2010 in context of the Consultation Paper No.07/2010-11, FIA had submitted as to how the HIAL (the airport operator) should endeavor to enhance its share of non-aeronautical revenues and leverage the non-aeronautical to bring down the aeronautical tariffs.	<p>GHIAL has always made best efforts to increase revenue from all sources including non-aero revenues. It is not correct to question the endeavors of the GHIAL. The sharp increase in Non-Aero revenue post privatization goes on to show the endeavors done by private airport operators.</p> <p>GHIAL has taken various initiatives to increase its non-aeronautical revenues on a continuous basis since operations which are also reflected in the growth rates in non-aeronautical revenues.</p> <p>However under a single till there is no incentive for</p>

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Sl.No.	FIA COMMENTS	GHIAL RESPONSE
		airport operator to improve upon its non-aeronautical revenues. The Authority should approve a suitable till to further incentivize for improvement of the Non Aero growth.
II	Re.: Assets and Revenue of Wholly Owned Subsidiaries of HIAL	
	It is noteworthy that out of the land parcel of 5,450 acres, available with HIAL, the land being used for aeronautical purposes is 3,950 acres and that to be used for non- aeronautical purposes is 1,500 acres	The land parcel given was part of original bid conditions based on which investment was done in the airport.
	In the Consultation Paper, it has been revealed that HIAL has three (3) wholly owned subsidiaries, namely (a) GMR Hyderabad Aviation SEZ Limited; (b) GMR Hotels and Resorts Limited; and (c) Hyderabad Duty Free Retail Limited. HIAL's stake in other companies has not been revealed in the Consultation Paper. Authority has considered HIAL as a stand-alone entity without any consolidation with its subsidiaries and accordingly, for the purpose of computing aeronautical tariff has not included the revenue and assets of any of the three aforementioned wholly owned subsidiaries (except revenue share from Duty Free)	<p>The subsidiaries which have been referred are the 100% subsidiaries of GHIAL.</p> <p>The other than wholly owned ventures of GHIAL may not be relevant for the current consultation. All relevant details requisitioned by Authority in this regard have been submitted to the Authority.</p> <p>GHIAL had filed for inclusion of all the wholly owned subsidiaries in tariff determination of GHIAL. However the Authority has considered GHIAL as standalone entity for determination of tariff.</p>
	It is noteworthy that the Authority, for the purposes of the calculation of aeronautical tariff presented in this Consultation Paper, has not subtracted the value of the lands on which the Hotel & Resorts and SEZ are being constructed by HIAL's wholly owned subsidiaries from the RAB and requested stakeholders' opinion in this regard. Without prejudice, it is submitted that if the Authority decides to exclude the revenue of the wholly owned subsidiaries like GMR Hyderabad Aviation SEZ Limited and GMR Hotels & Resorts Limited, then it must also exclude the market value of land on which such assets (Hotel and SEZ) have been constructed for the purpose of computing RAB.	<p>The methodology being suggested has no legal standing. Neither the concession, nor the AERA act has laid down any such methodology of removal of value of land.</p> <p>This kind of treatment has never been seen in any regulatory tariff determination anywhere in world.</p> <p>A conjoint reading of Concession Agreement, State Support Agreement and the Land lease Agreement indicates that the following concessions and assurances have been granted to the GHIAL at the time of the grant of the right/concession to develop the Airport, namely:</p> <ul style="list-style-type: none"> • The Concession Agreement defines and differentiates between mandatory 'Airport activities' consisting of aeronautical as well as

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Sl.No.	FIA COMMENTS	GHIAL RESPONSE
	<p>It is noteworthy that HIAL has been granted long term lease of such huge parcel of land, which has been acquired under Land Acquisition Act, 1894 to construct the RGI Airport at a concessional rate. It seems that HIAL has sub-leased the land on which Hotel and SEZ are constructed at very low rate, understandably as GMR Hyderabad Aviation SEZ Limited and GMR Hotels & Resorts Limited are its wholly owned subsidiaries. However, undeniably GMR Hyderabad Aviation SEZ Limited and GMR Hotels & Resorts Limited are deriving economic benefits which would be proportionate to the market value of land on which such Hotel and SEZ have been constructed. In other words, it is HIAL which has been granted the concession of the land parcel. By creating the wholly owned subsidiaries and sub-leasing at low rates, HIAL is channeling out the revenue stream while allowing wholly owned subsidiaries to operate on a location, which is commercially highly valuable.</p>	<p>non-aeronautical activities at the Airport and non-mandatory 'Non-Airport Activities' which the GHIAL is entitled to undertake at the Land (as defined under the Land Lease Agreement).</p> <ul style="list-style-type: none"> • Thus, in addition to the rights granted to the GHIAL for setting up and operating the RGI, certain additional rights have been granted for the purpose of development of the additional land for purely commercial purposes not relating to the airport activity. • In this regard, as noticed hereinabove, the Concession Agreement also makes a distinction between "Airport Activities" and Non-Airport Activities". While Airport Activities has been defined under Article 1.1 of the Concession Agreement to mean "the provision, at or in relation to the Airport, of the activities set out at Schedule 3, Part 1 as amended from time to time, pursuant to ICAO guidelines, provided that any activities that are not materially similar to those contemplated in Schedule 3, Part 1 shall require the mutual agreement of the Parties", Non-Airport Activities means "the provision, at or in relation to the Airport, of the services set out at Schedule 3, Part 2". Schedule 3, Part 2 of the Concession Agreement provides for the Non-Airport activities which consist of real estate activities. These activities are totally unconnected with the Airport Activities. <p>In view of the above, it is pertinent to note that the land earmarked for development of Non-Airport Activities as well as the cost of setting up and carrying out the Non-Airport Activities is not to be considered for the purpose of arriving at 'total project costs' of the Airport.</p> <ul style="list-style-type: none"> • GHIAL is permitted to utilize the said land parcel out of the total Land for carrying out Non-Airport Activities which are purely commercial, real estate and totally unconnected with the Airport business.

Sl.No.	FIA COMMENTS	GHIAL RESPONSE
		<p>Conclusion: On a conjoint reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement and not regulate any Other Charges in respect of the facilities and services provided at the Airport nor using the revenue therefrom to subsidize the Aero Charges. The value of the land earmarked for Non-Airport Activities (market or notional) cannot be included in nor deducted from the RAB and accordingly the revenue generated therefrom cannot be taken into account for cross subsidizing aeronautical tariff at airport.</p>
III	<p>Single Till approach proposed to be followed by Authority for tariff determination is in the right direction</p> <p>It is submitted that determination of aeronautical tariff warrants a comprehensive evaluation of the economic model and realities of the airport – both capital and revenue elements. HIAL's approach of Dual Till deserves to be discarded.</p> <p>In the Single Till Order, Authority has strongly made a case in favor of the determination of tariff on the basis of 'Single Till'. Under the Single Till basis, airport charges/aeronautical tariff are set with reference to the net costs of running the airport, taking into account other revenues arising at the airport i.e. non-aeronautical revenues.</p>	<p>The concession agreement of GHIAL based on which the investment was made allows an implied Dual Till.</p> <p>A conjoint reading of the following documents i.e. Concession Agreement, State Support Agreement and The Land lease Agreement indicates that the following concessions and assurances (relevant for the present queries) have been granted at the time of the grant of the right/concession to develop the Airport, namely:</p> <p>(i) Under Clause 10.2 read with Schedule 6 of the Concession Agreement, only Airport Charges defined as the 'Regulated Charges' are to be regulated by the IRA (i.e. AERA).</p> <p>(ii) Under Clause 10.2.4 of the Concession Agreement, the Regulated Charges shall be approved in consonance with ICAO Policies until the earlier of (a) the date that</p>

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Sl.No.	FIA COMMENTS	GHIAL RESPONSE
	It is noteworthy that the Authority in its <i>inter alia</i> Single Till Order has:	outstanding Debt in respect of the Initial Phase has been repaid and (b) fifteen (15) years from the Airport Opening Date.
	Comprehensively evaluated the economic model and realities of the airport – both capital and revenue elements.	(iii) In view of Clause 10.3 of the Concession Agreement, the GHIAL shall “be free without any restriction” to determine all Other Charges which are levied in respect of all other facilities and services at the Airport.
	Taken into account the legislative intent behind Section 13(1)(a)(v) of the AERA Act.	(iv) The Concession Agreement defines and differentiates between mandatory ‘Airport Activities’ consisting of aeronautical as well as non-aeronautical activities at the Airport and non-mandatory ‘Non-Airport Activities’ which GHIAL is entitled to undertake at the Land (as defined under the Land Lease Agreement).
	Concluded that the Single Till is the most appropriate for the economic regulation of major airports in India	
	The criteria for determining tariff after taking into account standards followed by several international airports (United Kingdom, Australia, Ireland and South Africa) and prescribed by ICAO.	The Concession Agreement (in terms of Article 10.2 and 10.3) has classified only two types of charges at RGIA i.e. Regulated Charges and Other Charges for the Airport Activities carried out at the Airport by the GHIAL consisting of both aeronautical as well as non-aeronautical activities. The Concession Agreement also defines “Regulated Charges” under Article 10.2.1 to mean only such Airport Charges as specified in Schedule 6 of the Concession Agreement and thus in terms of Schedule 6, Regulated Charges means the following charges i.e.
	The Authority in its AERA Guidelines (para 4.3) has followed the Single Till approach while laying down the procedure for determination of ARR for Regulated Services. In this respect, the matter must be dealt with by the Authority considering the ratio pronounced by the Constitutional Bench in the Hon’ble Supreme Court Judgment in PTC vs. CERC reported as (2010) 4 SCC 603 ¹⁰ wherein it is specifically stated that regulation under an Act, as a part of regulatory framework, intervenes and even overrides the existing contracts between the regulated entities inasmuch as it casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulations.	(i) Landing Housing and Parking charges, (ii) Passenger Service Fee and (iii) User Development Fee. While Article 10.2 read with Schedule 6 of the Concession Agreement mandates that the IRA i.e. AERA (pursuant to being empowered for the purpose) shall

Sl.No.	FIA COMMENTS	GHIAL RESPONSE
	<p>The fundamental reasoning behind 'Single Till' approach is that if the consumers/passengers are offered cheaper air-fares, the volume of passengers is bound to increase leading to more foot-fall and probability of higher non-aeronautical revenue. The benefit of such non aeronautical revenue should be passed on to consumers and that can be assured only by way of lower aeronautical charges. It is a productive chain reaction which needs to be taken into account by the Authority.</p> <p>FIA therefore submits as under:</p> <p>Single Till Model ought to be applied to ALL airports regulated by the Authority regardless of whether it is a public or private airport or works under the PPP model and in spite of the concession agreements as the same is mandated by the statute.</p> <p>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.</p>	<p>approve/determine the Regulated Charges, Article 10.3 states unequivocally that except the Regulated Charges mentioned in Schedule 6, the GHIAL shall "be free without any restriction" to determine all Other Charges which are levied in respect of the activities defined as the Airport Activities at the Airport. Other Charges have been defined in Article 10.3 to include all facilities and services provided at the Airport except facilities and services in respect of which Regulated Charges are levied. In other words, the Concession Agreement provides that while AERA shall be empowered to regulate all Regulated Charges mentioned in Schedule 6, the power to determine all charges other than Regulated Charges rests with the GHIAL.</p> <p>Thus, the Concession Agreement makes a clear distinction between charges which require determination by AERA [i.e. Airport Charges (which are Regulated Charges) and those which can be fixed by the GHIAL itself i.e. Other Charges (which are also Airport Charges but are not subject to regulation by AERA). It is pertinent to note that Section 13 of the AERA Act which empowers AERA to determine the tariff of "aeronautical services" in respect of major airports mandates AERA to take various factors into consideration for determining the tariff. Section 13 of the AERA Act states as under:</p> <p>"13. Functions of authority- (1) The Authority shall perform the following functions in respect of major airports, namely:-</p> <ul style="list-style-type: none"> (a) to determine the tariff for the aeronautical services taking into consideration- <ul style="list-style-type: none"> (i) the capital expenditure incurred and timely investment in improvement of airport facilities; (ii) the service provided, its quality and other relevant factors; (iii) the cost for improving efficiency; (iv) economic and viable operation of major airports; (v) revenue received from services other than aeronautical services (v) revenue received from services other than the aeronautical services; (vi) the concession offered by the Central Government in any agreement or memorandum of understanding or

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		<p>otherwise; (vii) any other factor which may be relevant for the purposes of this Act: Provided that different tariff structures may be determined for different airports having regard to all or any of the above considerations specified at sub-clauses (i) to (vii)" (...emphasis added)</p> <p>A perusal of Section 13 of the AERA Act makes it clear that while determining tariff for aeronautical services, AERA is statutorily obligated to consider the concession offered to the Airport Operators by the Central Government and the other agreements which form an integral and inalienable part of such concession.</p> <p>Reading of Section 13(1)(a)(vi) indicates that the concession granted by the Central Government has to be read into the AERA Act and all its provisions as well as limitations contained therein have to be considered by AERA while determining tariff including while deciding which services in a particular case and in terms of the relevant Concession, can be regulated by AERA.</p> <p>This is further confirmed by a reading of the proviso to Section 13(1)(a) of the AERA Act which states that "different tariff structures may be determined for different airports having regard to all or any of the considerations specified at sub-clauses (i) to(vii)" in the said section. In other words, the AERA Act recognizes that a straightjacket applicability of its provisions to all major airports is not intended and grants flexibility to AERA to determine tariff structures to different airports having regard to various considerations including the concession granted by the Central Government.</p> <p>Thus, even though the AERA Act empowers AERA to regulate tariff for Aeronautical Service as defined in Section 2(a) of the AERA Act, in case any concession has already been granted by the Central Government, AERA is statutorily mandated to consider such concession.</p> <p>In the case of RGIA, since one of the concession granted by the Central Government is that save for the 'Regulated Charges', the GHIAL shall be free without any restriction</p>

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		<p>to determine all Other Charges. Thus, on a reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement, AERA is only empowered to regulate the Regulated Charges as defined in the Concession Agreement (as an exception to the mandate of the Act which is recognized and allowed by the Act itself) and cannot regulate any Other Charges in respect of the facilities and services provided at the Airport including the other Aeronautical Services as defined in Section 2(a) of the AERA Act.</p> <p>By adopting a single till AERA is limiting the return which can accrue to airport operator on Non Aeronautical part or on unregulated charges. This is an indirect regulation of activities not mandated under AERA act or concession agreement.</p>
IV	<p>Levy of User Development Fee at RGI Airport is legally untenable</p> <p>It is to be noted that Clause 6.8.5 of AERA Guidelines in no uncertain terms provides that UDF is a revenue enhancing measure to allow Fair Rate of Return to the Airport Operator. It is not clear as on what basis the Authority has proposed to levy UDF at RGI Airport for the purpose of development and expansion work undertaken in the past. The Concession Agreement cannot be relied upon to allow levy of UDF (a revenue enhancing measure) in view of the expressed provisions of AERA Guidelines. It is settled position of law that regulations override the prior contractual arrangements.</p>	<p>The direction 5 of AERA has clearly laid down that :</p> <p>6.8.4. The Airport Operator(s) shall also submit information relating to the list of services or charges having a sub-cap within the overall yield per passenger, such as User Development Fee.</p> <p>6.8.5. The User Development Fee (UDF) and other aeronautical charges cover the same range of services, and therefore UDF shall be considered as a revenue enhancing measure to ensure economic viability of the airport operations and shall be allowed only in specific cases upon due consideration. Explanation: In a case where the Authority approves the proposal to levy UDF, it shall determine the rate of UDF so that the revenue is so enhanced so as to ensure that the Airport Operator is able to obtain Fair Rate of Return on the RAB, as per these Guidelines, over the relevant period.</p> <p>A5.9.2 Airport Operator(s) shall detail the specification of tariffs in terms of tariff types proposed (tariff for Regulated Service(s), user development fee (UDF), development fee</p>

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		<p>(DF), as well as tariff categories proposed for each tariff type (based on weight of aircraft, domestic / international passengers, etc.).</p> <p>A5.9.4. Where the Airport Operator considers that a UDF charge is required, it shall specify the proposed UDF levy for each Tariff Year of the Control Period as part of the overall yield per passenger..."</p> <p>The basis of the fair rate of return has been deliberated in detail in consultation paper and based on entitlement UDF has been approved.</p>
	<p>Further, in a long term PPP project, it remains unclear as to how the Authority can allow the funding to be borne by the unsuspecting rate payers, whereas the equity holders are in control of the assets. It is imperative to note that the lack of diligent contracting, supervision and reporting, if any, by HIAL, cannot lead to the detriment of the consumers at large. It is well recognised regulatory position that utilities are free to decide their plans of investment for improvement of system or expansion to meet the demand including upgradation and maintenance for a better and quality supply. <u>In appropriate cases, the Regulator may disallow such cases of utility and it is for the utility to bear the brunt of such investment and it cannot pass it on to consumers.</u>¹¹</p>	<p>In a PPP project the basic premise is that the project is entitled to be fairly remunerated for the investment to ensure the project operates on a profitable and viable basis. Non – adhering to this basic philosophy will negate the approach to PPPs.</p> <p>The other points discussed herein are not comprehensible.</p>
	<p>It is noteworthy that that the Hon'ble Supreme Court in the judgment of Consumer Online Foundation vs. Union of India & Others reported as (2011) 5 SCC 360¹² has categorically noted that there can be no contractual relationship between the passengers embarking at an airport and the airport operator with regard to the up-gradation, expansion or development of the airport which is to be funded or financed by UDF.</p>	<p>UDF is not a funding or financing source. UDF is revenue stream from passengers to airport operators.</p> <p>FIA has mixed up UDF and ADF. GHIAL is only levying UDF.</p> <p>However we shall also like to clarify that any charge whether by way of UDF or ADF allowed by the Authority need to be implemented and the user need to pay the same.</p>

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	In fact, the UDF which is being levied at the RGI Airport towards development and expansion of the airport facilities is in the nature of cess or tax. It is settled position of law that any levy or compulsory exaction which is in the nature of tax/cess cannot be levied without a statutory foundation/charging section, as laid down in a catena of judgments by the Hon'ble Supreme Court. Further, no tax, fee or any compulsory charge can be imposed by any bye-law, rule or regulation unless the statute under which the subordinate legislation is made specifically authorises the imposition. There is no room for intendment.	Again, FIA has mixed up between ADF and UDF. GHIAL is levying UDF which is revenue in nature and is not used directly for development and expansion of airport facilities. However we shall also like to clarify that any charge whether by way of UDF or ADF allowed by the Authority need to be implemented and the user need to pay the same.
	In view of the foregoing, it is submitted that	
	Neither AAI Act, Aircraft Act, 1934 nor AERA Act nowhere provide for provision of determination or levy of UDF on passengers.	This statement is not correct that UDF is not allowed by AAI Act, Aircraft Act, 1934 or AERA Act. UDF is allowed under Aircraft rules. Rule 89 reads as under: User Development Fee. —The licensee may, - (i) levy and collect at a major airport the User Development Fee at such rate as may be determined under clause (b) of sub-section (1) of section 13 of the Airports Economic Regulatory Authority of India Act, 2008; (ii) levy and collect at any other airport the User Development Fees at such rate as the Central Government may specify. [Substituted by – GSR No. 732(E) dated 02-11-2004 Amended by GSR No. 757 dated 14-10-2009]
	Authority in the present Consultation Paper has not deliberated upon the rationale for levying UDF. It is submitted that Authority is bound under Section 13(4)(c) of the AERA Act to fully document and explain its decision.	There has been extensive discussion on UDF in document and there UDF has been referred 258 times in document.
V	Regulatory Period ought to be determined prospectively	
	The Authority is overlooking that the HIAL has caused inordinate delay in submitting the details of project cost and relevant information for determination of aeronautical tariff which has:	There has been no delay in submission of tariff proposal. The proposal was submitted in the timelines approved by Authority

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	Diminished the effective Control Period to 31 months from 5 years;	There has been no delay from GHIAL side
	Led to exponential increase in aeronautical tariff (40% to 400% on a component to component basis) of RGI Airport with the past charges of last 29 months recoverable in the next 31 months from the future passengers and consumer including the airlines. This approach is unacceptable as it would increase the operational expenditure of the airlines and rendering its operations economically unviable.	There is no such impact as being referred. In fact the tariff as proposed by Authority has reduced entitlement in balance period.
	As noted above, Authority has proposed to allow HIAL to recover the Pre-control period losses to the tune of Rs. 333 Crores under the Single Till Model by adding the same to the ARR of HIAL thereby stretching the present tariff prior to 01.04.2011. There seems to be no legal or regulatory basis for:-	Rationale for this has been already been explained
	Firstly, to allow the alleged losses suffered by HIAL prior to the control period;	
	Secondly, to allow the carrying costs of Rs. 73 crores (for period 1.4.2011-1.09.2013) on alleged losses.	
VI	Depreciation up to 100% is contrary to the AERA Guidelines	

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	<p>HIAL has calculated depreciation up to 100% of the value of the asset based on the assumption that no compensation will be received towards the value of the net block of assets upon transfer of the airport upon completion of term. This is in contravention of the AERA Guidelines (Para 5.3.3) which allows depreciation to be calculated to the extent of 90% of the assets. Considering depreciation up to 100% value would result in an artificial increase in the depreciation charge and thereby have an adverse impact of increasing the tariff. It is submitted that Authority should consider 10% residual value of the assets for computing depreciation as mentioned in the AERA Guidelines. As per data provided in the Consultation Paper, considering depreciation up to 90% only would bring the Target revenue by 1%.</p>	<p>Depreciation is a return of capital and should lead to ensure adequate provision for replacement of assets. Hence the same needs to be allowed to 100%.</p> <p>Authority has already clarified this in consultation paper 09/2013-14 as under:</p> <p><i>13.15. The calculation of depreciation, submitted by HIAL in the tariff model, presently considers depreciation up to 90%, which is in line with the provisions of the Airport Guidelines vide Para 5.3.3. However, HIAL has requested the Authority to allow them to depreciate the assets up to 100%. According to the Authority's understanding, the Concession Agreement does not appear to include compensation towards the value of the net block of assets upon transfer of the airport upon completion of term. The Authority also notes that the depreciation policy of HIAL stipulates 100% depreciation of RAB. The Authority after careful consideration of these provisions feels that keeping a residual value (of 10% of RAB) may not be required. Having considered this issue in its totality, the Authority tentatively proposes to permit depreciation of 100% of RAB.</i></p>
VII	Tax savings has not been considered for determining Cost of Debt	

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	<p>The present Consultation Paper does not provide a breakup of the rupee term loan and ECB loan over the historic period and forecast period to calculate the actual cost of debt. It is noteworthy that cost of debt is the effective rate that a company pays on its current debt post adjustment for tax savings. However, based on aforementioned proposal of the Authority and review of Consultation Paper, it appears that cost of debt is not adjusted for any tax savings. Post adjustment of such tax savings (assuming tax rate at 30%) in cost of debt, WACC will reduce from 10.68% to 8.39%. It is submitted that Authority should factor such tax saving for computing WACC of HIAL. It is submitted that reduction in WACC from 10.69% to 8.39% will reduce target revenue by 11% (and will reduce the present value of Target Revenue by 17%).</p>	<p>The AERA guidelines in Direction no.5 clearly state the Cost of Debt in the calculation of WACC is pre-tax.</p>
VII	<p>General Operating Expenditure and non-aeronautical revenue have been forecasted without evaluating the commercial and financial terms in detail.</p>	<p>The Authority has sought necessary documents/certificates whenever the requirement was felt and we have submitted the same for scrutiny of the Authority.</p> <p>The basis of aforesaid allegation is not clear wherein the claim is being made that Authority has not evaluated the terms in detail.</p>
	<p>It is submitted that Operating Expenses (71%) and Non-aeronautical Revenue (50%) are <i>inter alia</i> the major components for determining Target Revenue. Thus, the Authority ought to evaluate these components in detail by evaluating commercial and financial details of each expense and income/revenue head.</p>	<p>All relevant details were submitted to the Authority.</p> <p>The opex is based on actual amount spent by GHIAL extrapolated on a basis which is evaluated by Authority.</p> <p>One of the components of the growth is inflation which is based on the projections of RBI</p> <p>Another aspect is traffic which is based on a study conducted in this regard.</p>
	<p><u>Re. Operating Expenses:</u></p>	

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	For the purpose of projecting operating costs/expense for balance control period, real increase in operating costs for HIAL for FY 2011-12 and FY 2010-11 comes to approximately 3.35% and 1.48% respectively. Further, average real increase for the period FY 2009-10 to FY 2011-12 has been computed by the Authority which comes out to be 2.42%. Hence, Authority has considered an increase of 3.0% for computing projected operating expenses, over the calculated average increase of 2.42% would provide for some generic allowance for uncertainties.	<p>The detailed rationale of each and every component has already been submitted to Authority.</p> <p>The operating expenses increase as the facility gets older. This factor needs to be considered in tariff determination.</p> <p>When the facility was new many equipment were under defect liability period / Warranty. The above is no more in vogue and these expenses will increase significantly. These factors need to be kept in mind while projecting the future expenditure.</p>
	Re. Non-aeronautical Revenue:	
	Non-aeronautical Revenue for FY 2013-14 to FY 2015-16 has been proposed by considering a 'year on year' (YoY) escalation of 5% and passenger growth rate, on total non-aeronautical revenue (minus the interest income) in FY 2012-13.	Statement of facts/Analysis – no comments.
VIII	Revenue from Cargo service ought to be treated as Aeronautical Revenue	
	FIA is conscious /aware that Authority has proposed to follow the Single Till Model for determination of aeronautical tariffs at RGI Airport. Thus, the proposal to treat the revenue arising from cargo services as non-aeronautical revenue won't materially affect the inclusion of revenue for determination of the Target Revenue. However, treatment of revenue arising from aeronautical service contrary to the statutory mandate, irrespective of the Till to be followed, is crucial for precedential value in the sector.	<p>Cargo must be kept outside the regulations.</p> <p>Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement.</p> <p>AERA act contemplates that the concession needs to be taken into consideration in fixing the charge. The clause 13(1)(a)(iv) reads as under:</p> <p style="text-align: center;">CHAPTER II POWERS AND FUNCTIONS OF THE AUTHORITY</p> <p>13. (1) The Authority shall perform the following functions in respect of major airports, namely:—</p> <p style="text-align: center;">(a) to determine the tariff for the aeronautical services taking into consideration—</p> <p style="text-align: center;">(i) the capital expenditure incurred and timely investment in improvement of airport facilities,</p> <p style="text-align: right;">Functions of Authority</p>

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		<p>(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;</p> <p>The Concession Agreement contemplates regulations of only the Regulated Charges by the Authority as mentioned in the Schedule 6 of Concession Agreement. The AERA act also contemplated that the concession should be adhered. As such the provisions of the concession agreement needs to be adhered.</p> <p>Provisions of Concession Agreement:</p> <p>Only the following Regulated Charges as enumerated in the Schedule 6 of the Concession Agreement are to be regulated by the Independent Regulatory Authority (IRA):</p> <ol style="list-style-type: none"> 1. Landing Charges 2. Parking Charges 3. Housing Charges 4. Passenger Service Fee 5. User Development Fee <p>Clause 10.2 of the Concession Agreement reads as under:</p> <p>10.2 Airport Charges</p> <p>10.2.4 From the date <u>the IRA has the power to approve the Regulated Charges</u>, HIAL shall be required to obtain approval thereof from the IRA. In this regard HIAL shall submit to the IRA, in accordance with any regulations framed by the IRA, details of the Regulated Charges proposed to be imposed for the next succeeding relevant period together with such information as the IRA may require for review...</p> <p>iii. Freedom to determine Other Charges for other</p>

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		<p>facilities or services:</p> <p>Clause 10.3 of the Concession Agreement reads as follows:</p> <p>10.3 Other Charges</p> <p>GHIAL and/or Service Provider Right Holders shall be <u>free without any restriction</u> to determine the charges to be imposed in respect of the facilities and services provided at the Airport or on the Site, other than the facilities and services in respect of which Regulated Charges are levied.</p> <p>As such Authority is not mandated to regulate any Other Charges in respect of the facilities and services provided at the Airport. As such the Cargo should be outside the regulations.</p> <p>GoAP also has clarified that Cargo, Ground Handling and Fuel should not be regulated. GHIAL has accordingly classified Cargo assets as non-aero and the revenue therefrom also has been classified as non-aero. In our view this is what is contemplated under the Concession Agreement and the same is requested be accepted by Authority.</p>
IX	<p>Re. Fuel farm Service</p> <p>Authority has noted that Airlines are presently making use of the fuel farm services at RGI Airport, Hyderabad and they would have entered into agreements with the fuel farm service provider, wherein the tariffs would have been indicated to the airlines. AERA is not aware of any reasonable objections from the users of fuel farm services (Clause 6 of CGF Guidelines). Thus, in view of the reasonableness of these agreements, AERA has proposed to determine the tariffs for fuel farm service provided by HIAL at RGI Airport, Hyderabad under light touch approach.</p>	<p>The Authority has provided chance to all the stakeholders to submit their comments/responses on the issues related to CP 09/2013-14 and called for written evidence based feedback, comments and suggestions from stakeholders on the proposed stand of the Authority.</p>
X	<p>Allowing Inflation at various levels has multiplier impact on Tariff</p>	

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	It appears that HIAL is also considering an inflationary increase in the proposed Yield Per Passenger ("YPP") for the balance years of the current control period. Since inflation has been considered on YPP and operating expense is one of the components to determine YPP. Therefore, in order to avoid manifold impact of inflation, it is submitted that all the expenditure should be delinked from inflation.	There is no double impact of inflation as being envisaged by FIA.
XI	Re. HIAL's monopolistic approach and 'Doctrine of Essential Facilities' It is submitted that such enormous hike in tariff by a monopolist HIAL may be viewed as 'abuse of its dominance' and accordingly liable under section 4 of the Competition Act, 2002 ("Competition Act"). Further, the Competition Act promulgates the "economic development of the country" by establishment of a Commission to, amongst other things, protect the interests of the consumers. Levy of such exponential charges by a monopolist is clearly against consumer interests, and thus, is against the basic premise of competition law in India.	 These are baseless allegations. There is nothing to show abuse of monopolistic power being abused. The regulatory framework and scrutiny by the regulator is meant to ensure avoidance of dominance, if any.
XII	Authority should conduct/commission its own study for assessing the claims of HIAL It is noteworthy that purpose of appointing an 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, more specifically company managers/directors. 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.	 Authority has already appointed consultant for review of the tariff filing of GHIAL. The details relating to all aspects have been submitted in great detail and each and every component has been closely scrutinized by the Authority and its consultants. The data being submitted are audited results of GHIAL with projections. As such the question of influence does not arise. As regards to traffic projections since the same is subject to true up there is no impact on this account as well.

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	It is submitted that the Authority ought to conduct/commission its own study for allocation of assets and not accept HIAL's submission on as it is basis. The Authority has been contemplating to commission its own study since April, 2012 when it first issued the DIAL Tariff Order (No.3/2012-13). It is regrettable that the Authority has yet again adopted the stance of commissioning its independent study at a later date. It is to be noted that in the Appeals ¹⁶ pending before the Hon'ble Airports Economic Regulatory Authority Appellate Tribunal, the issues pertaining to engagement of consultants/experts by the Authority instead of placing absolute reliance on consultants engaged by the airports operators have been raised and are pending adjudication.	The details relating to all aspects have been submitted in great detail and each and every component has been closely scrutinized by the Authority and its consultants.
	Similarly, Authority should independently scrutinize the claims of HIAL with respect to Operating Expenditure (71% of the HIAL's claim towards ARR).	The details relating to all expenditure have been submitted in great detail and each and every component has been closely scrutinized by the Authority and its consultants.
XIII	Re: True-up exercise	
	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	There is nothing like accurate forecast. Forecast is bound to be different from the actual figures. The Authority should take all factors into consideration and accordingly make provisions of true up for selected items.
	Judgment of APTEL in the case of BSES Rajdhani Power Limited vs. Delhi Electricity Regulatory Commission reported as 2009 ELR (APTEL) 88017 is to be considered	No comments
XIV	Discrepancies in CP No.09/2013-14	
	Tax computation: Tax charge used by the Authority in determining TR (Table 96 and 97 CP No. 09/2013-14) substantially differs with submission made by HIAL. No calculation has been made available by the Authority.	Table 97 has no tax numbers. The difference in table 95 and 96 is due to Different Tills
	Number of passengers: The Consultation Paper does not provide details of number of used to calculate the YPP.	All requisite details submitted to the Authority

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	Cost of debt: The Consultation Paper 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.	All requisite details submitted to the Authority
	Existing Yield per passenger is not available: In absence of the same, increase in YPP cannot be determined.	All requisite details submitted to the Authority
	Discrepancy in Non-Aeronautical revenue of FY12: Total Non-Aeronautical revenue of Rs. 178.4 crores considered by Authority for FY 2011-12 (as per Table 87 of CP No.9 of 2013-14) is not matching with aggregate of Revenue mentioned in Table Nos. 71 to 81 and Table 83 and the tables mentioned in paragraph Nos. 17.2.4 and 17.3.4 of the Consultation Paper.	Table 87 is non-aero considered by Authority, whereas previous tables, table 71-81 and table 83, are that proposed by GHIAL. There is difference between non-aeronautical revenue proposed by GHIAL and that considered by the Authority.
	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 Tariff as proposed by HIAL and the Authority (40% to 400% on a component to component basis). 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.	This is a strange request that airport operator must not be reimbursed for the capital expenditure (done by private concessionaire). This defies logic. Any charges approved by Authority whether ADF or UDF is critical for providing fair remuneration for the private operator and the continued operation of airport. However we will like to clarify that GHIAL currently is levying UDF (not ADF) which is revenue receipt by nature whereas what FIA is referring is ADF which is of the nature of capital grant. There has not been any increase in Aero charges of landing and parking for last 10 years, except 10% increase in 2009 and even if we take pure inflation the charges should go up considerably.

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	<p>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.</p>	<p>The charges of landing and parking even with proposed increase will be lower than the charges of Chennai and Kolkata airports.</p> <p>Increased funding source will not mean revenue from GHIAL. The revenue can be achieved only by charges.</p>
	<p>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. HIAL by way of its present proposal is acting to the detriment to airlines and the passengers.</p>	<p>A better infrastructure is essential for the growth of aviation. This also means saving due to efficient operations and cost saving by way of lower turnaround time and no hovering time. This aspect needs to be kept in mind.</p> <p>Entire privatization of the airports will fall apart if they are not properly remunerated. If PPP entity is allowed to continuously incur losses it will reach a stage when there will be no one forthcoming to invest in sector. This will mean lack of growth opportunities for airlines, delays at airport (eating into the precious time of airlines,) long hovering time (resulting in huge fuel bills). Airlines must appreciate the good work done by airport and try to focus on other items like fuel etc. that are the most critical areas to improve their bottom-line.</p>

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	<p>Annual concession fee is being paid by the HIAL 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. Subsequently, what the airport chooses to do with that revenue should not be ploughed back as a cost to the users in any form.</p>	<p>This is as per the terms of the Concession Agreement. This is expenditure and all expenditures need to be allowed. There is no expenditure which can go unremunerated.</p>
	<p>FIA reiterates its submission that there is a critical relationship between passenger traffic and growth of the civil aviation sector.</p> <p>What would benefit both the airport 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.</p> <p>In our view, the airport should be regarded as a single business as its aeronautical and non-aeronautical revenues are intertwined. In this backdrop, FIA strongly endorses the views of the Authority to follow the “Single Till” as the basis for determining airport revenue, without any carve-outs whatsoever. It is submitted that the Single Till Model adopted by the Authority warrants a comprehensive evaluation of the economic model and realities of the airport – both capital and revenue elements.</p>	<p>GHIAL is allowed a fixed entitlement irrespective of traffic.</p> <p>GHIAL is mandated to be regulated under DUAL till both under concession as well as under AERA act. The detailed rationale of the same is given below.</p> <p>However we will also like to reiterate that Single Till leaves no incentive with airport operator to improve its Non Aeronautical revenues. .</p> <p>Rationale for Adoption of Dual till: A conjoint reading of the concession documents, indicates that the following concessions and assurances (relevant for the present queries) have been granted at the time of the grant of the right/concession to develop the Airport, namely:</p> <p>(i) Under Clause 10.2 read with Schedule 6 of the Concession Agreement, only Airport Charges defined as the ‘Regulated Charges’ are to be regulated by the IRA (i.e. AERA).</p> <p>(ii) Under Clause 10.2.4 of the Concession Agreement, the Regulated Charges shall be approved in consonance with ICAO Policies until the earlier of (i) the date that outstanding Debt in respect of the Initial Phase has been repaid and (ii) fifteen (15) years from the Airport Opening Date.</p> <p>(iii) In view of Clause 10.3 of the Concession Agreement,</p>

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		<p>the GHIAL shall "be free without any restriction" to determine all Other Charges which are levied in respect of all other facilities and services at the Airport.</p> <p>(iv) The Concession Agreement defines and differentiates between mandatory 'Airport Activities' consisting of aeronautical as well as non-aeronautical activities at the Airport and non-mandatory 'Non-Airport Activities' which GHAIL is entitled to undertake at the Land (as defined under the Land Lease Agreement).</p> <p>1. The Concession Agreement (in terms of Article 10.2 and 10.3) has classified only two types of charges at RGIA i.e. Regulated Charges and Other Charges for the Airport Activities carried out at the Airport by the GHIAL consisting of both aeronautical as well as non-aeronautical activities. The Concession Agreement also defines "Regulated Charges" under Article 10.2.1 to mean only such Airport Charges as specified in Schedule 6 of the Concession Agreement and thus in terms of Schedule 6, Regulated Charges means the following charges i.e.</p> <ul style="list-style-type: none"> (i) Landing Housing and Parking charges, (ii) Passenger Service Fee and (iii) User Development Fee. <p>2. While Article 10.2 read with Schedule 6 of the Concession Agreement mandates that the IRA i.e. AERA (pursuant to being empowered for the purpose) shall approve/determine the Regulated Charges, Article 10.3 states unequivocally that except the Regulated Charges mentioned in Schedule 6, the GHIAL shall "be free without any restriction" to determine all Other Charges which are levied in respect of the activities defined as the Airport Activities at the Airport. Other Charges have been defined in Article 10.3 to include all facilities and services provided at the Airport except facilities and services in respect of which Regulated Charges are levied. In other words, the Concession Agreement provides that while AERA shall be empowered to regulate all Regulated Charges mentioned in Schedule 6, the power to determine all charges other than Regulated Charges rests with the GHIAL.</p>

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		<p>3. Thus, the Concession Agreement makes a clear distinction between charges which require determination by AERA [i.e. Airport Charges (which are Regulated Charges) and those which can be fixed by the GHIAL itself i.e. Other Charges (which are also Airport Charges but are not subject to regulation by AERA).</p> <p>4. It is pertinent to note that Section 13 of the AERA Act which empowers AERA to determine the tariff of "aeronautical services" in respect of major airports mandates AERA to take various factors into consideration for determining the tariff. A perusal of Section 13 of the AERA Act makes it clear that while determining tariff for aeronautical services, AERA is statutorily obligated to consider the concession offered to the Airport Operators by the Central Government and the other agreements which form an integral and inalienable part of such concession.</p> <p>Reading of Section 13(1)(a)(vi) indicates that the concession granted by the Central Government has to be read into the AERA Act and all its provisions as well as limitations contained therein have to be considered by AERA while determining tariff including while deciding which services in a particular case and in terms of the relevant Concession, can be regulated by AERA.</p> <p>This is further confirmed by a reading of the proviso to Section 13(1)(a) of the AERA Act which states that "different tariff structures may be determined for different airports having regard to all or any of the considerations specified at sub-clauses (i) to(vii)" in the said section. In other words, the AERA Act recognizes that a straightjacket applicability of its provisions to all major airports is not intended and grants flexibility to AERA to determine tariff structures to different airports having regard to various considerations including the concession granted by the Central Government.</p> <p>5. Thus, even though the AERA Act empowers AERA to regulate tariff for Aeronautical Service as defined in Section 2(a) of the AERA Act, in case any concession has already been granted by the Central Government, AERA is statutorily mandated to consider such concession.</p>

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Rajiv Gandhi International Airport, Shamshabad, Hyderabad
Response to Comments of federation of Indian Airlines (FIA)

Sl.No.	FIA COMMENTS	GHIAL RESPONSE
		<p>In the case of RGIA, since one of the concession granted by the Central Government is that save for the 'Regulated Charges', the GHIAL shall be free without any restriction to determine all Other Charges. Thus, on a reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement, AERA is only empowered to regulate the Regulated Charges as defined in the Concession Agreement (as an exception to the mandate of the Act which is recognized and allowed by the Act itself) and cannot regulate any Other Charges in respect of the facilities and services provided at the Airport including the other Aeronautical Services as defined in Section 2(a) of the AERA Act.</p> <p>By adopting a single till AERA is limiting the return which can accrue to airport operator on Non Aeronautical part or on unregulated charges. This is an indirect regulation of activities not mandated under AERA act or concession agreement.</p>
	Further, it is submitted that order passed by an administrative authority, affecting the rights of parties, must be a speaking order supported with reasons. It is well settled position of law ¹⁹ that:	<p>This comment relates to Authority.</p> <p>However following are our views:</p> <p>Currently, the Authority has come up with the Consultation Paper and not final Order. At this stage the Authority is giving all the stakeholders chance to submit written evidence based feedback. The final order is expected to be based on rationale and reasoning, after considering views of all including the concerns of GHIAL and also the concession agreements.</p>
	Reasons ought to be recorded even by a quasi-judicial authority.	no comments
	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.	no comments
	Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.	no comments
	Insistence on reason is a requirement for both accountability and transparency.	no comments

Rajiv Gandhi International Airport, Shamshabad, Hyderabad
Response to Comments of federation of Indian Airlines (FIA)

Sl.No.	FIA COMMENTS	GHIAL RESPONSE
	Reasons in support of decisions must be cogent, clear and succinct.	Consultation paper discusses every issue in great detail.
	A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.	no comments
	Requirement of giving reasons is virtually a part of 'Due Process'.	no comments

FICCI Comments	GHIAL Response																												
<p><u>Need for Investment in Airport Infrastructure</u></p> <p>The vital need for investment in the area of infrastructure cannot be exaggerated. It is estimated that Indian airports would require an investment of about Rs 67,500 Crores during the Twelfth Five Year Plan, of which around Rs 50,000 Crore is likely to be contributed by the private sector.</p> <p>It is critical that the investments should be made not just to address the existing capacity constraints at airports, but should also build capacity to accommodate the projected growth in the next decade. Needless to say, this can only be possible with the continued participation of the private sector in the PPP projects.</p> <p>It is well-recognized that airports require massive investments that are lumpy in nature. Historically, in India, airport-capacity has lagged demand, thus causing severe constraints in service quality. From this perspective, building world-class airport infrastructure and adequate capacity planning for the future need could be viewed as a welcome change. Therefore, preserving the interest of investors is of prime importance, towards achieving future growth in airports and other segments of infrastructure.</p>	<p>We appreciate the concern raised by FICCI for investment in airport infrastructure and request the Authority to abide by the Concession Agreement which will send positive signal to investor community.</p> <p>There is an implied Dual till mandated by concession and its earnestly requested that the same should be allowed by the Authority.</p>																												
<p><u>Concession Agreement and State Support Agreement</u></p> <p>We understand that the key agreements governing the working of the Hyderabad International Airport Ltd (HIAL) include (a) Concession Agreement, (b) Land Lease Agreement, and (c) State Support Agreement among others. These agreements played a critical role in forming the business decisions at the time of taking up the project. We are of the view that such agreements should be honoured so that confidence of the investors does not get weakened.</p>	<p>Concession Agreement is the most sacrosanct because that is the basis on which investment has been made.</p> <p>This is critical in attracting the investment. The private sector has given an airport which is ranked amongst best in world by ACI.</p> <div><table><tr><th>Airport</th><th>Ranking</th></tr><tr><td>HYD</td><td>4.767</td></tr><tr><td>HAK</td><td>4.765</td></tr><tr><td>WUH</td><td>4.743</td></tr><tr><td>TSN</td><td>4.715</td></tr><tr><td>SYX</td><td>4.711</td></tr><tr><td>HET</td><td>4.700</td></tr><tr><td>HRB</td><td>4.697</td></tr><tr><td>KHN</td><td>4.664</td></tr><tr><td>NGO</td><td>4.638</td></tr><tr><td>CUN</td><td>4.553</td></tr></table></div> <table><tr><th>Airport Name</th><th>Country</th><th>Airport Code</th></tr><tr><td></td><td></td><td></td></tr></table>	Airport	Ranking	HYD	4.767	HAK	4.765	WUH	4.743	TSN	4.715	SYX	4.711	HET	4.700	HRB	4.697	KHN	4.664	NGO	4.638	CUN	4.553	Airport Name	Country	Airport Code			
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Rajiv Gandhi International Airport, Shamshabad, Hyderabad
Response to Comments of FICCI

FICCI Comments	GHIAL Response		
	HYDERABAD RAJIV GANDHI INT AIRPORT	INDIA	HYD
	HAIKOU AIRPORT	CHINA	HAK
	WUHAN AIRPORT	CHINA	WUH
	TIANJIN AIRPORT	CHINA	TSN
	SANYA AIRPORT	CHINA	SYX
	HOHHOT AIRPORT	CHINA	HET
	HARBIN AIRPORT	CHINA	HRB
	NANCHANG AIRPORT	CHINA	KHN
	NAGOYA CHUBU CENTRAIR INTERNATIONAL AIRPORT	JAPAN	NGO
	CANCUN INTERNATIONAL AIRPORT	MEXICO	CUN
<p>GHIAL must be rewarded for the good work done.</p> <p>However in the current consultation paper the return on Equity of 16% is even lower than 18.33% IRR promised on privatization (equivalent to 24% return on Equity).</p>			

FICCI Comments	GHIAL Response
<p><u>Return on Equity</u></p> <p>As regards the Return on Equity (RoE), FICCI would like to suggest the broad direction on the expected return and factors leading to calculation of a fair return.</p> <ul style="list-style-type: none"> • One of the most crucial aspects determining success of any ambitious PPP project would be an adequate rate of return on the capital deployed by private players, commensurate to the risk taken. • In particular, airports are often perceived as more risky than several other infrastructure projects. Aviation sector is cyclical in nature and there are significant geo-political risks in the airport sector. • From the consultation paper we understand that the State Support Agreement of 30.9.2003 (between Government of Andhra Pradesh and HIAL) provides for return on equity @ 18.33%. • Further, Government of Andhra Pradesh has also clarified that the concession agreement does not envisage cross subsidy of non-aeronautical revenues against the aeronautical revenues [reference Letter No. 245/Airports/2011 dated 03.03.2011]. 	<p>The minimum equity IRR of 18.33% promised under the GO No.130 dated July 26, 2013 issued by GoAP and the State Support Agreement is integral to the concession.</p> <p>This is a fundamental premise of the said concession.</p> <p>The Parties to the concession have recognised, accepted and acted on the same. In view of the above, the Authority is requested to approve a minimum 18.33% Equity IRR (equivalent to return on equity of 24%).</p>

Subject	IATA's Comments	GHIAL response
(1) Recognition of revenue from cargo services	<ul style="list-style-type: none"> IATA agrees with the Authority's treatment of revenues from cargo service accruing to the airport operator as aeronautical revenue. In addition, IATA asserts that since cargo service is defined as an aeronautical service under the AERA Act to be regulated by AERA, any revenue (e.g. concession fee, revenue share, rental etc) derived by <u>the airport</u> from provision of this aeronautical service (regardless of whether the service is provided by the airport itself, by concessionaires or by the airport's appointed agent) should be treated as aeronautical revenue 	<p>It's earnestly requested that Cargo, ground handling and Fuel should not be regulated by Authority.</p> <p>The rationale of the same is as under:</p> <p>Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement.</p> <p>Section 13 of the AERA Act states as under: "13. Functions of authority- (1) The Authority shall perform the following functions in respect of major airports, namely:- (a) to determine the tariff for the aeronautical services taking into consideration- (i) the capital expenditure incurred and timely investment in improvement of airport facilities; (ii) the service provided, its quality and other relevant factors; (iii) the cost for improving efficiency; (iv) economic and viable operation of major airports; (v) revenue received from services other than aeronautical services (v) revenue received from services other than the aeronautical services; (vi) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise; (vii) any other factor which may be relevant for the purposes of this Act: Provided that different tariff structures may be determined for different airports having regard to all or any of the above considerations specified at sub-clauses (i) to (vii)" (...emphasis added)</p> <p>A perusal of Section 13 of the AERA Act makes it clear that while determining tariff for aeronautical services, AERA is statutorily obligated to consider the</p>
(2) Recognition of revenue from ground handling services	<ul style="list-style-type: none"> Under the AERA Act, ground handling service is an aeronautical service. Regardless of who provides the service, the airport has the monopoly power to affect the cost which is a significant component of industry cost. In order to curb any monopolistic tendency of the airport to treat ground handling services as a convenient source of revenue which could then lead to runaway cost for the airlines and the industry, IATA asserts that revenue in any form (including royalties and concession revenue) derived by the airport from ground handling services should be treated as aeronautical revenue. 	
(3) Recognition of revenue from fuel services	<ul style="list-style-type: none"> IATA agrees with the Authority's treatment of revenues from fuel services as aeronautical revenue. In addition, IATA asserts that a primary reason for fuel services to be regarded as an aeronautical service is because the airport can abuse its monopolistic position in this area and cause fuel costs to go up unreasonably and unnecessarily. Hence, any form of revenue derived by the airport from fuel services (e.g. concession fee, rentals, fuel facility fees etc.) should be treated as aeronautical revenue to curb the ability of the airport to treat fuel services as a convenient source of revenue that will have repercussions on the cost efficiency of the aviation industry. 	

Subject	IATA's Comments	GHIAL response
		<p>concession offered to the Airport Operators by the Central Government and the other agreements which form an integral and inalienable part of such concession.</p> <p>Reading of Section 13(1)(a)(vi) indicates that the concession granted by the Central Government has to be read into the AERA Act and all its provisions as well as limitations contained therein have to be considered by AERA while determining tariff including while deciding which services in a particular case and in terms of the relevant Concession, can be regulated by AERA.</p> <p>This is further confirmed by a reading of the proviso to Section 13(1)(a) of the AERA Act which states that "different tariff structures may be determined for different airports having regard to all or any of the considerations specified at sub-clauses (i) to (vii)" in the said section. In other words, the AERA Act recognizes that a straightjacket applicability of its provisions to all major airports is not intended and grants flexibility to AERA to determine tariff structures to different airports having regard to various considerations including the concession granted by the Central Government.</p> <p>Thus, even though the AERA Act empowers AERA to regulate tariff for Aeronautical Service as defined in Section 2(a) of the AERA Act, in case any concession has already been granted by the Central Government, AERA is statutorily mandated to consider such concession.</p> <p>In the case of RGIA, since one of the concession granted by the Central Government is that save for the 'Regulated Charges', the GHIAL shall be free without any restriction to determine all Other</p>

Subject	IATA's Comments	GHIAL response
		<p>Charges. Thus, on a reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement, AERA is only empowered to regulate the Regulated Charges as defined in the Concession Agreement (as an exception to the mandate of the Act which is recognized and allowed by the Act itself) and cannot regulate any Other Charges in respect of the facilities and services provided at the Airport including the other Aeronautical Services as defined in Section 2(a) of the AERA Act.</p> <p>As such Authority is not mandated to regulate any Other Charges in respect of the facilities and services provided at the Airport.</p> <p>This clarifies that Cargo, Ground Handling and Fuel services should be kept outside the regulation.</p> <p>GoAP: GoAP also has clarified that Cargo, Ground Handling and Fuel should not be regulated. GHIAL has accordingly classified Cargo assets as non-aero and revenue from Cargo, Ground Handling and Fuel services has been classified as non-aero. In our view this is what is contemplated under the Concession Agreement and the same is requested to be accepted by the Authority.</p>
(4) Pre-control period losses	<ul style="list-style-type: none"> AERA was established by the Indian Government through notification no GSR 317 (E) dated 12 May 2009. Prior to the establishment of AERA, the Ministry of Civil Aviation was the de facto economic regulator. IATA is of the strong view that legally, the Authority does not have jurisdiction over the period prior to its establishment and especially since there was a separate entity performing the regulator's role at that time i.e. the Ministry. In assessing the pre-control period claim, the period between 23 April 2008 and May 2009 (the establishment of AERA) should be excluded. Therefore, the Authority's 	<p>There is no bar on the Authority considering the eligible entitlement of previous periods for finalizing the tariff of current period.</p> <p>The Authority is mandated to consider the concession agreements and as part of this role, will need to consider past losses in the computation of the tariffs post creation of AERA. There needs to be fairness in the process such that the Capex and opex spent by airport operator is properly remunerated. In the absence of this there cannot be any investment by the private sector under PPP.</p> <p>The earlier interim (Ad-Hoc) determination of tariff</p>

CP 09/2013-14 (01.04.2011 – 31.03.2016)

Determination of Aeronautical Tariff of Rajiv Gandhi International Airport, Shamshabad, Hyderabad

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Rajiv Gandhi International Airport, Shamshabad, Hyderabad
Response to Comments of IATA

Subject	IATA's Comments	GHIAL response
	<p>proposed pre-control period losses (Rs260.68 crores under single till and Rs447.14 crores under dual till) should be re-computed.</p>	<p>was undertaken by Authority after its constitution.</p> <p>The same was finalized after detailed public consultation under the AERA act. In the earlier tariff order, Authority has laid down the following:</p> <p><i>"The detailed comments of the Authority on the issues raised by HIAL (as indicated in para 18.1 above) are given in Annexure-II. Broadly, it is the Authority's understanding that the aforesaid differences are arising mainly as HIAL is taking 2010-11 estimates as firm figures. It is reiterated that the figures of 2010-11 are only estimates and therefore, Authority proposes to continue with its approach of taking actuals of 2009-10 to estimate the figures in respect of 2010-11 and 2011-12 and 2012-13.</i></p> <p><i>After reconciliation the UDF rate has been worked out as Rs-430/-per domestic passenger and Rs.1700/-per international passenger, exclusive of service tax, on an ad-hoc basis w.e.f, 01.11.2010 (details at Annexure III).</i></p> <p><i>Authority is conscious that on a detailed assessment, including bottoms up analysis of all revenues and expenditures, the UDF rates presently determined may need to be altered. This exercise will be undertaken at the final determination stage."</i></p> <p>Accordingly this is in continuation of the earlier order of the Authority.</p>
(5) Asset Allocation (Aeronautical / Non-Aeronautical)	<ul style="list-style-type: none"> It is noted that asset allocation only emerges as an issue if dual till is applied. The Authority had recognized the need for an independent assessment of asset allocation in early 2012 during the tariff determination process for 	<p>The allocation was done on a scientific method and details and necessary certificates thereof have been submitted to the Authority.</p> <p>The asset allocation suggested by IATA is very</p>

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Rajiv Gandhi International Airport, Shamshabad, Hyderabad
Response to Comments of IATA

Subject	IATA's Comments	GHIAL response
1)	<p>Indira Gandhi International Airport, Delhi but had not taken any action between then and this instance of tariff determination for Rajiv Gandhi International Airport. The absence of an independent study has left this issue in a non-ideal situation of having to rely on the airport's allocation formula and to endure an unverified allocation formula until the next control period. In the event that a decision to adopt dual till is taken, IATA does not support the unverified use of the airport's allocation formula but instead requests the Authority to adopt a nominal asset allocation percentage of 70% to the aeronautical category which is in line with the experience seen at a number of European airports (please see Appendix 1).</p>	<p>unscientific and vague method. As regards to adoption of European methodology, we need to keep in mind that no two airports are similar in nature. GHIAL has concessioned out most of its non-aero revenue streams and as such it will have low Non Aero assets in its books.</p> <p>Proposal 3. a (ii) of the Consultation Paper No. 09/2013-14 stated the following</p> <p><i>"The Authority also tentatively proposes that it will commission an independent study to assess the reasonableness of the asset allocation submitted by HIAL and would take corrective action, as may be necessary for determination of tariffs under dual till, at the commencement of the next control period commencing with effect from 01.04.2016.</i></p> <p><i>The Authority further proposes that upon analysis / examination pursuant to such a study, the Authority may conclude that the allocation of assets considered under dual till needs to be changed. In such a case the Authority would consider truing up the allocation mix at the commencement of the next control period as may be relevant."</i></p> <p>As the Authority proposes to commission an independent study hence concern of IATA is no more valid.</p>
(6) Future Capital Expenditure	<ul style="list-style-type: none"> • IATA agrees with the Authority's proposal given that: <ul style="list-style-type: none"> - The costs submitted by the airport operator are only broad estimates - Capital expenditure taken on by a separate entity should not in normal circumstances be included for tariff determination of the airport entity 	<p>The details submitted to the Authority are comprehensive to enable allowance of future Capex. Sufficient evidences have been produced in support of the fact that no user consultation is required for such Capex.</p> <p>The stand of allowing Capex at a future date makes the approval uncertain and will lead to inefficient operations at airport which may impact the quality of</p>
(7) General	<ul style="list-style-type: none"> • Admission of the General Capital Expenditure 	

Subject	IATA's Comments	GHIAL response
Capital Expenditure	proposed by the airport in the Regulatory Asset Base for tariff determination in the current control period would necessitate that the estimated costs quoted are realistic and the eventual actual costs would not vary significantly from these estimates. To ensure proper cost control measures are practiced by the airport, there should be a cap on the upward variation of the costs allowable for trueing up (e.g. up to 5%) notwithstanding that evidential submissions along with auditor certificates are required.	services at the airport. The stand of future approval also makes it difficult for the airport to borrow for such projects. Since a 100% true up will be there for the future Capex it is earnest requested that the Future Capex should be allowed to be part of current approval. In absence of this the quality of the airport will suffer tremendously.
(8) Treatment of land granted by the State Government	<ul style="list-style-type: none"> IATA agrees that land provided by the State for the airport project should result in benefits to the industry by way of lowering the cost environment at the airport which would in turn support aviation growth and drive economic growth within the state. IATA fully supports the Authority's proposal to bring such intended benefits to the fore through a fair mechanism such as one that reduces the RAB by the market value of the land. 	<p>The stand of IATA is misplaced to the extent that the entire land was not meant for airport as clarified by GoAP, the entity which gave land to GHIAL.</p> <p>A conjoint reading Concession Agreement, State Support Agreement and the Land lease Agreement indicates that the following concessions and assurances have been granted to the GHIAL at the time of the grant of the right/concession to develop the Airport, namely:</p> <p>The Concession Agreement defines and differentiates between mandatory 'Airport Activities' consisting of aeronautical as well as non-aeronautical activities at the Airport and non-mandatory 'Non-Airport Activities' which the GHIAL is entitled to undertake at the Land (as defined under the Land Lease Agreement).</p> <p>Thus, in addition to the rights granted to the GHIAL for setting up and operating the RGIA, certain additional rights have been granted for the purpose of development of the additional land for purely commercial purposes not relating to the airport activity. In this regard, as noticed hereinabove, the Concession Agreement also makes a distinction between "Airport Activities" and Non-Airport Activities". While Airport Activities has been defined under Article 1.1 of the Concession Agreement to mean "the provision, at or in relation to the Airport, of the activities set out at Schedule 3, Part 1 as amended from time to time, pursuant to ICAO</p>

Subject	IATA's Comments	GHIAL response
		<p>guidelines, provided that any activities that are not materially similar to those contemplated in Schedule 3, Part 1 shall require the mutual agreement of the Parties", Non-Airport Activities means "the provision, at or in relation to the Airport, of the services set out at Schedule 3, Part 2".</p> <p>Schedule 3, Part 2 of the Concession Agreement provides for the Non-Airport activities which consist of real estate activities. These activities are totally unconnected with the Airport Activities.</p> <p>In view of the above, it is pertinent to note that the land earmarked for development of Non-Airport Activities as well as the cost of setting up and carrying out the Non-Airport Activities is not to be considered for the purpose of arriving at 'total project costs' of the Airport. GHIAL is permitted to utilize the said land parcel out of the total Land for carrying out Non-Airport Activities which are purely commercial, real estate and totally unconnected with the Airport business.</p> <p>On a conjoint reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement and not regulate any Other Charges in respect of the facilities and services provided at the Airport nor using the revenue therefrom to subsidize the Aero Charges.</p> <p>The value of the land earmarked for Non-Airport Activities (market or notional) cannot be included in nor deducted from the RAB and accordingly the revenue generated therefrom cannot be taken into account for cross subsidizing aeronautical tariff at airport.</p>

Subject	IATA's Comments	GHIAL response
(9) Treatment of foreign exchange fluctuations	<ul style="list-style-type: none"> IATA agrees with the Authority's proposal. Variations in foreign exchange can result in gains or losses which should be absorbed by the business entity as part of the risks of conducting business. 	<p>The sourcing of funds at a lower rate in foreign exchange is for the benefit to the passenger / other stakeholders by way of a lower WACC.</p> <p>However this means of funding also carries the inherent risk of foreign exchange fluctuations. Taking the benefit of a lower interest rate but not allowing the resultant Forex fluctuation goes against the principles of natural justice.</p> <p>The fluctuation need to be incorporated as part of RAB because of following reasons:</p> <p>(1) The level of Forex borrowing is not excessive. The level of borrowing is at level generally accepted to be normal in the industry.</p> <p>(2) This borrowing was availed before the Authority's current stand was finalized. The borrowing structure cannot be amended now.</p> <p>The Authority should appreciate the fact that the Company has not retained the benefits of cheaper borrowing cost and is passed on to the passenger in the form of lower WACC.</p> <p>If the Company had taken Domestic Loan instead of the ECB equivalent amount, the outflows of cash towards interest costs would have been much more. Also, it should be noted that the loss of Forex fluctuation on interest payments & principal repayments is real in nature and not a notional loss.</p> <p>GHIAL has taken the hit of the Forex fluctuations in actuals of FY 2011-12 and FY 2012-13 owing to interest and repayments servicing the ECB loan to the extent of Rs 34.46 Crs. This loss is not included in the computations of WACC.</p> <p>Therefore, Authority is requested to allow the Loss on impact of Forex Fluctuations by Inclusion of same in RAB.</p>

Rajiv Gandhi International Airport, Shamshabad, Hyderabad
Response to Comments of IATA

Subject	IATA's Comments	GHIAL response																
(10) Cost of equity	<ul style="list-style-type: none">IATA views that the cost of equity of 13.2% calculated by NIPFP is a reasonable reflection of HIAL's cost of equity and disagrees with the Authority's tentative proposal to round the figure up to 16%. IATA believes that there is no need for rounding up and the value of 13.2% should be used as it is. This value of 13.2% should also be used for computation of HIAL's WACC as well as for assessment of pre-control period losses from September 2009 to March 2011.	<p>The stand of IATA defies logic.</p> <p>The bank borrowing rates being around 11% to 12% and inflation being in rage of 10-11% there is no way equity return of 13.2% can be justified</p> <p>The minimum equity IRR of 18.33% was promised under the GO No.130 dated July 26, 2013 issued by GoAP</p> <p>The State Support Agreement is integral to the concession itself being a fundamental premise of the said concession and cannot be read in isolation or disregarded/ varied once the Parties to the concession have recognized, accepted and acted on the same. In view of the above, the Authority is requested not to alter or vary the assurance of minimum 18.33% Equity IRR (which is equivalent to 24% return on equity) granted to GHIAL.</p> <p>Also the following are results of some of the studies carried out by various experts on cost of equity. These are very established organizations of national and international repute. These studies were carried out on behalf of the Airports, the industry associations as well as MoCA, GOI. However the report of NIPFP relied by Authority have no such experience. The resultant number of NIPFP is nowhere near the estimates of these reports.</p> <table><tr><td colspan="2">Cost of Equity</td></tr><tr><td>Jacobs</td><td>24%</td></tr><tr><td>KPMG (for APAO)</td><td>20%-25%</td></tr><tr><td colspan="2">based on debt equity ratio.</td></tr><tr><td>SBI Caps (For MoCA/AAI)</td><td>18.5% to 20.5%</td></tr><tr><td>CRISIL (For MIAL)</td><td>18.16 to 20.44%</td></tr><tr><td colspan="2">based on debt equity ratio.</td></tr><tr><td>NIPFP</td><td>13.2%</td></tr></table> <p>Another interesting aspect is that with Cost of GHAIL debt being around 12% the Cost of equity of 13.2% is very low. NIPFP report was flawed and needed a lot of corrections. Authority has accepted a return of 16% against 13.2% recommended by NIPFP. This goes</p>	Cost of Equity		Jacobs	24%	KPMG (for APAO)	20%-25%	based on debt equity ratio.		SBI Caps (For MoCA/AAI)	18.5% to 20.5%	CRISIL (For MIAL)	18.16 to 20.44%	based on debt equity ratio.		NIPFP	13.2%
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CP 09/2013-14 (01.04.2011 – 31.03.2016)

Determination of Aeronautical Tariff of Rajiv Gandhi International Airport, Shamshabad, Hyderabad

Rajiv Gandhi International Airport, Shamshabad, Hyderabad
Response to Comments of IATA

Subject	IATA's Comments	GHIAL response
		<p>on to show that the study has not been found to be fully acceptable by the Authority as well. As such without prejudice to our stand that the minimum equity IRR should be 18.33% (equivalent to cost of equity of 24%) it is earnestly requested that a cost of equity based on various other studies as enumerated above may be used for tariff determination of GHIAL. Since the report of SBI Caps was by the Gol which is an independent entity, and the study was for private airports, the equity return as given in that report may be considered by Authority. Considering the higher Debt Equity ratio of GHIAL the higher range of the said report i.e. 20.5% is the minimum that may kindly be approved.</p>
(11) Operating Expenses	<ul style="list-style-type: none"> • IATA disagrees that a real increase of 3% over and above the current inflation of 6.5% provides a reasonable incentive for the airport operator to improve operating efficiency. The average used by the Authority to derive the 3% figure is flawed as three data points is far too few to provide a reliable and accurate average. Also, using data for the first three years of the airport's operations to represent that of future years is not reasonable as the nature of costs at start-up is unlikely to be the same as the steady-state costs. • IATA notes that as a result of the assumptions used by the Authority to grant a 3% real increase, it has unfairly provided an operating expense budget that is even higher than what the airport had asked for. This should be reviewed especially given that the airport's proposal would have more likely than not already built in some buffer. • IATA also notes that the 3% real increase have been approved across the board, even for irregular or ad hoc expense categories such as "Consultancy" and "Other Miscellaneous Business Promotion" that do not necessarily increase over time. This has resulted in provision of budget that is more than necessary for the airport and has led to additional buffer that does not incentivize operational efficiency. 	<p>GHIAL had asked for a real increase much higher than proposed by Authority.</p> <p>The increase currently proposed by Authority is very miniscule and GHIAL will not be able to carry out operations efficiently with such meager increase.</p> <p>The increase proposed by the Authority in consultation paper takes away the incentive to airport operator for the good work done of containing costs in past.</p> <p>Also the additional quality parameters imposed by the Authority will entail additional expenditure. The same also need to be taken into account while approving the operating expenditure.</p> <p>Hence, the Authority is requested to consider the growth rates as submitted by GHIAL.</p> <p>With reference to the increase GHIAL had made its submissions without considering WPI growth and requesting AERA to consider the same during the final tariff determination.</p> <p>Authority also needs to note that the operating expenses rise sharply as the facility gets older. Mere inflationary increase cannot sustain operations.</p>

Subject	IATA's Comments	GHIAL response
	<ul style="list-style-type: none"> IATA would propose that in order to provide a reasonable challenge for the airport to push for operational efficiency, the allowable annual increase in operating expenses needs to be below the inflation rate which is currently at 6.5%. 	
(12) Treatment of Cargo Revenue	<ul style="list-style-type: none"> IATA is concerned that while the assets used for provision of cargo services are in the books of the airport thus requiring the users to shoulder the burden of depreciation and WACC payable to the airport, the revenue that goes back to the airport to be treated as aeronautical revenue (which is a minor portion of the amount earned by the concessionaire) may not be commensurate with the costs borne by the users. Furthermore, the users could already be paying to the concessionaire (Hyderabad Menzies Air Cargo Pvt Ltd) cargo rates that are far in excess of the returns that the airport is entitled to should it be handling the cargo services itself. In other words, the users could be hit with a double whammy. IATA urges the Authority to re-examine the situation thoroughly and in conjunction with the returns that HMA CPL is getting to ensure that users do not end up shouldering unnecessary high costs for cargo services. 	<p>As explained above in detail, we are of the view that cargo should be outside regulation and all Capex and the revenue associated therein should be treated as Non Aero. This includes the revenue share as well as the rentals.</p> <p>Cargo must be kept outside the regulations.</p> <p>Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement.</p> <p>AERA act contemplates that the concession needs to be taken into consideration in fixing the charge. The clause 13(1)(a)(iv) reads as under:</p> <p style="text-align: center;">CHAPTER III POWERS AND FUNCTIONS OF THE AUTHORITY</p> <p>13. (1) The Authority shall perform the following functions in respect of major airports, namely:—</p> <p style="text-align: right;">Functions of Authority</p> <p>(a) to determine the tariff for the aeronautical services taking into consideration—</p> <p style="padding-left: 40px;">(i) the capital expenditure incurred and timely investment in improvement of airport facilities;</p> <p style="padding-left: 40px;">(ii) the service provided, its quality and other relevant factors;</p> <p style="padding-left: 40px;">(iii) the cost for improving efficiency;</p> <p style="padding-left: 40px;">(iv) economic and viable operation of major airports;</p> <p style="padding-left: 40px;">(v) revenue received from services other than the aeronautical services;</p> <p style="padding-left: 40px;">(vi) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise;</p> <p>The Concession Agreement contemplates regulations of only the Regulated Charges by the Authority as mentioned in the Schedule 6 of Concession Agreement. The AERA act also contemplated that the concession should be adhered. As such the provisions of the concession agreement needs to be adhered.</p> <p>Provisions of Concession Agreement:</p> <p>Only the following Regulated Charges as enumerated</p>

Rajiv Gandhi International Airport, Shamshabad, Hyderabad
Response to Comments of IATA

Subject	IATA's Comments	GHIAL response
		<p>in the Schedule 6 of the Concession Agreement are to be regulated by the Independent Regulatory Authority (IRA):</p> <ol style="list-style-type: none"> 1. Landing Charges 2. Parking Charges 3. Housing Charges 4. Passenger Service Fee 5. User Development Fee <p>Clause 10.2 of the Concession Agreement reads as under:</p> <p>10.2 Airport Charges</p> <p>10.2.4 From the date the IRA has the power to approve the Regulated Charges, HIAL shall be required to obtain approval thereof from the IRA. In this regard HIAL shall submit to the IRA, in accordance with any regulations framed by the IRA, details of the Regulated Charges proposed to be imposed for the next succeeding relevant period together with such information as the IRA may require for review...</p> <p>iii. Freedom to determine Other Charges for other facilities or services:</p> <p>Clause 10.3 of the Concession Agreement reads as follows:</p> <p>10.3 Other Charges</p> <p>HIAL and/or Service Provider Right Holders shall be free without any restriction to determine the charges to be imposed in respect of the facilities and services provided at the Airport or on the Site, other than the facilities and services in respect of which</p>

Subject	IATA's Comments	GHIAL response
		<p>Regulated Charges are levied.</p> <p>As such Authority is not mandated to regulate any Other Charges in respect of the facilities and services provided at the Airport. As such the Cargo should be outside the regulations.</p>
(13) Treatment of Ground Handling Revenue	<ul style="list-style-type: none"> Under the AERA Act, ground handling service is an aeronautical service. Regardless of who provides the service, the airport has the monopoly power to affect the cost which is a significant component of industry cost. In order to curb any monopolistic tendency of the airport to treat ground handling services as a convenient source of revenue which could then lead to runaway cost for the airlines and the industry, IATA asserts that revenue in any form (including royalties and concession revenue) derived by the airport from ground handling services should be treated as aeronautical revenue. 	<p>As explained above in detail, we are of the view that ground handling should be outside the regulation.</p>
(14) Fuel throughput charge	<ul style="list-style-type: none"> IATA is of the strong view that the sanctity of the tariff determination process should not be compromised by allowing the airport to levy a fuel throughput charge that is 2.6 times higher than what is allowed based on the ARR. AERA must preserve an orderly process by only allowing the ARR for fuel services to be collected through the fuel throughput charge and not allow a huge over-collection above the ARR to take place on the weak justification that it would be compensated through a lower YPP. It is unfair and indefensible to have the airlines pay a much higher rate just because they had been grossly over- charged all along. IATA also disagrees with the Authority's observation that the fuel farm agreements had been reasonable because the Authority was not aware of reasonable objections from the users of fuel farm services. The airlines had all along vehemently objected to the high fuel throughput charge at HYD but had no recourse since the airport had absolute monopoly over fuel services. IATA urges AERA to redress this unfair situation and reduce the fuel throughput 	<p>In the current tariff filing the upsides of fuel are being utilized for reduction of aeronautical charges.</p> <p>GHIAL is recovering as per entitled target revenue based on building blocks approach.</p> <p>However we are of the view that Fuel Charges should be outside regulation.</p>

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Response to Comments of IATA

Subject	IATA's Comments	GHIAL response
	charge to what is permissible based on ARR i.e. at Rs 828.29 per kiloliter.	
(15) Tariff Structure / Rate Card	<ul style="list-style-type: none"> • IATA is strongly opposed to the 100% increase in landing fee for international flights as that would present a significant shock to airlines' operating costs. IATA urges a significantly more moderate increase, if need be, that will support a cost environment more conducive for airlines to operate in and be able to grow services. From international experience, a 10% increase in landing fee would already be considered as at the high end. 	<p>Even with the proposed increase the landing and parking charges at GHIAL will be lower than those at Chennai and Kolkata.</p> <p>As regards to the issues of differentiation of rates in domestic and international passengers are concerned, we state that MoCA did the fixation of rates of the original DF.</p> <p>The current rates have also being determined by AERA.</p> <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.</p>
	<ul style="list-style-type: none"> • IATA reiterates its rejection of a differential in landing fee between international and domestic flights as this is in gross contravention of 	
	<p>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.</p> <ul style="list-style-type: none"> • IATA notes that the ratio of UDF between domestic to international has been kept the same as the existing rate of 1:3.95. IATA believes that this ratio is unfair. IATA urges the use of a more equitable ratio of 1:2 or lower. • IATA believes that as with the proposal by AERA in the tariff determination consultation paper for BLR, the Common Infrastructure Charge proposed for HYD should be disallowed for the sake of rate card simplicity and the revenue requirement be merged into the UDF. • As per the comments in point (14), the fuel throughput charge should be set at the correct level of Rs 828.29 per kiloliter. • IATA agrees with AERA's rejection of charging UDF for arriving passengers. 	<p>Also worthwhile is to mention that there has not been any major increase in landing and parking charges in almost last 10 years (except for a 105 increase in 2009) and even if we go by inflationary increase the current increase is justified. Passing on the entire burden on passenger charges is not justified.</p>

(16) Regulatory till	<ul style="list-style-type: none"> • IATA is fully supportive of AERA's proposal to determine aeronautical tariffs at RGI Airport, Hyderabad under single till. AERA had arrived at its conclusion after having gone through a comprehensive study and extensive consultation that the most appropriate approach in the context of India that best protects the interests of passengers is the single till approach and this should be used for regulation of tariffs at HYD. 	<p>The concession agreement as well as the AERA act supports the Dual Till at GHIAL. Following is the basis of the same:</p> <p>A conjoint reading of the concession documents, indicates that the following concessions and assurances (relevant for the present queries) have been granted at the time of the grant of the right/concession to develop the Airport, namely:</p> <p>(i) Under Clause 10.2 read with Schedule 6 of the Concession Agreement, only Airport Charges defined as the 'Regulated Charges' are to be regulated by the IRA (i.e. AERA).</p>

		<p>(ii) Under Clause 10.2.4 of the Concession Agreement, the Regulated Charges shall be approved in consonance with ICAO Policies until the earlier of (i) the date that outstanding Debt in respect of the Initial Phase has been repaid and (ii) fifteen (15) years from the Airport Opening Date.</p> <p>(iii) In view of Clause 10.3 of the Concession Agreement, the GHIAL shall "be free without any restriction" to determine all Other Charges which are levied in respect of all other facilities and services at the Airport.</p> <p>(iv) The Concession Agreement defines and differentiates between mandatory 'Airport Activities' consisting of aeronautical as well as non-aeronautical activities at the Airport and non-mandatory 'Non-Airport Activities' which GHAIL is entitled to undertake at the Land (as defined under the Land Lease Agreement).</p> <p>1. The Concession Agreement (in terms of Article 10.2 and 10.3) has classified only two types of charges at RGIA i.e. Regulated Charges and Other Charges for the Airport Activities carried out at the Airport by the GHIAL consisting of both aeronautical as well as non-aeronautical activities. The Concession Agreement also defines "Regulated Charges" under Article 10.2.1 to mean only such Airport Charges as specified in Schedule 6 of the Concession Agreement and thus in terms of Schedule 6, Regulated Charges means the following charges i.e.</p> <ul style="list-style-type: none"> (i) Landing Housing and Parking charges, (ii) Passenger Service Fee and (iii) User Development Fee. <p>2. While Article 10.2 read with Schedule 6 of the Concession Agreement mandates that the IRA i.e. AERA (pursuant to being empowered for the purpose) shall approve/determine the Regulated Charges, Article 10.3 states unequivocally that except the Regulated Charges mentioned in Schedule 6, the GHIAL shall "be free without any restriction" to determine all Other Charges which are levied in</p>
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		<p>respect of the activities defined as the Airport Activities at the Airport. Other Charges have been defined in Article 10.3 to include all facilities and services provided at the Airport except facilities and services in respect of which Regulated Charges are levied. In other words, the Concession Agreement provides that while AERA shall be empowered to regulate all Regulated Charges mentioned in Schedule 6, the power to determine all charges other than Regulated Charges rests with the GHIAL.</p> <p>3. Thus, the Concession Agreement makes a clear distinction between charges which require determination by AERA [i.e. Airport Charges (which are Regulated Charges) and those which can be fixed by the GHIAL itself i.e. Other Charges (which are also Airport Charges but are not subject to regulation by AERA).</p> <p>4. It is pertinent to note that Section 13 of the AERA Act which empowers AERA to determine the tariff of “aeronautical services” in respect of major airports mandates AERA to take various factors into consideration for determining the tariff. A perusal of Section 13 of the AERA Act makes it clear that while determining tariff for aeronautical services, AERA is statutorily obligated to consider the concession offered to the Airport Operators by the Central Government and the other agreements which form an integral and inalienable part of such concession.</p> <p>Reading of Section 13(1)(a)(vi) indicates that the concession granted by the Central Government has to be read into the AERA Act and all its provisions as well as limitations contained therein have to be considered by AERA while determining tariff including while deciding which services in a particular case and in terms of the relevant Concession, can be regulated by AERA.</p> <p>This is further confirmed by a reading of the proviso to Section 13(1)(a) of the AERA Act which states that “different tariff structures may be determined for different airports having regard to all or any of the considerations specified at sub-clauses (i) to(vii)” in</p>
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		<p>the said section. In other words, the AERA Act recognizes that a straightjacket applicability of its provisions to all major airports is not intended and grants flexibility to AERA to determine tariff structures to different airports having regard to various considerations including the concession granted by the Central Government.</p> <p>5. Thus, even though the AERA Act empowers AERA to regulate tariff for Aeronautical Service as defined in Section 2(a) of the AERA Act, in case any concession has already been granted by the Central Government, AERA is statutorily mandated to consider such concession.</p> <p>In the case of RGIA, since one of the concession granted by the Central Government is that save for the 'Regulated Charges', the GHIAL shall be free without any restriction to determine all Other Charges. Thus, on a reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement, AERA is only empowered to regulate the Regulated Charges as defined in the Concession Agreement (as an exception to the mandate of the Act which is recognized and allowed by the Act itself) and cannot regulate any Other Charges in respect of the facilities and services provided at the Airport including the other Aeronautical Services as defined in Section 2(a) of the AERA Act.</p> <p>By adopting a single till AERA is limiting the return which can accrue to airport operator on Non Aeronautical part or on unregulated charges. This is an indirect regulation of activities not mandated under AERA act or concession agreement.</p>
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Rajiv Gandhi International Airport, Shamshabad, Hyderabad
Response to Comments of IATA

<p>(17) Quality of Services</p>	<ul style="list-style-type: none"> • IATA agrees with the proposal for the rebate mechanism and the proposal for a transition period of six months for implementation but implementation should take place no later than 1 April 2014. 	<p>In terms of the AERA Act it is earnestly submitted that the role and jurisdiction of the Authority is limited to monitoring compliance of the service quality standards prescribed under the concession agreement. The prescription of any new services standards is not envisaged.</p> <p>While Section 13(1)(a)(ii) of the AERA Act permits the Authority to consider the services provided, its quality and other relevant factors in determining the tariff, there is no explicit power vested with the Authority to prescribe any penalties under the AERA Act in the event of a failure to meet service quality requirements.</p> <p>In view of the Authority being required to take the terms of the concession agreement into consideration for determining tariff and in view of the concession agreement already providing for a mechanism for penalties for failure to achieve service quality requirements, the Authority should not only take into consideration the service quality requirements, but also the penalties for failure to meet service quality requirements as set forth therein. Any penalties prescribed by the Authority for failure to meet the said service quality requirements would effectively tantamount to the Authority not taking into consideration the terms (including penalties) of the Concession Agreements and therefore would not be consistent with the AERA Act.</p> <p>Therefore, Authority is requested not to impose additional standards and penalties over and above those enumerated in the CA. Additional quality parameters, maintaining these standards, and monitoring requires additional capital and operating expenditure. The same needs to be allowed over and above the amounts allowed by Authority. As such the Authority is requested to continue with the methodology as prescribed under Concession Agreements for compliance, monitoring and penalties for non-conformity.</p>
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Rajiv Gandhi International Airport, Shamshabad, Hyderabad
Response to Comments of IOCL, BPCL and HPCL

Comments of IOCL, BPCL and HPCL	GHIAL Response
<p>a) As mentioned in clause 17.24 of the Consultation Paper, we agree with the Authority that tariff for service of supply of fuel has to be determined by the Authority under AERA Act.</p> <p>b) With regard to paras 17.25 and 17.29 of the Consultation Paper, we would like to submit, that the Oil companies, as Suppliers at the airport, are the users of the fuel farm services and have entered into individual tri-partite Suppliers Agreements with the fuel farm service provider i.e. GHIAL as Airport Operator and M/S Reliance Industries Ltd. as Fuel Farm Operator. The tariff for use of fuel facilities at the airport was not indicated in the Suppliers Agreement, however the same was mentioned in an e-mail message dated e Feb, 2008 from GHIAL, as Rs. 2170 per KL (Rs. 670 per KL towards Throughput Fee plus Rs.1500 per KL towards Infrastructure Recovery Charge, which includes fee towards Into Plane services). Copy of the e-mail is attached as Annexure-I.</p>	<p>We disagree with the stand of oil companies that the fuel charges must be regulated.</p> <p>Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement.</p> <p>Section 13 of the AERA Act states as under:</p> <p>“13. Functions of authority- (1) The Authority shall perform the following functions in respect of major airports, namely:-</p> <ul style="list-style-type: none"> (a) to determine the tariff for the aeronautical services taking into consideration- <ul style="list-style-type: none"> (i) the capital expenditure incurred and timely investment in improvement of airport facilities; (ii) the service provided, its quality and other relevant factors; (iii) the cost for improving efficiency; (iv) economic and viable operation of major airports; (v) revenue received from services other than aeronautical services (v) revenue received from services other than the aeronautical services; (vi) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise; (vii) any other factor which may be relevant for the purposes of this Act: <p>Provided that different tariff structures may be determined for different airports having regard to all or any of the above considerations specified at sub-clauses (i) to (vii)” (...emphasis added)</p> <p>A perusal of Section 13 of the AERA Act makes it clear that while determining tariff for aeronautical services, AERA is statutorily obligated to consider the concession offered to the Airport Operators by the Central</p>

Comments of IOCL, BPCL and HPCL	GHIAL Response
	<p>Government and the other agreements which form an integral and inalienable part of such concession.</p> <p>Reading of Section 13(1)(a)(vi) indicates that the concession granted by the Central Government has to be read into the AERA Act and all its provisions as well as limitations contained therein have to be considered by AERA while determining tariff including while deciding which services in a particular case and in terms of the relevant Concession, can be regulated by AERA.</p> <p>This is further confirmed by a reading of the proviso to Section 13(1)(a) of the AERA Act which states that “different tariff structures may be determined for different airports having regard to all or any of the considerations specified at sub-clauses (i) to(vii)” in the said section. In other words, the AERA Act recognizes that a straightjacket applicability of its provisions to all major airports is not intended and grants flexibility to AERA to determine tariff structures to different airports having regard to various considerations including the concession granted by the Central Government.</p> <p>Thus, even though the AERA Act empowers AERA to regulate tariff for Aeronautical Service as defined in Section 2(a) of the AERA Act, in case any concession has already been granted by the Central Government, AERA is statutorily mandated to consider such concession.</p> <p>In the case of RGIA, since one of the concession granted by the Central Government is that save for the ‘Regulated Charges’, the GHIAL shall be free without any restriction to determine all Other Charges. Thus, on a reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement, AERA is only empowered to regulate the Regulated Charges as defined in the Concession Agreement (as an exception to the mandate of the Act</p>

Comments of IOCL, BPCL and HPCL	GHIAL Response
	<p>which is recognized and allowed by the Act itself) and cannot regulate any Other Charges in respect of the facilities and services provided at the Airport including the other Aeronautical Services as defined in Section 2(a) of the AERA Act.</p> <p>As such Authority is not mandated to regulate any Other Charges in respect of the facilities and services provided at the Airport.</p> <p>Accordingly, it's an earnest request that the Fuel charges should be kept outside the regulations.</p>
<p>c) The Fuel Throughput charges of Rs. 2170 per KL demanded by GHIAL was considered exorbitant and the Oil PSUs had jointly protested against the same, vide communication ref. AV/SSBJGHIAL dated 11. July, 2008. A copy of the joint letter protesting against such exorbitant rate demanded by GHIAL is attached as Annexure-II.</p> <p>GHIAL did not have any reasonable consultation, stakeholder meeting or discussion for exchange of views with Suppliers or any back ground of such over-priced Fuel Throughput Charge. However, with no other alternative, and in order to ensure supplies to honour contractual commitments to Airline customers, the Suppliers had no option but to accept the tariff demanded by GHIAL, and since then have been releasing the payments to GHIAL at these rates.</p> <p>As you may kindly be aware, the 'Throughput Fee' & 'Infrastructure & Opex Fee' charged to the Suppliers gets added to final ATF price for Airlines, thereby increasing the input cost to Airline Operations.</p>	<p>The fuel throughput charges are not 2170/- per KL as being mentioned here. The 1500/- per KL out of this is infrastructure charge.</p> <p>The rates proposed by GHIAL were accepted by the oil companies and they have continued to pay the same.</p> <p>There was no coercion of any type with oil companies. It is ridiculous to assume any coercion with these large monopolistic public sector oil companies.</p> <p>Also the fuel throughput charge is a profit sharing with oil companies and the same should not be passed on to the end users.</p> <p>Also pertinent is the fact that oil companies also are supplying fuel to the airlines at airports and thus their profits (which are not transparent) and revenues should also be scrutinized by AERA as it is the ultimate cost of fuel that is important to airlines and excessive profits should not be allowed to monopolistic oil companies.</p> <p>Without prejudice to our rights, AERA has considered fuel throughput charges as aeronautical revenue in the consultation paper. As per building block approach, GHIAL is entitled to get aero-nautical revenue as per the building blocks. So irrespective of the charges towards Fuel, total entitlement of GHIAL remains the same.</p>

Comments of IOCL, BPCL and HPCL	GHIAL Response
	<p>Also as per the concession agreement the fuel charges are not to be regulated by the Authority.</p> <p>Under Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement.</p> <p>Section 13 of the AERA Act states as under:</p> <p>“13. Functions of authority- (1) The Authority shall perform the following functions in respect of major airports, namely:-</p> <ul style="list-style-type: none"> (a) to determine the tariff for the aeronautical services taking into consideration- <ul style="list-style-type: none"> (i) the capital expenditure incurred and timely investment in improvement of airport facilities; (ii) the service provided, its quality and other relevant factors; (iii) the cost for improving efficiency; (iv) economic and viable operation of major airports; (v) revenue received from services other than aeronautical services (v) revenue received from services other than the aeronautical services; (vi) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise; (vii) any other factor which may be relevant for the purposes of this Act: <p>Provided that different tariff structures may be determined for different airports having regard to all or any of the above considerations specified at sub-clauses (i) to (vii)” (...emphasis added)</p> <p>A perusal of Section 13 of the AERA Act makes it clear that while determining tariff for aeronautical services, AERA is statutorily obligated to consider the concession offered to the Airport Operators by the Central Government and the other agreements which form an</p>

Rajiv Gandhi International Airport, Shamshabad, Hyderabad
Response to Comments of IOCL, BPCL and HPCL

Comments of IOCL, BPCL and HPCL	GHIAL Response
	<p>integral and inalienable part of such concession. Reading of Section 13(1)(a)(vi) indicates that the concession granted by the Central Government has to be read into the AERA Act and all its provisions as well as limitations contained therein have to be considered by AERA while determining tariff including while deciding which services in a particular case and in terms of the relevant Concession, can be regulated by AERA.</p> <p>This is further confirmed by a reading of the proviso to Section 13(1)(a) of the AERA Act which states that "different tariff structures may be determined for different airports having regard to all or any of the considerations specified at sub-clauses (i) to(vii)" in the said section. In other words, the AERA Act recognizes that a straightjacket applicability of its provisions to all major airports is not intended and grants flexibility to AERA to determine tariff structures to different airports having regard to various considerations including the concession granted by the Central Government.</p> <p>Thus, even though the AERA Act empowers AERA to regulate tariff for Aeronautical Service as defined in Section 2(a) of the AERA Act, in case any concession has already been granted by the Central Government, AERA is statutorily mandated to consider such concession.</p> <p>In the case of RGIA, since one of the concession granted by the Central Government is that save for the 'Regulated Charges', the GHIAL shall be free without any restriction to determine all Other Charges. Thus, on a reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement, AERA is only empowered to regulate the Regulated Charges as defined in the Concession Agreement (as an exception to the mandate of the Act which is recognized and allowed by the Act itself) and cannot regulate any Other Charges in respect of the</p>

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	<p>facilities and services provided at the Airport including the other Aeronautical Services as defined in Section 2(a) of the AERA Act.</p> <p>As such Authority is not mandated to regulate any Other Charges in respect of the facilities and services provided at the Airport.</p> <p>Accordingly, it's an earnest request that the Fuel charges should be kept outside the regulations.</p>
<p>d) It may further be noted that in response to Authority's letter ref. F.No.AERA/20015/FT/2010-11/305 dated 24th June 2010 addressed to GHIAL, the Oil PSU had, vide joint letter dated 16th July, 2010, advised GHIAL to arrange necessary approvals from AERA for the throughput charges demanded by GHIAL. Copy of the joint communication dated 16th July, 2011 is placed at Annexure-III.</p>	<p>The earlier charging also had considered the fuel charges @ 2170/- per KL.</p> <p>The ad-hoc tariff approval was done vide order number 06/2010-11 dated 26th October 2010 for this period.</p> <p>AERA approved Fuel throughput charges to continue at the prevailing rate till the order was valid or till the final order is passed, whichever is earlier.</p> <p>However we shall like to clarify that the fuel throughput charge is a profit sharing with oil companies and the same should not be passed on to airlines. Further as stated above oil companies also are supplying fuel to the airlines at airports and thus their profits (which are not transparent) and revenues should also be scrutinized by AERA as it is the ultimate cost of fuel that is important to airlines and excessive profits should not be allowed to monopolistic oil companies.</p>
<p>e) In view of the above fact, which is on record, and which information might not have been made available to the Authority, we are of the opinion that reasonable objection from users of the fuel farm facilities' do exist, and that the tariffs for fuel farm services should therefore, not be determined under light touch approach and without consultation of Suppliers, which are the major stakeholders with regard to Fuel supplies at GHIAL.</p>	<p>The existing agreements including the rates being charged have been agreed upon by oil companies and the same has been paid by them.</p> <p>AERA is taking a holistic view for the Airport as well as Fuel Farm and the excess revenue from Fuel Farm is being set off against the Airport's Revenue eligibility.</p>
<p>We would further like to submit that, the existing Supplier Agreement, between Suppliers, GHIAL and the Fuel Farm Operator, which was renewed on 31st August, 2011 for a period till 8th March, 2014, clearly mentions that the Throughput Fee is required to be regulated by any appropriate authority as per the law, and that the regulated</p>	<p>There is nothing on record to show that oil companies had communicated against the soft touch regulation.</p> <p>The Para reproduced herein in no way can be interpreted to mean that the soft touch regulation cannot be there.</p>

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<p>fee that attains finality, shall prevail. During renewal of Supplier Agreement , discussions were held between Suppliers and GHIAL and Suppliers had clearly stated their position with respect to Authority's role regarding determination of tariff , thereby implying that the charges should not be considered under soft touch. Relevant clause of Supplier Agreements reproduced as under :</p> <p>The Throughput Fee plus taxes including service taxes and duties as applicable, levied on the Suppliers for each kiloliter of ATF delivered into the Aircraft 1it the Airport Shall be notified by GHIAL to the Suppliers from time to time. In case Throughput Fee is required to be regulated by any appropriate authority as per the law, the regulated fee that attains finality shall prevail. However, it is clarified that Throughput Fee shall be deemed to have attained finality only after settlement of all consultations contentions and/ or disputes, if any, between GHIAL and the regulator with regard to such regulated charges"</p>	<p>AERA has considered fuel throughput charges as aeronautical revenue in the consultation paper. As per building block approach, GHIAL is entitled to get aero-nautical revenue as per the building blocks.</p> <p>So irrespective of what GHIAL is charging towards Fuel total entitlement remains the same.</p> <p>However we are of the view that the fuel charges are akin to profit sharing with oil companies and should be treated as non-Aeronautical. We shall also like to clarify that the fuel throughput charge is a profit sharing with oil companies and the same should not be passed on to airlines as an airport charge. Further as stated above oil companies also are supplying fuel to the airlines at airports and thus their profits (which are not transparent) and revenues should also be scrutinized by AERA as it is the ultimate cost of fuel that is important to airlines and excessive profits should not be allowed to monopolistic oil companies.</p> <p>Also Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement.</p> <p>As such Authority is not mandated to regulate any Other Charges in respect of the facilities and services provided at the Airport. Accordingly, it's an earnest request that the Fuel charges should be kept outside the regulations.</p> <p>The statement being referred herein in no way supports the stand of oil companies against soft touch</p> <p>The clause referred to in the Supplier's Agreements does not in any way contradict the Soft Touch Stance. However, the clause states that the Final price shall at all times be such price as approved by the Regulator.</p>

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f) As per para 17.29 of the Consultation Paper, it has been proposed by the Authority to accept HIAL submission that the excess yield (calculated on the existing yield and Eligible Yield per kiloliter) being charged in respect of fuel farm services may be considered towards defraying the aeronautical charges for the passengers'.	Without prejudice to our rights, AERA has considered fuel throughput charges as aeronautical revenue in the consultation paper. As per building block approach, GHIAL is entitled to get aero-nautical revenue as per the building blocks. So irrespective of what GHIAL is charging towards Fuel total entitlement remains the same.
It is noted that the existing tariff of Rs. 2170 per KL is almost three times the eligible yield per KL Rs.728.40) calculated by the Authority, as mentioned in Table 90 of the Consultation Paper. There is a resultant excess charge of Rs.1,441.60 per KL being levied by GHIAL presently. PSU Suppliers are of the opinion that such adjustment of excess yield from fuel farm service with other aeronautical charges for the passengers, may not be proper, and eligible tariffs should only be charged for respective services. This would otherwise tantamount to subsidization of other services by the fuel farm service.	However we shall like to clarify that the fuel throughput charge is a profit sharing with oil companies and the same should not be passed on to airlines as an airport charge.
9) While on the subject, we would also like to bring to notice of the Authority the media reports about GHIAL's proposal to hive off its Fuel Farm business to a Special Purpose Vehicle (SPV) through a slump sale. The fuel-farm business will be transferred by GHIAL to the SPV, which will then divest 74% stake. As per the reports, the SPV will have equity and debt components of Rs. 57 Crore and Rs. 85.56 Crore respectively, making the asset value as Rs.	These are hypothetical statements and cannot be commented.
In view of the foregoing, PSU Suppliers – Indian Oil, IBPCL and HPCL are as follows:-	We are of the view that under AERA acts and under the concession agreement the Fuel charges are not to be regulated.
a) Authority may consider and treat the joint letter ref AV/SSB/GHIAL dated 14th July, (Annexure-II) as objection to user agreement with regard to High Fuel Throughput Charges at Rajiv Gandhi International Airport, Shamshabad, Hyderabad	Also there is nothing on the record to show that a light touch regulation cannot be mandated by authority.
b) The tariffs for fuel farm service provided by HIAL may not be determined under light touch approach, as proposed at Para 13.a.iii of the Consultation Paper	As per Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement. As such Authority is not mandated to regulate any Other Charges in respect of the facilities and services provided at the Airport.
c) HIAL submission for considering the excess yield being charged in respect of fuel farm services towards defraying the aeronautical charges for the passengers, may not be accepted and only the actual lower eligible yield per KL may be approved as Fuel Throughput Charge applicable at the airport.	Accordingly, it's an earnest request that the Fuel charges should be kept outside the regulations.