(Published in Part - III Section 4 of the Gazette of India, Extraordinary)

Tariff Authority for Major Ports

G. No 236 **New Delhi,** **7 December 2011**

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from the ABG Kandla Container Terminal Limited for revision of its Scale of Rates for operations at Berth Nos.11 and 12 in Kandla Port Trust as in the Order appended hereto.

(Rani Jadhav)
Chairperson

Tariff Authority for Major Ports
Case No. TAMP/40/2010-ABGKCTL

ABG Kandla Container Terminal Limited - - - Applicant

O R D E R
(Passed on this 11th day of October 2011)

This case relates to a proposal received from the ABG Kandla Container Terminal Limited (ABGKCTL) for revision of tariff for operations at berth nos.11 and 12 in Kandla Port Trust (KPT).

2.1. The existing Scale of Rates of the ABGKCTL was approved vide Order No.TAMP/43/2006-ABGKCTL dated 12 October 2007. The Order was notified in the Gazette of India on 26 October 2007 vide Gazette No. 211 and the revised SOR came into effect after expiry of 30 days from the date of notification of the Order. The Order prescribed a tariff validity of three years from the date of implementation of the Order. Accordingly, the existing SOR of ABGKCTL was valid till 25 November 2010.

2.2. At the request made by the ABGKCTL, this Authority vide Order dated 29 November 2010 extended the validity of the existing Scale of Rates till 31 March 2011 with an advise to ABGKCTL to file its proposal for revision of its SOR by 31 December 2010, in the absence of which, a 10% reduction in the existing Scale of Rates was ordered to be effected from 1 January 2011.

3.1. In this backdrop, the ABGKCTL has filed its proposal for general revision of its Scale of Rates vide its letter dated 28 December 2010. The main issues brought out by the ABGKCTL in its proposal are summarised below:

(i). (a). The Licensor (KPT) has failed to provide the required draft of 12.5 metres to enable ABGKCTL handle panamax vessel.

(b). The Licensor has failed to provide the committed land of 100m X 100m for handling rail cargo by the ABGKCTL. In fact, this land has been handed over to another BOT operator without any prior written information to the Licensee.

(c). The KPT has not handed over the facilities as per the handover schedule in the License Agreement and there are several defaults on the part of Licensor.

(d). Licensor's failure and continuing defaults in achieving its commitments and obligations has entirely crippled the Licensee and has resulted in terminal making huge cash losses year on year.

(ii). ABGKCTL has not paid the revenue share for shortfall in MGT and the license fees at LF-2 rates and proposes to refer this matter to Arbitration. KPT is yet to take action for appointment of the Arbitrator. To the extent of the non payment of revenue share for MGT and the difference in license fees, it will cause additional loss to ABGKCTL if the contention of ABGKCTL is not concurred with by the Arbitrator.

(iii). ABGKCTL is the only TAMP controlled terminal operator in India having to compete with three entirely unregulated private minor port operators. Thus, ABGKCTL is saddled with entirely unfair and unequal business environment.

(iv). There has been continuous drop in the container traffic at Kandla Port though the total traffic handled by various Major or Minor ports in Gujarat has increased manifold. The total traffic handled by ports in Gujarat and the share of Kandla Port in the container traffic during last 4 years are:

Particulars	2006-07	2007-08	2008-09	2009-10
All Gujarat Container Traffic	885910	1079532	1131138	1460369
Container Traffic at Kandla	178086	164014	137619	146777
% of Market Share	20%	15%	12%	10%

(v). The trade has complained that for reasons like non availability/ restrictions of night pilotage, inadequate draft and non maintenance of declared draft, no priority berthing of container vessels and high vessel related charges, they do not find Kandla Port as a preferred port of call.

(vi). The above constraints have led to change in the configuration of container traffic at Kandla Port. There is a rise in the percentage of coastal traffic because despite heavy port side charges, the low THC still keeps the overall cost of Kandla cheaper for coastal containers. This leads to poor per TEU revenue for ABGKCTL.

3.2. The highlights of the tariff proposal are given below:

(i). (a). The actual traffic handled by the ABGKCTL for the last 3 years are as follows:

Year	Throughput (in TEUs)
2007-08	164014
2008-09	137619
2009-10	146777

(b). The ABGKCTL has stated that though it is capable of handling 6 lakh + TEUs per annum, it has projected the following throughput, as it does not expect KPT to provide the committed depth for the next 3 years also:

Year	Throughput (in TEUs)
2010-11	168794
2011-12	185673
2012-13	204240

(ii). As per Clause 2.8.1. of the guidelines, revenue payable to the port is not considered as a pass through in the cost statement.

(iii). The additions proposed to the gross block of assets are ₹2012 lakhs in 2010-11 to ₹210 lakhs in 2011-12 and ₹400 lakhs in 2012-13, mainly for development of container yard, development of Admin building and for providing railway connectivity.

(iv). The cost statements submitted by the ABGKCTL reflects the following position for the past period and the future period from 2010-11 to 2012-13:

(**₹ in lakhs**)

Particulars	Actuals for past period			Projections for future		
	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Operating Income	3947	4271	4181	4665	5142	5670
Operating Expenditure	911	1070	1280	2172	2159	2288
Depreciation	943	1328	1987	1704	1747	1789
Overheads	525	497	499	517	535	554
ROCE (permitted)	1808	1670	2548	2311	2072	1867

Surplus/ Deficit	-240	-294	-2133	-2039	-1371	-828
Surplus/ Deficit as % of Income	-6%	-7%	-49%	-44%	-27%	-15%
Surplus/ Deficit - average for 3 years	-22%			-27%		

3.3. Though the cost position reflects deficit of ₹20.39 crores, ₹13.71 crores and ₹8.28 crores for the years 2010-11 to 2012-13 respectively, the ABGKCTL has not proposed any increase or modification in the existing Scale of Rates on the ground that increase in tariff would result in the tariff becoming prohibitive and could lead to further decline in throughput. It has, therefore, requested to retain the existing tariff for the years 2010-11 to 2012-13.

4. As stated earlier, the validity of the tariff at ABGKCTL was extended till 31 March 2011. Taking into account the position that the ABGKCTL has already filed its proposal and recognising the time required for examining the response before final disposal of the case after receipt of the requisite additional information/ clarifications sought from the ABGKCTL and KPT, this Authority vide its Order dated 2 May 2011 has extended the validity of the existing SOR from the date of its expiry till 30 September 2011 or till the effective date of implementation of the revised tariff, whichever is earlier, subject to the condition that any surplus over and above the admissible cost and permissible return for the period post 26 November 2010 will be set off fully in the tariff to be determined.

5. In accordance with the consultative procedure prescribed, the proposal of ABGKCTL was forwarded to the KPT and concerned users/ user organisations seeking their comments. The comments received from KPT and users/ user organisations were forwarded to ABGKCTL as feedback information. ABGKCTL has responded to the comments of KPT and users/ user organisations.

6.1. Based on the preliminary scrutiny of the proposal, the ABGKCTL was requested to furnish additional information / clarifications vide our letter dated 31 March 2011. The ABGKCTL vide its letter dated 13 May 2011 has furnished its reply on queries raised by us. The summary of the queries raised by us and the response of the ABGKCTL is brought out in the subsequent part of the note.

6.2. The KPT was also requested to furnish some additional information/ clarifications vide our letter dated 31 March 2011. The KPT has responded vide its email dated 21 April 2011 and letter dated 31 May 2011. The queries raised by us and the response of the KPT thereon are brought out in the subsequent part of the note.

7. Since the year 2010-11 was already over and since the actual traffic, income and Capital Expenditure for the year would be available, while raising the queries, the ABGKCTL was advised to update the cost statement with the actuals for the year 2010-11 and review its estimates for the years 2011-12 and 2012-13 with reference to the actuals for the year 2010-11. The ABGKCTL under cover of its letter dated 13 May 2011 has furnished a revised proposal.

8. A joint hearing in this case was held on 5 May 2011 at the KPT premises. The ABGKCTL made a power point presentation of its proposal. At the joint hearing, the ABGKCTL, KPT and the concerned users/ organisation bodies have made their submissions. The Kandla Port Steamship Agents Association (KPSAA) filed a written submission containing its comments on the proposal of ABGKCTL.

9.1. At the joint hearing, the ABGKCTL was requested to reply to our questionnaire dated 31 March 2011. The ABGKCTL was also requested to comment on the remarks of users and KPT which were already been forwarded to ABGKCTL and to comment on the written submission furnished by Kandla Port Steamship Agents Association during the joint hearing. The ABGKCTL was also requested to examine the comments of users on receipt of them and furnish their response.

9.2. The ABGKCTL vide its letter dated 13 May 2011 has responded to the queries raised by us. The same were forwarded to KPT for their remarks. The KPT vide its letter dated 6 July 2011 has replied. A summary of the queries raised by us, reply of ABGKCTL and the comments of KPT thereon are summarized and tabulated below:

Sl. No.	Queries raised by us	Response received from ABGKCTL	Reply received from KPT
A.	**GENERAL**		
(1).	The undertaking forwarded with the proposal is not filled and signed by ABGKCTL. Please forward the undertaking prescribed in the first page of the cost formats duly filled and signed.	The signed undertaking in first page of the prescribed cost formats is enclosed.	The KPT has not furnished any comments.
(2).	(i). The ABGKCTL has not filled SL. No.6 of Form 1 relating to the current performance and the targeted objective for productivity enhancement measure. Please furnish the requisite information at Sl No 6 and file an updated Form -1.	The ABGKCTL has furnished the requisite information in Form 1 of its revised proposal.	The KPT has not furnished any comments.
	(ii). The tariff guidelines of 2005 stipulate that tariff should be linked to benchmark of the levels of productivity. The ABGKCTL has not indicated anything about productivity levels to be maintained for various operations / services in the current tariff revision proposal. The benchmark level of productivity may be included in the Scale of Rates as a conditionality governing the respective tariff items. The basis adopted for determining the benchmark level of productivity may be explained.	The Benchmark levels of productivity in terms of parameters like ship turnaround time, berth productivity etc. would also depend upon the performance of KPT in terms of the time taken for pilotage, berthing and sailing as also the tide. In view of this ABGKCTL would benchmark productivity in terms of Gross Crane Rate (GCR). The targeted GCR for the tariff period will be 21 Moves per hour.	The KPT has not furnished any comments.
B.	**FINANCIAL COST STATEMENTS**		
(1).	The year 2010-11 has drawn to a close. The ABGKCTL may therefore update the cost statements with the actual for the year 2010-11 duly tallying the figures with the actual figures as certified by its Chartered Accountant. A copy of the Annual Accounts duly certified by the Chartered Accountant for the year 2010-11 may also be forwarded. The estimates for the subsequent years viz. 2011-12 and 2012-13 may be	Annual Accounts duly certified by the Chartered Accountant for the year 2010-11 will be forwarded as soon as available. Provisional figures for 2010-11 have been provided in the cost formats. (The ABGKCTL under cover of its letter dated 10 August 2011 has forwarded to us a copy of the audited Annual Accounts for the year 2010-11.)	The KPT has not furnished any comments.

	reviewed and modified, if necessary, with reference to the actual (to be furnished) for the year 2010-11.		
(2).	The validity of the tariff approved by the Authority is for three years. The ABGKCTL is therefore requested to furnish estimates for the year 2013-14 as well. Else the tariff fixed will be for truncated period of two years. While furnishing the estimates for the years 2013-14, the queries raised in the subsequent points also need to be addressed for the estimates (to be) provided for 2013-14.	The year 2013-14 has been added in the revised forms furnished.	The KPT has not furnished any comments.
(3).	**Comparison of actuals vis-à-vis estimates**:		
(i).	The last tariff Order passed by the Authority on 12 October 2007 considered the estimates for the years 2007-08 (five months) to 2010-11 for determining the tariff revision. The comparison of actuals vis-à-vis estimates furnished in Form 7 may, therefore, be updated with reference to 2009-10 and 2010-11 actuals.	2010-11 figures can be given only after audit. However provisional figures for 2010-11 are provided. The comparison for the year 2009-2010 is updated in Form 7. (Subsequently, the ABGKCTL under cover of its letter dated 20 September 2011 has updated the cost position for the year 2010-11 with actuals.)	The KPT has not furnished any comments.
(ii).	The sum of total expenses reported in the Annual Accounts for the years 2007-08 to 2009-10 (excluding the royalty and interest which are not admissible as items of cost) do not match with the total expenses (i.e. operating cost, depreciation, management and general overheads and the FME) considered by the ABGKCTL in the cost statements. Please furnish a reconciliation statement reconciling the profit before tax reported in the Annual Accounts with the net surplus before ROCE considered in the cost statement for each of the years 2007-08 to 2009-10 and also for the year 2010-11.	The sum of total expenses reported in the Annual Accounts for the years 2007-08 to 2009-10 (excluding the royalty and interest which are not admissible as items of cost) match with the total expenses (i.e. operating cost, depreciation, management and general overheads and the FME) considered in the cost statements.	The KPT has not furnished any comments.
(iii).	The comparative statement of actuals vis-à-vis estimates furnished by the ABGKCTL may be modified in view of the following gaps observed:		1. The Actual Traffic figures for container TEU for 2007-08 is 165092 and not 164014 as indicated in the proposal.

	(a). The actual vis-à-vis the estimated traffic may also be reflected in the cost statement. If the variation is more that +/ (-) 20% the reasons therefor may be explained.	(a). Traffic figures have been entered in the revised Form 7 being submitted by ABGKCTL now.	2. Reasons for deviation if B3 more than +/- 20% : ABGKCTL has mentioned under this subheading that the reasons are due to defaults by Licensor i.e. KPT in complying with its obligations as summarised by its letter dated 28.12.2011. However, Kandla Port does not accept these arguments put forth by ABGKCTL. Moreover, it is opined that the reasons for deviation are solely due to the faults of the licensee i.e. ABGKCTL. 3.<u>XII – Capacity Utilization</u> ABGKCTL has considered the capacity of he Container Terminal (in lakh TEU) as assessed by TAMP, as 2.90, 3.30, 3.90 & 4.50 for the years 2007-08, 2008-09, 2009-10 & 2010-11. However, the Port has considered the capacity figures of the Container terminal (in lakh TEU) to be 3.00 (3.60 MMT) for 2007-08 & 2008-09 and 6.00 (7.20 MMT) for 2009-10 & 2010-11. The reasons for deviation given by ABGKCTL are not acceptable to the licensor i.e. Kandla Port Trust. On the contrary, it is opined that the reasons for deviation are solely due to the fault of the licensor i.e. ABGKCTL. If the capacity of the container terminal as assessed by Kandla Port & approved by MoS, New Delhi are considered, the capacity utilization (in %) works out to be 55%, 46%, 24% & 27% during 2007-08, 2008-09, 2009-10 & 2010-11, which is much less than the utilization figures furnished by ABGKCTL, in their proposal.

	(b). In the last tariff Order, the Authority had effected 11% reduction in the tariff proposed by the ABGKCTL. The estimates shown in Form 7 as per the Order may be adjusted to factor the tariff reduction effected for a like to like comparison with the actual.	(b). Form 7 submitted by ABGKCTL is based on the modified estimates of TAMP.	
	(c). Sundry debtors, inventory, cash balance considered for computation of the working capital for the years 2007-08 to 2009-10 as well as 2010-11 may be modified in compliance with the norms prescribed in the tariff guidelines. Workings in this regard may be furnished.	(c). Sundry debtors, inventory, cash balance considered for computation of the working capital for the years 2007-08 to 2009-10 is in compliance with the norms prescribed in the tariff guidelines. The information for year 2010-11 is provisional. (Subsequently, the ABGKCTL under cover of its letter dated 20 September 2011 has updated the cost position for the year 2010-11 with actuals.)	
	(d). The capacity utilization is reported at 56.57%, 41.70%, 37.64% and 37.51% for the years 2007-08 to 2010-11 which is found to be below the benchmark level capacity utilisation of 60% for claiming full return. The ABGKCTL has, however, claimed full return in the cost statement. In this context, the ABGKCTL is requested to furnish the investment obligation as per the Appendix-IV of the LA (item-wise) and indicate that the capital investment made by the ABGKCTL for the corresponding period is in compliance with the investment plan envisaged in the LA.	(d). The statement showing details of the phase-wise investment has been furnished. In terms of clause 2.9.11 of 2005 Guidelines, in the case of private terminal operator, if the investment is made in accordance with the Concession Agreement it will be considered for ROCE even if full capacity utilization is not achieved. All the investments in fulfillment of Licence Agreement have been made.	
	(e). In the last tariff revision, capital cost of ₹9 crores was allowed in the year 2009-10 for the development of the yard and ₹2.25 crores for railway. It is understood from the comments of the KPT (which was forwarded to the ABGKCTL vide our letter dated 28 February 2011), that the ABGKCTL has not taken	(e). The yard is not handed over to ABGKCTL as per LA. However ABGKCTL is paying the license fee at LF-2 rates as per LA for the 18 hectare land. The work on yard is proposed to be taken up in 2011-12. However there is no progress on railway as the required land is not yet handed over by the KPT.	

<table>
<tr><td></td><td>over the 18 hectares of land behind berth no 18 for development of yard as per the LA. Please give the factual position.</td><td></td><td></td></tr>
<tr><td>(4).</td><td><u>Traffic</u>:</td><td></td><td></td></tr>
<tr><td>(i).</td><td>Furnish the basis of the traffic projections for the years 2011-12 and 2012-13.</td><td>The Traffic Projection is based on –

1. The past trend in traffic growth.
2. The likely share of traffic between coastal & foreign containers.
3. Expected provision of committed draft by KPT.
4. Expected removal of restriction in night navigation and.
5. Marketing efforts of ABGKCTL.</td><td>No comments are offered.</td></tr>
<tr><td>(ii).</td><td>The basis of assuming the share of foreign container and coastal container at 70% and 29% for the years 2010-11 to 2012-13 may be explained with reference to the container mix of 94% foreign and 4% reported during the years 2007-08 and 2008-09 and 78% and 20% share of foreign and coastal container reported in the years 2009-10. Likewise share of laden and empty container assumed in the traffic projections may also be justified with reference to the container mix achieved in the last two years i.e. with reference to the actual container mix in the last two years i.e. 2009-10 and 2010-11.</td><td>The basis of assuming the share of foreign container and coastal container is the past trend which is as below –

<table>
<tr><th>Year</th><th>Coastal Container (%)</th><th>Foreign Container (%)</th></tr>
<tr><td>2007-08</td><td>4</td><td>96</td></tr>
<tr><td>2008-09</td><td>20</td><td>80</td></tr>
<tr><td>2009-10</td><td>21</td><td>79</td></tr>
<tr><td>2010-11</td><td>28</td><td>72</td></tr>
</table>
Traffic projection for laden and empty container is based on the trend observed during the years 2007-2011.</td><td>No comments are offered.</td></tr>
<tr><td>(iii).</td><td>The traffic handled by the ABGKCTL for the years 2007-08, 2008-09 and 2009-10 are reported at 164014 TEUs, 137619 TEUs and 146777 TEUs respectively. The KPT has stated that the traffic figures compiled by them based on the information provided by the ABGKCTL for the year 2007-08 is 165092 TEUs which does not match with the traffic projected in the cost statement. Further, the numbers of foreign containers, coastal containers for the years 2008-09 and 2009-10 shown in the cost statement are also different from the figures made available to them. In this regard, the ABGKCTL is</td><td>ABGKCTL is submitting regular reports on traffic handled to KPT in the prescribed format. Discrepancies, if any, would be sorted out with KPT.</td><td>The container TEU throughput handled by ABGKCTL for F.Y. 2007-08 as reported by MOS, IPA etc. by Kandla Port is 165092 TEU & not 164014 TEU as indicated by ABGKCTL in its proposal. The discrepancy in figures indicated by ABGKCTL in its proposal and that reported by Kandla Port, is owing to wrong system of computing adopted by ABGKCTL & their unhealthy practice of making frequent changes in the throughput figures being communicated to this department.</td></tr>
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<tr><td></td><td>requested to provide KPT with the correct container traffic handled by it along with the container mix break for verification and obtain confirmation of the actual traffic figures for the period 2007-08 to 2009-10 and 2010-11 as well.</td><td></td><td>Further as per the ‘Checklist of Forms & other information / documents for filling tariff proposals by private terminals’, the revised information pertaining to ‘Cost statement for cargo handling activity’ (Form – 5B) & ‘Cost statement for vessel related activity‘ (Form 5c) have not been furnished in the enclosures along with the TAMP’s letter. So no comments are offered in respect of ‘Foreign & coastal containers for the years 2008-09 & 2009-10 shown in the cost statement’.</td></tr>
<tr><td>(iv).</td><td>The Minimum Guaranteed Throughput (MGT) indicated at Sl. No.III in Form 2A at 89063 TEUs, 178751 TEUs and 192751 TEUs for the years 2007-08 to 2009-10 and 210126 TEUs, 231608 TEUs and 256019 TEUs for the years 2010-11 to 2012-13 are found to be different from the MGT for the applicable period stipulated in Appendix X of the License Agreement presumably since the applicable period for which the MGT is stipulated in the LA is different from the Financial Year considered in the tariff revision. In view of the above, please furnish the calculation of the MGT considered in the cost statement for each of the years and confirm it is in compliance with the relevant provisions in the LA.</td><td>Revised MGT calculation as per LA is furnished in Form 2A. The MGT figure has been reworked in terms of financial year. The MGT figures for the years 2007-08 to 2010-11 as furnished in From 2A is given below:
<table><tr><th>Year</th><th>MGT (in TEUs)</th></tr><tr><td>2007-08</td><td>89063</td></tr><tr><td>2008-09</td><td>179249</td></tr><tr><td>2009-10</td><td>193249</td></tr><tr><td>2010-11</td><td>210874</td></tr><tr><td>2011-12</td><td>232392</td></tr><tr><td>2012-13</td><td>256981</td></tr><tr><td>2013-14</td><td>290712</td></tr></table></td><td></td></tr>
<tr><td>(v).</td><td>(a). The traffic projected for the years 2010-11 to 2012-13 is 168794 TEUs, 185673 TEUs and 204240 TEU respectively which are found to be lower than the MGT level computed by the operator. In the proposal, the ABGKCTL has attributed non achievement of the MGT in the past period as well as future is due to failure on the part of the Kandla Port Trust</td><td>(a). ABGKCTL’s comments on the response of KPT has already been brought out in the initial part of the note.</td><td></td></tr>
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<tr><td></td><td>to provide the required draft of 12.5 mtrs. in respect of berth No.11 and 12 and failure on the part of the Licensor to comply with other obligations as per the LA. The response of KPT has already been forwarded to you.

(b). The ABGKCTL has forwarded circulars issued by the KPT about the permissible draft since March 2007 but no correlation can be drawn how it has affected the traffic of the operator. In this context, furnish the no. of instances and number of container vessels (year wise), which could not be handled on account of the draft being lower than around 12.5 mtrs. since commencement of COD-12 till 2010-11.</td><td>(b). It is not a question of container vessels which could not be handled at Kandla because of draft less than 12.5 m. ABGKCTL is in regular contact with various shipping line to attract additional traffic. The shipping lines were reluctant to start services to Kandla citing draft restrictions and difficulties in night pilotage. Besides some shipping lines have already discontinued services at Kandla and shifted to Mundra because of continued delays in berthing/ Sailing. As ABGKCTL was unable to attract new lines to Kandla and some of the existing lines have moved out, it was not possible for ABGKCTL to achieve traffic growth as anticipated.

The circular issued by KPT since March 2007 demonstrate that the committed draft of 12.5 m was never achieved in the navigation channel which has prevented main line vessels from making calls at Kandla Port.</td><td></td></tr>
<tr><td>(vi).</td><td>The ABGKCTL has stated that the matter relating to non payment of royalty due to the shortfall in achieving the MGT and payment of the license fee at LF2 rates prescribed in the LA is proposed to be referred to the arbitrator. The matter of reference made to the arbitrator and the present status of the arbitration process may please be indicated.</td><td>LF2 payments were made under protest.

ABGKCTL has already referred the matter to KPT to appoint an arbitrator.</td><td></td></tr>
<tr><td>(5).</td><td><u>Capacity</u>:
The designed capacity may be assessed for each of the years 2007-08 to 2012-13 with reference to the physical facilities available and the productivity levels achieved/ to be achieved. Detailed calculation in this regard may be furnished.</td><td>As per the last tariff order of TAMP dated 17 October 2007, the capacity of the terminal during the years 2007-08 to 2010-11 is as under –
<table><tr><th>Year</th><th>Capacity assessed by TAMP (TEU)</th><th>Traffic (TEU)</th><th>Capacity utilisation (%)</th></tr><tr><td>2007-08</td><td>2,90,000</td><td>1,64,014</td><td>56%</td></tr></table></td><td></td></tr>
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<tr><td></td><td></td><td>
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<tr><td>2008-09</td><td>3,30,000</td><td>1,37,619</td><td>42%</td></tr>
<tr><td>2009-10</td><td>3,90,000</td><td>1,46,777</td><td>38%</td></tr>
<tr><td>2010-11</td><td>4,50,000</td><td>1,60,243</td><td>36%</td></tr>
</table>
As no further equipment is proposed to be commissioned on the terminal up to the year 2012-13, the capacity of the terminal continue to be 4,50,000 TEUs. In the proposal, it is proposed to achieve the capacity utilization of 41% and 45% respectively during the years 2011-12 and 2012-13.</td><td></td></tr>
<tr><td>(6).</td><td><u>Income estimation</u>:</td><td></td><td></td></tr>
<tr><td>(i).</td><td>The traffic projections show growth of 15% in the year 2010-11 whereas the income projections show 11% increase. The reasons therefor may be explained. As stated earlier, the actual income earned by the ABGKCTL may please be furnished and updated in the cost statement for the year 2010-11.</td><td>The traffic mix of the terminal during last two years indicates increasing percentage of coastal traffic. Since the traffic for the coastal containers is 60% of the tariff for foreign going container, the increase in income is proportionately lower. Actual figures for 2010-11 shall be provided after audit.

(Subsequently, the ABGKCTL under cover of its letter dated 20 September 2011 has updated the cost position for the year 2010-11 with actuals.)</td><td>Even considering the rates shown by ABGKCTL the container handling income does not reconcile with the container handling income shown in the statements. A statement showing container handling income taking the rates considered by ABGKCTL has been worked out.

The summary of the recasted container handling income projections of ABGKCTL as given by KPT is given below:
(₹ in crores)
<table>
<tr><th>Type of contain-ers</th><th>2010-11</th><th>2011-12</th><th>2012-13</th><th>2013-14</th></tr>
<tr><td>Foreign</td><td>40.95</td><td>44.28</td><td>48.71</td><td>53.57</td></tr>
<tr><td>Transhipment</td><td>0.27</td><td>0.30</td><td>0.33</td><td>0.36</td></tr>
<tr><td>Coastal</td><td>8.51</td><td>9.36</td><td>10.29</td><td>11.32</td></tr>
<tr><td>Others</td><td>0.99</td><td>1.08</td><td>1.19</td><td>1.31</td></tr>
<tr><td>TOTAL</td><td>50.72</td><td>55.02</td><td>60.52</td><td>66.56</td></tr>
</table></td></tr>
<tr><td>(ii).</td><td>While doing so, the point made by the KPT that ABGKCTL has considered uniform rate for different type / size of containers and to that extent the income is underestimated may also be addressed.</td><td>ABGKCTL has not taken uniform rate for different type/ size of containers.

ABGKCTL has taken the following rate for different type of containers-
<table>
<tr><th>Type of containers</th><th>Rate per container in ₹</th></tr>
<tr><td>Not exceeding 20 Ft Foreign</td><td>3115.00</td></tr>
<tr><td>Exceeding 20 Ft and up to 40 Ft Foreign</td><td>4672.50</td></tr>
<tr><td>Above 40 Ft Foreign</td><td>6230.00</td></tr>
<tr><td>Not exceeding 20 Ft Coastal</td><td>1869.00</td></tr>
<tr><td>Exceeding 20 Ft and up to 40 Ft Coastal</td><td>2803.50</td></tr>
<tr><td>Above 40 Ft Coastal</td><td>3738.00</td></tr>
</table></td><td></td></tr>
</table>

(iii).	The ABGKCTL has not furnished detailed computation of estimated income with reference to the traffic projected at the existing Scale of Rates. Please furnish detailed computation of income for the tariff projected at the existing tariff level from each of the tariff items prescribed in the SOR for each of the years 2011-12 to 2012-13 and 2013-14 as well. Confirm that the revenue estimated is at the existing ceiling level of tariff prescribed by the Authority.	ABGKCTL has proposed the tariff for the years 2011-12 to 2013-14 at existing rates only and hence there was no need to show calculation of income on existing and proposed tariff separately. It is confirmed that the revenue estimated is at the existing ceiling level of tariff prescribed by the Authority.	
(iv).	As regard the income from storage charge, indicate the average dwell time of containers for the last two years 2009-10 and 2010-11 and the dwell time considered for the purpose of income estimation.	The average dwell time for the year 2009-10 and 2010-11 is as below – For import containers – 4.5 and 4.1 days respectively For export containers – 5.1 and 5.7 days respectively For income estimation, storage charges are estimated as percentage of THC (11%)	
(v).	The exchange rate adopted for estimating the income from storage charge which is denominated in dollar terms in the existing Scale of Rates may be indicated. The income estimation may be updated based on the prevailing exchange rate.	The income estimates on storage charges was estimated as percentage of THC, which is indicated in INR terms. Therefore the question of exchange rate does not arise.	
(vi).	(a). The rates set by this Authority are ceiling levels only. From the proposal it appears that the ABGKCTL has allowed discount over the ceiling rates prescribed by the TAMP during the past period to attract containers to its terminal. The revenue impact of such discounts allowed by the ABGKCTL may be quantified for each of the past period. (b). If the actual revenue reported in the Annual Accounts of 2007-08, 2008-09, 2009-10 and 2010-11 (actuals to be furnished by ABGKCTL) are net of discounts, if any allowed by ABGKCTL then the revenue realizable at the ceiling level	(a). The revenue impact of the discounts allowed by ABGKCTL year wise is as below- 2008-09 – Nil 2009-10 – ₹33.87 Lac 2010-11 – will be submitted after the audit. (b). The income has been shown at ceiling level of tariff prescribed by the Authority. The rebate and discounts have been shown separately under the expenses. The actual discounts offered has been given in our reply above.	

	of tariff prescribed by the Authority may be furnished. A detailed income calculation may be furnished for the years 2007-08 to 2010-11 based on the actual traffic handled and applying the rates approved in the Scale of Rates (SOR) of the ABGKCTL.		
(7).	**Operating cost:**		
(i).	In terms of the clause 2.5.1 of the tariff guidelines for tariff fixation, expenditure projection should be in line with traffic adjusted for price fluctuation with respect to the current movement of Wholesale Price Index (WPI) for all commodities announced by the Government of India. Annual escalation in the cost estimation will be allowed as per the said provision in the tariff guidelines of March 2005.	The proposal has been accordingly prepared.	
(ii).	**Operating and direct labour and maintenance labour** (a). During the last tariff Order, the Authority had observed that the per TEU cost of employee estimated by the ABGKCTL is on the higher side. As against total operating and direct labourer of 157, 187 and 217 considered for estimating this cost item during the last tariff revision for the years 2008-09 to 210-11 respectively, the sum of number of labourers in these categories reported by the ABGKCTL in Form 3 B is 91, 71 and 83. Thus the deployment is half of what was considered during the last tariff revision. Explain the reasons for such wide variation in the estimated and the actual deployment of labourers. (b). Number of operating and direct labour is estimated to increase by 13%, 9% and 5.8% during the years 2010-11 to 2012-13 respectively. Number of maintenance	 (a). The total operating and direct labour charges for 2008-09 to 2010-11 are 80, 69 and 78. Deployment of less no. of workers against the projections is due to lower throughput than what has been envisaged earlier. (b). The traffic projections for 2010-11, 2011-12 and 2012-13 show increase at 15%, 10% and 10% respectively. Consistent with this, it is estimated that operating and direct labour would increase by	

<table>
<tr><td></td><td>labour is also estimated to increase by 15%, 20% and 22%. Justify the increase proposed in the staff when the traffic projection does not show any significant growth and also no capital additions are proposed except for civil work in the year 2010-11 and in rail connectivity in the year 2012-13.</td><td>13%, 9% and 5.8%. As the equipment gets older, maintenance work would increase and accordingly we have projected increase in the number of maintenance labour.</td><td></td></tr>
<tr><td></td><td>(c). Equipment Running Cost:</td><td></td><td></td></tr>
<tr><td></td><td>(i). The power consumption reported for the year 2009-10 is 13.67 per TEU and the same level is assumed for the years 2010-11 to 2012-13. Justify the power consumption of 13.67 unit per TEU assumed by the ABGKCTL as against the power consumption of 6.25 to 6.71 units/TEU at the other terminals like the Chennai Container Terminal Limited, PSA SICAL Limited, etc.</td><td>(i). The power consumption reported for the year 2009-10 at 13.67 unit per TEU is based on actual consumption of power at the terminal.

To illustrate let us take the power bills for Feb’11 and Mar’11.

<table><tr><th></th><th>Feb’11</th><th>Mar’11</th></tr><tr><td>TEUs handled</td><td>14,572</td><td>14,804</td></tr><tr><td>Power consumed in units</td><td>2,32,980</td><td>2,43,840</td></tr><tr><td>Unit per TEU</td><td>15.99</td><td>16.47</td></tr></table></td><td></td></tr>
<tr><td></td><td>(ii). Furnish copy each of the electricity bill of last two months to justify the unit rate of power at ₹10 for the year 2010-11.</td><td>(ii). Copies of the power bills for the month of February and March 2011 has been furnished. The projections are based on 3.76% increase in the cost of power as per notification.</td><td></td></tr>
<tr><td></td><td>(iii). Fuel consumption considered at 4 litres per TEU for the years 2010-11 to 2012-13 may be justified with reference to actual fuel consumption of 2.82 litres/ TEU reported in the years 2009-10 and also with reference to the actual fuel consumption in the year 2010-11(to be updated by the ABGKCTL).</td><td>(iii). The fuel consumption varied from 4.29 ltr per TEU to 3.25 ltr per TEU to 2.82 ltr per TEU during the years 2007-08 to 2008-09 to 2009-10. Any comparison between the years will not be correct as the equipment mix has varied over the years. In the 2007-08, MHCs were in operation. Later on ABGKCTL acquired reach stackers and transfer cranes. For year 2010-11 to 2012-13, fuel consumption per TEU has been assumed based on TAMP guideline for upfront tariff.</td><td></td></tr>
<tr><td></td><td>(iv). The ABGKCTL has stated that the repairs and maintenance cost is estimated at 3% of equipment and 1% on civil work for the years 2010-11 to 2012-13 as per the norms prescribed in the guidelines. In this context, it may be stated that the</td><td>(iv). TAMP guidelines for 2005 provides that attempt will be made to evolve normative cost for each element of port operation. As normative cost for expenses (capital and revenue) have been evolved for upfront tariff fixation, it would be appropriate to use the normative cost element for future estimates.</td><td></td></tr>
</table>

	norms prescribed are for fixation of upfront tariff for PPP projects bid after February 2008 and are not applicable for the projects bid prior to that. (v). Citing that the equipment has become old and warranty is over, steep hike of 335% is estimated in the repairs and maintenance cost in the year 2010-11 i.e. at ₹619 lakhs in the year 2010-11 as against the actual repairs and maintenance cost reported at ₹142 lakhs in 2009-10. The Authority has in various orders held that the repairs and maintenance cost will not increase in an accelerated manner owing to equipment getting older and warranty period getting over. (vi). The actual repairs and maintenance cost incurred by the ABGKCTL for the year 2010-11 may be furnished and the cost statement may be updated. The repairs and maintenance cost estimated for the years 2011-12 and 2012-13 at ₹516 lakhs and ₹520 lakhs may also be modified with reference to the actual repairs and maintenance cost incurred in the year 2010-11. Please confirm and show that one time major repairs and maintenance cost, if any, incurred during the past period of 2009-10 and 2010-11 are not considered while estimating this cost item for the years 2011-12 and 2012-13.	 (v). In estimating the repair & maintenance cost, we have used the norms laid down by TAMP for upfront tariff fixation. It may be noted that after the warranty is over: 1. Spares need to be procured at a very high cost. 2. Visits of foreign experts involves a very high cost. (vi). The license requires that ABGKCTL maintains the Civil structure viz. berths provided by KPT, in addition to the Civil, electrical and mechanical structure/ equipment provided by ABGKCTL. The proposal assumes that the cost of Civil Structures provided by KPT will be of the order of the cost of mechanical and electrical equipment brought in by ABGKCTL. Accordingly, the repairs and maintenance has been taken at 3% of Civil and electrical equipment cost and 1% of cost of civil works in line with the TAMP guidelines. The repair & maintenance cost for 2010-11 would be furnished after audit. (Subsequently, the ABGKCTL under cover of its letter dated 20 September 2011 has updated the cost position for the year 2010-11 with actuals.)	
(iii).	The expenditure incurred for hire of equipment during the year 2010-11 may be substantiated with copy of the agreement entered by the ABGKCTL in this regard.	Equipment are not hired in the terminal for regular operations. However certain equipment like generator, fork lift truck etc. are hired occasionally for very brief periods. These are not covered by any agreement. The expenditure involved in hiring is very small.	
(iv).	**Lease rental**: As per Article 7.3. of the LA, license fee of ₹377 lakhs is	 ABGKCTL has made payment of LF2 with interest to KPT.	

	payable in LF1 period and license fee as per LF2 rate is payable from the third handover date i.e. hand over of berth No 12. The cost statement indicates license fee payment of ₹377 lakhs in 2007-08 and ₹484 lakhs in the year 2008-09 and ₹661 lakhs in the year 2009-10. The estimates for the years 2010-11 to 2012-13 are at ₹740 lakhs, ₹766 lakhs and ₹794 lakhs respectively. Para 4 of the proposal states that the license as per LF2 rates are not paid by the ABGKCTL and the matter is proposed to be referred to an arbitrator. However, the license fee shown in the cost statement for the years 2008-09 and 2009-10 and estimates for the years 2010-11 to 2012-13 appear to be closer to the LF2 rates prescribed in the LA. Even the KPT has stated that the License fee considered by the ABGKCTL is at LF2 rates but in reality it has not paid these charges. The KPT has confirmed that the ABGKCTL pays license fee of ₹377 lakhs per annum at the LF1 rates and hence the expenditure can only be allowed only at the actual level incurred by them. In the light of the observation made by the KPT, the license fee considered in the cost statement may be modified.		
(v).	**Insurance** (a). The insurance cost is estimated to increase to ₹208 lakhs in the year 2010-11 as against actual insurance cost of ₹38 lakhs reported in the immediate previous year. The actual insurance cost incurred in the year 2010-11 may be indicated. Furnish a copy of the relevant insurance covers taken during the year 2010-11 to justify the actual figure (to be) considered in the cost statement.	(a). The insurance cost is estimated at 1% of Gross block of fixed assets in accordance with the TAMP guideline for upfront tariff fixation. The actual insurance cost for the year 2010-11 shall be furnished after the accounts are finalized. (Subsequently, the ABGKCTL under cover of its letter dated 20 September 2011 has updated the cost position for the year 2010-11 with actuals.)	

	(b). The insurance cost of ₹186 lakhs and ₹188 lakhs estimated for the subsequent years 2011-12 and 2012-13 respectively may also be justified with reference to the actual insurance cost incurred in the years 2010-11.	(b). As above	
(vi).	**Depreciation**: Depreciation for the year 2007-08 to 2009-10 shown in the cost statement do not match with the depreciation reported in the Annual Accounts. It is understood that other expenses are also clubbed with the depreciation. In this regard, the following points may be examined/ clarified: (a). Depreciation figure may be considered duly matching it with the depreciation reported in the Annual Accounts of the respective years. (b). The reasons for merging other expenses with depreciation of such expenses may be clarified. Furnish the break up and show it separately under overheads or operating costs. The other expenses considered for the years 2007-08 to 2009-10 and 2010-11 may be correlated with the expenses reported in the Annual Accounts for the years 2007-08 to 2009-10 and actuals for 2010-11. (c). Confirm the depreciation on assets is as per the straight line method with life norms adopted as per the Companies Act or based on life norms prescribed in the LA, whichever is higher.	(a). For the FY 2007-08 to 2009-10 the depreciation figure has been matched with the depreciation as reported in the Annual Accounts of the respective years. For the year 2010-11 onwards, depreciation has been estimated based on TAMP guideline for upfront tariff fixation. (b). No other expenses have been merged with depreciation. (c). We confirm that depreciation has been calculated on straight line method. Depreciation is higher if life norms are adopted as per the Companies Act. Accordingly in view of the TAMP guidelines we have assumed depreciation as per the Companies Act in the projection.	

<table>
<tr>
<td>(vii).</td>
<td>Finance and Miscellaneous Income & Finance and Miscellaneous Expenditure:

(a). Sl no. (VII)(iii)of the consolidated cost statement shows interest income on Fixed Deposit for the years 2007-08 to 2009-10. As per note (7) in the cost format prescribed, interest income on investment from specific fund, escrow account and general reserve should be excluded in the tariff computation.

(b). Please reconcile the other income reported in the Annual Accounts (which covers the FMI) with the FMI in the cost statement for the years 2007-08 to 2010-11.

(c). The Annual Accounts as well as the cost statement reflect foreign exchange loss of ₹311 lakhs in the year 2008-09 under the head FME. Foreign exchange gain of ₹7 lakhs and ₹35.95 lakhs in the years 2007-08 and 2009-10 are also considered in the cost statement as per the Annual Accounts of the respective years. The nature of exchange gain/ loss reported in the Annual Accounts may be explained.</td>
<td>(a). The Revised forms submitted now takes care of the observation.

(b). The reconciliation statement is as below:

<table>
<tr><th>Particulars</th><th>2007-08</th><th>2008-09</th><th>2009-10</th></tr>
<tr><td>Other Income as per Annual Accounts</td><td>5.14</td><td>51.17</td><td>912.86</td></tr>
<tr><td>Less : Interest on Fixed Deposits</td><td>5.14</td><td>51.17</td><td>630.65</td></tr>
<tr><td>FMI in the cost statement</td><td>-</td><td>-</td><td>282.21</td></tr>
</table>

(c). The exchange gain or loss arises in view of the fluctuations in the exchange rates between the time of delivery of RMQC & RTGC and the time of actual payment.</td>
<td></td>
</tr>
<tr>
<td>(viii).</td>
<td>Preliminary Expense write off

(a). The actual preliminary expenses incurred by the ABGKCTL before commencement of operation in 2009-10 other than upfront fee payment of ₹10 crores may be indicated.

(b). During the last tariff revision, estimated preliminary expenses of ₹9.27 crores and upfront fee of ₹10</td>
<td>(a). Following preliminary expenses were incurred by the ABGKCTL :
Year 2007-08 – ₹19.21 Lac (Share issue expenses
Year 2008-09 – ₹24.00 Lac (share issue expenses)
Year 2009-10 – Nil

(b). Upfront Payment is being amortized over the entire concession (project) period/ remaining period of the project.</td>
<td></td>
</tr>
</table>

	crores (payable by ABGKCTL as per the LA) were spread over the project period. In the cost statement, the upfront fee is spread over the project period in line with the earlier approach but the preliminary expense is spread over from 2006-07 (from 12.6.07) to 2008-09. For the purpose of fixation of tariff, the preliminary expense may also be spread over the project period. The cost statement for the past period as well as projections for the next three years may be modified accordingly. (c). The Balance Sheet for the years 2006-07 to 2009-10 do not show separate entry relating to un-amortised upfront fee and the Preliminary expense. If these expenses are merged with any of the asset group, then it may segregated and shown separately for the purpose of fixation of tariff for all the years from 2006-07 onwards. Corresponding adjustment may be done in the gross block, depreciation and net block of assets. (d). Return may be considered on the un-ammortised upfront fee and preliminary expense both for the past period and the future period in line with the treatment followed in the last tariff Order.	Other preliminary expenses have been written off as per the Companies Act and Accounting Standard. Otherwise also the amount is very small and its writing off in two year does not make any significant impact on tariff fixation. (c). In the balance sheet for the years 2006-07 to 2009-10, the un-amortised upfront fee is included under the head "Loan & Advances". For the purpose of tariff fixation, the un-amortised upfront fee has been shown in form 3 B under S.No. B (iii). No adjustment is required in gross block, depreciation and net block of assets. (d). Form 4A has been accordingly revised.	
(8).	**Capital Employed**:		
(i).	Since the year 2010-11 is coming to an end, the additions proposed to the gross block, depreciation and other related items may be modified with reference to the actuals and substantiated with documentary evidence.	The revised Cost formats contain the modification.	
(ii).	As stated earlier, the depreciation as well as cumulative depreciation considered in the cost statement (Form 3A and 4A) do not match with the depreciation reported in the	For the FY 2007-08 to 2009-10 the depreciation figure has been matched with the depreciation as reported in the Annual Accounts of the respective years. It may however be noted that the depreciation applied in the	

	Annual Accounts and consequently the net block of assets also do not match. These figures may be modified.	published account is lower than the rate provided under TAMP guideline.	
(iii).	Reconcile the actual gross block, depreciation, net block in the cost statement with the figures reported in the Annual Accounts for the years 2007-08 to 2009-10 and 2010-11.	The actual gross block, depreciation, net block in the cost statement has been modified in accordance with the figures reported in the Annual Accounts for the years 2007-08 to 2009-10. The annual account of 2010-11 is pending finalization. (Subsequently, the ABGKCTL under cover of its letter dated 10 August 2011 has furnished the Annual Accounts for the year 2010-11.)	
(iv).	The additions to the gross block based on actual in the year 2010-11, and additions to the gross block estimated ₹2.10 crores in 2011-12 and ₹4.00 crores in 2012-13 may be substantiated with copies of work orders issued/ budgetary quotations, etc. Please furnish the present status and the expected date of completion of the additions proposed to the gross block in the years 2011-12 to 2012-13 for each of the assets shown in from 4B of the proposal. Also, clarify whether all proposed investment are in accordance with provisions in the LA.	No addition to the gross block took place in 2010-11 except ₹1.13 crore on the 11KV substation and other equipment because the expected sale of the MHC did not take place.	
(v).	Additional traffic expected, capacity, improvement in productivity in absolute terms and reduction in cost, if any, may be quantified and shown in the cost statements with reference to each of the additions proposed.	As stated above at S.No. 9(iv), there was no major addition to Gross block in 2010-11 and hence no significant contribution to growth in traffic can be attributed to the addition of the gross block.	
(vi).	With reference of additions to plant and machinery to the tune of ₹7727 lakhs reported in the year 2009-10 in the Annual Accounts; in view of the point made by the KPT please confirm whether it was commissioned in the said year. It may be noted that only completed and commissioned assets should alone be counted for capital employed. The work-in-	During the year 2009-10, the CH4 equipment was commissioned as per the requirement of the Licence Agreement resulting in addition of ₹7727 lacs to the gross block.	

	progress shall not be taken into account. A confirmation in this regard may be furnished.		
(vii).	The estimates for the year 2010-11 indicate deletion of plant and machinery from the gross block of assets to the tune of ₹4110 lakhs. Please give details of the plant and machinery proposed to be deleted along with the written down value of the relevant assets, the sale proceeds realized. Please explain and show the treatment given in the cost statement with reference to profit/ loss made on sale of said asset.	The amount of ₹4110 lacs shown as reduction in the capital employed is on account of proposal to sell the additional equipment (2 Mobile Harbour Cranes), which are no more required for container operations. The sale of MHCs (2 nos.) is held up on account of delay in grant of permission by KPT. The actual loss can be worked out only after the sale of MHCs. For the purpose of projection, the estimates are fair and reasonable. The sale of MHCs is now shifted to the FY 2011-12.	
(viii).	Appendix IV of the LA gives details of the phase-wise investment (CH1, CH3 and CH4) to be made on various equipment /civil work and development of container stack yard. The details regarding licensee obligation given in Annexure VI of the proposal is not complete. Please furnish a statement showing the phase-wise investment envisaged as per the LA, date of investment, details of investment (i.e. equipment, number of equipment, civil work) juxtaposing the actual position in terms of date of commissioning of equipment, details of investment, capital cost for each of the items. The reasons for variations, if any, from the LA provisions may be explained.	The statement showing details of the phase-wise investment has been furnished.	On perusal of the phase wise investment data provided by ABGKCTL it is observed that the total investment made till date amounts to ₹206.69 crores against the total project cost. As such, ABGKCTL may not be entitled to claim fill ROCE as per the L.A. In fact, till date negligible investment has been made on civil works.
(ix).	(a). The estimation of Sundry debtors and cash balance by the ABGKCTL for determining the working capital is not found to be in accordance with the norms prescribed in clause 2.9.9. of the guidelines.	(a). Sundry debtors in the projection made for tariff calculation has been taken as NIL. It may not need any clarification. The cash balance comprises of the guarantee obtained from the bank, Licence Fees (paid in advance) and un amortised upfront payment in compliance with the TAMP guidelines. ABGKCTL has not considered the revenue share for calculation of the working capital.	

	(b). As per Article 7.3. of the LA, the ABGKCTL is required to pay lease rent to the KPT for the lands allotted to it 10 days prior to every LF1/LF2 payment period. If the license fee is paid in advance by the ABGKCTL as per the provisions in the LA, then the calculation of working capital may be modified to consider effect of the advance payment. As per Article 7.1. of the LA Revenue share is payable on the 10th of the succeeding month. Since royalty are not payable in advance it cannot be considered for computation of the working capital.	(b). Noted	
	(c). The consumption of stores and spares reported in the Annual Accounts is ₹39.40 lakhs, ₹66.44 lakhs, ₹109.85 lakhs for the years 2007-08 to 2009-10. The actual inventory consumption for the years 2007-08 to 2009-10 shown in the Form 4A at Sl. No.(VII) do not match with the figures reported in the Annual Accounts.	(c). Duly corrected.	
	(d). The basis of estimating capital spares and other inventory (excluding fuel and customized spares) for the years 2011-12 and 2012-13 may be explained and justified with the past years actuals.	(d). Requirement of spares has been projected for 2011-12 to 2013-14, based on the past experience.	
	(e). The actual current liability for the year 2010-11 may be indicated. The reasons and basis for projecting current liability at zero for the year 2011-12 and 2012-13 may be justified with reference to the actual current liability reported for the past period 2009-10 and 2010-11.	(e). Actual current liability for the year 2010-11 can be indicated only after finalization of accounts. (Subsequently, the ABGKCTL under cover of its letter dated 20 September 2011 has updated the cost position for the year 2010-11 with actuals.)	
	(f). As per clause 2.9.10 of the tariff guidelines of 2005, full ROCE is admissible if capacity utilisation is 60% and when the capacity utilisation is in the region of 50% to 60%, pro-rata reduction in the	(f). In terms of clause 2.9.11 of 2005 Guidelines, in the case of private terminal operator, if the investment is made in accordance with the Concession Agreement it will be considered for ROCE even if full capacity utilization is not	

	maximum permissible return is to decided on case to case basis. The ABGKCTL has claimed full ROCE though the capacity utilisation is in the range of 37% to 45% for the years 2010-11 to 2012-13. The ABGKCTL may justify the capacity under utilisation and traffic projections below the minimum guaranteed throughput prescribed in the LA.	achieved. All investments made are in fulfillment of Licence Agreement. The capacity utilization has been low because of factors like – 1. The availability of draft. 2. Delays in pilotage and restriction on night pilotage. 3. Delay in handing over licensed premises. 4. Non handing over of the land for railway connectivity. The Traffic Projections are based on – 1. The past trend in traffic growth. 2. The likely share of traffic between coastal & foreign containers. 3. Expected provision of committed draft by KPT. 4. Expected removal of restriction in night navigation and 5. Marketing efforts of ABGKCTL.	
(9).	Form 6 relating to Analysis of Efficiency on Productivity Improvement has not been filled by the ABGKCTL. Duly filled form may be sent in accordance with clause 2.4.1 of the tariff guidelines.	Form 6 is furnished.	
(10).	As per the L.A. (Clause 4.12.2. (xvii), Page 40 of the L.A.), the licensee is required to obtain stevedoring license from the Kandla Port Trust under the Kandla Port Trust (Licensing of Stevedores) Regulations, 1988. During the initial tariff fixation, the KPT had confirmed that it is the ultimate responsibility of the ABGKCTL to offer the stevedoring services and that the Stevedoring License is granted to the ABGKCTL as per the LA. The ABGKCTL did not separate rates for stevedoring service despite advice rendered but subsequently they agreed to absorb it as part of the composite rate. That being so, the Authority while	A letter from KPT, explaining why ABG is not required to obtain the stevedoring license is furnished.	**Reasons for not obtaining stevedoring license** The Kandla Port Trust (Licensing of Stevedores) Regulations are also applicable to stevedoring by the BOT Operator. Only a licensed stevedore can render stevedoring services. ABGKCTL has failed to obtain even the safety clearance Dock Safety inspectorate despite repeated requests.

	approving the rates stated that the composite box rate is inclusive of on-board stevedoring apart from other services mentioned therein. In this context, clarify the following: (i). As per the clause 4.12.2 (xvii) of the License Agreement, it is for the ABGKCTL to obtain the Stevedoring license from the KPT. The KPT has now brought out that the ABGKCTL has not obtained the stevedoring license. Please confirm the factual position and explain the reasons for non-compliance of this provision in the LA. (ii). Clarify presently who provides the stevedoring service at the terminal. Clarify the tariff arrangement for providing stevedoring service, which seems to be the responsibility of the ABGKCTL as per clause 4.12.2 (x) and (xvii) of the LA. (iii). The existing composite box rates approved by the Authority is stated to be inclusive of stevedoring service. If the stevedoring service is not offered, then explain why suitable reduction should not be effected in the existing tariff to the extent this service are not offered by the ABGKCTL.	 (i). ABGKCTL had written to KPT conveying its willingness to obtain stevedoring licence. KPT has been requested to confirm that ABGKCTL will not be required to engage DLB gangs in the container terminals. The reply is awaited. (ii). ABGKCTL is providing the stevedoring service. (iii). Does not arise.	
C.	**SCALE OF RATES**		
(1).	The Authority while approving the charges for supply of gangway vide Order No.TAMP/28/2009-ABGKCTL dated 16 June 2010 had inserted a note that it will be an optional service provided at the request of the relevant user. The note approved in the said Order may be incorporated in the proposed Scale of Rates.	Noted.	
(2).	The existing Scale of Rates prescribes uniform free period for three days for import empty and laden containers	There has been a persistent demand from shipping lines to provide additional free period for storage of import empty containers.	

	and storage charge are proposed for the period beyond the free period. In the proposed Scale of Rates, the number of free days for empty import container is proposed to be increase to seven days. The reasons for proposing to increase the number of free days in respect of empty (import) container may be explained with revenue implication, if any.	As the terminal has sufficient land this request may be accommodated without any difficulty. Besides it may help the terminal to attract additional volumes. Revenue implication will be marginal and may be compensated with additional throughput.	

10.1. As decided in the joint hearing, the KPT was requested to comment on the updated cost statements furnished by ABGKCTL. The KPT was also requested to reply to our questionnaire dated 31 March 2011. The KPT was to comment on the written submission furnished by Kandla Port Steamship Agents Association during the joint hearing and to examine the comments of users on receipt of them and furnish their response.

10.2. After reminder, the KPT vide its email dated 21 April 2011 and letter dated 31 May 2011 has furnished its response to the queries raised by us vide our letter dated 31 March 2011. A summary of the queries raised by us and the response of the KPT is tabulated below:

Sl. No.	Queries raised by us	Reply received from KPT
(i).	Traffic:	
	(a). Since the year 2010-11 is coming to an end, actual container traffic handled by the ABGKCTL for the year 2010-11 may be furnished.	During the year fiscal 2010-11 the actual container traffic handled by M/s.ABGKCTL, at Kandla Port, stands at 160243 TEU, with the tonnage at 25.86 lakh MT. This is the figure communicated to KPT by ABGKCTL, without any verification from KPT.
	(b). In view of the discrepancy in the container traffic figures indicated by the KPT with reference to the traffic details available with the port, the ABGKCTL has been requested to provide the correct container traffic figures with the break up of different types/ size of containers to the port for the year 2007-08 to 2009-10 and 2010-11. The KPT is requested to verify the traffic figures and certify the same.	KPT has consistently taken a stand that the container throughput traffic figures furnished to the Port, by M/s.ABGKCTL, have neither been verified by the Port, nor have been vetted/ authenticated by any Independent 3rd party auditor or outside agency. Therefore, the figures furnished by the Port to Ministry, IPA, & other private parties, media etc. are to be treated as provisional only. As regards verification of the traffic figures, it is stated that, since M/s.ABGKCTL has not provided us the container's 11 digit alphanumeric identification code, in respect of containers handled by them at Kandla Port, it is not possible for Kandla Port Trust to verify the authenticity of these figures communicated to us by M/s.ABGKCTL. However, Kandla Port is in the process of collecting information regarding the systems that are in place and the procedures & processes adopted for verifying the container throughput data in other Major Ports, where such private operators are running the container terminals. In the light of the above circumstances, Kandla Port Trust at this stage, cannot certify the correctness of the container traffic figures communicated to it by M/s.ABGKCTL, for any of the years starting from 2007-08 till 2010-11.

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<td>(c). Please furnish specific comments on the reasonableness of the traffic projections made by the ABG Kandla Container Terminal Limited (ABGKCTL) for the years 2011-12 to 2012-13.</td>
<td>The comparative statement of the projections made by ABGKCTL and Kandla Port are indicated below:
<table>
<tr><th>Year</th><th>ABGKCTL</th><th>KPT's container traffic projections</th><th>Projection as per New Revised projections after Perspective plan completion of FY 2010-11</th></tr>
<tr><td>2010-11</td><td>168794</td><td>160000</td><td>--------</td></tr>
<tr><td>2011-12</td><td>185673</td><td>170000</td><td>175000</td></tr>
<tr><td>2012-13</td><td>204240</td><td>175000</td><td>180000</td></tr>
</table>

It is stated that Kandla Port Trust had earlier during F.Y. 2010-11 projected the traffic throughput figures for the Port for major commodities, for incorporating them in to the 'New Perspective plan for 2010-11 to 2019-20', which was submitted to the Ministry of Shipping, New Delhi. However after completion of the fiscal 2010-11, and based on the current trend of commodity mix etc, these figures have been reviewed and the revised projections have been made by Kandla Port Trust and submitted to the Ministry of Shipping, for deciding the Port's traffic throughput targets for the year 2011-12. Both sets of projections made by the Port have been indicated above.

M/s.ABGKCTL has projected only a throughput of 168794 TEU for 2010-11, which is on the lower side as compared to the projections made by Kandla Port.

The traffic projections made by ABGKCTL for 2011-12 and 2012-13 seem to be highly inflated, looking to the present growth levels and the container traffic trend at Kandla Port. As per the latest projections (indicated above), ABGKCTL would handle around 1.75 lakh TEU during 2011-12 & 1.80 lakh TEU during 2012-13.

Thus based on the above facts, one can say that the projections given by ABGKCTL are far from being considered as reasonable.</td>
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<td>(d). The average share of foreign container and coastal container reported by the ABGKCTL is 94% and 4% respectively during the years 2007-08 and 2008-09 and in the year 2009-10 the share is 78% and 20%. The ABGKCTL has stated that the share of foreign container is reducing and the share of coastal container is expected to rise and accordingly the share of foreign container and coastal container is assumed at 70% and 29% for the years 2010-11 to 2012-13. Please comment on the reasonableness of the container mix of foreign and coastal as well as laden/ empty and transshipment containers assumed by the ABGKCTL.</td>
<td>As per the information regarding the container throughput at the Port's container terminal which is furnished by M/s. ABGKCTL to the Traffic department of Kandla Port, the share of foreign containers and coastal containers is 96% and 4% during 2008-09, while this share is 79% and 21% during 2009-10. The respective share for F.Y. 2010-11 is 72% and 28%. However, the share of foreign and coastal container traffic handled by M/s.ABGKCTL, during the fiscal 2007-08, has not been received by Kandla Port Trust, despite requests through official letters sent to them.

Based on the decreasing trend of the foreign containers and increase in share of coastal containers, for the years 2008-09 to 2010-11 at</td>
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<table>
<tr><td></td><td></td><td>Kandla Port, one could assume that the share of foreign and coastal containers at Kandla port could vary and could be around 70% and 30% during the years 2011-12 and 2012-13, and therefore based on the above facts, the percentage share of foreign and coastal traffic from 2010-11 to 2012-13 as indicated by ABGKCTL, seems to be reasonable.

Regarding laden/ empty containers, it is stated that M/s.ABGKCTL has reportedly handled 130781 TEU of laden (loaded) containers and 34311 TEU of empty containers during 2007-08. The corresponding figures for 2008-09 are 102126 TEU and 35493 TEU respectively.

For 2009-10, these figures stand at 115130 TEU and 31647 TEU respectively. For 2010-11 they are: 119812 TEU and 40431 TEU for laden and empty categories respectively. Since Kandla Port Trust has not received any figures from TAMP specifying M/s.ABGKCTL's set of figures for laden / empty containers for these years the reasonableness of these figures cannot be commented.</td></tr>
<tr><td>(ii).</td><td>The Minimum Guaranteed Throughput (MGT) indicated by the KPT at Sl. No.III in Form 2A is 89063 TEUs, 178751 TEUs and 192751 TEUs for the years 2007-08 to 2009-10. For the years 2010-11 to 2012-13, the MGT is estimated at 210126 TEUs, 231608 TEUs and 256019 TEUs respectively.

Appendix X of the License Agreement prescribes the MGT for the Applicable Period and also stipulates a formula for arriving at the applicable MGT. The applicable period for computation of the MGT is different from the financial year which the KPT has also admitted. That being so, the MGT for the applicable period has to be computed for the relevant financial year. In this regard, please confirm whether the MGT indicated by the ABGKCTL for the years 2007-08 to 2012-13 is in conformity with the provisions in the License Agreement. Also, indicate the MGT for the year 2013-14 as per the LA.</td><td>The applicable period as per L.A is applicable for royalty and other charges as per the various clauses of the MOU. However, while fixation of tariff and computation of capacity financial year is considered in line with computation of cargo handled by the Port which is also calculated based upon the proportionate MGT of the relevant applicable period. Incidentally, it is brought out that the financial year 2013-14 covers applicable period 7 & 8. Hence, the MGT for the applicable period 7 (covering some portion of financial year 2013-14) and applicable period 8 (covering the financial year 2014-15) is provided herewith which is 3,10,000 TEUs and 3,50,000 TEUs respectively.</td></tr>
<tr><td>(iii).</td><td>The ABGKCTL has in its proposal stated that it could not achieve the MGT prescribed in the LA in the past period and the traffic projected for the future is also lower than the MGT. The ABGKCTL has attributed non achievement of MGT on its part is due to failure on the part of the Kandla Port Trust to hand over the facilities as per the schedule, the KPT not providing the required draft of 12.5 mtrs. in respect of berth No 11 and 12 and several defaults by the licensor. In this regard, the KPT in para 14 of its letter dated 14 February 2011 has clarified that the required draft was provided by the port as per COD -12</td><td>The Port has handled a total container traffic (including empty containers) as indicated below since 2006-07 (the fiscal year, the container terminal was handed over to M/s.ABGKCTL).<table><tr><th>Year</th><th>Container Traffic (in lakh TEU)</th></tr><tr><td>2006-07</td><td>1.78</td></tr><tr><td>2007-08</td><td>1.65</td></tr><tr><td>2008-09</td><td>1.38</td></tr><tr><td>2009-10</td><td>1.47</td></tr><tr><td>2010-11</td><td>1.60</td></tr></table>
It is further stated that the maximum draft of container vessels that handled cargo at Kandla</td></tr>
</table>

	and only on few instances due to insufficient tidal height since Kandla is a tidal port, draft less than 12.5 mtrs. was permitted. In this context, circulars of permissible draft for ships issued by the KPT since the year 2007 which is forwarded as part of the proposal of the ABGKCTL show that the draft was below 11 mtrs. on most of the days and only on few instances it is 12mtrs or more. Please give the factual position in this regard and also indicate the impact of non provision of 12.5 metres draft by the KPT on the container traffic of the ABGKCTL.	Port during the fiscal year 2007-08 was 10.00 mtrs., during 2008-09 it was 10.30 mtrs., during 2009-10 was 11.50 mtrs. & during 2010-11 it was 10.90 mtrs. It is to be noted that the container traffic at a Port is dependant on number of other important factors apart from draft available at berths and in the navigational channel. It may be recalled that though Kandla port had a maximum draft of 11.50 metres at its dry cargo berths during 2004-05, it had handled a container traffic of 1.81 lakh TEU during that year, without a container terminal and its supporting specialized infrastructure then. Based on the above information and facts, since the container vessel with the deepest draft that ABGKCTL has handled at Kandla Port till 31.3.2011, is of 11.50 metres, there has been no impact on the container traffic of Kandla Port owing to alleged non provision of 12.50 mtrs. draft by KPT. The draft of 12.5 mtrs. was declared prior to COD 12 and has been maintained even since. However, the draft at Kandla is dependent on the height of tide and on a number of days the height of tide is not sufficient as such for that day the relevant draft is declared. The shipping operations and draft declaration are on purely non discriminatory basis.
(iv).	The KPT has stated that the capacity of the ABGKCTL is 3 lakh TEUS for the years 2007-08 and 2008-09 and with handing over of berth No 12, it is 6 lakhs TEUS from the year 2009-10 as reported and agreed by the Ministry of Shipping. The capacity determined by the KPT is not supported by any calculation. The KPT is requested to assess the capacity for each of the years 2007-08 to 2010-11 and for the period 2012-13 and 2013-14 with reference to the physical facilities available and the productivity levels achieved and furnish a working in this regard.	The capacity of the container terminal operated by ABGKCTL for handling containers as 3 lakh TEU for the fiscal years 2007-08 & 2008-09. After handing over the cargo berth number 12 to M/s.ABGKCTL during June 2008, the terminal handling capacity was considered by Kandla Port Trust as 6 lakh TEU since the terminal was now having full capacity with the inclusion of the remaining half of the terminal i.e. cargo berth No.12. Since the cargo handling capacity figures of the berths at the Port are computed / revised only once after the completion of the financial year, this capacity was taken as 6 lakh TEU from 2009-10 onwards. However, the 3 lakh TEU capacity for the terminal during 2007-08 & 2008-09 and 6 lakh TEU capacity from 2009-10 onwards have been assumed by Kandla Port Trust, as the ‘Working capacity’. As regards, the assessment of capacity for each of the years from 2007-08 to 2010-11 based on the productivity levels achieved is concerned, the same is calculated keeping in view the Ministry’s guidelines & methodology, which is being presently followed by Kandla Port Trust for computation and updating of cargo handling capacity every year.

		It is however stated that the container handling capacity for each of the years 2007-08 & 2008-09 is calculated considering that only one container berth (Cargo berth Number 11) is available to the terminal operator i.e. ABGKCTL during both these years. However, the container handling capacity from 2009-10 onwards is calculated considering the fact that 2 container berths are available to the operator, since the second container terminal's berth i.e. Cargo berth No. 12 was handed over to the container terminal operator during June 2008. The methodology adopted for arriving at the container handling capacity for one year is as follows : The capacity of the berth is computed using the formula : Number of working days in a year * Berth occupancy * Average Ship per berth day output. Here, as per the guidelines given by Ministry of Shipping, New Delhi, 'Number of working days in a year' – which are taken to be 330, are the number of days the berths are assumed to be available for operation purpose. The 'Berth occupancy' is considered as 0.60 (60%) for the years 2007-08 & 2008-09, and 0.70 (70%) from 2009-10 onwards, since Berth occupancy for a specialized container terminal is to be taken as 60% for single berth and 70% for more than 1 berth. 'Average ship per berth day output' is the Average of the Average per berth day output of the previous three years. The container handling capacity at Kandla Port based on the productivity levels, & worked out by adopting the above method is as follows : 1.16 MMT for 2007-08, 1.38 MMT for 2008-09, 3.81 MMT for 2009-10, 4.38 MMT for 2010-11 & 4.34 MMT for 2011-12. However, it may not be possible to furnish the projected cargo handling capacity for the years 2012-13 and 2013-14, by adopting the above method, since this would require the actual tonnage and actual total berth stay for the preceding three years.
(v).	Annex – VI furnished by the ABGKCTL along with the proposal about the licensor's obligation as per the LA, states that there has been delay on the part of the KPT in the handing over the 18 hectares of yard behind berth No 12. Whereas the KPT while furnishing comments on the proposal vide its letter dated 11 February 2011	As far as comments from traffic department is concerned, it is submitted that M/s.ABGKCTL has not fully developed the container yard given to it by Kandla Port. Further the utilization of the yard also has not been to desired optimum levels. Further, for storage and stacking of containers Kandla Port has handed over a

	has stated that the there has been failure on the part of the ABGKCTL to take over the yard behind the berth No 12. The factual position may be reported. Impact of this deviation from the LA on the traffic on the ABGKCTL may also be indicated.	portion of its storage space - around 22300 sq. metres, to M/s.ABGKCTL for its utilization. The delay in completion of the work of Murrum filling in back up area of berth no.12 was on account of delay in approval to the Revised Cost Estimate for the work of "Construction of 10th Cargo Berth (re-named as 12th Cargo Berth) at Kandla. The approval was within the competence of Expenditure Finance Committee (EFC) of Government of India and it took almost 2 years to get the said approval. The approval was received in the month of May 2008 and the work of Murrum filling was commenced in the month of June 2008 and the work has been completed on 10/11/2008. M/s.ABGKCTL had in their possession 22 ha. area in the backup of berth no.11 since 21/10/2007, which has not been developed till date and is grossly under utilised. Therefore, delay in handing over the backup area of berth no.12 has not made any material difference so far as the stacking of the cargo is concerned.
(vi).	As regards the third hand over of berth No 12 (which is stated to be 21 June 2008 as per the LA), the ABGKCTL has stated that the berth No.12 is shifting towards sea and may collapse. In this regard, the following points may be clarified:	The earth filling of the backup area was carried out scientifically. The movement of the crane rail lines was not on account of earth filling as the movement was noticed prior to commencement of earth filling. The work of earth filling was commenced in the month of June 2008 whereas, the movement was intimated by M/s.ABGKCTL vide letter No.ABG/KAN/380/07 dated 16/10/07 and No.ABG/KAN/403/07 dated 16/11/07. The opinion of M/s.IIT, Chennai by M/s.ABGKCTL was not based on complete facts. The letter No.IC/08-09/OEC/KPT/RSUN/Ltr/126 dated 26/2/2009 and letter dated 26/2/2009 from Dr. R. Sundaravadivelu, Head of Department of Ocean Engineering IIT, Madras, has been received in this regard. Subsequently, M/s.IIT, Chennai, after having inspected the site and examining the issue thoroughly, opined that the movement is not on account of earth filling of the backup area and the licensor is not responsible to undertake steps once the berth was handed over to M/s.ABGKCTL. The opinion given by M/s.IIT, Chennai to M/s.ABGKCTL was not based on complete facts. The matter requires thorough examination by M/s.IIT. Prof. Gandhi, Head of Geo Technical Engg. Division of M/s.IIT, Chennai, after visiting the site and examining the issue, has given his opinion on 2/2/2009. The opinion of Prof. Gandhi was endorsed by Dr. R. Sundaravadivelu, Head of Deptt. of Ocean Engineering and the same was thereafter, communicated to M/s.ABGKCTL. The contention of M/s.ABGKCTL that the report of M/s.IIT, Chennai, has raised more issues than providing explanations, is not correct. As
	(a). Examine and comment on the submission made by the ABGKCTL and clarify whether it will affect the capacity/ traffic/ MGT of the terminal.	
	(b). Clarify whether containers are presently being handled at berth No 12.	
	(c). If not, the actions initiated by the KPT to strengthen the berth No 12 to enable the ABGKCTL to handle containers at this berth may be explained.	

		regards stabilization of movement concluded by M/s.IIT, during the period of December 2008 to February 2009, there was no major deviation noticed in the rail alignment. As indicated earlier, the opinion of M/s.IIT dated 3/12/2008 was not based on complete facts. There was no effect of Murrum filling on the berth. The berth is designed to take the load of further filling and live-load of container stacking. Therefore, deck is safe and it can take all container stack loads. Containers are presently being handled at berth no.12.
(vii).	The ABGKCTL has stated that non payment of royalty due to the shortfall in achieving the MGT and payment of the license fee at LF2 rates prescribed in the LA is proposed to be referred to the arbitrator. The matter of reference made to the arbitrator and the present status of the arbitration process may please be indicated.	ABGKCTL has made adhoc payment for ₹7.32 crores against LF-2 for the period from 10.11.2008 to 31.12.2010 and also continuing the payment towards LF 2. However, for making payment of Royalty towards shortfall in MGT, M/s.ABGKCTL is insisting for Arbitration.
(viii).	As per the clause 4.12.2 (xvii) of the License Agreement, it is for the ABGKCTL to obtain the Stevedoring license from the KPT. During the initial tariff fixation, the KPT had confirmed that it is the ultimate responsibility of the ABGKCTL to offer the stevedoring services and that the Stevedoring License is granted to the ABGKCTL as per the LA. Though the ABGKCTL did not propose separate rates for stevedoring service they agreed to absorb it as part of the composite rate. Based on the position made available to us, the Authority while approving the Order stated that *composite* box rate is inclusive of on-board stevedoring apart from other services mentioned therein. The KPT has now brought out that the ABGKCTL has not obtained the stevedoring license which contradicts the position reported in the last Order. In this context, clarify the following:	
	(a). What is the remedial action initiated by the KPT as per the provision of the LA in view of non compliance on the part of the ABGKCTL in obtaining the stevedoring license.	The issue of obtaining stevedoring license by M/s.ABGKCTL and the relevant provisions of license agreement is being interpreted differently by KPT, M/s.ABGKCTL and the Unions. The dispute between KPT and the Unions is pending before the Asstt Labour Commissioner, Gandhidham and the dispute between KPT and M/s.ABGKCTL is being dealt alongwith other deviation/ dispute as a whole.
	(b). Clarify presently who provides the stevedoring service at the terminal. Clarify the tariff arrangement followed by the ABGKCTL stevedoring service, which seems to be the responsibility of the ABGKCTL as per clause 4.12.2 (x) and (xvii) of the LA.	Presently the services of loading and discharging of containers are being done by M/s.ABGKCTL as per LA and the composite charges being levied include costs of on board lashing/ unlashing etc. for containers.

11. With reference to the written submissions filed by Kandla Port Steamship Agents Association (KPSAA) during the joint hearing, which were forwarded to ABGKCTL and KPT for their comments, the ABGKCTL vide letter dated 1 June 2011 and KPT vide its letter dated 6 July 2011 have furnished their reply.

12. The revised cost statement furnished by ABGKCTL under cover of its letter dated 13 May 2011 reflected the estimates for the year 2010-11. Subsequently, at our request, the ABGKCTL under cover of its email dated 20 September 2011 has updated the cost statement with actuals for the year 2010-11. The financial position reflected in the Cost statement furnished under cover of letter dated 20 September 2011 is summarized below:

(**₹ in Lakhs**)

Particulars	Proposal of December 2010						Proposal of September 2011						
	Actuals			Estimates			Actuals				Estimates		
	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Traffic (in TEUs)	164014	137619	146777	168794	185673	204240	164014	137619	146777	160243	176267	193894	213283
Operating Income	3947	4271	4181	4665	5142	5670	3947	4271	4181	4387	4872	5372	5898
Operating Expenditure	911	1070	1280	2172	2159	2288	911	1070	1280	1880	2258	2259	2392
Depreciation	943	1328	1987	1704	1747	1789	650	931	1382	1482	1748	1790	1796
Overheads	525	497	499	517	535	554	525	497	534	537	572	593	614
ROCE (permitted)	1808	1670	2548	2311	2072	1867	2401	2343	3352	3322	2900	2689	1850
Surplus/ Deficit	-240	-294	-2133	-2039	-1371	-828	-543	-611	-2344	-2848	-2621	-1973	-753
Surplus/ Deficit as % of Income	-6%	-7%	-49%	-44%	-27%	-15%	-14%	-14%	-56%	-65%	-54%	-37%	-13%
Average Surplus/ Deficit	-22%			-27%			-37%				-33%		

13. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received and arguments made by the concerned parties will be sent separately to the relevant parties. These details will also be made available at our website http://tariffauthority.gov.in.

14. With reference to the totality of the information collected during the processing of the case, the following position emerges:

(i). The Scale of Rates of ABGKCTL was fixed for the first time in October 2007 with initial validity upto 25 November 2010.

This Authority vide its Order dated 2 May 2011 has extended the validity of the existing Scale of Rates of the ABGKCTL till 30 September 2011 or till the effective date of implementation of the revised tariff, whichever is earlier, subject to the condition that any surplus over and above the admissible cost and permissible return for the period post 26 November 2010 will be set off fully in the tariff to be determined.

(ii). The initial proposal filed by ABGKCTL in December 2010 was revised by them in May 2011. The revised cost statements furnished by ABGKCTL under cover of its letter dated 13 May 2011 reflected the estimates for the year 2010-11. At our request, the ABGKCTL under cover of its email dated 20 September 2011 has updated the cost statement with actuals for the year 2010-11. The revised cost statements furnished by ABGKCTL under cover of its letter dated 20 September 2011 and the additional information/ clarification furnished by ABGKCTL during the processing of this case are considered for the purpose of this analysis.

(iii). The ABGKCTL has repeatedly alleged that due to failure on the part of the KPT to hand over the facilities as per the Licence Agreement schedule with regard to provision of land to handle rail cargo, provision of the required draft of 12.5 metres in respect of berth No.11 and 12, and several other defaults on the part of the licensor, it could not handle panamax vessels resulting in non-achievement of the Minimum Guaranteed Throughput (MGT) prescribed in the Licence Agreement. Same reasons are attributed for projecting the traffic lower than the MGT levels in the future period.

The KPT has outright denied the allegations made by the ABGKCTL and confirmed that non-provision of 12.50 metres draft by KPT has no impact on container traffic. It has stated that the maximum draft of container vessels handled by ABGKCTL at KPT is in the range of 10 metres to 10.90 metres during the years 2007-08, 2008-09, 2009-10 and 2010-11 and the deepest draft vessel handled in the year 2009-10 was of 11.50 metres. It has confirmed that the draft at the port is sufficient to handle container vessels at the terminal.

Even user associations like Kandla Port Steamship Assets Association (KPSAA), Shipping Corporation of India (SCI), etc., have cited examples of other ports where the average draft is in the range of 11 to 12 mtrs. and are in a position to bring in main line vessels. Most of the user associations including KPT find the argument of ABGKCTL about mainline vessels not calling the terminal, as baseless.

Apart from the above points, disagreement persists between the ABGKCTL and KPT regarding stevedoring license, allotment of additional land for rail line etc., have also been highlighted. It is not for this Authority to adjudicate upon these issues. The KPT and the ABGKCTL need to examine these issues and resolve the matter amicably or by taking the remedial measures provided in the Licence Agreement.

(iv). Clause 2.13 of the tariff guidelines of 2005 mandates review of the actual physical and financial performance of the Major Port Trust and private terminal at the end of the prescribed tariff validity period with reference to the projections relied upon at time of fixing the prevailing tariff.

During the last review of tariff of ABGKCTL, estimates for the years 2007-08 to 2010-11 were relied upon. As such, it is necessary to make a comparison of the estimates for the years 2007-08 to 2010-11 with the actuals for the said years.

(v). The analysis of performance of ABGKCTL during the years 2007-08 to 2010-11 along with modifications done in the cost statement filed by the ABGKCTL is explained below:

(a). In the tariff Order of October 2007, the income estimates were based on the tariff level then proposed by the ABGKCTL. Based on the cost position derived, this Authority had effected 11% reduction in the proposed level of tariff which came into effect from 26 November 2011. It is noteworthy that prior to approving the final rates in October 2007, this Authority vide Order No.TAMP/43/2006-ABGKCTL dated 8 January 2007 had approved interim tariff arrangement at ABGKCTL, which was 35% less than the tariff level proposed by ABGKCTL. In other words, the ABGKCTL has operated at 35% lower than the proposed rates for the period from April to November 2007 (forming part of the year 2007-08) and at 11% lower than the proposed rates for the period from December 2007 to March 2008.

The income estimates are suitably adjusted to consider the effect of 35% reduction for the period April to November 2007 as per the interim tariff Order and 11% reduction for the period from December 2007 to March 2011, so as to enable a correct comparison between the actual and the estimated income.

(b). The actual traffic reported to have been handled by ABGKCTL is 164014 TEUs, 137619 TEUs, 146777 TEUs and 160243 TEUs during the years 2007-08 to 2010-11 respectively, as against the estimates of 172000 TEUs, 192640 TEUs, 215757 TEUs and 241648 TEUs for the corresponding years. Thus, as against the estimated total container traffic of 822045 TEUs, the ABGKCTL has actually handled traffic of 608653 TEUs. There is a negative variation of 26% in actual traffic handled by ABGKCTL as compared to the estimates.

The KPT was requested to verify and certify the traffic figures of ABGKCTL for the years 2007-08 to 2010-11. The KPT has furnished the container traffic figures as provided by ABGKCTL to the port at 165092 TEUs, 137619 TEUs, 146777 TEUs and 160243 TEUs for the years 2007-08 to 2010-11 respectively. It has stated that these traffic figures could not be authenticated by the port as they do not have the requisite mechanism. The container traffic of KPT reported in the website of Indian Ports Association (IPA) for the years 2007-08 to 2010-11 is also the same as communicated by KPT.

It is surprising to learn that even after four years of operations by the operator at its port, the KPT who is entitled to receive revenue share on gross earning of ABGKCTL has not developed a mechanism to track the traffic handled by ABGKCTL and give authenticated traffic figures. The KPT may, in its own interest, initiate necessary steps in this direction.

The actual container traffic figures of ABGKCTL given by KPT for the years 2007-08 to 2010-11 and the traffic reported by ABGKCTL are the same except for a variation of 1078 TEUs observed in the year 2007-08. This variation observed in traffic figures however, does not have any effect on the final decision and, therefore, the actual traffic figures furnished by ABGKCTL for the years 2007-08 to 2010-11 is relied upon for the past period analysis.

(c). For the analysis of the past period 2007-08 to 2010-11, the actuals furnished in the Annual Accounts of the ABGKCTL for the corresponding years are relied upon subject to the adjustments discussed in the subsequent paragraphs:

(i). The ABGKCTL has reported that it has offered discounts to certain shipping lines to retain their clientele. While reviewing the past performance, revenue realisable as per the approved Scale of Rates can only be considered. Therefore, discounts granted by ABGKCTL at its discretion and shown as an item of expenditure in the annual accounts for the years 2009-10 and 2010-11 at ₹33.87 lakhs and ₹12.60 lakhs respectively are excluded from the actual expenses reported in the cost statement under the head ‘General overheads’.

(ii). Interest income and interest expenditure are not considered in fixation of tariff of major port trusts/ private terminals. Hence the actual interest income/ expense reported in the Annual Accounts of the respective years are excluded.

(iii). The ABGKCTL has clarified that the exchange gain or loss reported in its Annual Accounts is on account of fluctuations in the exchange rates between the time of delivery of RMQCs & RTGCs and the time of actual payment. The treatment given by ABGKCTL may be as per the applicable Accounting Standard, but, for the purpose of tariff fixation, the exchange gain/ loss which has arisen on account of purchase of equipment is generally capitalized, instead of treating it as a revenue item. This is in line with the approach followed in some other private terminal case. Accordingly, the foreign exchange gain of ₹7.47 lakhs in the year 2007-08 and ₹35.95 lakhs in the year 2009-10 and the exchange loss of ₹311.44 lakhs reported in the Annual Accounts for the year 2008-09 is treated as part of the capital value of the concerned assets. Suitable adjustment is made in the depreciation for the relevant period as well as in future estimates and the net value after depreciation is considered for allowing return.

(iv). The Annual Accounts for the year 2007-08 reflect expenses towards Liquidated damages to the tune of ₹42 lakhs and the Annual Accounts for the year 2008-09 reflect income from Liquidated damages to the tune of ₹282.21 lakhs. The income and expense reported under this head is understood to be on account of non-fulfillment of the provisions of Licence Agreement by either ABGKCTL or KPT. As such, it may be appropriate to capitalize the same instead of treating it as a revenue item. Therefore, the liquidated damages expenses of ₹42 lakhs reported in the year 2007-08 is added to the net block of the asset in the relevant year. Similarly, the net block of assets reported for the year 2008-09 is also adjusted with reference to the income of ₹282.21 lakhs reported from liquidated damages.

(v). In compliance with the policy direction of the Ministry of Shipping dated 29 July 2003 and clause 2.8.1. of the tariff guidelines of 2005, the revenue share payable by ABGKCTL to KPT cannot be admitted as an item of cost. The same stand has been considered in the tariff Order of October 2007. In line with this, the ABGKCTL has not claimed revenue share as an item of cost for the years 2007-08 to 2010-11.

(vi). While analyzing the actual financial position for the years 2007-08 to 2010-11, it is observed that management, administration and general overheads show 35% increase over the estimated level whereas the other actual operating costs show a reduction of 33% from the estimated level for the corresponding period. The actual management administration and general overheads constitutes almost 36% of the operating cost. Though, management and general overhead may not vary with volumes, the reasons for steep increase in this cost item is not known. Clause 2.11.5 of the tariff guidelines of March 2005 recommends the private terminals to take cost reduction measures. The ABGKCTL is, therefore, advised to review the overheads and to initiate corrective measures of cost control and cost reduction and show palpable results.

(vii). As per Article 7.3. of the Licence Agreement, license fee of ₹377 lakhs is payable by ABGKCTL to KPT in LF1 period and license fee as per LF2 rate is payable from the third handover date i.e. handover of berth No 12. The ABGKCTL in its initial proposal had stated that it did not pay the licence fee as per LF2 rates as the matter was proposed to be referred to an arbitrator. Subsequently, it has clarified that it has paid lease rental as per LF2 rates along with interest. The KPT has also confirmed the position reported by the ABGKCTL and stated that an adhoc payment of ₹7.32 crores is paid by ABGKCTL towards licence fees for the period from 10 November 2008 to 31 December 2010 and it continues to pay at the LF2 rates for the subsequent period.

There is, however, some difference in the sum of license fee calculated as per the LF1 and LF2 rates prescribed in the License Agreement for the year 2007-08 to 2010-11 vis-à-vis the sum of license fee reported in the Annual Accounts of the ABGKCTL for the corresponding period. The figure reported in the Annual Accounts is found to be on the higher side perhaps on account of the interest paid by ABGKCTL. Users need not be burdened with the interest component for delay in payment made by ABGKCTL. Therefore, the lease rentals calculated as per provisions of the Licence Agreement for the years 2007-08 to 2010-11 is considered.

(viii). In the tariff Order of October 2007, upfront fee of ₹10 crores payable by ABGKCTL to KPT as per the License Agreement and estimated preliminary expense of ₹9.27 crores aggregating to ₹19.27 crores was amortised over the project period. While analysing the actual position, the total of preliminary expenses and the upfront payment of ₹10 crores is reported at ₹10.10 crores. Therefore, the amount of ₹10.10 crores is spread over the entire project period i.e. ₹33.33 lakhs per annum.

In addition to that, the Annual Accounts of the ABGKCTL show that it has incurred share issue expenses to the tune of ₹19.21 lakhs, ₹24 lakhs and ₹2.30 lakhs during the years 2007-08, 2008-09 and 2010-11 respectively. The ABGKCTL has treated it as revenue expenditure in the relevant years. The expenses relating to share issue is with reference to the project and hence may not be confined only to the year in which it is incurred. As such, the share issue expenses incurred by ABGKCTL in the above mentioned years are amortised over the remaining licence period alongwith the base amount of ₹33.33 lakhs.

(ix). For reasons explained earlier, foreign exchange gain/ loss on account of procurement of equipment and liquidated damages income/ expenses have been capitalised. Hence the depreciation figures reported in the Annual Accounts of ABGKCTL for the years 2007-08 to 2010-11 are adjusted to capture the effect of this modification. The depreciation figure for the year 2010-11 is also adjusted to give effect to the deletion of value of two HMCs from the gross block of assets, as discussed in the subsequent paragraph.

(x). The position regarding the investment plan envisaged in the LA with reference to HMC, RMQCs and RTGCs, as reported by ABGKCTL and KPT in the last revision of tariff of ABGKCTL and the actual deployment of equipment by ABGKCTL is tabulated below:

Particulars	**As per LA**		**Actual deployment of equipment as reported by ABGKCTL**	
	Date	**Equipment deployed**	**Date**	**Equipment deployed**
Phase-I (Early COD)	17.02.2007	2 cranes for ship/ shore transfer	10.03.2007	2 HMCs
Phase-II	20.10.2007	2 RMQCs and 2 RTGCs	26.09.2007	2 RMQCs + 2 RTGCs
Phase-III	20.06.2009	Additional 2 RMQCs and 2 RTGCs	04.06.2009	2 RMQCs + 2 RTGCs

From the above, it can be seen that the ABGKCTL has deployed the equipment in accordance to the provisions in the Licence Agreement. It may also be relevant to bring out here that in the tariff Order of October 2007, the ABGKCTL had proposed to develop 22 hectares of land and additional 18 hectares of land by 2009-10.

It is understood from the comments received from KPT that the 22 hectares of land allotted to ABGKCTL has not been fully developed as container yard. The other 18 hectares of land is yet to be allotted by the KPT. The ABGKCTL has proposed to develop the yards in the year 2011-12. Thus, though 18 hectares of land is not developed, all the four RTGCs as stipulated in the Licence Agreement have already been procured by ABGKCTL. From the Licence Agreement, no correlation can be drawn that the procurement of 2 additional RTGCs in phase III are contingent upon development of additional storage yard of 18 hectares.

The investment of additional two RTGCs in the year 2009-10 has been considered in the analysis, solely on the ground that the said investment is done by the ABGKCTL as per the LA provisions though the additional land is yet to be developed. It is relevant to mention here that even though the equipment has been inducted as per provisions of the LA, the RMQCs and RTGCs are grossly underutilised. As against the annual capacity of 6 lakh TEUs assessed by the KPT for the years 2009-10 and 2010-11 with deployment of additional 2 RMQCs at the second berth, the actual throughput handled by ABGKCTL in the year 2010-11 is 160,243 TEUs. The throughput projected in the future is also at 176,267 TEUs, 193,894 TEUs and 213,283 TEUs for the years 2011-12 and 2013-14 respectively.

The ABGKCTL has assessed the capacity of the terminal as 4.5 lakh TEUs from the year 2010-11 onwards. The KPT has assessed the capacity of the terminal at 3 lakh TEUs for the years 2007-08 and 2008-09 and 6 lakh TEUs from the year 2009-10 onwards with deployment of additional RMQCs in the second berth. Considering the capacity of the terminal as furnished by KPT and the actual throughput handled by ABGKCTL, the capacity utilisation for the terminal works out to 54.67%, 45.83%, 24.40% and 26.7% for the years 2007-08 to 2010-11. The drop in the capacity utilisation from the year 2009-10 onwards is due to the reason that traffic has not grown to commensurate with the increase in the capacity of the terminal on account of deployment of additional equipment as per the LA provisions

It can also be seen that from the year 2009-10 onwards, the ABGKCTL has 4 RMQCs in addition to two MHCs already deployed by them at the time of commencement of operations in the year 2006-07. The Licence Agreement does not specifically mention whether the mobile cranes brought under the initial phase would continue to be pressed into service even after the arrival of full complement of shore equipment at the later phases. The ABGKCTL has stated that the MHC were utilised earlier in the year 2007-08. From the position explained by ABGKCTL it is clear that with deployment of 2 additional RMQCs in the year 2009-10 i.e. 4 RMQCs in total, the 2 MHCs are not in use. There is no reason why return should be allowed on this asset which is lying idle. In this context, it is noteworthy that even the ABGKCTL has proposed to dispose the MHCs in the year 2010-11 which was deferred to the year 2011-12. In our analysis, the 2 MHCs are deleted in the year 2009-10 when the two additional RMQCs were pressed into service. Consequently, the net block of assets reported in the Annual Accounts of the year 2009-10 onwards has been suitably moderated. The effect of this adjustment in the depreciation amount is also considered from the year 2010-11 onwards.

(xi). The working capital is analysed below:

(a). In line with the provisions contained in the tariff guidelines of 2005, the ABGKCTL has not considered Sundry Debtors for the years 2007-08 to 2010-11.

(b). As per the Order passed by this Authority on 30 September 2008 refining tariff guidelines of 2005, prepayments of certain expenses which flow from the provisions of the Licence Agreement can be considered as Sundry Debtors.

As per Article 7.3. of the Licence Agreement, the ABGKCTL is required to pay quarterly lease rental in advance to the KPT for the lands allotted to it. As such, the ABGKCTL was requested to effect change in the calculation of working capital by considering the effect of the advance payment of lease rentals. The ABGKCTL has not quantified the amount of advance payment of lease rentals in the current assets. Since there was delay on the part of ABGKCTL to pay the lease rentals as per LF2 rates, only the advance payments relating to lease rentals paid by ABGKCTL at LF1 rates are considered for the years 2007-08 to 2009-10. For the year 2010-11, quarterly advance lease rental at LF2 rates are considered as an item of current assets in the past period analysis.

As per Article 7.1. of the Licence Agreement, revenue share is payable on the 10th of the succeeding month. Since it is not payable in advance, it has not been considered as part of the working capital.

(c). The ABGKCTL has considered the annual consumption of stores and spares excluding fuel reported in the Annual Accounts for the years 2007-08 to 2010-11 as inventory. This is not found to be in line with the norms prescribed in the tariff guidelines of 2005. In our analysis, 50% of the consumption of stores and spares (excluding fuels) reflected in the Annual Accounts of the years 2007-08 to 2010-11 is considered as inventory.

(d). Cash balance has been calculated at one month's operating expenses including overheads but excluding the upfront payment, as done during the last tariff revision of ABGKCTL.

(e). The ABGKCTL has furnished the figure of current liabilities for the years 2007-08 to 2010-11, which are the figures of Sundry Creditors reflected in the Annual Accounts for the relevant years. The amount as furnished by ABGKCTL is considered in the analysis.

(f). Subject to the above adjustments, Working Capital works out to be negative. Hence, it is considered as NIL. Thus, the Capital Employed comprises of only Net Block of Assets at ₹13255.72 lakhs, ₹12346.54 lakhs ₹15343.62 lakhs and ₹13936.30 lakhs for the years 2007-08 to 2010-11 respectively.

(xii). In the tariff Order of October 2007, though capacity utilization of the terminal was below 60%, full return on capital employed at 16% was allowed for the years 2007-08 to 2010-11 in line with Clause 2.9.11 of the tariff guidelines of 2005, as the investments proposed to be made by ABGKCTL were in line with the provisions of the Licence Agreement. As stated earlier, the actuals also reflect that the investments made are as per the LA. Hence, 16% return is allowed on the modified capital employed maintaining the position followed in the last Order.

(vi). Most of the user associations like the Kandla Port Steamship Agents Association (KPSAA), Shipping Corporation of India Limited (SCI), etc., have pointed out under utilisation of the facilities and have also suggested that KPT should withdraw one of the berths from ABGKCTL for more productive use. The points made by the user associations are beyond the scope of this Authority to adjudicate. It is for the Government of India, Licensor and the Licensee to look into the matter and find a way out to improve the use of under utilised facility.

(vii). (a). A summary of the comparison of the actuals vis-à-vis the estimates considered in the last tariff Order is tabulated below:

(₹ in lakhs)

Particulars	**Estimates relied upon in the October 2007 Order**					**Actuals**					**% Variation**
	2007-08	**2008-09**	**2009-10**	**2010-11**	**Total**	**2007-08**	**2008-09**	**2009-10**	**2010-11**	**Total**	
Traffic (in TEUs)	172000	192640	215757	241648	822045	164014	137619	146777	160243	**608653**	-25.96%
Op. Income	4225.97	5874.00	6578.88	7367.42	24046.27	3947.23	4270.68	4181.51	4386.90	**16786.32**	-30.19%
Total Exps (incl. Depn)	1836.00	3118.00	3898.70	4894.00	13746.70	2037.82	2514.67	3203.37	3640.71	**11396.58**	-17.10%
Surplus before Return	2389.97	2756.00	2680.18	2473.42	10299.57	1909.41	1756.01	978.14	746.19	**5389.74**	-47.67%
Capital Employed	13519.00	13607.00	20618.00	18302.00	16511.50	13255.72	12346.54	15343.62	13936.30	**13720.55**	-16.90%
ROCE	2163.04	2177.12	3298.88	2928.32	2641.84	2120.91	1975.45	2454.98	2229.81	**2195.29**	-16.90%
Net Surplus after ROCE	226.93	578.88	-618.70	-454.90	-267.79	-211.50	-219.44	-1476.84	-1483.62	**-3391.41**	1166.44%

(b). As seen from the above table, the actual net deficit after admissible cost and permissible return for the years 2007-08 to 2010-11 is ₹33.91 crores as against the estimated deficit position of ₹2.68 crores assessed as per the tariff Order of October 2007.

(c). As per clause 2.13 of the tariff guidelines, if review of actual physical and financial performance for the previous tariff cycle shows the variation of more than + or – 20% with reference to the actuals, then 50% of such accrued benefit / loss has to be adjusted in the next tariff cycle.

In case of ABGKCTL, prima facie the variation in both the physical as well as the financial performance is seen to be more than 20%. As can be seen from the above table, the traffic is 25.96% lower than the estimated level and the operating income is 30% lower than the estimated level. The traffic handled by ABGKCTL is also significantly lower than the Minimum Guaranteed Throughput prescribed in the Licence Agreement (and adjusted by ABGKCTL for the financial years) at 89063 TEUs, 179249 TEUs, 193249 TEUs and 210874 TEUs for the years 2007-08 to 2010-11. The deficit arising for the years 2007-08 to 2010-11 is mainly because the actual volume handled is far lower than the estimated position and the ABGKCTL has also not achieved the MGT prescribed in the Licence Agreement.

The KPT as well as the various users consulted during the proceedings of the case in reference have pointed out about underutilization of the facilities at ABGKCTL. In view of gross under utilisation of the capacity of the terminal, it may not be necessary to adjust the deficit for the years 2007-08 to 2010-11 in the future tariff. The future traffic should not be made to bear the burden of under utilisation of the capacity at ABGKCTL, in the past.

(viii). As per clause 3.1.8. of the tariff guidelines of 2005, the tariff validity cycle is for a period of three years and hence the analysis of estimates is done for a period of three years i.e. 2011-12 to 2013-14. The actual throughput reported to have been handled by ABGKCTL is 160243 TEUs in the year 2010-11.

The traffic estimated by ABGKCTL for the years 2011-12 to 2013-14 is 176267 TEUs, 193894 TEUs and 213283 TEUs respectively. The ABGKCTL has projected 10% growth in the traffic for each of the years under consideration over the actual/ estimated traffic of the respective previous years. The KPT has stated that the traffic projections made by ABGKCTL are highly inflated and that it should be around 1.75 lakh TEUs during 2011-12 and 1.80 lakh TEUs during 2012-13 considering the present growth levels and the container traffic trend at Kandla.

When the ABGKCTL has justified that 10% annual growth projected in the traffic is based on the past trend in traffic growth, expected removal of night navigation and taking into consideration its marketing efforts, there is no reason to assume lower traffic projections indicated by the KPT which is not supported by any analysis. It is relevant to state that even at the projected traffic the ABGKCTL does not reach MGT level prescribed as per the Licence Agreement (adjusted by the ABGKCTL for the financial years) at 232392 TEUs, 256981 TEUs and 290712 TEUs for the years 2011-12 to 2013-14 respectively.

The share of foreign container/ coastal container assumed at 70% and 29% for the years 2011-12 to 2013-14 by the ABGKCTL is based on the past trend of container mix handled in the years 2009-10 and 2010-11. The KPT has also endorsed that the container composition of foreign/ coastal containers assumed by the ABGKCTL is reasonable. The ratio of laden and empty containers has been projected at around 75 : 25 which is found comparable to the ratio of laden and empty containers in the past years at around 76 : 24.

The traffic mix as well as the traffic forecast as furnished by ABGKCTL for the years 2011-12 to 2013-14 is relied upon and considered for the purpose of this analysis. At the time of the next general review of tariff of ABGKCTL, if any additional financial advantage is found to have accrued to the ABGKCTL due to wrong estimation of traffic, the additional surplus so earned will be adjusted as per the tariff guidelines.

(ix). The operating income estimated by ABGKCTL in the cost statement for the years 2011-12 to 2013-14 is ₹4871.88 lakhs, ₹5372.41 lakhs and ₹5898.32 lakhs respectively. The ABGKCTL has furnished computation of income estimation based on the existing level of tariff for the traffic projected.

The KPT has reported that the income calculation made by ABGKCTL is erroneous and has furnished revised income calculation. As rightly stated by ABGKCTL, the KPT in its workings has not converted the TEUs (of above 20' containers) into containers while estimating the income from those categories of containers. The container handling income calculation furnished by ABGKCTL at the existing level of tariff is verified and found to be in order.

The estimated operating income includes income from demurrage to the tune of ₹477.68 lakhs, ₹526.75 lakhs and ₹578.32 lakhs for the years 2011-12 to 2013-14 respectively, which is calculated at 11% of the container handling income. The average demurrage income for the past years 2007-08 to 2010-11 is also around 11% of the container handling income. Similarly, the ABGKCTL has estimated 'Other income' at around 1% of the container handling income which is in tandem with the position reported for the past years 2007-08 to 2010-11. The estimates of demurrage income as well as other income as furnished by ABGKCTL are also relied upon and considered in this analysis.

(x). Annual escalation factor adopted by ABGKCTL to estimate the items of expenditure is 3.76%. This Authority has decided to allow an escalation factor of 6% for the expenditure projections in all tariff cases of major ports and private terminals to be decided in the financial year 2011-12 as communicated to all Major Port Trusts and Private Terminals including ABGKCTL under cover of our letter number TAMP/27/2005-Misc dated 11 July 2011. Accordingly, escalation factor of 6% is considered for the expenditure projections.

(xi). (a). Actual strength of operating and direct labour for the year 2010-11 is reported at 71. The ABGKCTL has estimated this category of labour to increase to 85 during the year 2011-12 and 90 in the years 2012-13 and 2013-14. The maintenance labour force is estimated at 18 during the year 2011-12 and 22 during each of the years 2012-13 and 2013-14, as against the existing 15 employees reported for the year 2010-11. The ABGKCTL has justified that the increase estimated in the labour force is on account of increase in the traffic projections. The ABGKCTL has also stated that as the equipment gets older, maintenance work is expected to increase and accordingly it has projected increase in the number of maintenance labour.

It is relevant to state all the equipment prescribed as per Licence Agreement viz. 4 RMQCs and 4 RTGCs are already in place from the year 2009-10 onwards. The maintenance of equipment will not increase in an accelerated manner with ageing of equipment as held by ABGKCTL. The existing facilities/ equipment deployed at the terminal are grossly under utilised as brought out earlier. In view of this position and recognising that the 10% annual growth rate projected in the traffic is a normal trend, the increase estimated in the operating and labour force as well as maintenance labour force is not found to be justified. The actual number of operating & direct labour and maintenance labour indicated by the ABGKCTL for the year 2010-11 is considered for estimating the labour cost for the years 2011-12 to 2013-14.

(b). The actual average operating and direct labour cost and maintenance labour considered by ABGKCTL for the year 2010-11 is ₹1.24 lakhs and ₹0.80 lakhs per annum respectively. For estimating this cost for the years 2011-12 to 2013-14, escalation factor of 6% per annum is applied, as against 3.76% considered by ABGKCTL.

(xii). The estimated Equipment running cost comprises of power cost, fuel cost and cost of repairs and maintenance. Each items of cost estimate are discussed in the following paragraphs:

(a). (i). The actual power consumption reported by ABGKCTL for the years 2009-10 and 2010-11 is 13.67 units per TEU and 14.54 units per TEU respectively. For the years 2011-12 to 2013-14, the ABGKCTL has estimated power consumption of 13.67 units per TEU for each of the years. The power consumption of 13.67 units per TEU is found to be on a higher side compared to the power consumption pattern reported at other container handling terminals. This position arises at ABGKCTL mainly because the throughput handled in the year 2010-11 as well as the projections for the three years are found to be on lower side with reference to the capacity of equipment deployed at the terminal.

Based on copies of the electricity bills furnished by ABGKCTL for the months of February and March 2011, the actual power consumption works out to 15.99 units and 16.47 units per TEU respectively. But, for the purpose of estimating the power cost for the years 2011-12 and 2013-14, the ABGKCTL has presumed the power consumption at 13.67 units per TEU based on the actual average consumption of power reported for the 2010-11 actual. The same is considered in our analysis also.

(ii). The average actual unit cost of power for the year 2010-11 indicated by the ABGKCTL is ₹10.23. The ABGKCTL has not segregated the power cost into variable and fixed component. It has estimated power cost for the years 2011-12 to

2013-14 applying 3.76% annual escalation in the actual/ estimated unit rate of power of respective previous years and adjusted for the traffic.

Recognising that the fixed power cost will not vary with the traffic, the variable and fixed components of power cost are segregated in our analysis based on copies of the electricity bills furnished by ABGKCTL for the months of February and March 2011. The variable per unit cost of power works out to ₹7.23. For the years 2011-12 to 2013-14, 6% annual escalation is allowed in the unit cost of electricity as against 3.76% applied by ABGKCTL. For estimating the variable power cost, adjustment for the traffic growth is captured as per the tariff guidelines.

The actual fixed costs obtained from the bills of two months of February and March 2011 is projected for the full year and escalated by 6% per annum for the years 2011-12 to 2013-14 over the actuals/ estimates of the respective previous years. The ABGKCTL has also furnished a copy of bill raised by KPT towards yard lighting at ₹73218/- for the month of June 2011 which is projected for the full year of 2011-12 and 6% escalation is considered for the subsequent two years.

Based on the above modification, the estimated power cost is considered at ₹245.86 lakhs, ₹280.37 lakhs and ₹320.23 lakhs for the years 2011-12 to 2013-14 respectively as against ₹255.87 lakhs, ₹292.04 lakhs and ₹333.32 lakhs estimated by ABGKCTL for the corresponding period.

(b). As against the actual fuel consumption of 2.82 litres per TEU and 3.30 litres per TEU reported for the years 2009-10 and 2010-11 respectively, the ABGKCTL has estimated fuel consumption at 4 litres per TEU each for the years 2011-12 to 2013-14 based on the power consumption norm prescribed in upfront tariff guidelines of 2008. It has stated that since there is change in the method of handling the containers (earlier MHCs were used and subsequently reach stackers and transfer cranes are used), the fuel consumption for the past years cannot be taken as base.

Firstly, the guidelines of 2008 are applicable for fixation of upfront tariff for Private Participation Projects at the Major Port Trusts and they do not apply to existing Major Port Trusts and the private terminals operating thereat who are continued to be governed by the tariff guidelines of 2005. As the tariff guidelines of 2008 are not applicable to ABGKCTL, fuel consumption of 4 units/TEU assumed by ABGKCTL which is not supported by the actual consumption cannot be accepted.

Notwithstanding the above, it is pointed out here that the ABGKCTL has conveniently chosen to adopt only those parameters from the upfront tariff guidelines which are suitable to them and ignored that the said guidelines of 2008 require upfront determination for the optimal capacity of the terminal whereas in its case following the 2005 guidelines, the cost position is analysed for the traffic projection which is found to be significantly lower than the capacity of the terminal.

The ABGKCTL has themselves admitted that with deployment of additional 2 RMQCs in the year 2009-10, MHCs are no more in operation. The actual fuel consumption reported for the year 2010-11 which forms the base for future estimates would capture the effect of change in the method of handling containers i.e. MHCs replaced with other equipment. Hence, for the purpose of this analysis, the actual fuel consumption of 3.30 units per TEU is considered for estimating the fuel cost.

The unit cost of fuel considered by ABGKCTL for the year 2011-12 is ₹43.81 per litre. The fuel rate prevailing at the time of finalization of the case is ₹46.25 per litre which is considered for the year 2011-12. For the subsequent years 2012-13 and 2013-14, an annual escalation of 6% is allowed in unit rate of fuel over the estimates of the respective previous years as against the annual escalation of 3.76% adopted by the ABGKCTL.

(c). Repairs and Maintenance cost for the years 2011-12 to 2013-14 has been estimated by the ABGKCTL by applying the norms prescribed in the upfront tariff guidelines of 2008 for the mechanical equipment and civil costs, on the ground that the repairs and maintenance cost is likely to be in line with the amount calculated as per upfront tariff guidelines as the equipment are getting older and are no longer under warranty period. As already stated earlier, the upfront tariff guidelines of 2008 are not applicable in its case.

The actual repairs and maintenance cost reported by ABGKCTL in the year 2010-11 forms 1.36% of the gross block of asset. As against that, the ABGKCTL has estimated this cost at 3% on mechanised equipment cost and 1% of the civil works. Steep increase of around 119% in the repairs and maintenance cost i.e. from ₹283.35 lakhs actually reported in the year 2010-11 to ₹621.79 lakhs estimated in the year 2011-12 is not justified by any cost analysis with reference to past actuals except stating that the repairs and maintenance will increase as the equipment are getting older.

This Authority has in various orders held that the repairs and maintenance cost will not increase in an accelerated manner owing to equipment getting older and warranty period getting over. Thus, there is no reason to allow steep increase estimated by ABGKCTL in the repairs and maintenance cost. In fact it is relevant to state here that even though 2 MHCs are considered for deletion from the gross block in the year 2009-10 in our analysis, the said equipment continues to be with the ABGKCTL and the operator may have incurred some repairs and maintenance on this equipment in the year 2010-11. In the absence of details of repairs and maintenance cost incurred by the ABGKCTL in the year 2010-11 suitable adjustment (reduction) could not be made in this regard in the year 2010-11 while analysing the past period.

The ABGKCTL has also proposed to dispose the MHC in the year 2011-12, but, it has not suitably moderated the repairs and maintenance cost to capture the effect of disposal of these equipment. In the absence of requisite details provided relating to repairs and maintenance cost incurred on the MHC, the actual repair and maintenance cost of ₹283.35 lakhs reported for the year 2010-11, is considered as repair cost for the year 2011-12 as well, without applying escalation factor of 6% to give effect of deletion of the 2 HMCs. For the subsequent two years, annual escalation of 6% is allowed over the estimates of repairs and maintenance cost for the respective previous years.

On the additions of equipment proposed to the gross block, the ABGKCTL has estimated the repairs and maintenance cost at 3% of the estimated capital cost. In our analysis, repairs and maintenance on the additions to gross block is estimated at 2% on the capital cost of mechanical equipment proposed to be added in the year 2011-12 in line with the approach followed in other private terminals. In case of additions to civil works, 1% of the cost is allowed towards repairs and maintenance as estimated by ABGKCTL but on the modified estimates. For future estimates, 6% annual escalation is considered as against 3.76% adopted by ABGKCTL.

(xiii). As stated earlier, in compliance with the policy direction of the Ministry of Shipping dated 29 July 2003 and clause 2.8.1. of the tariff guidelines of 2005, the revenue share payable by ABGKCTL to KPT cannot be admitted as an item of cost. In line with this, the ABGKCTL has not claimed revenue share as an item of cost for the years 2011-12 to 2013-14.

(xiv). The ABGKCTL has estimated equipment hire charges at ₹6.48 lakhs, ₹6.72 lakhs and ₹6.98 lakhs for the years 2011-12 to 2013-14 towards hire of Reach stackers. The ABGKCTL has furnished contract copy in this regard. It has stated that equipments are hired occasionally for brief periods and it does not pertain to regular operations. Since hire of equipment is reportedly not for regular operations and there is no certainty in this regard and also recognising that the existing fleet of equipment itself is grossly underutilised, this cost element is not found to be justified and, therefore, the estimate under hire of equipment is considered as nil.

(xv). The lease rentals estimated by ABGKCTL at ₹766.50 lakhs, ₹794.67 lakhs and ₹824.67 lakhs for the years 2011-12 to 2013-14 is found to be in line with the provisions of the Licence Agreement. The estimate of lease rentals as furnished by ABGKCTL is relied upon in the analysis.

(xvi). The insurance cost estimated by ABGKCTL for the years 2011-12 to 2013-14 are ₹208.93 lakhs, ₹188.98 lakhs and ₹192.99 lakhs respectively, as against the actual insurance cost of ₹35.20 lakhs reported for the year 2010-11. Despite request, the ABGKCTL has not furnished copies of the insurance policy documents to substantiate the insurance cost estimated for the year 2011-12. In respect of the existing block of assets, the estimated insurance cost for the years 2011-12 to 2013-14 is taken at the actual reported for the year 2010-11 and on the capital additions 1% of the capital cost is allowed in line with the approach followed in the case of Visakha Container Terminal Private Limited (VCTPL), TMILL etc.

(xvii). Clause 2.7.1 of the revised tariff guidelines stipulates that incase of private terminals, depreciation has to be allowed on straight line method with life norms adopted as per the Companies Act, 1956 or based on the life norms prescribed in the Concession Agreement whichever is higher. The ABGKCTL has confirmed that it has considered the rates for depreciation as prescribed in the Companies Act. The modifications carried out in the estimation of proposed capital addition to the gross block of assets, as discussed in the later part of the note, is captured in the estimation of depreciation.

(xviii). The Management and Administration Overheads mainly comprise of Salary and other expenses. The actual management and administration overheads for the year 2010-11 are ₹300.76 lakhs. The Management and general overheads reported for the year 2010-11 is taken as base and escalated by 6% per annum over the figures of the respective previous years to arrive at the estimates for the years 2011-12 to 2013-14, instead of 3.76% escalation considered by ABGKCTL. However, as stated earlier, the ABGKCTL is advised to review the expenditure under this head and take corrective measures of cost control and cost reduction and furnish an analysis in this regard, in next review of its tariff.

(xix). Amortisation of upfront fee is considered at ₹35.27 lakhs for each of the years 2011-12 to 2013-14 as has been done for the past period.

(xx). The ABGKCTL has not estimated Finance and Miscellaneous Income for the years 2011-12 to 2013-14 respectively.

Under Finance and Miscellaneous Expenses, the ABGKCTL has considered the Contribution to provident fund at 3.76% escalation over the actual/ estimates of the respective previous year. The amount is moderated to reflect the escalation factor of 6% per annum.

(xxi). The Capital Employed comprising of Net Fixed Assets and Working Capital are discussed in the following paragraphs:

(a). Fixed Assets:

(i). Year 2011-12:

The ABGKCTL has proposed the following additions to the gross block at an estimated cost of ₹22.14 crores:

No.	Particulars	₹ in lakhs
1.	Tractor Trailers	65.00
2.	Information & Technology	50.00
3.	Development of yard	2098.69
	TOTAL	**2213.69**

The ABGKCTL has not furnished any documentary evidence in support of the capital cost estimated towards tractor trailer and IT. It is observed that the LA requires ABGKCTL to deploy a total of 36 tractors trailers by the end of Phase III, of which 18 have been reported to have been procured by ABGKCTL. Now, the ABGKCTL has proposed to acquire 10 numbers of tractor trailers during the year 2011-12. Even after the proposed additions, the number of tractor trailers with ABGKCTL would be 28, as against 36 numbers prescribed in the Licence Agreement. Considering the above position, the capital cost estimated towards tractor trailers is considered in the year 2011-12.

Regarding IT, the ABGKCTL has clarified that it is relating to administration and documentation office. Based on the clarification furnished by the ABGKCTL, the capital cost of ₹50 lakhs in this regard may also be considered.

In the initial tariff fixation of ABGKCTL in October 2007, total cost of ₹18 crores was estimated during the years 2008-09 and 2009-10 for the phase wise development of 22 hectares of land as well as 18 hectares of additional land proposed to be undertaken by the ABGKCTL. The KPT has stated that the existing land of 22 hectares already given by the port is not fully developed into container yard. Additional 18 hectares of land is yet to be allotted by the port. The ABGKCTL has stated that it is already paying licence fee at LF2 rates as per the LA provisions for the 18 hectares of land and the civil work on yard is proposed to be taken up in the year 2011-12. It has estimated ₹21 crores towards development of yard in the year 2011-12. Though the development of yard by the ABGKCTL flows from the provisions of the LA, the LA does not stipulate any specific time limit for such development. It is relevant to mention here that the traffic projected by ABGKCTL does not warrant development of additional 18 hectares of land.

The ABGKCTL has stated that quotations for the proposed civil work have been received but the work order is yet to be finalized. Since concrete steps for development of the yard is yet to be initiated, it is doubtful whether the development of yard would be completed before end of the current financial year 2011-12. In view of the above, though the said capital cost which flows from the LA is to be considered, the same is shifted to the year 2012-13.

(ii). Year 2012-13:

The ABGKCTL has proposed additions to the tune of ₹4 crores towards development of railway connectivity upon 100m x 100m of land. The development of railway connectivity is also governed by the provisions of the LA. However, the ABGKCTL has reported that the land is yet to be handed over by the KPT and it has also mentioned that the KPT has handed over the land to another BOT operator. The KPT is silent on this matter. In view of the uncertainty of allotment of land for the proposed railway connectivity, it is felt appropriate not to reckon the said capital cost in the current tariff review exercise. This by any means need not be construed as restraining the ABGKCTL from developing the rail connectivity. If the land allotment matter is resolved with the port and the ABGKCTL develops the railway connectivity in the current tariff cycle, then it can come up for a mid term review of its tariff on this aspect.

(iii). The ABGKCTL has not proposed any additions during the year 2013-14.

(b). <u>Working Capital:</u>

(i). The ABGKCTL has not considered Sundry Debtors as part of Current assets in line with the norms prescribed in Clause 2.9.9. of the tariff guidelines of 2005.

(ii). As stated earlier, as per the Order passed by this Authority on 30 September 2008 refining tariff guidelines of 2005, prepayments of certain expenses which flow from the provisions of the Licence Agreement can be considered as Sundry Debtors.

As per Article 7.3. of the Licence Agreement, the ABGKCTL is required to pay quarterly lease rental in advance to the KPT for the lands allotted to it. The ABGKCTL has not captured the effect of advance lease rental in the calculation of working capital. As explained in the analysis of the past period, lease rental payable by the ABGKCTL quarterly in advance are reckoned with as an item of current assets.

As per Article 7.1. of the Licence Agreement, revenue share is payable on the 10^{th} of the succeeding month. Since it is not payable in advance, it has not been considered as part of the working capital.

(iii). The consumption of stores excluding fuels estimated by ABGKCTL for the years 2011-12 to 2013-14 is reportedly based on the past experience. It is not supported by any basis or workings. For the purpose of this analysis, the inventory considered for the year 2010-11 as explained in the past period analysis is taken as a base and escalated by 6% per annum for the years 2011-12 to 2012-13.

(iv). Cash balance has been calculated at one month's of modified cash expenses.

(v). The ABGKCTL has not estimated current liabilities for the years 2011 to 2013-14. As such, the actual current liabilities considered for the year 2010-11 at ₹960.58 lakhs is considered for the years 2011-12 to 2013-14 in the estimation of the working capital.

(vi). Based on the above analysis, the Working Capital results in a negative figure. Since the Working Capital is negative, it has been taken as NIL in the analysis.

(c). Subject to above modification, the Capital Employed for the years 2011-12 to 2013-14 which consists of only the Net Block of assets at ₹12789.79 lakhs, ₹13003.93 lakhs and ₹11183.07 lakhs respectively is considered in this analysis.

(xxii). Based on the capacity of the terminal assessed by KPT at 6 lakhs TEUs, the capacity utilisation of the terminal comes to 29.38%, 32.32% and 35.55% in the years 2011-12 to 2013-14.

The tariff guidelines of 2005 prescribe a minimum capacity utilisation of 60% for claiming full Return on Capital Employed (ROCE). Clause 2.9.11. of the tariff guidelines of 2005 stipulates that if the investment made by the private operator is in accordance with the obligations under the concession agreement it will be considered for ROCE even if full capacity utilisation is not achieved. The investments made by ABGKCTL are found to be as per the Licence Agreement. Hence, 16% return is allowed on the modified capital employed following the provision prescribed in the tariff guidelines.

(xxiii). Subject to the above discussions, the cost statement filed by the ABGKCTL for the years 2011-12 to 2013-14 has been modified. The modified Cost statement is attached as **Annex - I**. The results disclosed in the cost statement at the existing tariff level is summarized below:

(**₹ in lakhs**)

Particulars	2011-12	2012-13	2013-14	Total
Operating Income	4,871.88	5,372.41	5,898.32	**16142.61**
Net Deficit	-1168.99	-938.50	-337.16	**-2444.65**
Net Deficit as a percentage of Operating Income	-23.99%	-17.47%	-5.72%	**-15.73%**

The above table depicts a total deficit of ₹24.45 crores at the existing level of tariff for the years 2011-12 to 2013-14 as against deficit of ₹53 crores estimated by ABGKCTL for the corresponding period. The deficit in this case arises mainly because of underutilisation of the capacity created and as a matter of fact the operator does not even envisage to reach the Minimum Guaranteed Throughput (MGT) prescribed in the Licence Agreement. The ABGKCTL has deployed the container handling equipment for two berths as required by the LA. 4 RMQCs and 4 RTGCs are deployed apart from other complementary equipment. It has 22 hectares of land at its disposal for storage. In addition to that, in view of LA provisions additional 18 hectares of land is also proposed to be developed. Despite all investments in place, the container traffic does not commensurate with the facilities created at the terminal. The terminal facility at the ABGKCTL is thereby grossly underutilized. But, since the investments made or reported to be made in near future by the operator are as per the LA, guidelines require return on capital employed of 16% to be allowed which is maintained.

Inspite of estimating a deficit position, the ABGKCTL has proposed to continue with the existing level of tariff on the grounds that increase in tariff would become prohibitive and could lead to further decline in tariff. In view of the position explained by ABGKCTL and considering that the terminal facility is underutilised, no increase in tariff is allowed, though the terminal is in deficit. The ABGKCTL, with all its marketing efforts and improved productivity endeavor may improve the volume and thereby reduce the deficit. Thus, as proposed by the ABGKCTL, the existing Scale of Rates is allowed to continue except for updating the penal interest rate with prevailing Prime Lending Rate and the modification proposed by ABGKCTL in the free period of empty containers as discussed in the subsequent paragraphs.

(xxiv). In line with clause 2.18.2 of the tariff guidelines, the proposed note 2(iii)(b) relating to penal interest for delayed payment by users/ refund by ABGKCTL has been modified at 16.25% to reflect the prevailing Prime Lending Rate of State Bank of India at 14.25% plus 2%.

(xxv). The existing Scale of Rates of ABGKCTL prescribes uniform free period of three days for import empty and laden containers. In the proposed Scale of Rates, the ABGKCTL has proposed to increase the number of free days for empty import container to seven days. The ABGKCTL has stated that due to persistent demand from shipping lines to provide additional free period and also since the terminal has sufficient land, the request of the users can be accommodated without any difficulty. The ABGKCTL has further added that it may help the terminal to attract additional volumes. The ABGKCTL has not quantified any increase in income on account of reduction in the free period. It has stated that the revenue impact would be marginal and would be compensated with additional throughput.

Clause 5.8.1 of tariff guidelines of 2005 gives liberty to Major Port Trusts/ Private Terminals to prescribe the number of free days. The traffic is a major concern at ABGKCTL. Since the proposal of ABGKCTL to increase the number of free days for empty import containers is with the intention to attract the traffic, the proposal is approved.

(xxvi). As per the clause 4.12.2 (xvii) of the License Agreement, it is for the ABGKCTL to obtain the Stevedoring license from the KPT. During the initial tariff fixation in October 2007, the KPT had confirmed that it is the responsibility of the ABGKCTL to offer the stevedoring services and that the stevedoring License is granted to the ABGKCTL as per the LA. Though the ABGKCTL did not propose separate rates for stevedoring service in the initial tariff fixation they agreed to absorb it as part of the composite rate. Based on the position then made available to us, this Authority while approving the Order had mentioned that the composite box rate approved is inclusive of on-board stevedoring apart from other services mentioned therein.

The KPT has now brought out that the ABGKCTL has not obtained the stevedoring license. The ABGKCTL has stated that though they are willing to obtain stevedoring licence, subject to the condition that it will not be required to engage DLB gangs in the container terminals, the reply from KPT is awaited. As stated earlier, the dispute between KPT and ABGKCTL with regard to the Stevedoring service may have to be settled amongst themselves.

Notwithstanding the disagreement on the issue of stevedoring license, both the ABGKCTL as well as the KPT have confirmed that the stevedoring service is presently being provided by the ABGKCTL. Since the stevedoring service is being provided by ABGKCTL, the existing note prescribed in the Scale of Rates of ABGKCTL prescribing that the composite box rate is inclusive of on-board stevedoring including stowage planning, lashing/ unlashing apart from other services mentioned therein holds good and is retained in the SOR.

(xxvii). The tariff guidelines of 2005 stipulate that tariff should be linked to benchmark of the levels of productivity. The ABGKCTL has stated that the benchmark level of productivity achieved during the years 2008-09 to 2010-11 is 22.15 moves per hour, 22.10 moves per hour and 20.34 moves per hour respectively and the targeted productivity rate is 21 moves per hour. Merely stating the benchmark level of productivity in the Scale of Rates may not serve any useful purpose unless a suitable incentive/ disincentive linked to the performance achieved below/ above the benchmark level of productivity is prescribed in the SOR. The ABGKCTL is, therefore, advised to propose a well analysed proposal linking the tariff with the productivity level at the time of the next tariff review by which time the traffic can be built up.

15.1. In the result, and for the reasons give above, and based on a collective application of mind, this Authority approves the revised Scale of Rates of the ABGKCTL which is attached as **Annex - II**.

15.2. The revised provisions in the Scale of Rates and conditionalities shall come into effect after expiry of 30 days from the date of notification in the Gazette of India and the Scale of Rates shall be in force till 31 March 2014. The approval accorded would automatically lapse thereafter unless specifically extended by this Authority.

15.3. The validity of the existing Scale of Rates of the ABGKCTL is deemed to have been extended beyond 30 September 2011 till the effective date of implementation of the revised Scale of Rates, in terms of the earlier extension Order.

15.4. This Authority has relied upon the estimates for the years 2011-12 to 2013-14. Additional surplus, if any, arising due to variation in actual performance in the said years will be governed by the provisions of Clause 2.13 of the tariff guidelines of 2005 in the next review, unless a different method of treatment of any of the specific items is indicated in the analysis above.

15.5. The tariff of the ABGKCTL has been fixed relying on the information furnished by the operator and based on assumptions made as explained in the analysis. If this Authority, at any time, during the prescribed tariff validity period, finds that the actual position varies substantially from the estimates considered or there is deviation from the assumptions accepted herein, this Authority may require ABGKCTL to file a proposal ahead of the schedule, to review its tariff and to set-off the advantage as per the revised tariff guidelines accrued on account of such variations in the revised tariff.

15.6. In this regard, the ABGKCTL is requested to furnish a report of the actual physical and financial performance within 15 days of completion of each quarter of a year in the same format in which the cost statement for the tariff proposals are filed. The report should also be accompanied with the reasons for variation from the estimates relied upon for fixing the tariff in force. If a variation of (+) / (-) 20% is observed between the actual and the estimates for two consecutive quarterly period, this Authority will call upon the concerned operator to submit their proposal for an ahead of scheduled review. If the ABGKCTL fails to file a tariff proposal within the time limit to be stipulated by this Authority, this Authority will proceed *suo motu* to review the tariff.

(Rani Jadhav)
Chairperson

ABG KANDLA CONTAINER TERMINAL LIMITED
Consolidated Cost Statement

Sr. No.	Particulars	Actuals				Estimates at the existing level of tariff as furnished by ABGKCTL			Estimates at the existing level of tariff as moderated by TAMP		
		2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2011-12	2012-13	2013-14
	Traffic (In TEUs)	164,014	137,619	146,777	160,243	176,267	193,894	213,283	176,267	193,894	213,283
I	**Total Operating Income**										
	Container handling income	3,947.23	4,270.68	4,181.51	4,386.90	4,871.88	5,372.41	5,898.32	4,871.88	5,372.41	5,898.32
	Total	**3,947.23**	**4,270.68**	**4,181.51**	**4,386.90**	**4,871.88**	**5,372.41**	**5,898.32**	**4,871.88**	**5,372.41**	**5,898.32**
II	**Operating Costs (excluding depreciation)**										
	Operating & Direct Labour	60.10	78.88	58.17	88.29	77.15	84.76	87.95	93.58	99.20	105.15
	Maintenance Labour	24.73	7.81	8.43	11.99	12.56	15.93	16.53	12.71	13.47	14.28
	Equipment Running Costs	393.36	453.40	508.58	745.25	1,186.53	1,167.58	1,262.70	800.83	917.20	1,028.56
	Equipment Hire	25.55	4.67	6.02	32.33	6.48	6.72	6.98	0.00	0.00	0.00
	Lease Rentals payable	377.00	504.22	713.73	739.50	766.50	795.00	824.67	766.50	794.67	824.67
	Insurance	30.09	40.67	37.80	35.20	208.93	188.98	192.99	35.85	55.86	55.86
	Total	**910.83**	**1,089.64**	**1,332.72**	**1,652.56**	**2,258.15**	**2,258.97**	**2,391.82**	**1,709.48**	**1,880.41**	**2,028.53**
III	Depreciation	**650.92**	**938.09**	**1,355.19**	**1,456.59**	**1,748.00**	**1,790.00**	**1,797.00**	**1,718.59**	**1,751.59**	**1,785.59**
IV	**Overheads**										
	Management & Administration Overheads	248.77	272.40	293.56	300.76	316.05	327.93	340.26	318.81	337.94	358.21
	General Overheads	176.22	156.74	161.23	171.43	210.05	217.95	226.14	197.52	209.37	221.93
	Preliminary expenses & Upfront Payment write-off	34.33	35.18	35.18	35.27	33.33	33.33	33.33	35.27	35.27	35.27
	Others	5.48	10.14	11.94	16.64	12.85	13.34	13.84	0.00	0.00	0.00
	Total	**464.80**	**474.47**	**501.92**	**524.10**	**572.29**	**592.56**	**613.58**	**551.59**	**582.57**	**615.41**
V	**Operating Surplus / (Deficit) (I) – (II) – (III) - (IV)**	**1,920.68**	**1,768.49**	**991.69**	**753.65**	**293.44**	**730.89**	**1,095.92**	**892.21**	**1,157.84**	**1,468.79**
VI	**Finance & Miscellaneous Income (FMI)**										
	Others	0.02	0.00	0.01	6.53	0.00	0.00	0.00	0.00	0.00	0.00
	Total	**0.02**	**0.00**	**0.01**	**6.53**	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**
VII	**Finance & Miscellaneous Expenses (FME)**										
	Contribution of Provident Fund	11.29	12.48	13.56	13.99	14.52	15.06	0.00	14.83	15.72	16.66
	Total	**11.29**	**12.48**	**13.56**	**13.99**	**14.52**	**15.06**	**0.00**	**14.83**	**15.72**	**16.66**
VIII	FMI Less FME (VI) - (VII)	**(11.27)**	**(12.48)**	**(13.55)**	**(7.46)**	**(14.52)**	**(15.06)**	**0.00**	**-14.83**	**-15.72**	**-16.66**
IX	**Surplus Before Interest and Tax (V) + (VIII)**	**1,909.41**	**1,756.01**	**978.14**	**746.19**	**278.92**	**715.83**	**1,095.92**	**877.38**	**1,142.12**	**1,452.13**
X	Capital Employed	13,255.72	12,346.54	15,343.62	13,936.30	18,124.48	16,804.32	11,559.73	12,789.79	13,003.93	11,183.07
XI	Return on Capital employed	2,120.91	1,975.45	2,454.98	2,229.81	2,899.92	2,688.69	1,849.56	2,046.37	2,080.63	1,789.29
XII	Capacity Utilization	54.67%	45.87%	24.46%	26.71%	39.17%	43.09%	47.40%	29.38%	32.32%	35.55%
XIII	RoCE adjusted for capacity utilization	**2,120.91**	**1,975.45**	**2,454.98**	**2,229.81**	**2,899.92**	**2,688.69**	**1,849.56**	**2046.37**	**2080.63**	**1789.29**
XIV	**Net Surplus / (Deficit) (IX) - (XIII)**	**(211.50)**	**(219.44)**	**(1,476.84)**	**(1,483.62)**	**(2,621.00)**	**(1,972.86)**	**(753.64)**	**(1,168.99)**	**(938.50)**	**(337.16)**
XV	**Net Surplus / (Deficit) as a % of operating income (XIV/I in %)**	-5.36%	-5.14%	-35.32%	-33.82%	-53.80%	-36.72%	-12.78%	-23.99%	-17.47%	-5.72%
XVI	**Average Net Surplus/ (Deficit) as a % of operating income**						**-34.43%**			**-15.73%**	

Annex - II

ABG KANDLA CONTAINER TERMINAL LIMITED
SCALE OF RATES

DEFINITIONS AND CONDITIONS

This Scale of Rates sets out the charges payable to ABG Kandla Container Terminal Limited from time to time for the use of services and facilities provided by ABG Kandla Container Terminal Limited.

1. DEFINITIONS

In this Scale of Rates, unless the context otherwise requires, the following definitions shall apply:

(i). ***"ABGKCTL"*** means ABG Kandla Container Terminal Limited, a company incorporated in India, its successors and assigns.

(ii). ***"Coastal Vessel"*** means any vessel exclusively employed in trading between any port or place in India to any other port or place in India and / or having a valid coastal license issued by the competent authority.

(iii). ***"Container"*** means the standard ISO container, suitable for the transport and stacking of cargo and must be capable of being handled as a unit and lifted by a crane with a container spreader.

(iv). ***"FCL"*** means containers said to contain Full Container Load.

(v). ***"Foreign-going Vessel"*** means any vessel other than a coastal vessel.

(vi). **"*Hazardous container*"** means a Container containing hazardous goods as classified under IMO.

(vii). ***"ICD"*** means Inland Container Depot.

(viii). ***"ICD Container"*** means containers discharged from a vessel and placed in the custody of the ABGKCTL for the purposes of loading on a Train, inside the Terminal. Also ***"ICD Container"*** means containers discharged from a Train inside the Terminal and placed in the custody of the ABGKCTL for the purposes of shipment on a vessel.

(ix). ***"LCL"*** means containers said to contain Less than Full Container Load (Container having cargo of more than one importer/exporter).

(x). **"*Over Dimensional Container"*** means a Container carrying over dimensional cargo beyond the normal size of standard containers and needing special devices like slings, shackles, lifting beam, etc. Damaged Container and Container requiring special devices for lifting is also classified as Over-Dimensional Container.

(xi). ***"Per Day"*** means per calendar day or part thereof.

(xii). **"*Per Shift"*** means per period of 8 (eight) hours.

(xiii). ***"Port"*** means the Kandla Port Trust (KPT) whereas "Terminal" means the Container Terminal operated by ABG Kandla Container Terminal Limited.

(xiv). ***"Reefer"*** means any Container for the purpose of the carriage of goods, which require refrigeration.

(xv). ***"Shut Out Container"*** means a container, which has entered in to the terminal for export for a vessel as indicated by VIAN and is not connected to the vessel for whatsoever reason.

(xvi). ***"Tonne"*** means one metric Tonne of 1,000 kilograms or one cubic metre.

(xvii). ***"Transhipment Container"*** means container discharged from a vessel and placed in the custody of the ABGKCTL for the purposes of shipment on another vessel declared on a Transhipment manifest with the ultimate port destination marked on each container lodged with prior to or at the time of such a container is placed in its custody.

(xviii). ***"VIAN"*** means Vessel Identification Advise Number.

2. GENERAL

(i). Status of a vessel as borne out by its certification issued by Director General of Shipping is the relevant factor for deciding whether the vessel is 'foreign-going' or 'coastal'. Foreign going vessels permitted to undertake coastal voyages and the cargo / container carried by them will also qualify for the concession in respect of such permissible voyages.

(ii). (a). A foreign-going vessel of Indian Flag having a General Trading Licence can convert to coastal run on the basis of a Customs Conversion Order.

(b). A foreign-going vessel of Foreign Flag can convert to coastal run on the basis of a Coastal Voyage License issued by the Director General of Shipping.

(c). In cases of such conversion, coastal rates shall be chargeable by the load port from the time the vessel starts loading coastal goods.

(d). In cases of such conversion coastal rates shall be chargeable only till the vessel completes coastal cargo discharging operations; immediately thereafter, foreign going rates shall be chargeable by the discharge ports.

(e). For dedicated Indian coastal vessels having a Coastal Licence from the Director General of Shipping, no other documents will be required to be entitled to coastal rates.

(iii). All charges worked out shall be rounded off to the next higher rupee on the grand total of each bill.

(iv). (a). Users shall pay penal interest on delayed payments of any charge under this Scale of Rates. Likewise, the ABGKCTL shall pay penal interest on delayed refunds.

(b). The rate of penal interest will be 16.75%. The penal interest will apply to both the ABGKCTL and the users equally.

(c). The delay in refunds by the ABGKCTL will be counted beyond 20 days from the date of completion of services or on production of all the documents required from the users, whichever is later.

(d). The delay in payments by the users will be counted beyond 10 days after the date of raising the bills by the ABGKCTL. This provision shall, not apply to the cases where payment is to be made before availing the services as stipulated in the Major Port Trust Act, 1963, and / or where payment of charges in advance is prescribed as a condition in this Scale of Rates.

(v). A premium of 25% will be levied in case of Hazardous cargo containers / Over Dimensional Containers over the applicable handling charges prescribed for respective categories of containers.

(vi). Containers less than and upto 20' in length will be reckoned as one TEU for the purpose of tariff.

(vii). Container-related charges denominated in US dollar terms shall be collected in equivalent to Indian rupees. For this purpose, the market buying rate prevalent on the date of entry of the vessels into the Terminal (in case of import containers) and on the date of arrival of containers in the Terminal premises (in case of export containers) shall be applied for re-conversion of the dollar-denominated charges into Indian rupees.

(viii). A regular review of exchange rate shall be made once in thirty days from date of arrival of the vessels in cases of vessels staying in the Port for more than thirty days. In such cases, the basis of billing shall change prospectively with reference to the appropriate exchange rate prevailing at the time of review.

(ix). (a). Users will not be required to pay charges for delays beyond a reasonable level attributable to the port.

(b). In case vessel idles due to non-availability or breakdown of the shore based facilities of ABCKCTL or any other reasons attributable to the ABGKCTL, rebate equivalent to berth hire charges payable to KPT accrued during the period of idling of vessel shall be allowed.

3. APPLICATION

(i). Import and Export rates shall apply when:

(a). a loaded or empty container is discharged from a vessel, eventually delivered out of the Container Terminal; or

(b). a loaded or empty container is received at yard, eventually is shipped.

(ii). Transhipment container rates shall apply to a loaded or empty container when it is discharged from the first carrier onto ABGKCTL's premises and remained in the custody of ABGKCTL until it is transhipped in its original status by a nominated second carrier.

SECTION - I

1. CONTAINER OPERATIONS

1.1. A. COMPOSITE RATE FOR HANDLING IMPORT AND EXPORT CONTAINERS:

(in ₹)

Sl. No.	Particulars	Container not exceeding 20 feet in length		Container exceeding 20 feet in length and upto 40 feet length		Container exceeding 40 feet in length and upto 45 feet length	
		Foreign-going	Coastal	Foreign-going	Coastal	Foreign-going	Coastal
(a).	Loaded imports / exports	3115.00	1869.00	4672.50	2803.50	6230.00	3738.00
(b).	Empty imports / exports	2492.00	1495.20	3738.00	2242.80	4984.00	2990.40
(c).	Transport to Rail Flat from CY or vice versa and lift on / lift off						
	- Loaded	890.00	890.00	1335.00	1335.00	1780.00	1780.00
	- Empty	890.00	890.00	1335.00	1335.00	1780.00	1780.00

Notes:

(1). Services in the case of item no. (a) and (b) above include handling by quay crane, transport to and from quayside, lift on at CY for storage or vice versa landing and loading the container from or to customer's vehicle, wharfage and stevedoring charges towards stowage planning, lashing / unlashing and on-board supervision.

(2). Services in the case of item no. (c) above include transport to and from CY to rail siding and loading the container on rail flat or vice versa.

(3). Export Containers are to be delivered to ABGKCTL for loading at least 6 hours before berthing of the vessel.

1.1. B. REBATES:

Rebates as follows shall be applicable to users for carrying out various operations with their own arrangements with the prior written permission of the ABGKCTL when the ABGKCTL equipment/s is/are not available for some reason.

(in ₹)

Sl. No.	Particulars	Container not exceeding 20 feet in length		Container exceeding 20 feet in length and upto 40 feet length		Container exceeding 40 feet in length and upto 45 feet length	
		Foreign -going	Coastal	Foreign -going	Coastal	Foreign -going	Coastal
(a).	If the ship's gears are used for loading/ unloading containers from ship to shore or vice versa	534.00	320.40	801.00	480.60	1068.00	640.80
(b).	If the terminal user deploys yard to quay his own tractor trailer for transporting containers from Container Yard to Quay or Quay to Container Yard.	267.00	160.20	400.50	240.30	534.00	320.40
(c).	If the terminal user deploys his own equipment for lifting containers from the container yard to truck and vice versa	222.50	222.50	333.75	333.75	445.00	445.00

Notes:

1. No rebate will be admissible for back to town containers handled by private equipment.

1.2. HANDLING OF TRANSHIPMENT CONTAINERS:

(in ₹)

Sl. No.	Particulars	Container not exceeding 20 feet in length		Container exceeding 20 feet in length and upto 40 feet length		Container exceeding 40 feet in length and upto 45 feet length	
		Foreign-going	Coastal	Foreign-going	Coastal	Foreign-going	Coastal
(a).	Loaded	4672.50	2803.50	6230.00	3738.00	8285.90	4971.55
(b).	Empty	3738.00	2242.80	4984.00	2990.40	6621.60	3972.95

Notes:

(1). The above charges apply to the complete cycle of transhipment. Services include handling by quay crane (discharge and loading), transport between CY and quayside, lift on and off at CY, wharfage and stevedoring charges.

(2). A container from foreign port handling at ABGKCTL for subsequent transhipment to an Indian Port on a coastal voyage or vice versa would be charged 50% of the transhipment charge prescribed for foreign-going vessel and 50% of that prescribed for the coastal category.

(3). Any transhipment container delivered out of ABGKCTL by road or rail shall be charged the import / export container rate.

(4). A shut out charge as per Schedule 1.8 shall apply:

(i). if the carrier is changed after berthing of the originally nominated carrier; or

(ii). if the nomination is changed from a later carrier to an earlier carrier after the earlier carrier is berthed.

(5). The vessel on which the transhipment container is to be loaded shall be declared at time of submission of the Import advance list of the vessel on which the said transhipment container is imported or else the transhipment container shall be treated as normal container for the purpose of fixing tariff.

1.3. LIFT ON OR LIFT OFF:

(in ₹)

Sl. No.	Particulars	Container not exceeding 20 feet in length		Container exceeding 20 feet in length and upto 40 feet length		Container exceeding 40 feet in length and upto 45 feet length	
		Foreign-going	Coastal	Foreign-going	Coastal	Foreign-going	Coastal
(a).	Loaded	378.25	378.25	567.40	567.40	756.50	756.50
(b).	Empty	378.25	378.25	567.40	567.40	756.50	756.50

Note: Placing of Gangway upon berthing of vessel

When at the request of the vessel, gangway is placed, by deploying the terminal's container handling equipment, charges prescribed at (a) above for 20' container shall be payable if gangway is handled using 20' spreader. In case 40' Spreader is used, the rate for containers exceeding 20 feet and upto 40 feet will be charged.

1.4. HATCH COVER HANDLING FOR ONE OPERATION (both opening and closing):

(in ₹)

Sl. No.	Particulars	Foreign-going vessels	Coastal vessels
(a).	Without landing Hatch Cover on the quay	1068.00	640.80
(b).	With landing Hatch Cover on the quay	2136.00	1281.60

Note: Half the rate shall be applicable if there is only one activity, i.e. either an opening or closing operation.

1.5. SHIFTING OF CONTAINERS WITHIN VESSEL (Restows):

(in ₹)

Sl. No.	Particulars	Container not exceeding 20 feet in length		Container exceeding 20 feet in length and upto 40 feet length		Container exceeding 40 feet in length and upto 45 feet length	
		Foreign-going	Coastal	Foreign-going	Coastal	Foreign-going	Coastal
(a).	Loaded or empty shifted without landing the container on wharf and reloading	934.50	560.70	1401.75	841.05	1869.00	1121.40
(b).	Loaded or empty shifted by landing the container on wharf and reloading	3738.00	2242.80	5607.00	3364.20	7476.00	4485.60

1.6. INTERNAL TRANSPORTATION

(in ₹)

Sl. No.	Particulars	Container not exceeding 20 feet in length		Container exceeding 20 feet in length and upto 40 feet length		Container exceeding 40 feet in length and upto 45 feet length	
		Foreign-going	Coastal	Foreign-going	Coastal	Foreign-going	Coastal
(a).	Loaded or empty	1335.00	1335.00	2002.50	2002.50	2670.00	2670.00

Note: Internal Transportation Charges apply when a container is required to be moved by a trailer within ABGKCTL upon customer's request.

1.7. REEFER RELATED CHARGES

(in ₹)

Sl. No.	Particulars	Container not exceeding 20 feet in length		Container exceeding 20 feet in length and upto 40 feet length		Container exceeding 40 feet in length and upto 45 feet length	
		Foreign-going	Coastal	Foreign-going	Coastal	Foreign-going	Coastal
(a).	Pre-trip inspection (excluding the electricity charges)	311.50	311.50	311.50	311.50	623.00	623.00
(b).	Reefer-run test (excluding electricity charges)	178.00	178.00	178.00	178.00	356.00	356.00
(c).	Charges for supply of electricity including connecting and disconnecting, monitoring at Reefer Yard per 4 hours or part thereof.	160.20	160.20	240.30	240.30	320.40	320.40

Notes:

(1). Services include only plugging / unplugging and monitoring of the temperature. No maintenance will be performed on malfunctioning reefers.

(2). PTI and Run Test of the reefer containers are optional services and shall be rendered when requested. This excludes charges for supply of power and monitoring of the reefer during the PTI/Run test. The PTI/Run test includes checking of the working condition of reefer machinery and reporting of the condition to the customer.

(3). These charges will be applicable for restow reefer containers also.

1.8. CHARGES FOR A SHUT OUT CONTAINER

Where an Export container or a Transhipment container is shut out, the following rates shall apply:

(in ₹)

Sl. No.	Particulars	Container not exceeding 20 feet in length	Container exceeding 20 feet in length and upto 40 feet length	Container exceeding 40 feet in length and upto 45 feet length
(a).	Loaded	1602.00	2403.00	3204.00
(b).	Empty	1602.00	2403.00	3204.00

Notes:

(i). Shut out charges apply when a container is shut out by one vessel and subsequently shipped by another vessel.

(ii). The storage charges shall be levied in terms of Schedule 1.10.

1.9. ADDITIONAL CHARGES

(in ₹)

Sl. No.	Particulars	Container not exceeding 20 feet in length	Container exceeding 20 feet in length and upto 40 feet length	Container exceeding 40 feet in length and upto 45 feet length
1.	Direct Loading – Loaded / Empty	534.00	801.00	1068.00
2.	Shifting of containers within the terminal including Lift on, transportation, Lift off	2225.00	3337.50	4450.00
3.	Container Cleaning Charges (High pressure water wash)	445.00	667.50	890.00
4.	Cancellation of Document (per EIR)	89.00		
5.	One door open charge (per container)	534.00		
6.	Fixing / removal of seal (per seal)	160.20		
7.	Fixing / removal of 'Hazardous' sticker (per container)	89.00		
8.	Customs inspection within the terminal (per container)	356.00		
9.	Plugging / Unplugging of Reefer Container (per container)	71.20		
10.	Non-Declaration / Mis-declaration of Hazardous Container (per container)	2670.00		

11.	Issuance of documents per document or part thereof (maximum of 5 pages)	445.00
12.	VIA Cancellation	71.20
13.	Weighment of Trailer with or without Containers /Cargo (per weighment)	71.20
14.	POD, Size, Status or Weight Change	712.00
15.	Delay in submission of the relevant documents beyond the prescribed time (charges are per 'document')	44.50

Notes:

(1). **Direct loading** charge applies when, at the request of customers, ABGKCTL accepts an export container delivered to the terminal after the prescribed closing time or accepts the list of export containers that are already in CY before the cut off time but not included in the export advance list submitted before the cut off. This charge is in addition to all applicable charges in a normal export cycle.

(2). '**Shifting of container**' charges shall be applicable whenever there is a change in shipment status or container status involving actual shifting of the container or any shifting done at customer's request for any purpose including shifting for availing any other service provided by the terminal. Shifting is a consolidated charge levied for lift on, transportation and lift off.

(3) **Container Cleaning Charges:** These services are optional and the relevant charge is applicable when the containers are cleaned with water.

(4) **Cancellation charge for EIR** applies when EIR is cancelled at the request of customer.

(5). "**One Door Open**" **Charge** is applicable for handling container which requires only one door to be kept open (e.g. Onions) and when door opening and securing is carried by the terminal.

(6). **Fixing / Removal of Seal**

Bottle seals shall be fixed on every container arriving at the terminal - by rail / road / sea - without a proper bottle seal on it, prior to allowing its entry. The terminal staff shall be at liberty to do this without having to obtain prior consent of the shipping lines. The list of such containers on which a seal is affixed by the terminal shall be intimated to the lines. Seals shall be removed at the request of the customer.

(7). **Fixing / Removal of** '**Hazardous Sticker**'

Hazardous stickers indicating the IMCO class only shall be affixed on a container (Four Stickers) carrying hazardous cargo. Similarly old stickers on the container shall be removed from a container carrying non-hazardous cargo. In either case, the customer has to intimate in writing to ABGKCTL to undertake the said activity, within the terminal.

(8). **Customs Inspection**

The inspection of a container shall be allowed at a nominated point only, on the written request of the customer. The container doors can be opened only under customs supervision.

(9). **Plugging / Unplugging of Containers**

The Plugging / unplugging of reefer containers on board the vessel / train / truck shall be done at the request of the customer.

(10). **Non-Declaration / Mis-declaration of Hazardous Container**

The Customer has to declare the hazardous nature of the cargo as per the IMCO rules and furnish the relevant hazardous details to ABGKCTL. The charges are for non declaration / mis-declaration of the hazardous nature and also for not furnishing the full particulars of the hazardous nature including the IMCO class, UN NO, EPS, MFAG, correct technical name, contact details of the person in case of emergency.

However, the liabilities and costs towards the consequences arising due to non-declaration or misdeclaration shall be on the customer's account.

(11). **Issuance of documents**

The charge is towards Additional documents issued by the Terminal apart from the normal routine Terminal Reports (Vessel reports / yard report / reefer report etc) forwarded to the line.

(12). **Cancellation of VIA**

Cancellation of VIA applies when the VIAN allocated by ABGKCTL is subsequently cancelled on request by Vessel Operator for reasons whatsoever.

(13). **Weighment of Trailer with or without Containers / Cargo**

The service of weighment of trailers / trucks is an optional service and shall be offered at the request of the users. The charge includes issuing of the requisite certificate with the weight indicated on it.

(14). **Change of Container Status** applies each time the detail of an import or export container whose POD, Size, Status or weight (varying by +/- 2 ton) is changed after processing by ABGKCTL.

Change of shipment status applies when:

(i). A transhipment container in ABGKCTL premises is changed to an import container;

(ii). An import container in ABGKCTL premise is re-exported;

(iii). An export container is delivered out of ABGKCTL premise;

(iv). A local delivery container is changed to an ICD Container after landing or vice versa;

(v). A transhipment container whose outbound VIAN is not declared prior to the berthing of the inbound carrier;

(vi). An Export container arriving by Rail whose outbound VIAN is not declared at least 6 hours prior to the arrival of the Train at Rail Siding in the terminal.

(15). **Delay in submission of the relevant documents**

The relevant documents include Import and Export Advance Lists, Hazardous Manifests, Restows, Import Bay plans and any other document that may be required and declared in due course for smooth operations. The time limit for submission of documents will be notified in advance by ABGKCTL and any notification thereto will be carried out in consultation with users.

1.10. CHARGES FOR STORAGE OF CONTAINERS

(a).(i) Import - Empty Containers

Sl. No.	Particulars	Container not exceeding 20 feet in length		Container exceeding 20 feet in length and upto 40 feet length		Container exceeding 40 feet in length and upto 45 feet length	
		Foreign-going	Coastal	Foreign-going	Coastal	Foreign-going	Coastal
		US $	₹	US $	₹	US $	₹
(a).	First 7 days	Free	Free	Free	Free	Free	Free
(b).	From 8 to 15 days	2.67	109.40	4.45	182.40	5.56	227.85
(c).	From 16 to 30 days	5.34	218.85	8.90	364.75	11.12	455.70
(d).	Beyond 30 days	10.68	437.70	17.80	729.45	22.25	911.80

(a).(ii) Import – Loaded Containers

Sl. No.	Particulars	Container not exceeding 20 feet in length		Container exceeding 20 feet in length and upto 40 feet length		Container exceeding 40 feet in length and upto 45 feet length	
		Foreign-going	Coastal	Foreign-going	Coastal	Foreign-going	Coastal
		US $	₹	US $	₹	US $	₹
(a).	First 3 days	Free	Free	Free	Free	Free	Free
(b).	From 4 to 15 days	2.67	109.40	4.45	182.40	5.56	227.85
(c).	From 16 to 30 days	5.34	218.85	8.90	364.75	11.12	455.70
(d).	Beyond 30 days	10.68	437.70	17.80	729.45	22.25	911.80

(b). Export – Loaded and Empty Containers

Sl. No.	Particulars	Container not exceeding 20 feet in length		Container exceeding 20 feet in length and upto 40 feet length		Container exceeding 40 feet in length and upto 45 feet length	
		Foreign-going	Coastal	Foreign-going	Coastal	Foreign-going	Coastal
		US $	₹	US $	₹	US $	₹
(a).	First 7 days	Free	Free	Free	Free	Free	Free
(b).	From 8 to 15 days	2.67	109.40	4.45	182.40	5.56	227.85
(c).	From 16 to 30 days	5.34	218.85	8.90	364.75	11.12	455.70
(d).	Beyond 30 days	10.68	437.70	17.80	729.45	22.25	911.80

(c). ICD Containers – Loaded and Empty

Sl. No.	Particulars	Container not exceeding 20 feet in length		Container exceeding 20 feet in length and upto 40 feet length		Container exceeding 40 feet in length and upto 45 feet length	
		Foreign-going	Coastal	Foreign-going	Coastal	Foreign-going	Coastal
		US $	₹	US $	₹	US $	₹
(a).	First 15 days	Free	Free	Free	Free	Free	Free
(b).	From 16 to 30 days	2.67	109.40	4.45	182.40	5.56	227.85
(c).	From 31 to 45 days	5.34	218.85	8.90	364.75	11.12	455.70
(d).	Beyond 45 days	10.68	437.70	17.80	729.45	22.25	911.80

(d). Transhipment Containers – Loaded and Empty

Sl. No.	Particulars	Container not exceeding 20 feet in length		Container exceeding 20 feet in length and upto 40 feet length		Container exceeding 40 feet in length and upto 45 feet length	
		Foreign-going	Coastal	Foreign-going	Coastal	Foreign-going	Coastal
		US $	₹	US $	₹	US $	₹
(a).	First 30 days	Free	Free	Free	Free	Free	Free
(b).	From 31 to 45 days	2.67	109.40	4.45	182.40	5.56	227.85
(c).	From 46 to 60 days	5.34	218.85	8.90	364.75	11.12	455.70
(d).	Beyond 60 days	10.68	437.70	17.80	729.45	22.25	911.80

(e). Shut Out Containers – Loaded and Empty

Sl. No.	Particulars	Container not exceeding 20 feet in length		Container exceeding 20 feet in length and upto 40 feet length		Container exceeding 40 feet in length and upto 45 feet length	
		Foreign-going	Coastal	Foreign-going	Coastal	Foreign-going	Coastal
		US $	₹	US $	₹	US $	₹
(a).	From 1 to 15 days	2.67	109.40	4.45	182.40	5.56	227.85
(b).	From 16 to 30 days	5.34	218.85	8.90	364.75	11.12	455.70
(c).	Beyond 30 days	10.68	437.70	17.80	729.45	22.25	911.80

Notes:

(1). Free dwell-time (storage) period for import containers shall commence from the day after the day of landing of the container and for export containers the free period shall commence from the time container enters the terminal.

(2). For the purpose of calculation of free time, Sundays, Customs notified holidays and the Terminal's non-operating days shall be excluded.

(3) Storage charge shall not accrue for the period during which ABGKCTL is not in a position to deliver / ship the containers when requested by the users.

(4). Transhipment containers whose status is subsequently changed to local FCL / LCL or ICD container shall be levied storage charges at par with the relevant import containers.

(5). Total storage period for shut out container shall be calculated from the day following the day when the container has become shut out till the day of shipment / delivery.

(6). For Over Dimensional Containers, storage charge shall be based on actual number of ground slots the respective container occupies under the respective slab as given above.

(7). Hazardous containers shall attract storage charge at 1.25 times the normal applicable charges.

(8). In the case of auction containers, after the auction is over, the empty containers will attract the storage charges as empty containers from the day following the day de-stuffing is completed.

(9). The storage charges on abandoned containers / shipper owned containers shall be levied up to the date of receipt of intimation of abandonment in writing or 75 days from the day of landing of the container, whichever is earlier subject to the following conditions:

(i). The consignee can issue a letter of abandonment at any time.

(ii). If the consignee chooses not to issue such letter of abandonment, the container Agent / MLO can also issue abandonment letter subject to following:

(a). the Line shall resume custody of container along with cargo and either take it back or remove it from the port premises; and

(b). the Line shall pay all port charges accrued on the cargo and container before resuming custody of the container.

(iii). The container Agent / MLO shall observe the necessary formalities and bear the cost of transportation and destuffing. In case of their failure to take such action within the stipulated period, the storage charge on the container shall be continued to be levied till such time all necessary actions are taken by the shipping lines for destuffing the cargo.

(iv). Where the container is seized / confiscated by the Customs Authorities and the same cannot be destuffed within the prescribed time limit of 75 days, the storage charges will cease to apply from the day the Customs order release of the cargo subject to Lines observing the necessary formalities and bearing the cost of transportation and destuffing. Otherwise, seized/confiscated containers should be removed by the Line / consignee from the terminal premises to the Customs bonded area and in that case, the storage charge shall cease to apply from the day of such removal.

1.11. CHARGES FOR REMOVAL OF GARBAGE

A consolidated charge of ₹1780/- per truck trip shall be payable for removal of garbage collected on board of ship and delivered at the quayside by the vessel.

1.12. CHARGES FOR SUPPLY OF FRESH WATER

For Foreign going vessel, ₹89/- per 1000 Litres or part thereof will be charged for supply of fresh water, subject to a minimum charge of ₹890/-.

For Coastal vessel, ₹53.40 per 1000 Litres or part thereof will be charged for supply of fresh water, subject to a minimum charge of ₹534/-.

SECTION - II

2. OTHER SERVICES

2.1. VISITOR ENTRY PASS

		Yearly	Monthly	Daily
		₹	₹	₹
(a).	Per Application	250.00	100.00	20.00

2.2. VEHICLE ENTRY PASS

(a).	Per Entry	₹100.00

Note:

(1). The vehicle entry fee will not be levied on vehicles entering/leaving ABGKCTL's terminal for delivery/dispatch of containers/cargo.

2.3. PHOTOGRAPHY

(a).	Film Shooting and Photography	₹	10,000 per day
(b).	Taking Photographs of Goods Imported / Exported	₹	500 per day
(c).	Taking Photographs of Crews and Others	₹	250 per day
(d).	Videography (related to operational activities)	₹	3,000 per day

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SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS / DIFFERENT USER ORGANISATIONS AND ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY

F. No.TAMP/40/2011 - ABGKCTL - Proposal from the ABG Kandla Container Terminal Limited for revision of its Scale of Rates at berth nos.11 and 12 operated at Kandla Port Trust.

A summary of the comments received from Kandla Port Trust (KPT), users/ user organisations and the comments of ABG Kandla Container Terminal Limited (ABGKCTL) thereon are summarized and tabulated below:

Sl. No.	Comments of KPT and users / user organisations	Comments of ABGKCTL
1.	**Northern India Shippers Association (NISA)**	
(i).	NISA does not agree with the proposal of ABGKCTL for increasing the charges as exporters are already facing problems due to melt down and international market has not fully recovered. Exports are yet to reach the normal rate of growth.	ABGKCTL has not proposed any increase in tariff, despite projected financial losses and expected rate of return far below 16%.
(ii).	India already has very high transaction cost and the proposal of ABGKCTL would further increase the cost. NISA requests ABGKCTL to reduce the charges to make the Indian export competitive in the international market.	In view of what is stated above, there is no scope for reduction of tariffs.
2.	**Gujarat Chamber of Commerce and Industry (GCCI)**	
(i).	TAMP should closely scrutinize the projections given by the Licensee. In particular, the projected expenditure figures seem to be on the high side. While the average annual expenditure for the period 2007-2010 is around ₹1,100 lakhs, the average annual figure for the period 2010-13 is nearly double at about ₹2,200 lakhs. TAMP should agree to the continuance of the existing scale of rates for the period 2010-13 only if it is satisfied, after a thorough scrutiny, that the ROCE would not be above the permitted level of 16%.	The projection of expenditure (repairs and maintenance) for the years 2011-14 has been considered in accordance with the TAMP guidelines which is 3% of cost per year for mechanical equipment and 1% per annum for civil works. The warranty period for equipment is over and as they are getting older, the cost of maintenance increases. With the continuance of the existing tariff, the projected ROCE will work out to be way below 16%.
(ii).	TAMP may look into some of the issues raised in the proposal of ABGKCTL about non-performance of certain obligations by the Licensor, KPT. If the claims are correct and has resulted in drop in efficiency of performance of the Licensee, then, if necessary curative actions are taken wherever warranted, the efficiency of the terminal may improve which in turn could lead to lower tariffs.	Non-performance of certain obligations by the Licensor (particularly draft, pilotage, handing over of licensed premises, etc.) has adversely affected the performance of the Licensee. ABGKCTL has repeatedly sought that the matter should be left to arbitration, as mutual consultations did not help in resolving the disputes. The Licensor has not, so far, responded positively to the suggestion.
3.	**Kandla Port Trust (KPT)**	
(i).	On perusal of the calculation of projected container handling income it is seen that the income for various types of container handling (loaded / empty / Transshipment – both for foreign & loaded) have been projected based on a single composite rate of ₹3115/- which has resulted in deficit for the year 2010-11 to 2012-13.	The port Trust has not correctly assessed the projected container handling income. The calculation of projected container handling income in the proposal submitted by ABGKCTL does not base the income on a single composite rate of ₹3115 per container. The rate has been correctly applied as per the present tariff applicable to foreign and costal containers.
(ii).	However, the income projections have been re-worked applying the handling rates of various types of containers viz. Loaded/ Empty/ Transshipment for both foreign and coastal as per current Scale of Rates of ABGKCTL and the same is furnished hereunder:	The port while calculating the revenue from handling other than 20 Ft containers has committed a mistake. It has multiplied the total number of TEUs by rate applicable for the containers. KPT should have converted the volume in TEUs into number of containers

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<tr><th>Sr. No.</th><th>Particulars</th><th>2010-11</th><th>2011-12</th><th>2012-13</th></tr>
<tr><td>1.</td><td>Operating Income</td><td>5795.65</td><td>6373.72</td><td>7012.21</td></tr>
<tr><td>2.</td><td>Operating Costs</td><td>2172</td><td>2159</td><td>2288</td></tr>
<tr><td>3.</td><td>Depreciation</td><td>1704</td><td>1747</td><td>1789</td></tr>
<tr><td>4.</td><td>Overheads</td><td>517</td><td>535</td><td>554</td></tr>
<tr><td></td><td>Operating Surplus</td><td>1402.65</td><td>1932.72</td><td>2381.21</td></tr>
<tr><td>5.</td><td>FMI – FME</td><td>-14</td><td>-15</td><td>-15</td></tr>
<tr><td></td><td>Surplus before Interest/ Tax</td><td>1388.65</td><td>1917.72</td><td>2366.21</td></tr>
<tr><td></td><td>Capital Employed</td><td>14441</td><td>12949</td><td>11669</td></tr>
<tr><td></td><td>ROCE @ 16%</td><td>2311</td><td>2072</td><td>1867</td></tr>
<tr><td></td><td>Capacity Utilisation</td><td>38</td><td>41</td><td>45</td></tr>
<tr><td></td><td>ROCE adjusted for lower Capacity Utilisation</td><td>878</td><td>850</td><td>840</td></tr>
<tr><td>6.</td><td>Net Surplus/ Deficit</td><td>-922.35</td><td>-154.28</td><td>499.21</td></tr>
<tr><td>7.</td><td>Net Surplus/ Deficit considering adjusted ROCE</td><td>510.65</td><td>1067.72</td><td>1526.21</td></tr>
<tr><td>8.</td><td>As a % of Operating Income (in case full ROCE is allowed)</td><td>-15.91</td><td>-2.42</td><td>7.12</td></tr>
<tr><td>9.</td><td>As a % of Operating Income (in case ROCE adjusted for lower capacity is considered)</td><td>8.81</td><td>16.75</td><td>21.77</td></tr>
</table>
Note: Except for Container Handling Income all other items are as taken as projected by M/s.ABGKCTL.
On perusal of the same it can be seen that the a surplus of ₹499 lakhs or ₹4.99 crores will accrue to ABGKCTL for the year 2012-13 which is 7.12% of the Operating Income despite all the alleged hardships brought out by ABGKCTL. This is after allowing a handsome return of 16% on the Capital Employed. Moreover since the capacity utilization projected by M/s.ABGKCTL is less than 60% for the years from 2010-11 to 2012-13, considering adjusted ROCE for reduced capacity, there will actually be surplus to the tune of ₹510.65 lakhs, ₹1067.72 lakhs and ₹1526.21 lakhs for the years from 2010-11 to 2012-13 which are 8.81%, 16.72% and 21.77% of the recast operating surplus. Also, while re-working the container handling income, all other details like container traffic, operating expenditure, FMI & FME have been taken as projected by ABGKCTL.
</td>
<td>before multiplying it with the applicable tariff. In respect of transshipment containers, KPT has applied the tariff at the rate prescribed for foreign going transshipment containers, without considering the rule (5) attached to the clause 1.2 of the SOR.</td>
</tr>
<tr>
<td>(iii).</td>
<td>While perusing the Operating Costs it is seen that the major item of operating viz. Lease Rentals or License fee considered by ABGKCTL is ₹740 lakhs, ₹766 lakhs and ₹794 lakhs respectively for the years 2010-11 to 2012-13. However, in reality, ABGKCTL has presumably not paid these charges and instead continues to pay the License Fees at LF1 rate i.e. ₹377 lakhs per annum. As such these items can be allowed as expenditure only when they are actually paid to KPT and not otherwise.</td>
<td>The Licence Fee shown in the proposal for the years 2007-08 to 2009-10 comprise of Licence Fees already paid / provision made in the books on account of Licence Fees payable to KPT. ABGKCTL has already paid the license fee at LF2 rates.</td>
</tr>
<tr>
<td>(iv).</td>
<td>On perusal of the Form 5 A (iii) containing the computation of Capital Employed for Container Handling Activity it is seen that M/s.ABGKCTL has resorted to manipulate the figures of Capital Employed with a view to show deficit and claim a higher ROCE. During the year 2009-10 a Plant & Machinery Costing ₹7727 lakhs has been shown as additions to Gross Block while in the very next year 2010-11 a huge amount of ₹4110 lakhs has been shown as reduction</td>
<td>During the year 2009-10, the CH4 equipment were commissioned as per requirement of the Licence Agreement resulting in addition of ₹7727 lacs to the gross block. The amount of ₹4110 lacs shown as reduction in the capital employed is on account of the proposal to sell the additional equipment (2 Mobile Harbour Cranes), which are no more required for container operations. The allegation of the KPT</td>
</tr>
</table>

	from the Plant & Machinery. As a result of this the figure of Capital Employed for the year 2009-10 has been inflated, leading to higher ROCE and resultant deficit while during 2010-11 owing to addition of a huge asset of ₹1962 towards civil works and sale of Plant and Machinery costing ₹4110 lakhs and increased depreciation on additional assets the capital employed had been reduced. Thus, it appears that the disposal of plant & machinery worth ₹4110 lakhs has been deliberately shifted to the year 2010-11. Further the profit and loss on sale of the fixed assets needs to be ascertained. Whether these Civil Works will be actually completed and commissioned during the year 2010-11 and the date of commissioning of huge block of Plant & Machinery during the year 2009-10 needs to be confirmed before the same can be allowed.	is not understood because addition to capital employed in 2009-10 does not give any tariff advantage to ABGKCTL. Similarly reduction in capital employed can only lead to decrease in the tariff. The statement by KPT that the figures of capital employed has been manipulated and the disposal of plant & machinery worth of ₹4110 lacs has been deliberately shifted to the year 2010-11 is not understood because these reflect the actual position of accounts and the project which are in the knowledge of KPT. The sale of MHCs (2 nos.) did not take place yet because of delay in grant of permission by KPT. The actual loss can be worked out only after sale of MHCs. For the purpose of projection, the estimates are fair and reasonable. The date of commissioning of CH4 equipment is known to KPT as advised by the independent engineer.
(v).	As a result of above, equipment running costs at ₹1140 lakhs have more than doubled during the year 2010-11 as compared to the amount of ₹507 lakhs during the year 2009-10. Also the repair and maintenance cost has been considered at 3% of the gross block of equipment as against 2% allowed by TAMP.	As per TAMP guidelines for upfront tariff fixation, 2% of cost of mechanical and electrical equipment is admissible for repair and maintenance. The TAMP norms also provide 1% of cost of all civil assets for civil repair and maintenance. As ABGKCTL would have to take care of the repair & maintenance of the electrical and mechanical equipment and the berth structure (berth 11 & 13), we have provided 3% of the cost for repair and maintenance.
(vi).	In respect of fuel consumption, the ABGKCTL has estimated fuel consumption of 4 litre per TEU as against 3 litre per TEU allowed by TAMP in the earlier revision. The reasons for increase in consumption when new equipment to the tune of ₹77 crores have been added needs to be clarified.	The fuel consumption estimates are based on TAMP guidelines (norms for operating cost) 4 liters per TEU is admissible.
(vii).	Insurance cost estimates have been substantially increased from ₹38 lakhs in 2009-10 to ₹208 lakhs during 2010-11 and ₹186 lakhs and ₹188 lakhs during the years 2011-12 and 2012-13. The documentary evidence for payment of insurance justifying such steep increase in the insurance premium needs to be furnished by ABGKCTL.	For the year 2009-10, insurance cost reported is actual. For the years 2010-11, 2011-12 & 2012-13 the same is considered as per TAMP guidelines i.e. 1% of gross fixed asset value.
(viii).	The traffic projected during 2010-11 is 168794 TEUs as compared to 146777 TEUs during 2009-10 i.e. an increase of 15% whereas the operating cost for the year 2010-11 has been estimated at ₹2172 lakhs as compared to ₹1280 lakhs for the year 2009-10 i.e. an increase of a whopping 70% over 2009-10 which does not appear to be justifiable.	We have already given the explanation for all items of expenditure under operating cost. All projections are based on reasonable estimates based on the norms prescribed by TAMP and provisions of Licence Agreement.
(ix).	On one hand M/s ABGKCTL is complaining about failure of KPT to hand over committed land of 100 m X 100 m for handling rail cargo and on the other hand it is not taking over the huge back up area of 18 hectares (1,80,000 Sq. mtr.) behind berth number 12 which it is committed to take over as per License Agreement. M/s.ABGKCTL have failed to utilize the KPT railway lines as provided in the license agreement for handling ICD containers.	The backup area of 18 hectares was not handed over by KPT in accordance with the provisions of Licence Agreement (LA). Unscientific earth fill in the back up area caused lateral thrust of the filled earth on the civil structure (berth). This shifted the alignment of the quay rail lines. ABGKCTL had reported these to KPT and declined to take over the backup area of 18 ha, unless corrective action was taken by the Port trust. This has no relevance to the KPT's obligation of handing over 100 x 100 m land behind berth no 13 for rail operation. In fact KPT has handed over the above land (100m X 100m) to another port operator without the concurrence of ABGKCTL.

<table>
<tr>
<td>(x).</td>
<td>The various charges being levied by M/s.ABGKCTL includes charges for on board stevedoring. However, M/s.ABGKCTL has failed to obtain the stevedoring license from KPT as committed at the time of last revision of scale of rates. In fact TAMP had allowed ABGKCTL to recover on board stevedoring charges only on the condition that it will obtain stevedoring license from KPT, which was required to obtained as per the LA.</td>
<td>ABGKCTL has informed KPT that they will obtain stevedoring license provided KPT gives assurance to ABGKCTL that they will not be obliged to engage DLB labor gangs. We are yet to receive a reply.

KPT itself has stated in their communication dated 26-07-07 addressed to the Assistant Labour Commissioner that in a dedicated container terminal, there is no requirement of a stevedoring license.

ABGKCTL is engaging workers for on board lashing, unlashing and other stevedoring works, which is a fact known to KPT.</td>
</tr>
<tr>
<td>(xi).</td>
<td>Nothing has been mentioned about the productivity levels and incentives for better performance of the terminal and disincentives for performance below the benchmark levels. Since ABGKCTL has now gained sufficient experience in the operation of terminal the productivity levels now need to be specified invariably.</td>
<td>While ABGKCTL can lay down bench mark level of productivity for unloading of containers from the vessel and vice versa (gross crane rate), it cannot lay down norms with regard to turn around time of the vessels, berth productivity or berth stay as these are dependent also on the KPT (berthing, sailing and pilotage are services rendered by KPT).

No productivity norms are prescribed in the License Agreement.</td>
</tr>
<tr>
<td>(xii).</td>
<td>While approving the Scale of Rates of ABGKCTL in October 2007, the TAMP had allowed a capital cost of ₹9 crores for the year 2009-10 towards development of 18 hectares of land into CY. However, the fact of the matter is that ABGKCTL is yet to take over this 18 hectares of land behind berth No.12 and hence the ROCE enjoyed by it on this amount of capital employed needs to be adjusted.</td>
<td>This is not relevant for the present tariff proposal.</td>
</tr>
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<td>(xiii).</td>
<td>ABGKCTL has repeatedly stated in the proposal that it is at a disadvantageous position vis-à-vis private terminals like MICT, Pipavav in the matter of flexibility of tariff. A statement showing a comparison of major items of tariff of ABGKCTL with that of MICT and PIPAVAV is furnished.

TABLE SHOWING COMPARISON OF RATES OF ABGKCTL WITH PIPAVAV& MICT

<table>
<tr><th>Sr. No.</th><th></th><th colspan="3">ABGKCTL</th><th colspan="3">PIPAVAV</th><th colspan="3">MICT</th></tr>
<tr><td>I</td><td>COMPOSITE RATE FOR HANDLING CONTAINERS</td><td>20’</td><td>>20’ <=40’</td><td>>40</td><td>20’</td><td>>20’ <=40’</td><td>>40</td><td>20’</td><td>>20’ <=40</td><td>>40</td></tr>
<tr><td></td><td>(A) Foreign</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td></td><td>Loaded Containers</td><td>3115</td><td>4673</td><td>6230</td><td>3200</td><td>4800</td><td>6400</td><td>3885</td><td>5827</td><td>7769</td></tr>
<tr><td></td><td>Empty Containers</td><td>3738</td><td>4984</td><td>6622</td><td>2600</td><td>3900</td><td>5200</td><td>3656</td><td>5484</td><td>7312</td></tr>
<tr><td>II</td><td>Particulars</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td></td><td>(a) Pre Trip Inspection</td><td>311.5</td><td>311.5</td><td>623</td><td>650</td><td>650</td><td>1300</td><td rowspan="3">1371</td><td rowspan="3">2057</td><td rowspan="3">2742</td></tr>
<tr><td></td><td>(b) Refeer run test</td><td>178</td><td>178</td><td>356</td><td>500</td><td>500</td><td>1000</td></tr>
<tr><td></td><td>(c) Charges for supply of electricity including connecting and disconnecting ,monitoring at Reffer Yard</td><td>480.6</td><td>720.9</td><td>961</td><td>1828</td><td>2742</td><td>3656</td></tr>
<tr><td>III</td><td>Transfer to Rail Yard from CY and loading onto Railway Flat or vice versa</td><td>20’</td><td>>20’ <=40’</td><td>>40</td><td>20’</td><td>>20’ <=40’</td><td>>40</td><td>20’</td><td>>20’ <=40</td><td>>40</td></tr>
<tr><td></td><td>(a) Loaded</td><td>890</td><td>1335</td><td>1780</td><td>1300</td><td>2000</td><td>2600</td><td>1234</td><td>1851</td><td>2468</td></tr>
<tr><td></td><td>(b) Empty</td><td>890</td><td>1335</td><td>1780</td><td>1300</td><td>2000</td><td>2600</td><td>1188</td><td>1782</td><td>2376</td></tr>
</table>

NOTES

<table>
<tr><td>1</td><td>Refeer charges of MICT are prescribed in US $ and the same are converted into Indian Rupees by applying exchange rate of 1US $ = ₹45.70</td></tr>
<tr><td>2</td><td>Charges for supply of Electricity (item (c) above for PIPAVAV port are prescribed in US dollar and are converted applying same exchange rate.</td></tr>
</table>
</td>
<td>While a mere comparison of published tariff may favor Kandla, the important thing is that ABGKCTL is competing with private terminals in Gujarat which are managed by private ports. They are offering substantial volume based discounts not only on THC, but also on Marine charges, Ground rent etc., thus in effect far more economical than Kandla. In addition, these private Ports are deeper in draft and equipped with adequate support vessels to ensure that there are no pilotage delays in contrast with Kandla Port where the pilotage, berthing and sailing delays are endemic. There are volumes of correspondence with KPT on inadequate draft, pilotage delays, problems of nigh pilotage. Despite the repeated correspondence, the position has not improved.</td>
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<tr><td></td><td>
<table>
<tr><td>3</td><td>Further charges are prescribed for 12 hours for PIPAVAV port and as such charges of ABGKCTL for item (c) which are for 4 hours are converted to 12 hour charges.</td></tr>
<tr><td>4</td><td>At MICT Charges for Container exceeding 40 feet are 200% of the charges for 20 feet container.</td></tr>
<tr><td>5</td><td>In respect of Refeer Containers comparison has been made for refeer related charges only and not handling charges. ABGKCTL has no separate handling charges for reefer containers.</td></tr>
</table>

On perusal of the statement it will be seen that the composite container handling charges, charges for reefer containers, charges for transfer to Rail Yard from CY and loading onto Railway flat or vice versa at ABGKCTL are less than those of MICT and PIPAVAV. From the above it can be concluded that underutilization of capacity of the terminal and failure to meet the MGT is solely on account of inefficiency of ABGKCTL and not because of any tariff barriers.
</td><td></td></tr>
<tr><td>(xiv).</td><td>
(a). As per COD-12, the maximum permissible draught of 12.5 mtrs. was announced well in time and has been maintained ever since. However, Kandla being a tidal Port, such draught can only be available on certain days when the height of tide raised above the average tide. This is non-discriminatory as per Clause 3 (ii) and is applicable to all vessels calling Kandla Port. On certain days, the permitted draught is less than 12.5 mtrs. which is due to insufficient tidal height for the safety of the vessels. It is also clarified that such draught are available during day-light hours and during darkness hours, an extra safety margin for the vessels is kept purely for the safety of the vessels calling and leaving Kandla Port and this is also on non-discriminatory basis as per the Clause mentioned above.

(b). With reference to ABGKCTL Letter No.ABG/P206/10 dated 19th November 2010 to KPT attached as Annexure – V, the KPT has clarified that it is only repetition of their earlier tirades against the KPT by finding excuses to camouflage their own failure to find cargo and business for their terminal which has resulted in colossal losses to the Kandla Port and other Port Users ever since the terminal was handed over to them.

(c). As per the accusations and allegations in the above letter whereby Director, ABGKCTL has made a statement that “It now transpires that the committed draft was never available for navigation even during day” is totally false and motivated. The two incidents which are being referred to are basically from hearsay and not based on facts. The two vessels which are claimed to have been grounded were not actually grounded, but the Pilots and the Masters of the Vessels experienced a reduction in speed which could be due to reduction in the under keel clearance which in marine terms in called “smelling the bottom”. This could be due to a variety of height of tide, mis-declaration of draught by the ships, excessive speed/squat, etc. but immediately claming that there has never been a committed draught available all these years is a mis-statement and totally false.
</td><td>The published quarterly circulars of the Deputy Conservator of the KPT during the last 4 years already attached to the tariff proposal would show that the Port Trust has not declared a draft of 12.5 m in the navigation channel on even a single day.</td></tr>
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<tr>
<td></td>
<td>(d). All these years vessels of 12 mtrs. draught have been handed with regular frequency and even vessels with 12.5 mtrs. draught have been brought in occasionally without problems. ABGKCTL may kindly be asked to enlist the vessels names and draughts which were refused entry for being within the committed draughts

(e). Harbour Master has never announced reduction in draught but it was only made known to the Port Users that an extra 30cm under keel clearance will be kept for the safety of the vessels, due to which the permissible draught on certain days may fall below the earlier predicted ones. Even if the extra clearance of 30 cm is kept on a particular day and the permissible draught instead 12.5 mtrs. becomes 12.2 mtrs. which are the vessels programmed and planned by ABGKCTL that have been affected may also kindly be enquired from the them.

(f). KPT has never failed to honour their part of commitments and even on regular basis has gone out of the way to assist the container ships movement even when giving priority to container vessels, is not party of the agreement.</td>
<td></td>
</tr>
<tr>
<td>(xv).</td>
<td>M/s.ABGKCTL has made the following yearwise throughput projection :

<table><tr><th>Year</th><th>Throughput</th></tr><tr><td>2010-11</td><td>168794</td></tr><tr><td>2011-12</td><td>185673</td></tr><tr><td>2012-13</td><td>204240</td></tr></table>
<u>Comments</u>:

As per the traffic projections of KPT for the period 2010-11 to 2012-13 and based on the present trend of container traffic being handled by M/s.ABGKCTL, a conservative estimate for handling of containers was made, which suggests that the Port's container terminal operator, would handle a throughput (TEU) figure of around 160000 during 2010-11, around 170000 during 2011-12 & around 175000 during 2012-13.</td>
<td>Our projections are based on the anticipated market growth and future enhancement in the facility which will attract more cargo into Kandla. The projections are also based on the expectation that KPT would provide the committed draft of 12.5m, lifting of restrictions in night navigation and priority for container vessels.</td>
</tr>
<tr>
<td>(xvi).</td>
<td>M/s.ABGKCTL has indicated that the container throughput for the past 4 years from 2006-07 to 2009-10 at Kandla Port is as follows:-
<table><tr><th>Particulars</th><th>2006-07</th><th>2007-08</th><th>2008-09</th><th>2009-10</th></tr><tr><td>All Gujarat Container traffic</td><td>885910</td><td>1079532</td><td>1131138</td><td>1460369</td></tr><tr><td>Container traffic at Kandla</td><td>178086</td><td>164014</td><td>137619</td><td>146777</td></tr><tr><td>% of Market share</td><td>20%</td><td>15%</td><td>12%</td><td>10%</td></tr></table>
<u>Comments</u> :
For the financial year 2006-07, 2007-08, 2008-09 & 2009-10, the container traffic throughput figures based on the information received from M/s.ABGKCTL is 177787 TEU, 165092 TEU, 137619 TEU & 146777 TEU respectively. These container terminal throughput figures however, have not been verified by Kandla Port authorities as regards their authenticity, through any other independent third party or independent auditor (jointly agreed upon by Kandla Port Trust and ABGKCTL).</td>
<td>KPT has admitted the grounding of the vessel, which was due to maintenance of the published draft. This confirms the observation of ABGKCTL that KPT has not maintained the declared draft in the channel.</td>
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</table>

(xvii).	With regard to the statement made by ABGKCTL that it is having a rising percentage of coastal traffic, it is mentioned that the figures received by KPT from M/s.ABGKCTL, suggest that the coastal container traffic has increased from 6883 TEU during F.Y. 2007-08 to 29432 TEU during F.Y. 2009-10. However, the same had decreased to 6018 TEU during F.Y. 2008-09, when compared to the throughput figures handled during F.Y. 2007-08.	No comment.
(xviii).	M/s.ABGKCTL has mentioned in Form 2A that the container traffic for 2007-08 is 164014 TEU, 137619 TEU for 2008-09 & for 2009-10 it is 146777 TEU. The figures for 2007-08 as have been compiled and finalized (based on information received from M/s.ABGKCTL) stand at 165092 TEU and do not match with the corresponding figure of 164014 TEU furnished by M/s.ABGKCTL in their tariff revision proposal submitted to TAMP. Therefore no comments can be offered on the bifurcation of these figures into Loaded, empty, reefer, transshipment, coastal etc. Further, for the years 2008-09 & 2009-10, the following facts may be considered: (a). Foreign Containers: The figures of 129916 TEUs and 114785 TEUs for 2008-09 & 2009-10 do not match with the figures of 120908 TEUs and 84178 TEUs for the respective years, as has been compiled by KPT based on the information received from M/s.ABGKCTL. (b). Transshipment Containers: The information pertaining to transshipment figures for 2008-09 & 2009-10 are not made available to us in the desired format (as specified in the proposal) and hence no comments can be offered. (c). Coastal Containers : The figures for the coastal TEU compiled on the information made available by M/s.ABGKCTL stand at 6018 TEU & 29432 TEU, which do not match with the corresponding figures of 5978 TEU & 30062 TEU, as indicated in the tariff proposal.	The numbers reported by ABGKCTL are correct. KPT needs to check the numbers reported by them with reference to the monthly reports submitted by ABGKCTL. Though attempts were made by ABGKCTL to tally the traffic figures with the KPT, the exercise could not be completed.
(xix).	Since the container traffic projections of the Port (as communicated in 'Preparation of New Perspective Plan replacing on the NMDP of Major Ports for the period 2010-11 to 2019-20') for 2010-11, 2011-12 & 2012-13 do not match with those provided by M/s.ABGKCTL in their tariff revision proposal, no comments can be offered on the break up of this traffic into Loaded Containers, Transshipment containers and Coastal containers, for these years.	As above.
(xx).	KPT has not been made available with information pertaining to TEU throughput under the three categories viz. (i) Over Dimensional (ii) hazardous and (iii) others, for the period from 2007-08 till 2012-13, & therefore no comments are offered.	ABGKCTL is submitting throughput figures on a monthly basis as per the format prescribed by the KPT.
(xxi).	The figures for Minimum guaranteed (MGT) throughput as per the license agreement have been furnished from 2007-08 to 2012-13, based on the assumption that these are figures for each of the financial years ending on 31st March of the subsequent year. Whereas as per the License Agreement the throughput figures are to be considered in terms of 'The Applicable period' which is not the same as the financial year. Since the License Agreement specifies "The Applicable period" for considering the MGT, no comments are offered on the figures furnished by M/s.ABGKCTL. However, it is	The MGT in the License Agreement is in terms of "applicable period", which is not the same as financial year. Therefore, ABGKCTL has adjusted the MGT figures in terms of financial year.

	submitted that as per the License Agreement, for the "Applicable period – 1" the MGT is 172000 TEU, and for the immediately succeeding Applicable periods it is 186000 TEU, 200000 TEU, 221000 TEU, 243000 TEU & 270000 TEU respectively.	
(xxii).	KPT has envisaged a cargo handling capacity of 3.00 lakh TEU (per annum) for the container terminal when it was operating with only one berth i.e. Cargo berth no. 11. The same was envisaged to be 6.00 lakh TEU, after the Port handed over the second berth i.e. Cargo Berth 12 to M/s.ABGKCTL. Thus the Port's container terminal's capacity reported and agreed upon by Ministry of Shipping, for all the financial years is 3.00 lakh TEU each for 2007-08 and 2008-09, whereas this increased to 6.00 lakh TEU for 2009-10, 2010-11. It is opined that this capacity would remain unchanged for the remaining years i.e. 2011-12 & 2012-13.	No comment.
(xxiii).	At Sr. V under page 157 of this proposal, the actual figures for capacity utilization have been furnished from 2007-08 to 2009-10. Since the capacity of this container terminal as has been considered by the Port varies with the figures provided by M/s.ABGKCTL, no comments are offered on the capacity utilization figures for these years. Moreover, since the Port's container terminal capacity considered by KPT from 2010-11 to 2012-13 is not the same as that considered by M/s.ABGKCTL, no comments are offered for the figures communicated for these years in the tariff revision proposal.	No comment.
4.	**Indian National Shipowners' Association (INSA)**	
	INSA has no comments to offer.	
5.	**Kandla Port Steamship Agents Association (KPSAA)**	
(i).	In its proposal, ABGKCTL accepts its failure for the development of the terminal, but blames the internal disputes between the port and the terminal for the same. Thus the trade has to bear and suffer. Kandla Port is one of the deepest draft ports in India, whereas several ports and container terminals with lesser drafts than Kandla has drawn enormous container traffic to their ports, obviously due to the cost and proper infrastructure. Kandla Port has always given the drafts close to 12.5 meters, whereas in respect of following ports / private terminals, even then the average draft is less than KPT, traffic is abundant at these ports due to the marketing network, service capability and costing. (a). Navasheva = 11.50 mtrs. (b). Pipavav = 12.00 mtrs. (c). Jabel ali = 11.00 mtrs. (d). Colombo = 11.00 mtrs. (e). Mundra = 14.00 mtrs. (though vessels calling here is upto 12 meters) When the container traffic at all the container ports in India has increased tremendously, the allegations for obstacle in development should be disregarded.	The information furnished by KPSAA with regard to the existing drafts in other Ports is incorrect. ABGKCTL contention is that KPT has failed to provide the committed draft and this, along with pilotage delays, adversely affected the ability of ABGKCTL in attracting mainline vessels.
(ii).	Before the terminal was handed over to ABGKCTL in 2007, the conventional system of handling the container vessels/ traffic was much better and cost effective. But now the negative presumptions to development of the	All the RMQC's are functional. The delay in setting up the CPY arose because of the delay in handing over the licensed premises. Though ABGKCTL has paid the license fee at full rates,

	traffic in Kandla, is making ways for the cargo to move to neighbouring ports, which may lead to Kandla being recognised as a Non Container Handling Port. (a). Out of the 4 RMQC available only an average 2 cranes are required to be operational to handle such volumes. (b). Container yard is not developed with proper infrastructure. (c). This is no yard Management or electronic control. (d). No Lightings on the undeveloped yard, and agents have to bring torches to find their container. (e). Having only 8 Trailers working for the total traffic. (f). Never shown keen interest to put Trade Meet or Function promotion. These basic requirements to handle the container traffic still seems to be a Vision….. for an "Unknown Year" as it has not been projected in the proposals.	under protest, 18 Ha of backup area is yet to be formally handed over by KPT.
(iii).	ABGKCTL is presently computing the composite tariff at ₹3115/- per TEU, on which it gives 49% to port and 15% as discount is given to the trade, thus leaving them only 29% as a revenue. Even this is questionable, as there is no evidence of ABG giving such discounts. Most of the lines are making payments as per the tariff. With the present tariff enhanced to 150% which was at the time of conventional tariff, if ABG projects a loss of 27% annually, it is a serious statement and all reasons for such loss should be verified. The traffic and trade from Kandla has noticeably moved to neighbouring port, because of its cost and service effectiveness, so if the tariff is discounted in Kandla by 25% (15% which ABG already taken into account and another 10% because of its incomplete infrastructure and service stature). This will help the port to regain the cargo and increase its throughput to 300,000 TEUs per annum. This will also draw profit to the port/ ABGKCTL/ trade.	ABGKCTL has never contended that 15% discount is being given to trade. On the other hand, ABGKCTL is unable to extend discounts in a commercially meaningful manner as the revenue share to KPT is computed at the ceiling rates fixed by TAMP.
(iv).	Though ABGKCTL confirms that the present terminal is in a good capacity to handle 600,000 TEUs per annum, they have narrated themselves in a hopeless situation and factually accept a down fall in traffic of 15% every year from the already existing traffic. The terminal also projects its throughput to rise only to the tune of maximum 200,000 TEUs until the year 2013. Under the present circumstance, ABGKCTL is leading a role to diminish the utility and traffic to Kandla Port. This is leading to heavy loss to the trade and a huge national loss also, since that one berth is in a capacity of handling 6 Million Tonnes Per Annum. The Government/ Port/ TAMP/ and all such authorities should view this declared projection seriously and withdraw one berth from ABGKCTL immediately and give it to the trade for common use in the interest of the trade and nation. ABGKCTL should come forward and release one berth to the port under a condition to regain the said berth when the traffic reaches to 300,000 TEUs per annum.	Release of a berth for common use etc are matters irrelevant to the present proposal. ABGKCTL is requesting TAMP to retain existing tariff in the interest of attracting more volumes to Kandla, despite the fact that the Company is incurring losses.

2. A joint hearing in this case was held on 5 May 2011 at the KPT premises. The ABGKCTL made a power point presentation of its proposal. At the joint hearing, the ABGKCTL, KPT and the concerned users/ organisation bodies have made the following submissions:

ABG Kandla Container Terminal Limited

(i). Poor draft, absence of night navigation and high vessel related charges affect growth of our traffic. We have, however, projected 10% growth in traffic.

(ii). We don't make the permissible level of ROCE. But, in the interest of trade and to retain volumes, we propose to continue with the existing rate.

Kandla Port Trust

(i). We request TAMP to increase tariff as per guidelines. ABGKCTL can allow rebates to attract trade.

(ii). We achieve 12.5 mtrs. of draft. But, it is not uniform at all days and time. The available draft is sufficient to handle container vessels.

Kandla Stevedores Association

(i). The container berths return an occupancy level of 30%. Therefore, the demand of ABGKCTL for priority berthing of container vessels does not have any merit as the berth would always be available.

(ii). Tariff increase or even retention of the existing rates should be conditional upon yard development. For the past 4 years, ABGKCTL uses only the old KPT plots for storage, though very high storage charges are already prescribed based on its earlier submissions of developing a modern yard.

(iii). Mere fact of capital investment may not be a justification for tariff fixation. Utilisation level of the assets created will be critical. The 4 RTGs don't operate for the past 4 years as no developed yard is available. RMQCs are also underutilised. Assets are idle but return thereon is claimed in full.

Kandla Port Steamship Agents' Association

(i). When Mundra can attract mother vessels with draft less than 12.5 mtrs., why is it not possible at ABGKCTL ?

(ii). We request TAMP to reduce the existing rates to encourage volume build up.

Gandhidham Chamber of Commerce & Industry

(i). We endorse the views of Kandla Port Stevedores Association & Steamer Agents Association.

(ii). The Licence Arrangement with ABGKCTL should be reviewed as a precise asset is underutilised.

3. With reference to the written submissions filed by Kandla Port Steamship Agents Association (KPSAA) during the joint hearing, which were forwarded to ABGKCTL and KPT for their comments, the ABGKCTL vide letter dated 1 June 2011 and KPT vide its letter dated 6 July 2011 have furnished their reply. A summary of the written submissions made by KPSAA and reply received from ABGKCTL and KPT thereon are tabulated below:

Sl. No.	Written submission made by KPSAA	Comments of ABGKCTL	Comments of KPT
(i).	On the first phase of the deliberations given by ABGKCTL it states the lacking towards development of the	ABGKCTL contends that KPT failed to maintain the committed depth of 12.5 meters in the channel/ alongside the berths.	

	terminal, and it also relates the internal disputes between the port and the terminal, finally leaving aside the terminal development and trade to suffer. ABGKCTL's terming the failure of the port and the government is totally baseless as it is on record that Kandla Port is one of the deepest draft ports in India and other nearby countries for container handling, giving a draft of 12.5 meters, whereas the other ports given hereunder, doing container traffic the most, draws the following drafts: a) Navashev = 11.50 mtrs. b) Pipavav = 12.00 mtrs. c) Jabel ali = 11.00 mtrs. d) Colombo = 11.00 mtrs. e) Mundra = 13.00 mtrs. (though there is no vessels calling with above 12 mtrs.) It goes without saying, that all the Government Container Ports in India volume has increased (the traffic) tremendously, and thus ABGKCTL allegations for the stroll of developments should be disregarded.	Besides, there were perennial delays in pilotage. Both these factors have adversely affected ABGKCTL's efforts to attract additional traffic to the terminal. There are volumes of correspondence between ABGKCTL and KPT on these issues. ABGKCTL has also furnished copies of the circulars issued by the KPT which confirm that the committed depth was hardly ever achieved. The draft available in any other port is irrelevant to the issue and no comments are being offered on the same.	
(ii).	ABGKCTL presently indicates the composite tariff of ₹3115/- per TEU, on which it is said that 15% of discount is given, whereas the trade is not aware to whom ABGKCTL is giving this discount, and thus the revenue ABGKCTL earning after all deductions 29% can be said as incorrect. With all the infrastructure given by ABGKCTL to the trade which is only the Gantry Cranes, for which the composite tariff rise to the trade had been 150% and even then ABGKCTL projections of 27% loss is only due to mismanagement and loss of traffic to Kandla.	While the other private ports in Gujarat offer volume based discounts, ABGKCTL is handicapped in offering such discounts since the revenue share due to KPT is payable at TAMP approved ceiling rates. Despite the same, ABGKCTL has offered discounts to certain shipping lines to retain their clientele.	

(iii).	ABGKCTL has narrated themselves in a hopeless situation, whilst the terminal is already in the capacity to handle 600,000 TEUs per annum whereas their present experience gives figure by the down fall of 15% from the then existing traffic every year. The terminal also projects its throughput upto maximum 200,000 TEUs for the year 2013. Which itself draws that ABGKCTL is not in a capacity to handle both the berths no.11 and 12, and or probably, ABGKCTL is leading a role to diminish the utility and traffic to Kandla Port. The Government/ Port/ TAMP/ and all such authorities should view this declared projection very seriously, impose penalty on ABGKCTL and immediately one of the berth to be withdrawn for the common use to the trade, which presently is incurring a Huge National Loss (atleast ₹30 crores per annum to Kandla Port revenue only on the Marine/ berth hire charges if one berth allotted to the trade). Also ABGKCTL should come forward and release one berth to the port and demand for the 2nd one only when the handling rises above 300,000 TEUs per annum at one berth.	No comments	
(iv).	The trade of Kandla has obviously moved to Mundra, because of the cost effective at that port (finally the cost on the cargo shipment is derived from the freight/ thc/ handling as the parameters), so if the tariff is discounted in Kandla by 25% to the trade, this will help the port to increase its throughput to 300,000 TEUs per annum, which will definitely bring in profit to the port/ ABGKCTL/ trade.	Diversion of traffic to nearby private ports is a serious problem arising out of perennial delays in berthing and unberthing, non-maintenance of committed draft in the channel and along side the berths, and high vessel related charges (compared to the neighbouring Private Ports).	
(v).	When the terminal was handed over to ABGKCTL in 2007, the conventional system of handling the container vessels/ traffic was much better and cost effective, we trade can only judge with the present scenario, the ABGKCTL plays a negative role to development of the traffic in Kandla, making ways for the cargo to move to	The observations are factually incorrect. All four quay cranes are brand new cranes and fully operational at all times. The yard development has been delayed due to delay in handing over licensed premises by KPT. This has not affected operations, because in the intervening period, ABGKCTL has leased out 5 ha of land	

	Mundra, which can only lead to Kandla Port to recognize as a non container handling port. The basic requirements to handle the container traffic still seems to be a vision for which year "No One Knows" as not projected in the proposals. a) Though 4 RMQC is available only average 2 is operational. b) Yard is not developed, with infrastructure c) The yard is not managed with proper markings d) There is no lightings on the undeveloped yard, and agents have to bring torches to find their container. e) There is only 8 trailers working for the total traffic. f) ABGKCTL never shown keen interest to put trade meet or function to promote.	from KPT adjacent to Berth 10 as additional stack yard, where the RTGCs are deployed. ABGKCTL is taking up work for development of CPY behind berth no.11. There are 12 tractor trailors owned by the terminal and additional needs, if any, can be met by hiring. Local trade meets are organised by KPT, attended by ABGKCTL staff. Besides, ABGKCTL has organised such trade meets at various places in the hinterland. During last financial year trade meets were organised by ABGKCTL at Jaipur, Baroda and Ludhiana.	
(vi).	(a). Withdraw one berth and deliver for common use of the bulk/ cargo ships (so that the loss on the ABGKCTL is minimised, the revenue to the port increases and the national loss in other way is minimised). (b). There is a constant rise for the container traffic shipped from Gujarat, whereas ABGKCTL experience shows a downfall at Kandla, and we expect the rise is only achievable if the container tariff is discounted by 25% on the existing.	(a). No comments. (b). ABGKCTL submits that it is seeking the approval of TAMP to retain the existing tariff as any increase may lead to more diversion of traffic. The Company is incurring heavy financial losses and the return on capital employed is far below the prescribed bench mark of 16%. It is hoped that with increased marketing efforts, better draft, priority in pilotage and co-operation from KPT the terminal may be able to achieve the traffic as projected in the tariff proposals for 2011-2014.	(a). Not related to tariff fixation, no comments are warranted. (b). The same is prerogative of ABGKCTL being a commercial decision.

4. At the joint hearing, the users were allowed 7 days time to furnish its further comments on the proposal of ABGKCTL. Though the KPSAA has responded, its comments are similar to the submissions made by it earlier. The Shipping Corporation of India Limited (SCI) has also furnished its comments. The comments of SCI were forwarded to ABGKCTL and KPT for their remarks. The ABGKCTL vide its letter dated 22 June 2011 has furnished its reply on the

comments of SCI. The KPT has not responded to the comments of SCI. The comments received from SCI and reply furnished by ABGKCTL thereon are summarized and tabulated below:

Sl. No.	Comments of SCI	Reply received from ABGKCTL
(i).	While going through the proposal of KPT, it is felt that they are unable to perform in a profitable and efficient matter.	No comments.
(ii).	Leasing out berths to ABGKCTL, in a conventional manner, KPT was handling around 1,75,000 TEUs per year with consistent increase in volume every year which has led to a lot of traffic moving to the neighbouring port but that should not be attributed for the decreased volume had there been efforts to market the terminal.	Only due to the marketing efforts of ABGKCTL, there has been a slow but steady growth in traffic, despite the presence of three private terminals in the close vicinity and continued defaults on the part of the Licensor in fulfilling its obligations.
(iii).	Lower draft and draft restrictions at Kandla for not bringing main line vessels to Kandla is not correct in as much as the following ports are having lesser draft and are brining main lines vessels to their ports; a) Nhava Sheva = 11.50 mtrs b) Pipvav = 12.00 mtrs c) Jabel Ali = 11.00 mtrs d) Colombo = 11.00 mtrs e) Mundra = 13.00 mtrs (though there is no vessels calling with above 12 mtrs) Above being the position of draft in other ports, ABGKCTL can also bring main line vessels to Kandla with the available draft.	There is no denying the fact that KPT could not provide the committed draft of 12.5 mtr. (with tidal advantage) in the navigational channel/ alongside the berths. The problem was further accentuated by cancellation/ restrictions in night pilotage, inordinate and recurring delays in berthing and unberthing of vessels, shortage of pilots and tugs, etc. which has prompted many shipping lines to divert their services to nearby deep drafted ports which offer 24 hour pilotage, volume based discounts and lower vessel related charges. The SCI, observes that “ABGKCTL can also bring mainline vessels in Kandla with the available draft”. But they have declined to start services to Kandla on the ground that their vessels “which are of 29000 tns dwt will need to wait for tides to enter/ exit from the port, which will result in delays to the vessels, missing windows at other ports resulting in costs going up”.
(iv).	ABGKCTL states that they are giving a discount of 15% on composite revenue of ₹3115/- per TEU, whereas the trade is not aware to whom ABGKCTL are granting this discount.	As ABGKCTL already submitted to TAMP, it can offer only small discounts to certain shipping lines in an effort to retain their clientele. The revenue share payable to KPT is computed on the maximum of the tariff fixed by TAMP and ignore the rebates/ discounts extended by ABGKCTL.
(v).	ABGKCTL terminal projected a volume of 2,00,000 teus for the year 2013 which in our opinion is very low and underutilisation of two berths which should be put to use for the maximum benefit of Port, ABGKCTL and importantly the users. As the users will not mind for maintaining the same rates existing today but given the situation when the terminal is not offering any extra services, it has no reason for extending this benefit to them.	The future projections are made on a realistic basis after taking into account the supply and demand, the problems in draft and pilotage, the ability of the port to attract new shipping lines, etc.
(vi).	It is felt that ABGKCTL should surrender one berth to the Port so that the same be used for handling other clean cargo thereby increasing the revenue of the Port as well as it will act as a booster for the user who otherwise suffer very heavy financial losses due to huge payment of demurrage charges in foreign	No comments.

	exchange because of detention of vessels due to heavy congestion.	
(vii).	It should not be misconstrued that the above recommendation to withdraw one berth from ABGKCTL but to make it more productive and at any given time when they increase the volumes and achieve optimum utilisation, the one berth which is recommended to be taken from them can be given back to them so that all the concerned are benefited from this. Though we are aware that TAMP may not be able to effect this, however, can make a strong recommendation to the Ministry for considering our above please.	No comments.
(viii).	In view of above, it is submitted that there should not be any revision of scale of rate as proposed by ABG Kandla Container Terminal Ltd.	ABGKCTL has requested for continuation of the existing tariff, despite the fact the terminal would incur heavy losses.

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