Netherlands Competition Authority

No: 200083/72.BT37
Case: Tariffs and conditions Schiphol 2007 –application by KLM

INFORMAL TRANSLATION

DECISION

of the Board of the Netherlands Competition Authority in respect of the application, in terms of section 8.25f (1) of the Aviation Act [*Wet luchtvaart*], by **the public limited liability company, Koninklijke Luchtvaart Maatschappij N.V., established in Amstelveen** with the purpose of determining whether the terms and conditions for the activities of the airport operator, in terms of section 8.25d (1) of the Aviation Act, are contrary to the rules contained in or pursuant to the Aviation Act.

1. Introduction

1. On 27 June 2007, the Board of the Netherlands Competition Authority (hereinafter "the Board"), received an application in terms of section 8.25f (1) of the Aviation Act, raising objections to the adoption of the (new) tariffs and conditions for N.V. Luchthaven Schiphol (hereinafter "Schiphol") in respect of the activities, as referred to in section 8.25d(1) of the Aviation Act.

2. Parties

Applicant

2. The application was submitted by the public limited liability company, Koninklijke Luchtvaart Maatschappij N.V. (hereinafter "KLM"), established in Amstelveen.

Defendant

3. The operator of Schiphol Airport, as referred to in section 8.1 (g) of the Aviation Act, is N.V. Luchthaven Schiphol, a public limited liability company in accordance with the law of the Netherlands, with its registered office at Schiphol Airport, at Evert van de Beekstraat 202, 1118 CP Luchthaven Schiphol (hereinafter "the Airport" or "Schiphol" or "the operator").

Public version
The Dutch version is authentic.

3. Procedure

Consultation and determination of tariffs and conditions by Schiphol

4. In accordance with the provisions of section 8.25e (1) of the Aviation Act, Schiphol gave notice on 23 April 2007 of a proposal for the tariffs and conditions applicable to the activities, as referred to in section 8.25d (1) of the Aviation Act.

5. Following this notification, KLM submitted opinions, as referred to in section 8.25 (2) of the Aviation Act, on 23 April and 2 May 2007.

6. On 31 May 2007, Schiphol adopted the tariffs and conditions. These tariffs and conditions apply as of 1 November 2007. On 31 May 2007, Schiphol also gave notice of the tariffs and conditions, as prescribed in section 8.25d (1) of the Aviation Act.

Procedure in accordance with section 8.25f of the Aviation Act

7. On 28 June 2007, KLM submitted an application, as referred to in section 8.25f (1) of the Aviation Act, to the Board. The Board has ascertained that KLM is a user, in terms of section 8.25f (1) read in conjunction with section 8.1, preamble and (i), of the Aviation Act. In addition, the Board has ascertained that KLM submitted its application within the term stipulated in section 8.2 5(1) of the Aviation Act. KLM's application is therefore admissible.

8. KLM provided further substantiation of its application on 24 July 2007 by means of factual data and documents.

9. On 29 June 2007, the NMa notified Schiphol of the fact that KLM had submitted an application, as referred to in section 8.25f of the Aviation Act. In the period from July to October 2007, the NMa asked Schiphol questions on various occasions in relation to KLM's application.

10. On 10 July 2007, the NMa also put questions to KLM in a telephone conversation. On 13 July 2007, the NMa also put questions to KLM in writing, to which KLM replied in its letter of 27 July 2007.

11. On 30 July 2007, Schiphol and KLM were given the opportunity to respond to each other's initial responses. The responses to each other's documents which had been submitted reached the NMa on 10 August 2007 (KLM) and on 13 August 2007 (Schiphol).

12. Within the framework of this procedure, a hearing was also held on 31 July 2007 at the offices of the NMa. Representatives of KLM and Schiphol were present at the hearing and had the opportunity to explain their opinions verbally and to answer additional questions which the NMa had. Minutes of the hearing were drawn up and the parties were given the opportunity to respond to the minutes. Schiphol submitted its comments on the minutes of the hearing in its letter of 7 September 2007, which was received by the NMa on 11 September 2007.

4. Legal framework

13. In accordance with section 8.25d (1) of the Aviation Act, the airport operator must determine tariffs and conditions at least once a year for its activities in relation to the use of the airport by users.

14. These so-called 'aviation activities' are categorised and listed in section 2 of the Schiphol Airport Operation Decree [*Besluit exploitatie luchthaven Schiphol*][1] (hereinafter "the Decree"). The categories are:

1. the taking off and landing of aircraft;
2. the parking of aircraft;
3. the handling of aircraft passengers and their baggage in relation to the taking off and landing of aircraft;
4. ensuring the security of passengers and their baggage, including facilities for border controls (hereinafter "security activities" or "security").

15. In determining the tariffs for the above-mentioned activities, Schiphol is required to take into account the allocated revenues from its other activities, which are directly related to the above-mentioned aviation activities.[3] These so-called 'aviation-related activities' are listed in the Decree.[2]

16. The tariffs for aviation activities must be cost-oriented.[3] The tariffs and conditions for aviation activities must also be fair and non-discriminatory.[4] In so far as these are relevant to this decision, these legal requirements will be discussed in more detail below. In addition, the

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[1] Decision of 7 July 2006, providing rules in relation to the operation of Schiphol Airport (Schiphol Airport Operation Decree), *Netherlands Bulletin of Acts and Decrees*, 2006, 333.

[2] See *Netherlands Bulletin of Acts and Decrees*, 2006, 333, section 2(2). The aviation-related activities relate to a) the granting of a concession for the supply of aviation fuel, b) the granting of a concession for catering for aircraft, c) utility services and d) activities by or on account of the Airport operator which are charged to aviation activities and which are made payable to third parties.

[3] See the Aviation Act, section 8.25d(3).

[4] See the Aviation Act, section 8.25d(2).

consultation procedure, set out in section 8.25e of the Aviation Act, which precedes the adoption of the tariffs and conditions, will be discussed. Finally, attention will be paid briefly to the present procedure, pursuant to section 8.25f of the Aviation Act, in accordance with which users of the airport may apply to the Board for its opinion with regard to whether the tariffs and conditions are contrary to rules provided in or pursuant to the Aviation Act. The overview of the legislation and regulations provided below is an overview of the main principles and only relates to the elements referred to in the application. Any further characteristics of the legislation and regulations will be discussed at other points in this decision, in so far as they are relevant to this decision.

Cost orientation

17. The criterion of cost orientation means that the product of the proposed tariffs and the (volume of) the projected aircraft activities, netted with any permissible settlements and in the light of the projected revenues from so-called aviation-related activities[5] and a possible voluntary contribution from the revenues of non-aviation activities, must at most be equal to the cost estimate (including the cost of capital). The Act has been designed in such a way that this criterion applies to the following categories of aviation activities: 1) the security activities (see paragraph 14, under point 4) and 2) the "other aviation activities" (see paragraph 14, under points 1 up to and including 3).

18. The criterion of cost-orientation only applies at the level of aggregation of the aforementioned two categories of services. This means that cross subsidisation is allowed within these categories.[6] However, the tariffs may not be applied in a discriminatory manner. In addition, the individual tariffs must be fair.[7]

19. With regard to compliance with the criterion of cost orientation, the Aviation Act stipulates, for instance, that Schiphol must apply a system for allocating the costs and revenues of its aviation activities. In brief, the allocation system consists of the methods of calculation,[8] in accordance with which it is determined which part of the total costs and revenues of the airport are attributed to the above-mentioned aviation activities. The allocation system is therefore an important basis for the periodic setting of tariffs for aviation activities. The allocation system must be approved by the Board.[9] The allocation system, on which the tariffs

[5] The last category mentioned in Schiphol's specification also includes the activities which relate directly to aviation activities. In accordance with section 8.25d(5),these to start taking into account when determining the tariffs for aviation activities.

[6] *Netherlands Bulletin of Acts and Decrees*, 2006, 333, p. 17.

[7] In this regard, see, for instance, *Netherlands Bulletin of Acts and Decrees*, 2006, 333, p. 18.

[8] The Act and the Decree contained a number of conditions and criteria with which this method of calculation must comply.

[9] Section 8.25g(1) of the Aviation Act.

in question are based, was approved by de Board in its decision of 25 April 2007 (hereinafter "the allocation system").

20. The Aviation Act also includes a provision in relation to the maximum tariff level[10] whereby the operator is obliged to settle certain variances between revenues and costs retrospectively when determining the tariffs for aviation activities. This legal provision is set out in section 8.25d(9) of the Aviation Act and reads as follows. *"When setting the tariffs, after these have been determined subject to subsections (1) up to and including (8), the airport operator shall settle the difference between the estimated and the actual revenues and costs, in relation to the projected and realised volume of aviation traffic, the transport of passengers and freight, and the implementation of investments, as reflected in the financial report for the financial year preceding the moment at which the tariffs are set."*

21. The Explanatory Memorandum to the Decree[11] contains further rules in relation to the above-mentioned settlement in accordance with section 8.25d (9) of the Aviation Act. These rules may be summarised briefly as follows. The settlement of revenues is limited to the settlement of revenues from the tariffs for aviation activities, as referred to in section 2 of the Decree. The settlement of revenues occurs in relation to variances between *ex ante* estimates and *ex post* realisation, ascertained retrospectively as a result of 1) traffic (number of aircraft movements, average maximum take-off weight) and 2) transport (number of passengers commencing travel or in transit and tons of freight).

22. With regard to the settlement of costs, the following, in particular, is stipulated in the Explanatory Memorandum to the Decree. The criterion of cost orientation applies at the moment that the tariffs are determined (*ex ante*) for aviation activities (excluding security) or, alternatively, for security activities and not in relation to their realisation (*ex post*). This implies that a comprehensive settlement of cost variances does not occur at the end of a financial year, but only a settlement of cost variances which occurred during the year as a result of 1) additional/lower investment, including investment (with an effect on depreciation and cost of capital in respect of the Regulatory Asset Base); 2) additional/lower costs in relation to investment and 3) traffic and transport (in so far as this relates to direct variable costs); 4) insurance premiums to cover damage resulting from acts of terrorism; 5) a statement of the implementation of activities relative to the projections; 6) activities imposed by the government or, alternatively, at the request of users.

23. The Explanatory Memorandum also states that the above implies that the airport operator may not settle financial setbacks and inefficiencies. On the other hand, a higher efficiency gain (relative to the estimates) and any financial setbacks (in so far as these are not the result of

[10] See in this regard the proceedings of the Upper House of the Dutch Parliament, session year 2004-2005, 28074, No. 9. p. 12.

[11] See *Netherlands Bulletin of Acts and Decrees*, 2006, 333, p. 19-20.

postponement, occur at the request of users or are imposed by the government) may be retained by the airport operator.

Fairness

24. As was stated, each individual tariff for aviation activities must be fair. The criterion of fairness means, for instance, that no disproportionate relationships may exist between the tariffs and and which is provided in exchange for these.[12] By applying the criterion of fairness separately to each of the tariffs and the conditions, it is possible to prevent so-called 'goldplating'. As a result, it is possible to ensure that facilities are not created which users do not require, but which do impact on the tariffs.[13]

25. Whether the tariff for each separate aviation activity is fair can be assessed in various ways, according to the Explanatory Memorandum to the Aviation Act and the Decree. The fairness of the tariff can be assessed, for instance, on the basis of a comparison of the service provided and the price paid for this, and by comparing the tariffs and conditions for such activities at other airports in comparable market conditions[14] or, alternatively, in the light of usual practice at leading international airports[15] ("benchmarking"). In addition, the quality of service provision may be important in assessing whether the tariffs and conditions set by the airport operator are fair in relation to the service provided.[16] In assessing the quality of these services provided, the quality indicators contained in section 7 of the Schiphol Airport Operation Decree [*Besluit exploitatie luchthaven Schiphol*] may serve as a guide.[17]

Consultation

26. The airport operator must give notice of a proposal for tariffs and conditions and following this must consult users about this proposal. The users must be given insight into the economic substantiation of the proposal and into the conditions, including the quality of the services provided.[18] After conclusion of the consultation procedure, the operator must adopt the tariffs and conditions, taking into account the users' opinions.

27. This so-called consultation procedure is regulated further by section 8.25e of the Aviation Act and section 4 of the Decree. In determining the tariffs and conditions, the operator must also

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[12] See *Netherlands Bulletin of Acts and Decrees*, 2006, 333, p. 18.

[13] *Netherlands Bulletin of Acts and Decrees*, 2006, 333, p.18.

[14] *Netherlands Bulletin of Acts and Decrees*, 2006, 333, p. 18.

[15] Proceedings of the Lower House of the Dutch Parliament, 2001-2002, 28074, No. 3, p. 6.

[16] Proceedings of the Lower House of the Dutch Parliament, 2001-2002, 28074, No. 3, p. 4 and *Netherlands Bulletin of Acts and Decrees* 2006, 333, p. 18.

[17] See *Netherlands Bulletin of Acts and Decrees*, 2006, 333, p. 18.

[18] *Netherlands Bulletin of Acts and Decrees*, 2006, 333, p. 28.

take into account the opinions of the users. Following the consultation, the operator must provide reasons for its deliberations in relation to the opinions presented (section 8.25e (3) of the Aviation Act). In other words, on each occasion the operator will have to explain why it has not taken into account the matters raised by users in relation to the adoption of the tariffs and conditions.[19]

Procedure in accordance with section 8.25f of the Aviation Act

28. After the conclusion of the consultation, once the operator has adopted the tariffs and conditions it is possible for the users of the airport to request the Board to assess whether the tariffs and conditions are in conflict with rules provided in or pursuant to the Aviation Act.[20] The grounds on which the user bases its application may relate, for instance, to the level of the tariffs, the conditions stipulated, the procedure followed in determining the tariffs and the presentation of documents by the operator.[21] The assessment is based on the legal criteria of non-discrimination, cost orientation and fairness.

5. Description of the application

29. KLM presents four grounds on which it bases its argument that the tariffs and conditions adopted by a Schiphol are contrary to legislation and regulations pursuant to the Aviation Act. These grounds are set out briefly below. Any additional arguments raised by KLM will be discussed in the assessment of this decision, in so far as these are relevant.

I Unreasonably high tariffs for passengers in transit

30. Schiphol has amended the tariff structure for passenger-related tariffs. This, according to KLM, has resulted in an unreasonable increase in the tariff for passengers in transit by 20% (Passenger Service Charge, hereinafter "PSC") in favour of the tariff for Origin/Destination passengers (hereinafter the "O/D tariff"). The Security Service Charge (hereinafter "SSC"), according to KLM, has been increased disproportionately by 48%. According to KLM, these increases do not satisfy the criterion of fairness, which each tariff is required to meet separately.

31. KLM stated that (according to Schiphol) this increase is necessitated by the decision to reduce the difference between transit tariffs and O/D tariffs and to bring these into line with other airports in the EU. in addition, Schiphol supposedly claims that it and KLM incur a certain risk that a competition authority could reach the conclusion that competition rules have been breached.

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[19] Proceedings of the Lower House of the Dutch Parliament, 2001-2002, 28074, No. 3, p. 5.

[20] See the Aviation Act, section 8.25f(1).

[21] *Netherlands Bulletin of Acts and Decrees*, 2006, 333, p. 31.

32. Within the framework of the consultation, KLM has drawn Schiphol's attention to the negative impact of the proposed tariff increase on the competitive position of KLM (an increase in KLM's costs by approximately EUR [*confidential business information*] million), and on the competitive position of Schiphol as a mainport. In this regard, KLM refers to the Cabinet's standpoint of April 2006. According to KLM, the tariff applicable at present would be an indication of a fair tariff.

33. KLM also discusses the way in which the above-mentioned tariffs are determined. According to KLM, Schiphol has provided insufficient justification for the change in tariffs. KLM is of the opinion that Schiphol has not demonstrated that harmonisation, such as Schiphol proposes, should result in the aforementioned tariff increases. According to KLM, Schiphol should have stated this explicitly in the light of the legislation. KLM states that it suggested alternatives to Schiphol, which Schiphol pushed aside without giving any reasons for this.

34. KLM is of the opinion that in assessing the above-mentioned principles in accordance with the principles contained in the Aviation Act, the Board must take into account all circumstances, such as the importance of the mainport, and the impact on users of such an increase and the speed with which the increase is implemented. In this part of its application, KLM also requests the Board to assess whether the tariffs and conditions set by Schiphol comply with the principles of competition law.

II The allocation system has been applied incorrectly

35. According to KLM, Schiphol has not applied the Allocation System approved by the Board, in accordance with section 8.25g (1) and (8) of the Aviation Act correctly. As a result, Schiphol's tariffs and conditions are contrary to material standards contained in the Aviation Act and the Decree, according to KLM. KLM also argues that it is not clear to what extent the Allocation System has been applied incorrectly. As a result, it is supposedly not possible for KLM to assess the level of the tariffs properly.

36. According to KLM, there are three irregularities.

a. Allocation of square metres in the terminal complex

37. According to KLM, Schiphol has not substantiated the allocation of square metres in the terminal complex on the basis of drawings, as Schiphol is unable to produce drawings reflecting the square metres used as at 1 January 2007. KLM has received a pro forma calculation of the square metres used. However, according to KLM, this provides insufficient insight.

38. Schiphol states that it will settle the difference between actual use as at 1 January 2007 and the pro forma calculation. Such a settlement, according to KLM, is contrary to the Decree because Schiphol may not settle financial setbacks and inefficiencies.

39. Schiphol incorrectly applies the S-NEN standard, while the Board, according to KLM, has decided that the NEN 2580 standard should be applied.

b. Specification of the Regulatory Asset Base (RAB) and the allocation of assets

40. KLM lacks a sound, specified overview of the assets which comprise the RAB, and a full specification of the share of these allocated to aviation and security respectively.

41. KLM has identified errors in the RAB and the designation of the assets. Following the comments made by KLM, Schiphol has made corrections in 10 respects. According to KLM, this does not increase confidence in the application of the Allocation System.

42. The specification of the RAB is not clear. With regard to existing assets, this only states the share allocated to Aviation and Security respectively. However, the value of the assets is missing. Insight into the value of the assets is of considerable importance to KLM.

c. Cost details

43. KLM draws attention to a high degree of inaccuracy in the specification of cost details and a lack of clarity with regard to the naming of cost items; in this regard KLM refers to a number of specific information items which play a role in the calculation of the allocation keys and which, according to KLM, are incorrect. KLM has also stated that the designation of cost items is unclear, in its view.

44. Schiphol's response to KLM's contribution is that it is factually incorrect in certain respects and/or incomplete. This applies in any event to the following matters. (1) The drawings of 1 January 2007 presented by Schiphol were rejected by KLM. (2) Schiphol argues that no areas of Schiphol are reserved for commercial use. In the light of Schiphol's plans, this does not seem correct to KLM. The information provided by Schiphol in this respect is supposedly also contradictory. (3) The correction in the allocation of reserved areas to non-aviation activities is not clear to KLM (What does this include? How was this determined? What is the amount of the correction?). (4) Finally, KLM states that the number of square metres occupied by free-standing objects should be measured at a height of 1.5 m above the floor, but this was still measured at floor level in the drawings of 1 January 2007 which were used.

III Settlement in conflict with the law

45. In determining the tariffs, which take effect on 1 November 2007, Schiphol settles the difference between the estimated and the actual revenues of the previous financial years, 2005 and 2006. The objections to this raised by KLM are set out briefly below. Any additional arguments on the part of KLM, in so far as these are relevant, will be discussed in the assessment of this decision. The latter also applies to the further description of the items.

46. KLM's general standpoint with regard to the settlements is not altogether clear. In its application of 27 June 2007, KLM states that section 8.25d of the Decree (the Board assumes that KLM refers here to the Act) is the basis for settlements in relation to 2005 and 2006. In KLM's opinion, this does not detract from the fact that the calculations must be based on the tariffs approved in accordance with section 36 of the Aviation Act. In its letter of 10 August 2007, KLM appears to argue, although in relation to an individual item, that section 8.25d (9) of the Aviation Act cannot be applied at all. On the other hand, however, in its correspondence with the Board on this matter KLM discusses the individual settlement items extensively. Whatever these may be, partly in the light of the practical consequences of this assertion—assuming that it were correct—the Board deems the latter (the settlement of items) is KLM's most far-reaching claim.

47. According to KLM, an incorrect settlement is made in relation to the following items. KLM is of the opinion that the discount received by Schiphol in accordance with the Valuation of Immovable Property Act [*Wet waardering onroerende zaken (WOZ)*] is not an efficiency advantage. The effects of the change in the fiscal regime in relation to "job-related early retirement of Fire Department personnel", according to KLM, is a financial setback (which cannot be settled), as formulated in the Decree. According to KLM, the expenditure for "distress cases" (a gift to the environment) and "Mainport & Environment" also do not qualify for settlement. According to KLM, these items were not budgeted in advance and are not permitted, in accordance with the principles of the Allocation System approved by the NMa. According to KLM, the cost item "Corporate cost privatisation" cannot be interpreted as an activity imposed by the government or, alternatively, requested by users and these costs are therefore a financial setback which cannot be settled, as defined in the Decree. The settlement of the cost item "Oxygen injection in water" is also deemed by KLM to be incorrect, because Schiphol could foreseeably have avoided having to take these measures by taking preventative measures (whereby the costs of the preventative measures would have been considerably lower than the corrective measures taken). With regard to the foreseeability of the measures, KLM allegedly urged Schiphol to take further measures on numerous occasions. Finally, KLM is of the opinion that the amount budgeted for "decentral security" was too low and therefore cannot be settled, in the light of the Decree.

IV The tariff proposal was drawn up in a manner which lacked transparency and was inadequately substantiated

48. It can be concluded from the above, according to KLM, that Schiphol did not comply with the criteria of transparency and consultation. Partly on the grounds of this, KLM is of the opinion that "*the NMa cannot, within reason, conclude that the tariffs satisfy the criterion of fairness, in terms of section 8.25d (2) of the Aviation Act*". In its application of 24 July 2007, KLM once again explained this point with a general reference to correspondence with and information obtained from Schiphol and with reference to a concrete example relating to the allocation of the costs of certain lifts in the terminal complex.

6. Schiphol's response

49. On 18 July 2007, Schiphol submitted a response to KLM's application to the Board. The response first describes the framework within which the approval of the tariffs and conditions occurs and then discusses the separate parts of the application. A summary of the response to the separate parts is provided below.

I Tariffs for passengers in transit

50. Schiphol argues that it adhered to the statutory requirements in the consultation. It did so by taking into account the users' comments adequately in the final decision.

51. With regard to fairness, Schiphol argues that what is at issue is not the increase but the fairness of the tariffs. According to Schiphol, the criteria it applied in assessing the fairness of the tariffs were, on the one hand, the relative volumes of the services provided and, on the other hand, the ratio of the O/D tariff to the tariff for transit passengers compared to that of other airports in the EC. The present ratio (Schiphol means the ratio prior to 1 November 2007) between the O/D tariff and the tariff for transit passengers of 3:1 is no longer fair, according to Schiphol, on the basis of the above-mentioned criteria. Schiphol argues that it took sufficient care in relation to the increase in the tariff for transferred passengers (namely timely and very extensive communication about the proposals and a reduction in an amendment proposed earlier in line with KLM's wishes). With regard to the Security Service Charge (SSC), Schiphol is of the opinion that it notified KLM that the services for O/D and transit passengers were very similar. With regard to the Passenger Service Charge (PSC), a comparison is more difficult, but the fact that a considerable part of these services focuses on the transit product, such as requirements with regard to peak capacity and specific transit facilities, is indicative of this.

II Application of the Allocation System

52. With regard to the argument that Schiphol has not provided drawings which reflect the actual use of square metres of the Terminal Complex as at 1 January 2007, Schiphol makes the following comment. Schiphol states that the drawings as at 1 January 2007 were based on the allocation rules contained in the Draft Decision of the Board in relation to the approval of the Allocation System on 4 January 2007. According to Schiphol, an additional 'pro forma' off-balance calculation of the percentage allocations was made applying the principles contained in the definitive decision[22] By the Board of 25 April 2007 in relation to the approval of the Allocation System and this was used for the cost allocation on which the tariffs of 1 November 2007 were based. Schiphol states that it is not possible to provide amended drawings as of 1 January 2007 because these drawings are a snapshot and cannot be amended retrospectively.

53. With regard to the argument raised by KLM that the 'pro forma' calculation provided too little insight, Schiphol states that it has discussed the amendments relative to the reference date with KLM. According to Schiphol, KLM allegedly did not state that this information provided insufficient insight. With regard to the settlement of variances which emerged retrospectively, Schiphol appeals to the principle of fairness. According to Schiphol, in its definitive decision (in respect of Schiphol's Allocation System), the Board explicitly stated why Schiphol is not required to apply the normal NEN standard.

54. With regard to the RAB, Schiphol stated that it had made an effort to process all the financial data and allocations in a timely manner. Schiphol is of the opinion that it has provided sufficient information about the RAB. KLM raised a number of questions with regard to the naming of items. According to Schiphol, it has answered these questions.

55. With regard to the details of cost items, Schiphol stated that it has made an effort to process all the financial data and allocations in a timely manner. Schiphol is of the opinion that it provided sufficient details in relation to the cost items. In so far as these were not clear to KLM, they were explained to KLM. One cost centre number had been given an incorrect name. This has been amended. With regard to Schiphol's argument that it has rejected the drawings of 1 January, Schiphol states that it discussed the drawings with KLM. With regard to the areas reserved for the development of real estate at Schiphol Centrum, Schiphol states that the cost of these has not been allocated to aviation activities. The correction with regard to the reserved areas was explained to KLM earlier. The measurement of free-standing objects, according to Schiphol, was carried out in accordance with the Allocation System.

[22] The allocation system was finally approved after a consultation of the users by the Board, which was held in the period from January to February 2007.

III Settlements

56. Once again, summarised briefly, the following is Schiphol's response to KLM's application in relation to the settlements. 1) "Discount in accordance with the Valuation of Immovable Property Act": if this item is not regarded as an efficiency gain, this is a windfall which cannot be settled. 2) "Job-related early retirement of Fire Department personnel", "Corporate Cost of privatisation" and "Oxygen injection into water": the settlements are the result of activities imposed by the government, according to Schiphol. 3) "Distress Cases" and " Mainport & Environment": Schiphol refers here to a political discussion in relation to the possible growth of Schiphol which at a certain moment also focused on compensatory measures which Schiphol ought to take. At the moment at which budgets were drawn up, Schiphol was not aware of compensatory measures which had to be taken. Schiphol argues that these costs were incurred to facilitate the growth in aviation activities. 4) "Security costs which were estimated too low": according to Schiphol, the respective costs were estimated as realistically as possible in advance. The costs which may be settled result from the implementation of new regulations which could not be foreseen during the consultation.

IV Transparency and motivation of the tariff proposal

57. Schiphol is of the opinion that it has met the requirements of transparency and the requirement to consult users as well as is reasonably possible; in its view, it also provided sufficient justification for the level of the tariffs and the amendments to the tariff structure during the consultation period.

7. Assessment by the Board

58. In the discussion below, the points raised by KLM in its application will be dealt with. KLM also raised arguments in its application which related to consultation and transparency. In addition to the specific arguments, KLM states that, in its opinion, it is apparent from points I up to and including III of its application that there was generally insufficient transparency and substantiation. For this reason, the Board will include the arguments raised by KLM with regard to transparency and consultation in this discussion and will give consideration to these in its separate assessment of points I up to and including III of KLM's application in respect to 1) the tariffs for passengers in transit, 2) the application of the allocation system and 3) the settlements.[23]

[23] It should be noted that the provisions of the legislation and regulations with regard to Schiphol's obligation to provide transparency are set out in section 8.25e of the Aviation Act and section 4 of the Decree.