

Netherlands Competition Authority

No: 200084/30.BT37

Case: BARIN/SAOC

INFORMAL TRANSLATION

DECISION

of the Board of Directors of the Netherlands Competition Authority in respect of the application, in terms of section 8.25f (1) of the Aviation Act [*Wet luchtvaart*], by **(1) the Association Board of Airline Representatives in The Netherlands, and (2) the Association Schiphol Airline Operators Committee, established in Haarlemmermeer** 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 28 June 2007, the Board of Directors 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.¹

2. Parties

Applicant

2. The application was submitted by **(1) the Association Board of Airline Representatives in The Netherlands (hereinafter "BARIN")**, established in Haarlemmermeer, and **(2) the Association Schiphol Airline Operators Committee (hereinafter "SAOC")**, established in Haarlemmermeer, referred to jointly hereinafter as **"BARIN/SAOC"**.

Defendant

¹ See section 8.25d of the Aviation Act, as amended by the Aviation (Amendment) Act of 29 June 2006 in relation to the operation of Schiphol Airport, *Netherlands Bulletin of Acts and Decrees*, 2006, 331, pursuant to the Decree of 7 July 2006 determining the moment at which the Act of 29 June 2006 came into force, *Netherlands Bulletin of Acts and Decrees*, 2006, 332, which came into force on 19 July 2006.

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").

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, BARIN/ SAOC submitted opinions, as referred to in section 8.25e(2) of the Aviation Act, on 21 May 2007. Schiphol responded to these in a letter of 31 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 8.25e (1) of the Aviation Act.

Procedure in accordance with section 8.25f of the Aviation Act

7. On 28 June 2007, BARIN/ SAOC submitted an application, as referred to in section 8.25f (1) of the Aviation Act, to the Board. The Board has ascertained that BARIN/ SAOC are users, 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 BARIN/ SAOC submitted their application within the term stipulated in section 8.25f (1) of the Aviation Act. BARIN/ SAOC's application is therefore admissible. On 29 June 2007, NMa notified Schiphol of the fact that an application, as referred to in section 8.25f of the Aviation Act had been submitted by BARIN/ SAOC.
8. Within the framework of this application, the following documents are specifically relevant:
 - a. the application by BARIN/ SOAC of 28 June 2007 (no reference, file number 200084/ 1);
 - b. the confirmation of receipt by NMa of 29 June 2007 (reference 200084/ 3.B947);
 - c. the factual evidence and documents submitted by BARIN/ SOAC on 13 July 2007 (no reference, file number 200084/ 4);
 - d. the initial response of 18 July 2007 by Schiphol to the application (reference 2007016, file number 200084/ 6);
 - e. the further questions posed by NMa of 20 July 2007 (reference 200084/ 11.B947);

- f. the answers by BARIN/ SOAC to questions posed, of 27 July 2007 (no reference, file number 200084/ 12);
 - g. Schiphol's response to the documents received from BARIN/ SOAC, of 10 August 2007 (reference 200-7020, file number 200084/ 17);
 - h. the response by BARIN/ SOAC to Schiphol's letter (reference 200016) of 10 August 2007 (no reference, file number 200084/ 15);
 - i. the minutes of the hearing held on 31 July 2007, of 28 August 2007 (reference 200084/ 18.B1003);
 - j. the e-mail from BARIN/ SOAC with a further explanation of communication with Schiphol (reference 200084/ 20).
9. On 31 July 2007, a hearing was held at which BARIN/ SOAC and Schiphol presented their opinions in relation to the application submitted by BARIN/ SOAC.

4. Legal framework

10. 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.
11. These so-called 'aviation activities' are categorised and listed in section 2 of the Schiphol Airport Operation Decree [*Besluit exploitatie luchthaven Schiphol*]² (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").
12. 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.³

² 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.

³ See *Netherlands Bulletin of Acts and Decrees*, 2006, No. 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 carried out by or on behalf of the airport operator which are accounted for as aviation activities and charged to third parties.

13. The tariffs for aviation activities must be cost-oriented.⁴ The tariffs and conditions for aviation activities must also be fair and non-discriminatory.⁵ In so far as these are relevant to this decision, these legal requirements will be discussed in more detail below. In addition, the 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 applies only to the elements referred to in this 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

14. 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 activities⁶ 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). This 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 11, under point 4) and 2) the "other aviation activities" (see paragraph 11, under points 1 up to and including 3).
15. 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.⁷ However, the tariffs may not be applied in a discriminatory manner. In addition, the individual tariffs must be fair.⁸
16. With regard to compliance with the criterion of cost orientation, the Aviation Act stipulates, for instance, that Schiphol must apply an Allocation System for allocating the costs and revenues of its aviation activities. In brief, the Allocation System consists of the methods of

⁴ See the Aviation Act, section 8.25d(3).

⁵ See the Aviation Act, section 8.25d(2).

⁶ 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), the tariffs in relation to these activities have to be taken into account when determining the tariffs for aviation activities.

⁷ Explanatory Memorandum to the Decree, *Netherlands Bulletin of Acts and Decrees*, 2006, 333, p. 17.

⁸ In this regard, see, for instance, the Explanatory Memorandum to the Decree, *Netherlands Bulletin of Acts and Decrees*, 2006, 333, p. 18.

calculation,⁹ 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.¹⁰ The Allocation System, on which the tariffs in question are based, was approved by the Board in its decision of 25 April 2007.

Consultation

17. 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.¹¹ After conclusion of the consultation procedure, the operator must adopt the tariffs and conditions, taking into account the users' opinions.
18. 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 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.¹²

Procedure in accordance with section 8.25f of the Aviation Act

19. 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 the rules provided in or pursuant to the Aviation Act.¹³ 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.¹⁴ The assessment is based on the legal criteria of non-discrimination, cost orientation and fairness.

5. Description of the application

⁹ The Act and the Decree described a number of criteria which these calculation methods must meet.

¹⁰ Section 8.25g(1) of the Aviation Act.

¹¹ Explanatory Memorandum to the Decree, *Netherlands Bulletin of Acts and Decrees*, 2006, 333, p. 28.

¹² Proceedings of the Lower House of the Dutch Parliament, 2001-2002, 28074, No. 3, p. 5.

¹³ See the Aviation Act, section 8.25f(1).

¹⁴ Explanatory Memorandum to the Decree, *Netherlands Bulletin of Acts and Decrees*, 2006, 333, p. 31.

20. In general, BARIN/ SAOC have two objections to the tariffs and conditions which Schiphol adopted on 31 May 2007. On the basis of these, BARIN/ SAOC are (apparently) of the opinion that the tariffs and conditions do not meet the criteria set out in the Aviation Act. The two objections are:
- a. BARIN/ SAOC are of the opinion that the provision of information by Schiphol in the so-called 'consultation phase', as referred to in section 8.25e of the Aviation Act, was deficient. In addition to the application submitted during the hearing, BARIN/ SAOC requested the Board during the hearing to make an *ex officio* assessment of section 8.25e of the Aviation Act;
 - b. BARIN/ SAOC also object to the way in which Schiphol implemented the so-called 'allocation system', as referred to in section 8.25g of the Aviation Act.

a. Provision of information during the consultation phase

21. BARIN/ SAOC are of the opinion that a proper consultation with users, as referred to in section 8.25e of the Aviation Act, was not held by Schiphol and that Schiphol therefore acted in conflict with its legal obligations. To substantiate this claim, the following arguments were presented.
- a. Schiphol incorrectly did not issue drawings from which the actual use of square metres in the terminal complex as at 1 January 2007 was apparent.
 - b. With regard to the specification of the Regulatory Asset Base (RAB), the allocation of assets and the cost details, which Schiphol issued to the airline companies, BARIN/ SAOC conclude (1) that these documents contain many inaccuracies, (2) that incorrect or unclear naming is used and (3) that they are incomplete. In the letter of 27 July 2007 from BARIN/ SAOC to NMa, it is also argued that a statement of the level of the asset values was absent. According to BARIN/ SAOC, only a statement of the percentage of the asset values allocated to aviation activities was issued by Schiphol.
22. In the letters of 13 July 2007 (substantiation of the application) and 27 July 2007 (answers by BARIN/ SAOC to questions posed by NMa) from BARIN/ SAOC to NMa, a concrete statement of its application is given in relation to the above-mentioned points. BARIN/ SAOC give the following examples in the respective letters.
- a. The source and the method of determining the risk-free rate are still unclear; Schiphol refers to external market information but, according to BARIN/ SAOC, it is still unclear which information this is.
 - b. In a letter to BARIN/ SAOC within the framework of Schiphol's consultation, Schiphol gives the impression that there was agreement between KLM and Schiphol with regard to the drawings which described the situation as at 1 January 2007 while, according to BARIN/ SAOC, there is no agreement between KLM and Schiphol.
 - c. There are inaccuracies in the data provided by Schiphol, such as in relation to construction interest for construction work during the construction period.

- d. Corrections made to the allocation system (communicated to BARIN/ SAOC by Schiphol in its letter of 17 April 2007) have not been incorporated in a manner which is visible to BARIN/ SAOC.
 - e. According to BARIN/ SAOC, no answer or an answer which avoids the question was received from Schiphol in relation to the following questions: (1) the request for detailed information in relation to vertical transportation as an explanation for the increase in the share of aviation activities in the costs of the Terminal complex and (2) three matters¹⁵ relating to the allocation of road infrastructure on the basis of traffic figures.
23. In their letter of 27 July 2007 in answer to questions posed by NMa, BARIN/ SAOC also state that Schiphol cancelled an important meeting prior to the consultation period (page 2, point f, of the respective letter). BARIN/ SAOC considered this meeting to be of considerable importance in the light of the assessment of the proposal for tariffs and conditions which was to follow. BARIN/ SAOC consider the meeting to be an unconditional part of the formal consultation process.

b. Application of the Allocation System

24. BARIN/ SAOC are of the opinion that Schiphol has not applied the Allocation System correctly. They give the following arguments for this.¹⁶
1. According to Schiphol's statement, the use of square metres in the Terminal complex by aviation has increased from 57.2% (1 July 2005) to 60.7% (1 January 2007), an increase of 3.5 percentage points. On 14 May 2007, Schiphol stated in an explanation that the largest proportion of the increase (namely 2.7 percentage points) was largely the result of an amendment to the basis on which the square metres were allocated, which related to vertical transportation. Since the basis for the allocation of vertical transportation was no different on 1 January 2005 than it was on 1 January 2007, according to BARIN/ SAOC, they are of the opinion that it is not probable that the increase in the share of the use was caused by this. In the letter from BARIN/ SAOC to NMa of 10 August 2007, it was also stated that the shift of 2.7 percentage points would amount to a shift of 15,000 square metres (from non-aviation to aviation), which BARIN/ SAOC does not deem plausible.
 2. BARIN/ SAOC are of the opinion that the share of the costs of road infrastructure allocated to aviation is too high. To illustrate this, they argue that all vehicle movements which relate to the stocking of shops in Schiphol Plaza, lounges and the like are allocated

¹⁵ 1) the question as to how the stocking of shops in Schiphol Plaza is taken into account in the calculation of the cost allocation of road infrastructure; (2) the question as to how government services are included in the traffic figures; (3) the question as to how traffic to and from the parking garage P24 is taken into account in the figures.

¹⁶ BARIN/ SAOC repeated the arguments referred to in points 1 and 3 of this paragraph in their letter of 10 August 2007 in response to the documents provided by Schiphol in relation to the processing of BARIN/ SAOC's application.

to aviation, while all vehicle movements by government services in office buildings which are rented from Schiphol are not included in the figures.

3. BARIN/ SAOC are of the opinion that Schiphol's estimate of the concession revenues is too low on a structural basis because Schiphol extrapolates annual figures from the first four months of the year, which are the months with the lowest transport volumes. As a result, the estimates of these revenues are too low and this results in airport fees which are too high..

6. Schiphol's response

Letter of 18 July 2007

25. Summarised briefly, in its response Schiphol discusses the legal framework within which its terms and conditions must be determined in general terms. In doing so, Schiphol states that, as a company, it has the scope to carry out independent business activities in a responsible manner. It emphasises the condition that the determination of tariffs and conditions must comply with the standards of non-discrimination, transparency and cost orientation.
26. Schiphol then discusses BARIN/ SAOC's application more specifically and is of the opinion that it has complied with the obligation to provide users with information adequately in respect of all the points referred to in the application and that the Allocation System was applied correctly. In this regard, Schiphol states the following.

Item a. Provision of information during the consultation phase

27. With regard to the argument that Schiphol did not provide drawings which reflected the actual use of square metres in the Terminal complex on 1 January 2007, Schiphol notes the following. 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 of 4 January 2007. According to Schiphol, it made a calculation of the percentage allocations applying the principles contained in the final decision¹⁷ by the Board of 25 April 2007 with regard to the approval of the Allocation System and used these as the basis for allocating costs for the purpose of setting tariffs applicable as of 1 November 2007. Schiphol states that it had insufficient time also to make amendments to the drawings in line with the amendments to the allocation principles contained in the final decision.
28. With regard to the argument raised by BARIN/ SAOC in connection with the detailed provision of information in respect of vertical transportation, Schiphol emphasises that it provided

¹⁷ The allocation system was finally approved after a consultation with users held by the Board in the period from January to February 2007.

BARIN/ SAOC with a written explanation of the causes of the increase in the percentage allocated to aviation activities.

29. With regard to the argument that the specifications (RAB, cost details) contain inaccuracies and incorrect or, alternatively, unclear naming, and are substantively incomplete, Schiphol notes the following. Schiphol states that it endeavoured to process all the financial data and allocations in a timely manner. Due to the necessity to complete numerous processes simultaneously, some results were not perfect and several corrections had to be made. In addition, Schiphol stated that it is possible that the naming may be less transparent in a few instances because the information originates directly from its internal systems. According to Schiphol, BARIN/ SAOC did not raise any questions in the consultation period with regard to the meaning of any naming of tangible fixed assets.

Item b. Application of the Allocation System

30. The increase in the use of square metres by aviation in the Terminal complex, according to Schiphol, can be attributed largely to a change in the method of allocating square metres to aviation activities. In contrast to the claims made by BARIN/ SAOC, this method has changed (with the introduction of S-NEN-2580). In accordance with the new method, vertical spaces are no longer allocated directly. For the remaining part, the change can be attributed, according to Schiphol, to alterations to the buildings (new square metres).
31. With regard to the argument that the share of the costs allocated to road infrastructure is too high, Schiphol explained how these costs are allocated, in accordance with the Allocation System.
32. With regard to the argument that the estimates of concession revenues is too low on a structural basis, Schiphol stated that the extrapolation is based on a projected seasonal pattern and not on a linear extrapolation from the first months of the year.

Letter of 10 August 2007

33. In its letter of 10 August 2007, Schiphol responds to BARIN/ SAOC's letters of 13 and 27 July 2007 (supplements respectively to the application and answers to questions posed by NMa). In summary, this response is as follows. Schiphol states that the questions posed by BARIN/ SAOC during the consultation period were answered and in all instances these answers included a substantiation which was to the point. With regard to the RAB, Schiphol states that the statement provided meets the requirements of the Aviation Act and the Decree. The intended format of the RAB statement was presented to BARIN/ SAOC on 19 March 2007 and a response was not received from BARIN/ SAOC in this regard. At BARIN/ SAOC's request, a further explanation of the "vertical transportation" point was provided by Schiphol. According to Schiphol, BARIN/ SAOC did not request further details during the consultation

period after this. Schiphol also provided a further explanation¹⁸ of the way in which the traffic figures for non-aviation traffic were included in the allocation. With regard to the risk-free rate, Schiphol states that it determines this in accordance with the rules contained in the Decree. Finally, Schiphol states that in relation to the concessions it only provided an answer with regard to fuel concessions. According to Schiphol, this is correct because these are the only concession revenues which relate to aviation.

7. Assessment by the Board

Introduction

34. BARIN/ SAOC submitted an application to the Board in accordance with section 8.25f (1) of the Aviation Act. BARIN/ SAOC supplemented the application by means of a letter of 13 July 2007 in which they also submitted further documents to substantiate their application. Since, in the first instance, BARIN/ SAOC omitted to state which passages from the further documents submitted were relevant to which parts of the application, in its letter of 20 July 2007 NMa requested BARIN/ SAOC to state concretely and specifically (with reference to paragraph or page numbers) which information from the further documents submitted served to substantiate the application. BARIN/ SAOC only complied with NMa's request partially by giving a number of examples. In the assessment below, the Board discusses the arguments which BARIN/ SAOC presented in sufficiently concrete terms.

Item a. Provision of information during the consultation phase

35. In the discussion below, the arguments referred to by BARIN/ SAOC with regard to the provision of information will be assessed. With regard to the argument that the data provided by Schiphol contain many inaccuracies, of which the only concrete example referred to by BARIN/ SAOC is the construction interest for construction work during the construction period (see paragraph 22, under (c)), the Board notes that this does not relate to the quality of information provision, but to the issue of whether the Allocation System was applied correctly. This aspect is discussed in paragraphs 55 up to and including 71 of this decision.
36. The following is stated in the Explanatory Memorandum to the Aviation Act with regard to regulations relating to the consultation: "*Rules are determined in the fourth clause of the Order-in-Council with regard to the procedure applicable to the consultation and the notification of proposed tariffs and conditions. In this decision, the minimum procedural requirements will be set out which will ensure that users are given the opportunity to make their opinions known. In the present situation, in which market parties negotiate with a monopolist, the minimum requirements are also necessary to ensure that the market parties for their part have the necessary countervailing*

¹⁸ Also in the letter from Schiphol to BARIN/ SAOC of 31 May 2007.

power. It is not the intention that the further rules should exceed the level of minimum procedural requirements. After all, in principle, negotiations should be left to the market parties."

37. In the discussion which follows, the points raised by BARIN/ SAOC will be discussed separately. The question as to whether the statutory requirements have been met will only be assessed definitively in the conclusion to this section in paragraphs 51 up to and including 54. These points will be assessed in the conclusion taking into account the legislator's intention referred to in the previous paragraph.

Specification of the RAB and cost details

38. With regard to the argument that the level of the asset values are absent from the specification of the Regulatory Asset Base (RAB) (the first and third part of point (b) of paragraph 21), the Board notes the following. Section 4(4)(c) of the Decree stipulates that, in accordance with the allocation system, the tariff proposal must state which tangible fixed assets are used for aviation activities and the extent to which this is the case, as well as the costs which are caused by aviation activities. In addition, section 4(4)(d)(2°) of the Decree stipulates that the proposal of Tariffs and Conditions must contain: "*a projection of the amendment to the way in which the tangible fixed assets will be utilised (...)*". The explanation of section 4 of the Decree states: "*The operator may provide this information in the form of percentage allocations*".
39. The Board deduces from the above that, despite the fact that this information may be useful in itself, the regulations do not oblige Schiphol to provide information during the consultation with regard to the level of the asset values. The way in which the RAB is presented in the consultation document ("Consultation Airport Charges 23 April 2007") in the form of percentage allocations is therefore not in conflict with the legal requirements.
40. With regard to the point relating to the incorrect and unclear naming of the RAB and cost details (see part 2 of point (b) of paragraph 21), Schiphol stated that the naming may sometimes be unclear because the information originates directly from its financial administration. In this regard, the Board notes the following. Within the framework of the consultation, Schiphol is required to provide information on the assets used for aviation activities and to state which costs are caused by the aviation activities and the extent to which this is the case. This requires, for instance, transparency with regard to the meaning of the names used.
41. The Board notes that in so far as the aforementioned information in the consultation documentation, which describes the proposal for tariffs and conditions, was not clear, BARIN/ SAOC could have consulted the Allocation System. The documents which described the Allocation System were also issued to users by Schiphol during the consultation. The provision of this information is logical in the light of Schiphol's obligation to allocate the

costs in accordance with the Allocation System. On the basis of the numbers of the cost centres provided in the consultation documentation, the users could have found the corresponding cost centre numbers in the Allocation System. The description of the Allocation System provides clear information on which cost categories/assets are registered under a certain cost centre.

Risk-free rate

42. With regard to the argument that the source and the method of determining the risk-free rate remain unclear (see paragraph 22 under (a)), the Board notes the following. BARIN/ SAOC asked how the risk-free rate is determined and what the relationship is to the 10-year government bond. Schiphol answered this question in its letter of 31 May 2007. The source of the interest-rate, as such, is not included in the answer, but information in this regard in relation to the WACC can also be found in the Allocation System issued by Schiphol during the consultation (*Het Financieele Dagblad* is cited as the source). It should also be noted that the risk-free rate for the WACC referred to at the start of the consultation was a provisional figure. The definitive rate will only be determined when the tariffs are adopted.¹⁹
43. With regard to the source of the risk-free rate in relation to construction interest, the Board concludes that BARIN/ SAOC were not provided with an explicit reference to the source during the consultation.

Drawings of the Terminal complex

44. With regard to the argument that Schiphol incorrectly did not provide drawings which reflect the actual use of the terminal complex as at 1 January 2007, the Board notes the following. The provision of drawings serves to provide transparency in relation to the allocation of square metres in buildings and the Board therefore deems it most desirable that Schiphol provide these. The regulations (in this context, section 4 (4) of the Decree), however, do not provide a basis for making the provision of drawings obligatory.²⁰ If BARIN/ SAOC mean by this point in their application that no information whatsoever was issued with regard to the situation as at 1 January, the Board notes that the consultation documentation (sheet 18) provides off-balance information with regard to the use of square metres on 1 January as a percentage. The types of space (after correction) which are not taking into account in the allocation to aviation activities are also stated. Schiphol explained these figures again in an e-mail and a letter of 14 May 2007 and 31 May 2007 respectively to BARIN/ SAOC. In so far as BARIN/ SAOC mean that the information is supposedly incorrect, any inaccuracy of this information was not substantiated by BARIN/ SAOC in their application. An audit of this,

¹⁹ In this regard, see the Explanatory Memorandum in relation to the Decree, *Netherlands Bulletin of Acts and Decrees* 2006., 333, p 14.

²⁰ In this regard, kindly also see the provisions of the regulations contained in section 4 (4) of the Decree.

together with the audits of other alleged inaccuracies, was included in the Board's overall audit in relation to the Allocation System. It is concluded that on the grounds of the arguments presented in the application submitted by BARIN/ SAOC, it cannot be assumed that Schiphol provided BARIN/ SAOC with insufficient information in this respect.

45. With regard to the argument raised by BARIN/ SAOC that Schiphol incorrectly gave the impression that agreement had been reached between KLM and Schiphol with regard to the drawings which described the situation as at 1 January 2007 (see paragraph 23 under (b)), the Board notes the following. BARIN/ SAOC refer in this case to a letter of 31 May 2007 to BARIN²¹ and an e-mail to BARIN/ SAOC of 14 May 2007. It cannot be concluded from the text of either of these documents that Schiphol indicated to BARIN/ SAOC that agreement had been reached between KLM and Schiphol. This is without prejudice to the following. Section 8.25e (3) of the Aviation Act states that the operator must take into account the opinions of the users. Taking into account the opinions of the users in no sense means that Schiphol has a legal obligation to reach agreement with KLM on a set of drawings. The Board concludes that Schiphol on the grounds of the argument referred to in this paragraph has not acted contrary to its obligations in accordance with section 8.25e (3) of the Aviation Act.

Answers to questions

46. With regard to the argument that BARIN/ SAOC did not receive an answer or received an answer which avoided the question from Schiphol with regard to a number of questions posed by BARIN/ SAOC during the consultation phase (see paragraph 22 under (e)), Schiphol has a statutory obligation during the consultation phase to ensure that the data issued in relation to the proposal for tariffs and conditions in the possession of the operator and the users are consistent.²² During the consultation phase, BARIN/ SAOC put questions to Schiphol in writing (the letter of 21 May 2007). Schiphol answered the respective questions point by point (in its letter of 31 May 2007). In this regard, the Board notes the following.
47. With regard to the question posed by BARIN/ SAOC in relation to vertical transportation within the Terminal complex, Schiphol answered this question, although it did so in general terms. The effect of vertical transportation on the changes made to the allocation, which was the subject of the question posed by BARIN/ SAOC, was not specified or explained. This is a complex matter and the Board can imagine that the answer given by Schiphol is not entirely clear to BARIN/ SAOC. However, in this case Schiphol has not acted contrary to the minimum statutory requirements because the question posed by BARIN/ SAOC refers to the existence or otherwise of variances in relation to allocation principles applied in the past. According to section 4 (4) (c) of the Decree, Schiphol is only required to provide information in relation to the application of the allocation system applicable at present.

²¹ This relates to the third paragraph of page 3 of this letter and page 1 of the respective e-mail.

²² See the explanation of section 4 in the Explanatory Memorandum to the Decree.

48. With regard to the questions concerning traffic figures, posed by BARIN/ SAOC, the answers to the questions with regard to traffic figures in relation to the stocking of shops and government services may be characterised as "cryptic". It is not clear from the answers how the respective traffic movements are counted. The question posed by BARIN/ SAOC with regard to traffic to and from the parking garage P24 was answered adequately, in the Board's opinion.

Other points

49. With regard to the argument that the corrections made to the Allocation System were not processed visibly (see paragraph 22 under (d)), the Board notes the following. The Allocation System approved by NMa consists of the Allocation System submitted to the Board by Schiphol on 20 December 2006, including the amendments to this according to the Notice of Amendment published by Schiphol on 17 April 2007. Both documents combined described the approved Allocation System which Schiphol is required to apply in its entirety. As is stated above, the Aviation Act does not make it obligatory to explain the effect of differences between the Allocation System ultimately approved by the Board and an earlier version of the allocation system which was presented to users and/ or other interested parties during a consultation held by the Board. The Board concludes that Schiphol has complied with its obligations in accordance with section 8.25e (4) of the Aviation Act in relation to the point referred to in this paragraph.
50. With regard to the cancellation of the meeting by Schiphol, prior to the consultation period (see paragraph 23), the Board notes the following. This meeting was to be planned at a moment (in the week of 16 April 2007) prior to the moment at which the consultation period, pursuant to section 8.25e of the Aviation Act, commenced (namely 23 April 2007). This falls outside the scope of the Board's supervision in relation to the consultation and consequently also outside the assessment made in this decision.

Conclusion with regard to the provision of information during the consultation phase

51. The Board concludes that in relation to the examples discussed in the above paragraphs, Schiphol, in any event to a large extent, did not act contrary to the minimum legal requirements. What remains to be assessed are a number of specific examples of answers to questions which Schiphol did not answer with sufficient clarity.
52. In order to assess whether the statutory requirements have been met, it should be noted firstly that the legislator only wished to stipulate a set of minimum requirements with regard

to the provision of information in the consultation phase.²³ Negotiations must be left to the market parties. Whether it may be claimed that Schiphol answered several questions inadequately must be assessed in the light of these assumptions.

53. It emerges from the structure of the consultation and the correspondence between BARIN/ SAOC and Schiphol that BARIN/ SAOC were given sufficient opportunity by Schiphol to ask further questions with regard to the answers and information which Schiphol provided. If a party such as BARIN/ SAOC does not avail itself of this opportunity, which appears to be the case after further investigation by NMa, this cannot be held against Schiphol, leaving aside whether the failure to answer the respective questions adequately must be qualified as serious, partly in the light of the fact that Schiphol, in the Board's opinion, informed BARIN extensively, as emerges from the correspondence by Schiphol within the framework of the consultation.
54. On the above grounds, the Board is of the opinion that Schiphol has not acted contrary to its legal obligation (section 8.25e of the Aviation Act) in relation to the provision of information in the consultation phase. The Board therefore sees no reason for a further *ex officio* assessment of whether Schiphol has complied with these legal obligations.

Item b. Application of the Allocation System

55. With regard to the arguments raised by BARIN/ SAOC in relation to the application of the Allocation System, the following applies. The application of the Allocation System was examined as a whole and thoroughly at NMa's request in relation to the approval of Schiphol's tariffs and conditions. This relates to the Allocation System, as approved by the Board on 25 April 2007. The audit was carried out by Schiphol's independent auditor (PricewaterhouseCoopers Accountants N.V. or PwC), with the application of a protocol determined by NMa. The protocol is included as Addendum 3 to this decision. Although Schiphol is not required to have its independent auditor issue an auditor's report in respect of predetermined data during audits in accordance with section 8.25f, it cooperated fully with this request.
56. In this regard, it was taken into consideration that it is of the utmost importance, particularly on the first occasion that the Allocation System is applied within the statutory framework, that it should be ascertained that the Allocation System is correctly applied to avoid the discovery of any errors in this Allocation System in its later application or in relation to retrospective settlements. NMa found confirmation in BARIN/ SAOC's application and that of KLM for the necessity under these circumstances to carry out a comprehensive and thorough audit (or to have such an audit carried out), whether or not by Schiphol's independent auditor. During the

²³ See the Explanatory Memorandum, Proceedings of the Lower House of the Dutch Parliament, session year 2001-2002, 28 074, No. 3, p.11.

hearing of 31 July 2007, BARIN/ SAOC indicated that its application should be understood as a general question as to whether the Allocation System had been applied correctly.

57. The audit related to the cost orientation of the tariffs adopted by Schiphol, pursuant to the Aviation Act and the Decree. The auditor established the following: the plausibility of predetermined cost data, the correct application of the Allocation System and correspondence between the budgeted costs and predetermined tariff revenues. The protocol provides for the issuing of a separate memorandum by the auditor with regard to a number of specific cost and revenue items and parameters which determine the costs of Aviation and Security to a considerable degree.
58. The audit related to a comprehensive test of the application of the Allocation System according to generally accepted principles applicable to an audit. In addition, the application of all allocation keys was audited. With regard to materiality, the following should be noted:
- with regard to future-oriented activities: in so far as the data are historical, the auditor based his findings on information audited earlier by him;
 - with regard to the RAB, the materiality was equated with the materiality applied in the auditing of the annual accounts for 2006;
 - with regard to the correct application of the Allocation System, a materiality of almost nil was applied; for this purpose, for instance, the spreadsheets used were examined in their entirety.
59. During the audit, the auditors drew attention to findings in relation to the correctness of the calculations in the Allocation System. In addition, the application of all allocation keys in the Allocation System was audited. The remarks made have a cumulative effect of almost nil in relation to the total budgeted costs in the tariff proposal. The total impact of the remarks in relation to the allocations and onward charging to the result of PMC Aviation amount to a rounded-off amount of EUR 684,000 (the revenues of PMC Aviation are lower than the maximum amount allowed). With regard to the total costs (excluding the cost of capital) involved in the consultation in relation to PMC Aviation (amounting to EUR 333 million), the impact is 0.21%. The total impact of these remarks on the result in relation to allocations and onward charging involved in the consultation in relation to PMC Security amounts to a rounded-off amount of eight and EUR 840,000 (the revenues are lower than the maximum amount allowed). With regard to the total costs (excluding the cost of capital) involved in the consultation in relation to PMC Security, amounting to EUR 201 million, the impact is 0.42%. With regard to the RAB, the auditor's finding is that the RAB for Aviation in the Tariff Proposal is EUR 142,000 (= 0.01%) too high and that the RAB for Security in the Tariff Proposal is EUR 217,000 (= 0.2%) too low.

60. The above can also be represented as follows.

Amounts x EUR 1000	Aviation		Security	
	Tariff proposal	Auditor	Tariff proposal	Auditor
Operating expenditure	332,997	333,681	200,574	201,414
Cost of capital RAB *)	109,525	109,514	8,575	8,591
SUBTOTAL	442,522	443,195	209,149	210,005
Settlements 2005/06 **)	-	-	10,700	10,700
Maximum allowed revenues	442,522	443,195	219,849	220,705
Budgeted revenues	440,800	440,800	219,800	219,800
NB: Average RAB 2007	1,426,106	1,425,964	111,650	111,867

) Calculated on the basis of the average RAB as at 1-1-2007 and 31-12-2007 7.68% average cost of capital. The percentage cost of capital is the percentage at the moment of adoption.

**) The settlements are regarded as a given in the audit.

61. The above findings lead to the conclusion that although errors were found in the application of the Allocation System, the total impact of the findings is less than the criterion of materiality. In the Auditor's Report, the auditor (PwC) concluded that on the grounds of its audit of the data, on which the assumptions are based, the auditor found nothing on the basis of which he ought to conclude that the assumptions do not provide a fair basis for the Tariff Proposal. Following the audit, Schiphol recalculated the costs. Schiphol sent the recalculations in question to NMa. The calculations correspond entirely to PwC's findings. The Board sees no reason to doubt the correctness of the calculations.
62. The calculation of the projected revenues was also verified with regard to their totality by the auditor. No relevant findings emerged from this.
63. On the basis of the above, the tariffs for aviation activities meet the condition that they should be equal at most to the above-mentioned cost estimate (including the cost of capital), given the budgeted concession revenues and the revenues in the category of "other revenues", any settlements and any voluntary contribution from the revenues of non-aviation activities with regard to the (two) applicable categories of aviation activities: 1) the security activities and 2) the other aviation activities. In terms of the statutory criterion of cost orientation, the above leads to the conclusion that the tariffs for the aviation activities are not in conflict with the criterion of cost orientation, in terms of section 8.25d(3) of the Aviation Act.
64. It should also be noted that the conclusion of this decision with regard to the level of the tariffs is based on the settlements which Schiphol approved on 31 May 2007 in its tariffs. In the audit in relation to the application of the Allocation System, these are regarded as a given. This does not detract from the Board's assessment and conclusions in its decision on BARIN/SAOC's application in relation to the settlements.

Specific points

65. With regard to the application of the Allocation System, BARIN/ SAOC mentioned a number of specific points. Without prejudice to the above conclusions in relation to the overall assessment of the Allocation System, the Board will discuss these points below.
66. With regard to the point that there are inaccuracies in the data provided by Schiphol in relation to the construction interest for construction work during the construction period (see paragraph 22 under (c)), the Board notes the following. Within the framework of the audit, the auditor concluded that the construction interest was calculated in accordance with the description provided in paragraph 5.2.5 of the allocation system.
67. With regard to its application of the allocation key for the Terminal complex, the auditor carried out a so-called partial test which included 80 randomly selected parts of the Terminal complex. In addition, the correspondence between the information taken from the terminal information system and the off- balance calculation were verified. This audit identified one typing error. Schiphol calculated the consequences in their totality and the auditor verified this calculation. The auditor included the financial consequences of this calculation in the overall findings, as presented in the above table. PwC assessed the allocation of square metres in relation to actual use on the reference date of 1 January and by applying the principles contained in the Allocation System approved by the Board.
68. With regard to BARIN/ SAOC's argument in relation to areas for vertical transportation (this is part of the allocation key for square metres in the Terminal complex), the Board notes specifically that an assessment must be made to ascertain whether the method of allocation is in accordance with the Allocation System approved by the Board on 25 April 2007. Firstly, it is clear, contrary to statements made in the application by BARIN/ SAOC, that an amendment was made to the allocation key in this respect during the approval procedure before the Board, following an opinion submitted by a user, which resulted in a different allocation of square metres to aviation activities and non-aviation activities.²⁴ Secondly, in the light of the fact that this allocation key was to be implemented in a generic manner in relation to the Terminal complex with a view to consistency, it was also became clear during the audit, which is part of this procedure, that this would result in considerable shifts, in particular due to the fact that the aviation activities in a number of cases make "dedicated" use of vertical spaces with a considerable surface area, such as ramps. On the basis of the above, the explanation given by Schiphol and, of course, the thorough approach to the audit of the application of the allocation system, the Board sees no reason to assume that the Allocation System was incorrectly applied in this respect.

²⁴ See paragraph 155 of Addendum 1 to the decision of the Board of 25 April 2007 with reference 200.057/ 149.BT37.

69. With regard to the argument that the share of the cost of road infrastructure allocated to aviation is too high (paragraph 24, item 2), the Board notes the following. The allocation occurs in accordance with the Allocation System approved by NMa. The Board concludes that in so far as BARIN's application relates to the opinion submitted by BARIN/ SAOC in respect of the Allocation System, as such, this falls outside the scope of this assessment. An official consultation procedure was held in this regard.
70. With regard to the argument raised by BARIN/ SAOC that Schiphol's estimate of the concession revenues is too low (paragraph 24, item 3), the Board notes the following. With regard to the "incorrect estimates of concession revenues" Schiphol has stated that it takes into account the applicable seasonal pattern; the extrapolation is based on a projected seasonal pattern. During the hearing, Schiphol further explained that it based its estimate for the entire year on the realisation of the first four months of 2007 and for the remainder of the year on an expected seasonal pattern, which is based on a historical seasonal pattern. Schiphol presented a calculation from which it appears that the budgeted concession revenues are differentiated on a monthly basis. The Board concludes that the projection was calculated correctly. The Protocol referred to in paragraph 56 specifically stipulates that the audit must focus on ascertaining that the allocation of revenues is correct. In the Auditor's Report, the auditor concluded that this Protocol was taken into account in his activities.
71. On the basis of the points raised by BARIN/ SAOC in their application, the Board of Directors of the Netherlands Competition Authority concludes that Schiphol has not acted contrary to its obligations (pursuant to section 8.25d(3) and section 8.25e of the Aviation Act) in relation to the cost orientation of the tariffs of its aviation activities.
- c. The Board's final conclusion*
72. On the basis of the points raised by BARIN/ SAOC in their application, the Board of Directors of the Netherlands Competition Authority concludes that Schiphol has complied with its obligations pursuant to section 8.25d(3) and section 8.25e of the Aviation Act.

8. Decision

73. The Board of Directors of the Netherlands Competition Authority concludes that on the basis of the points raised by BARIN/ SAOC in its application that Schiphol has complied with its obligations in accordance with section 8.25d(3) and section 8.25e of the Aviation Act.

Date: 24 October 2007

The Board of Directors of the Netherlands Competition Authority,
on its behalf:

Signed

G.J.L. Zijl
Member of the Board of Directors

Any person whose interests are directly affected by this decision may file an appeal with the Administrative Law Section of the Court of Rotterdam, P.O. Box 50950, 3007 BL Rotterdam within six weeks after the publication hereof.

Addendum to the decision with reference 200084/30.BT37: Protocol for the audit of the tariffs for 2007

Protocol for the Audit of the Tariffs for Aviation Activities of N.V. Luchthaven Schiphol

1. Introduction

1a. Application

This protocol only applies to the audit of the tariffs of N.V. Luchthaven Schiphol (hereinafter "Schiphol") within the framework of the powers of the Board of Directors of the Netherlands Competition Authority (hereinafter "NMa") pursuant to the Aviation Act. In accordance with this protocol, the Board may commission an audit of the tariffs for aviation activities of N.V. Luchthaven Schiphol. Schiphol is the client with regard to the audit and the audit is carried out at the expense of Schiphol. The outcomes of the audit may be included by NMa in its assessment. The audit, in principle, relates to the data calculated in advance and used by Schiphol to determine its tariffs. NMa reserves the right to amend the protocol in the future and to add specific questions during concrete audits by the auditor.

1b. Scope

The auditor must carry out the audit of the tariff proposal in accordance with NV COS 3400 'Audit of prospective financial information'. The auditor must also include the areas of attention stated in this protocol in his audit. The auditor shall issue an auditor's report in relation to the tariff proposal audited by him in accordance with the model included in this protocol. In addition to the auditor's report, the auditor shall provide a separate auditor's memorandum on his findings.

1c. Object and objective of the audit

The audit relates to the cost orientation the tariffs determined by Schiphol, in accordance with the Aviation Act [*Wet luchtvaart*] and the Schiphol Airport Operation Decree [*Besluit exploitatie luchthaven Schiphol*] of 7 July 2006 (hereinafter "the Decree") (hereinafter "cost orientation"). In addition, the auditor shall assess the following:

- a. the plausibility of the projected cost data (hereinafter also "the cost estimate"), as determined by Schiphol,²⁵ to be charged to its purchasers of aviation activities (the users), subject to the Aviation Act, and the correct application of the Allocation System approved by NMa.²⁶

²⁵ Determination, as referred to in section 8.25d (1) of the Aviation Act.

²⁶ Where reference is made in this protocol to the Allocation System, this is a reference to the Allocation System approved by NMa's decision of 25 April 2007. This is the allocation system sent to NMa by Schiphol on 20

- b. the correspondence between the budgeted costs and the projected tariff revenues; this relates to the above-mentioned cost estimate for the financial year in which the commencement date of the tariffs falls in accordance with Schiphol's notice of the adoption of the tariffs.

The auditor shall ascertain whether the proposed tariffs and the (volume) of the projected aviation activities, netted with any permissible settlements and any voluntary contribution from the revenues from non-aviation activities is at most equal to the aforementioned cost estimate (including the cost of capital) with regard to the (two) applicable categories of aviation activities: 1) the security activities and 2) the other aviation activities and activities which are directly related to these.²⁷

With regard to the plausibility of the projected cost data, the auditor shall ascertain whether the estimates made, which underlie these, are not unreasonable and, in the case of hypotheses, whether these are consistent with the aim of providing information.

1d. Materiality

The auditor's report which the auditor issues (see chapter 3) shall provide both an assessment of the applicable assumptions and an assessment of whether the Allocation System approved by NMa has been applied correctly. The auditor shall set out his findings in this regard in a separate auditor's memorandum.

In order to be able to issue an unqualified auditor's report, it is necessary that all the deviations observed in relation to the correct and complete application of the Allocation System approved by NMa should be corrected in the cost estimate and the tariffs based on this.²⁸ If a correction is not made or is not made adequately, this must be expressed by not issuing an unqualified auditor's report (a negative auditor's report or an auditor's report subject to qualifications). The deviations which were observed but were not corrected in relation to the correct and complete application of the Allocation System approved by NMa must be analysed in a separate auditor's memorandum and the consequences of this for the cost estimates and the tariffs based on this must be quantified in more detail.

The audit will take into account both future-oriented (prospective) and historic (retrospective) data. With regard to those parts of the audit which relate to historic data, the auditor may base his audit

December 2006, including the amendments to this in the notice of amendment sent to NMa by Schiphol on 17 April 2007.

²⁷ The activities which are directly related to aviation activities are summarised in section 2 (2) of the Schiphol Airport Operation Decree.

²⁸ The auditor has an alerting function. The auditor may recommend to Schiphol that it make amendments to the calculations in order to ensure that the auditor's report is unqualified. NMa uses the report within the framework of its supervisory powers.

on information audited by him previously (for instance, within the context of the auditing of the annual accounts). In relation to the tolerance with regard to the correct application of the Allocation System, this is virtually nil. Ascertaining that the Allocation System has been applied correctly is an important part of the assignment.

Chapter 2 of this protocol contains a part relating to the first audit in 2007. This first audit related, for instance, to the correct valuation of the opening balance of the RAB (Regulatory Asset Base). Specifically in the audit of the correct valuation of the opening balance of the RAB, the auditor applied a tolerance which was consistent with the tolerance applied by him in relation to the auditing of Schiphol's annual accounts.

2. Areas of attention in the audit

It is stated in the previous chapter that the auditor will carry out his audit in accordance with NV COS 3400 'Audit of prospective financial information'. In addition to the activities included in this standard, the auditor will also take into account the areas of attention set out in this chapter.

2a. Consistency of the Allocation System and the Schiphol Airport Operation Decree 7 July 2006

The auditor shall ascertain whether the cost estimate on the basis of which the tariff revenues will partly be determined was made taking into account the principles, allocation keys and other agreements set out in the Allocation System, as well as the Aviation Act and the Schiphol Airport Operation Decree of 7 July 2006.²⁹ In doing so, the auditor shall take into account Addenda 3 and 4 of the Allocation System, in which the applicable onward charging and allocations are discussed. The auditor will ascertain whether the onward charging and allocations referred to in these addenda have taken place in accordance with the system described in this regard and, in doing so, shall also assess whether the historic financial and non-financial input data applied within the system are correct. In line with the provisions of chapter 3 of this protocol, the auditor shall report on his findings in this regard, irrespective of whether his findings, taking into account the applicable tolerances, influence the tenor of the auditor's report.

Within the framework of this section, the auditor shall pay attention to the following aspects in his audit:

1. Determination of the Regulatory Asset Base (RAB)

A number of specific rules are stipulated in the Schiphol Airport Operation Decree for the allocation of assets to the aviation activities. Tangible fixed assets are allocated to aviation activities on the basis of the use of aviation activities. For this purpose, allocation keys are

²⁹ The clause "in addition to the Aviation Act and the Schiphol Airport Operation Decree of 7 July 2006" ceased to apply during the audit because this audit is not the task of an independent auditor.

applied, as described in the Allocation System referred to above. It is specifically important in this regard to acknowledge that:

- the assets are allocated to the RAB for the first time at the moment at which the asset becomes operational. This means, for instance, that so-called strategic ground may not be allocated to the RAB for as long as this ground is not in use for aviation activities.
- the calculation of construction interest has taken place in accordance with the Allocation System. With regard to the tangible fixed assets, it is stipulated in the Allocation System that these are valued at their historic cost price including, for instance, construction interest in the case of large-scale investments.

This construction interest is interest paid to third parties during the construction of the tangible asset for capital which may be allocated to the investment. The construction interest is then corrected in accordance with regulations contained in the Schiphol Airport Operation Decree of 7 July 2006. Section 5.2.5 of the Allocation System sets out the differences which apply between the calculation of construction interest in Schiphol's external annual report and the calculation based on the Aviation Act, and the corrections which result from this in relation to the tariff proposal.

The auditor shall ascertain whether the allocation keys, as well as the assumptions which are included in the Allocation System and which relate to the determination of the RAB, have been applied correctly and completely in drawing up the tariff proposal.

2 *Tangible fixed assets and depreciation*

The principles applicable to the processing of tangible fixed assets and appreciation are described in section 7.2.1 of the Allocation System. Given the dynamic nature of the aviation branch and the capital-intensive nature of Schiphol, an annual evaluation of the standard economic life and residual value of the tangible fixed assets is necessary. A change in the economic life may result in an adjustment to the standard depreciation term and/or residual value. The auditor will ascertain whether the processing of the tangible fixed assets and depreciation has occurred in accordance with section 7.2.1 of the Allocation System. In particular, the auditor will ascertain whether the applicable amendments to depreciation terms in respect of the tangible fixed assets are based on changes in their economic life, whereby the substantiation of these changes provided by Schiphol will also be the subject of the audit.

3 *Allocation of the most important shared costs*

The application of the allocation of share costs, which are the most important in terms of the amount of the allocated costs (including assets), is described in section 5.3 of the Allocation System. These important shared costs are in turn: the assets and depreciation costs of the Terminal complex, the operating expenses of the Terminal complex (including depreciation), security costs and the cost of land-based infrastructure. The rules which must be taken into

account when making allocations to aviation activities in relation to these components are explained in general terms in paragraph 5.3. The auditor will ascertain that all the rules set out in this section have been applied correctly and completely in drawing up the tariff proposal. Further details with regard to the allocation of these costs can be found in Addenda 3 and 4 of the Allocation System.

4. Determination of the cost of capital (WACC)

The determination of the weighted average cost of capital (WACC) is described in chapter 9 of the Allocation System. A distinction is made between the fixed variables and the variable costs which are determined annually (section 9.1). In addition, a number of data sources, which are relevant to the variables comprising the cost of capital, are referred to in section 9.2.

In his audit, the auditor shall ascertain whether the cost of capital (WACC) has been determined in accordance with the provisions of the Allocation System, whereby it will be ascertained, in particular, whether the data sources used to determine the Asset Beta and the risk-free rate used comply with the provisions in this regard in section 9.1.2.

5. Allocation of revenues

It is stated in chapter 1, in the section entitled "Object and objectives of the audit", that the auditor will ascertain whether the proposed tariffs and the (volume) of the projected aviation activities, netted with any permissible settlements and any voluntary contribution from the revenues from non-aviation activities is at most equal to the aforementioned cost estimate (including the cost of capital) with regard to the (two) applicable categories of aviation activities: 1) the security activities and 2) the other aviation activities and activities which are directly related to these.³⁰

In calculating the revenues, the possibility that different tariffs may be determined for different periods of the year must be taken into account.

6. Settlement of the revenues and costs

The settlement of revenues and costs, which relate to previous financial years, will be determined within the framework of financial reporting (retrospective settlement). Within the framework of this protocol, the auditor will ensure that the amounts to be settled are in accordance with the correct outcomes of this financial reporting; the correctness of the amounts to be settled in relation to the Tariffs and Conditions of 1 November 2007 are not part of the audit within the framework of this protocol.

³⁰ The activities which are directly related to aviation activities are summarised in section 2 (2) of the Schiphol Airport Operation Decree.

2b. First audit in 2007

The audit by the auditor into the Tariffs and Conditions of 1 November 2007 is the first audit which will take place within this framework, partly in relation to the Allocation System. Due to this circumstance, the auditor shall ascertain in his audit whether:

1. the opening balance of the Regulatory Asset Base as at 1 January 2007 (initial audit), based on the criteria referred to in the Allocation System, is correct.
2. the calculation models used to calculate the costs in relation to aviation activities are correct (the correctness of the data entered and the calculation rules).

Item 1) Initial audit of the RAB

The initial audit comprises, in particular, the following elements:

The assets which may comprise the RAB

The tangible fixed assets will be understood to be the assets intended to serve the legal entity on a sustainable basis in the implementation of its activities. In determining the assets which should be deemed to be tangible fixed assets, the economic ownership, rather than the legal ownership, will be decisive.

Assets other than Tangible Fixed Assets may not be included in the Regulatory Asset Base (section 8 (3) and (9) of the Aviation Act). Software may be allocated to the tangible fixed assets as soon as this becomes operational and is used for aviation activities.

Valuation

Tangible fixed assets must be valued at their historic cost including any depreciation from the moment that the criteria for capitalisation have been met and at the earliest moment in time that they were purchased by Schiphol (the 'origin principle', as described in the Allocation System). The historic costs will be understood to be the price basis for the procurement or production price.

The audit focuses on compliance with the above definition. This implies, for instance, that the following is ascertained:

- that no revaluation of assets occurred after the moment at which the criteria for capitalisation were met;
- that in the event of the sale and subsequent repurchasing of the asset by Schiphol, the valuation is based on the original historic cost price including any depreciation (at the moment at which the criteria for capitalisation were met).

Allocation of the assets to the RAB and non-RAB

The allocation of the assets to the RAB will occur on the basis of the provisions in relation to the allocation keys contained in the Allocation System. Initially this audit will amount to no more than the annual recurring audit of this item.

Statement of the initial balance of the RAB

The auditor will obtain the following balanced statement of the assets (per asset) from Schiphol for the initial audit, which will reflect the development of the assets from its purchase:

- the purchase price on the basis of historic cost, consisting of the procurement or production price;
- additional capitalisations after the original purchase;
- the procurement or production price of (partial) divestments;
- cumulative depreciation;
- cumulative depreciation of divestments;
- depreciation;
- the book value, as the initial level of the RAB.

The auditor will ascertain whether the above-mentioned balanced statement is correct, whereby the auditor shall also determine whether the procurement or production price, or additional capitalisation are based on the correct data.

2c. Consistency with historic financial information

As is stated above, the auditor will carry out his activities in accordance with NV COS 3400 'Audit of prospective financial information'. The emphasis of this standard lies on the estimates made and assumptions chosen by the management, which underlie the prospective information, in this case the tariff proposal. Within the framework of this assignment, the auditor will also ascertain whether the financial information used for the tariff proposal is also based on the most recent historic financial information. In particular, this relates to financial information for the financial year 2006 and financial information in relation to the financial year 2007 which was available at the time that the tariff proposal was published (for instance, realisation for the first quarter of 2007).

1. Reporting

The auditor's report on the basis of the audit carried out by him will consist of the following parts:

- an auditor's report;
- an auditor's memorandum.

3a. Auditor's report

In the event of an unqualified auditor's report, the auditor shall use the following text:

To: N.V. Luchthaven Schiphol

Auditor's report

This auditor's report is intended for the Netherlands Competition Authority.

Assignment

We have audited the enclosed tariff proposal "Aviation Tariffs & Conditions (...³¹) of N.V. Luchthaven Schiphol in Amsterdam", which was certified by us. The tariff proposal, including the assumptions on which this is based, was drawn up under the responsibility of the management board of the company. It is our responsibility to issue an auditor's report in relation to the tariff proposal.

Activities

In accordance with standards for the auditing of prospective financial information generally accepted in the Netherlands, our activities consisted mainly of obtaining information from officers of the company, carrying out quantitative analyses on the basis of the financial data and ascertaining whether the assumptions were applied correctly. In addition, we included in our activities the Protocol for the Audit issued by the Netherlands Competition Authority of 27 July 2007 with reference 200080/22.O1003.

Opinion

On the basis of audit of the data on which the assumptions are based, we have no cause to conclude that the assumptions do not constitute a reasonable basis for the tariff proposal. In addition, we are of the opinion that the tariff proposal was drawn up correctly on the basis of the assumptions and has been explained in accordance with the Allocation System approved by NMa on 25 April 2007, as well as the Schiphol Airport Operation Decree of 7 July 2006.³²

The actual outcomes will probably deviate from the tariff proposal, since the events assumed will usually not occur in the exact manner assumed here and the variances may be of material importance.

Town/city, date

Signature

³¹ With regard to the first report, this is the tariff proposal of 1 November 2007.

³² The text "in addition to the Schiphol Airport Operation Decree of 7 July 2006" ceased to apply during the audit because this is not a task for an independent auditor.

In the event of a qualified auditor's report, the auditors must state the matters which have given rise to this.

3b. Auditor's memorandum

The auditor's memorandum is a supplement to the auditor's report mentioned above. The findings reported in this document may not be at odds with the tenor of the assessment, as formulated in the auditor's report.

In the auditor's memorandum, the auditor reports on the activities which he has carried out and on his findings in this regard, irrespective of whether these findings have influenced the tenor of the auditor's report. The auditor will report specifically on the aspects referred to in section 1c, under (a) and (b), and the items included in chapter 2 under "Areas of attention in the audit".

Within the framework of the audit, it is not necessary that the auditor reports on *all* the findings of the audit in the auditor's memorandum. However, all the findings must be included in the auditor's file with a view to the possibility of review, referred to in chapter 5. The relevance of a finding which is to be reported will be assessed independently by the auditor in the light of the fact that the audit takes place within this framework specifically on behalf of NMa.

3c. Time aspects

Subject to amendments to legislation in the interim, this protocol shall apply for the duration of the first Allocation System approved by NMa (date of approval, 25 April 2007). As stated in point 1a, NMa reserves the right to make amendments to the protocol.

5. Documentation

The auditor will draw up a work schedule which shall include the way in which the above-mentioned standard NV COS 3400 'Audit of prospective financial information' and the areas requiring attention referred to in this protocol will be included in his audit. The auditor will also document his findings and conclusions in this respect in the file.

6. Possibility of review

In principle, auditors designated by the Audit Service of the Ministry of Economic Affairs or NMa may carry out a review at the offices of the auditor responsible for auditing the tariff proposal. NMa may also make use of the opportunity to consult the independent auditor with regard to the outcomes of the audit.

END OF ADDENDUM 1