

№	Question	Answer
1	<p>Clause 1.1 (Definitions) – Acceptable Person</p> <p>"Acceptable Person" is defined in Clause 1.1 (Definitions) of the Concession Agreement as "any Government Authority, or a body of similar status, whose functions and activities are financed entirely or mainly through the central budget of the State". Pursuant to Clause 46.2 (Assignment by the Grantor) of the Concession Agreement "The Grantor may assign or transfer [this] Agreement without prior consent of the Concessionaire provided that the Concessionaire shall be entitled to terminate this Agreement where the rights and obligations of the Grantor are assigned or transferred (whether contractually or by virtue of any Laws) to any person other than an Acceptable Person.". Although the insertion of a definition of "Acceptable Person" is an improvement compared to the previous draft, this definition is problematic as it makes reference to any "body of similar status whose functions and activities are financed entirely or mainly through the central budget of the State". Since Clause 46.2 (Assignment by Grantor) of the revised draft of the Concession Agreement allows the Grantor to assign the Concession Agreement without the consent of the Concessionaire if the assignment is made to an Acceptable Person, this wording creates an uncertainty and a major bankability issue given the vagueness of the criteria of "body of similar status" and "financed [...] mainly through the central</p>	<p>The proposed wording is a compromise based on the constitutional separation of authorities in Bulgaria and the fact that we cannot predict how this will evolve over the entire concession period.</p> <p>Even though we appreciate your proposal, we deem it problematic from a state guarantee/state aid regulations perspective.</p> <p>The adoption of the proposed text could also be understood as a form of increase of the state debt, insofar as state guarantees are included in the latter.</p>

	<p>budget of the State" and the fact that it is uncertain that such entities would have the same credit-standing and credit-worthiness of the Grantor. The Lenders in the context of a project of this nature will be analyzing the credit-worthiness and credit standing of the Grantor. Any assignment to an entity which may be more or less remote from the central government of Bulgaria may have an impact on the explicit or implicit guarantee by the Government of Bulgaria of payments to be made under the Concession Agreement. On the basis of the above, we kindly request that (i) you confirm that, in case of an assignment of the Concession Agreement by the Grantor to a "body or similar status whose functions and activities are financed entirely or mainly through the central budget of the State", the initial Grantor shall guarantee all obligations and payment obligations of the new Grantor under the Concession Agreement; and (ii) you amend the definition of "Acceptable Person" as follows ""Acceptable Person" shall mean (i) any Government Authority, or (ii) a body of similar status, whose functions and activities are financed entirely or mainly through the central budget of the State <u>to the extent that in such case all obligations and payments of such entity under the Concession Agreement are guaranteed by the initial Grantor</u> ".</p>	
<p>2</p>	<p>Clause 1.1 (Definitions) – Market Value of the Investments "Market Value of the Investments" is defined in Clause 1.1 (Definitions) of the Concession Agreement as "as of the Termination Date (i) the net (amortized) book value of all Moveable and Intangible Concession Assets developed by the Concessionaire in the Concession Site</p>	<p>We consider the proposed wording in the current draft Concession Agreement sufficiently clear and balanced.</p>

through actual Capital Expenditures, including - for the avoidance of doubt - the unamortized value of the Upfront Concession Fee, which amount shall be revaluated for inflation by a valuation expert appointed by the Grantor, on the basis of the Index (except for the Upfront Concession Fee which shall not be Indexed) **and from which any impairment for wear and tear to the value of the tangible assets as assessed by a valuation expert will need to be deducted"** .While it is understandable that some deductions for impairment for wear and tear be made when determining the book value of the Moveable and Intangible Concession Assets, the Concession Agreement, as drafted, creates a bankability issue since it does not give the Concessionaire and the Lenders a visibility as to the anticipated Market Value of the Investments since it does not provide for a cap on the deductions to be made (the value of these deductions being left at the discretion of the Grantor and the expert unilaterally appointed by the Grantor).As is customary in projects of this nature, the value of any such deductions for any impairment for wear and tear when determining the market value of the investments is generally subject to a cap which enables the concessionaire and the lenders to anticipate the potential market value of the investments and to take it into account in the sensitivities of the financial model, when determining the potential compensation that the concessionaire may receive in case of a termination of the concession agreement for a concessionaire or a grantor event of default.On the basis of the above, we kindly request that (i) you confirm that any

	<p>deduction for any impairment for wear and tear when determining the Market Value of the Investments is subject to a cap which could be equal, for example, to the amount of the Operation Guarantee; and (ii) you amend the definition of "Market Value of the Investments" accordingly</p>	
<p>3</p>	<p>Clause 14.1.4 (Financing of the Concession with Debt) Pursuant to Clause 14.1.4 (Financing of the Concession with Debt) of the Concession Agreement "The Concessionaire shall also be obliged to replace a Lender to the extent such Lender loses its qualification as an Acceptable Bank with a new Lender being an Acceptable Bank within sixty (60) days upon occurrence of such change of status ".The counterparty risk regarding the identity and the quality of the Lenders before the Senior Debt is disbursed to the Concessionaire is an important element which needs to be monitored in order to ensure that the Senior Debt is made available timely and duly and does not hinder the activities of the Concessionaire. However, once the Senior Debt is disbursed to the Concessionaire, the counterparty risk becomes irrelevant since the Senior Debt would have already been disbursed to the Concessionaire.While a such monitoring can be made in order to ensure that the initial Lenders and any subsequent Lenders during the disbursement period (or possibly, after such date) have the minimum rating requirement as at the date they become a lender of record, a such monitoring at a later date is impossible for a borrower. A such requirement puts the borrower in a position to set up a monitoring of all banks who may become Lenders and to possibly reserve a</p>	<p>We will review and assess whether there is any need for amendments.</p>

	<p>right to prepay any portion of the Senior Debt should such portion come to be held by a bank which no longer has the minimum rating. This requirement has no precedent in any similar project and in particular in an OECD country given the burden it puts on the Concessionaire and is unacceptable as such. On the basis of the above, we kindly request that (i) you confirm that the requirement of Clause 14.1.4 (Financing of the Concession with Debt) of the Concession Agreement is only applicable until the disbursement of the Senior Debt by the Lenders to the Concessionaire; and (ii) you amend Clause 14.1.4 (Financing of the Concession with Debt) of the Concession Agreement as follows "<u>The Concessionaire shall also be obliged, until the full disbursement of the Senior Debt to the Concessionaire, to replace a Lender to the extent such Lender loses its qualification as an Acceptable Bank with a new Lender being an Acceptable Bank within sixty (60) days upon occurrence of such change of status ensure that all Lenders are Acceptable Bank upon entering into the pool of Lenders.</u>".</p>	
<p>4</p>	<p>Clause 34.4 (Rebalance Payment) Pursuant to Clause 34.1.4 (Compensation Events) a Qualifying Change in Law is Compensation Event. Pursuant to Clause 34.4 (Rebalance Payment) "(...) In addition, the Concessionaire shall be entitled to terminate this Agreement in the case of a Qualifying Change in Law relating to the Guideline which results in an uncapped liability of the Shareholders or Third Party resources under the respective Appendices 11a to 11c. (...)". The Concession Agreement now gives the</p>	<p>Please refer to our recent questions and answers.</p>

	<p>Concessionaire the right to terminate the Concession Agreement in the case of a Qualifying Change in Law relating to the Guideline which results in an uncapped liability of the Shareholders or Third Party resources under the respective Appendices 11a to 11c. However, the Concession Agreement does not specify that the compensation regime applicable in such case shall be based on Clause 40.6.2 (Compensation Upon Termination for Event of Default).</p> <p>On the basis of the above, we kindly request that (i) you confirm that in case of a termination of the Concession Agreement by the Concessionaire in the case of a Qualifying Change in Law relating to the Guideline which results in an uncapped liability of the Shareholders or Third Party resources under the respective Appendices 11a to 11c, the compensation regime applicable in such case shall be based on Clause 40.6.2 (Compensation Upon Termination for Event of Default); and (ii) you amend Clause 34.4 (Rebalance Payment) accordingly.</p>	
5	<p>Clause 12.1 (Equity Investment) Clause 5 (Limited Indemnities Undertaking) of Schedule 11a (Shareholder Undertaking) Pursuant to Clauses 12.2 (Maximum Liability Amount) of the English version of the revised draft of the Concession Agreement (the Concession Agreement): "The Parties agree that the Maximum Liability Amount set forth in Appendices 11a to 11c represents a cap on the liability of the Shareholders/Third Parties providing certain capabilities as set forth above subject to the terms and conditions of such Appendices and the Guideline." Pursuant to Clause 5.1</p>	We will review and assess whether there is any need for amendments.

(Limited Indemnities Undertaking) of Schedule 11a (Shareholder Undertaking) of the Concession Agreement "Subject to the Maximum Liability Amount set forth in Section 5.2 (Limited Indemnities Undertaking) below, the Initial Shareholders shall bear explicit liability for the Shareholder Undertakings set forth in Section 2 (Shareholder Undertakings) hereof, for the representations and warranties as well as the undertakings set out in Sections 3 (Limited Warranties Undertaking) and 4 (Additional Undertakings) hereof, whether solely, jointly, jointly and severally with the Concessionaire or otherwise towards the Grantor under the Concession Agreement." Pursuant to Clause 5.2 (Limited Indemnities Undertaking) of Schedule 11a (Shareholder Undertaking) of the Concession Agreement "By signing this Letter, the Grantor acknowledges and agrees that the total maximum liability of Initial Shareholders and any subsequent Shareholder (whether solely, jointly, jointly and severally with the Concessionaire and any Shareholder where this provision under no circumstances should be understood and interpreted as limiting in any way the Concessionaire's liability) shall be BGN 200,000,000 (in words: two hundred million Bulgarian Lev) ("**Maximum Liability Amount**") as such liability arises for the Initial Shareholder or any subsequent Shareholder as the Acceding Party under this Letter **and/or as a matter of Law** provided the Maximum Liability Amount shall apply to the aggregate of the claims by the Grantor against the Initial Shareholders and the Shareholders pursuant to and in accordance with this Letter." Pursuant to the Guideline,

on the basis of which the Grantor has amended some of the provisions of the Concession Agreement (notably, the above-mentioned provisions) "Where the project company is formed by the economic operators participating in the group, pursuant to Art. 21, para 2 and para 3, CA, its capital is distributed as proposed in the offer. In this case, similar to the above with regard to third parties, **the liability of each economic operator should be determined in relation to the resources, which it provided when joining the project company.** To assume something different would be to impose requirements that are not proportional, thereby breaking the principle under Art. 4, CA, as well as the quoted requirement of the Directive. "The Concession Agreement as drafted does not specify yet that, although the liability of the Initial Shareholders and any subsequent Shareholders (whether jointly, jointly and severally with the Concessionaire and any Shareholder where this provision under no circumstances should be understood and interpreted as limiting in any way the Concessionaire's liability) shall not exceed the Maximum Liability Amount, the individual liability of each Initial Shareholder and each subsequent Shareholder (taken individually) shall not exceed the amount of its shareholding in the Concessionaire. The Concession Agreement, as currently drafted, puts the Initial Shareholders in a joint and several obligation among themselves and on this basis, for example, where a minority Shareholder holding only five percent (5%) of the shares of the Concessionaire can be held liable for up to Maximum Liability Amount, which is in contradiction of the

Guideline and in breach with the principle under Article 4 of the Concession Act, as well as the requirement of the Directive 2014/23 / EU of the European Parliament and of the Council on the award of concession contracts (the **Directive**). Moreover, by referring to "and/or as a matter of Law", Clause 5.2 (Limited Indemnities Undertaking) of Schedule 11a (Shareholder Undertaking) seems to imply that the Initial Shareholders can be held liable for matters which are outside the scope of the accession letter where it is understood from the express provisions of Clause 5.1 (Limited Indemnities Undertaking) of Schedule 11a (Shareholder Undertaking) that the Initial Shareholders shall only "bear explicit liability for the Shareholder Undertakings set forth in Section 2 (Shareholder Undertakings) hereof, for the representations and warranties as well as the undertakings set out in Sections 3 (Limited Warranties Undertaking) and 4 (Additional Undertakings) hereof, whether solely, jointly, jointly and severally with the Concessionaire or otherwise towards the Grantor under the Concession Agreement.". On the basis of the above, we kindly request that (i) you confirm that, although the liability of the Initial Shareholders and any subsequent Shareholders (whether solely, jointly, jointly and severally with the Concessionaire) shall not exceed the Maximum Liability Amount, the individual liability of each Initial Shareholder and any subsequent Shareholder (taken individually) under the accession letter shall not exceed the amount of its participation in the equity capitalisation (shareholding + debt) in the Concessionaire;

	<p>(ii) you amend the provisions of Clause 12 (Equity Investment) of the Concession Agreement and Clause 5 (Limited Indemnities Undertaking) of Schedule 11a (Shareholder Undertaking) of the Concession Agreement accordingly; (iii) you confirm that the Initial Shareholders shall only "bear explicit liability for the Shareholder Undertakings set forth in Section 2 (Shareholder Undertakings) hereof, for the representations and warranties as well as the undertakings set out in Sections 3 (Limited Warranties Undertaking) and 4 (Additional Undertakings) hereof, whether solely, jointly, jointly and severally with the Concessionaire or otherwise towards the Grantor under the Concession Agreement."; and (iv) you amend Clause 5.2 (Limited Indemnities Undertaking) of Schedule 11a (Shareholder Undertaking) accordingly.</p>	
6	<p>The concession documents provide the format for various submission certificates. However, based on discussion with stakeholders, we have received draft certificates with minor language changes in the content which are in compliance with the intent of such certificates. Kindly confirm that such certificates with minor language changes will be acceptable for the submission.</p>	<p>Such certificates will be acceptable, provided that the content is in substance compliant with the respective Form.</p>
7	<p>The current bid evaluation criteria for the technical proposal evaluates all the deliverables based on being fully / to a significant / partially compliant with requirements of Sections 1, 2 and 3 of Schedule 4. Kindly provide a detailed mechanism for objective evaluation of the technical proposal.</p>	<p>Please review the mechanism for assessing the Technical proposal, as explained with example below:</p> <p>Evaluation of the Technical Proposal (P1, P2 and P3):</p> <p>Component assessment: Conceptual Development Plan (P2 .3):</p>

		<p>The proposal of bidder X for an Conceptual Development Plan meets the requirements of Appendix No. 4, Part 3.II.1 of the Concession Documentation for which the participant receives the maximum number of points for this component – 45 points</p> <p>Component assessment: Business plan (P2 .1):</p> <p>The proposal of Section X for Business Plan meets the requirements of Appendix No. 4, Part 3.II.2 of the Concession Documentation for which the participant receives 75% of the maximum number of points for this component – 15 points (calculation: 20 x 75% = 15 points)</p> <p>Component assessment: Financing plan (P2 .2):</p> <p>The proposal of bidder X for a Financing Plan meets the requirements of Appendix No. 4, Part 3.II.2 of the Concession Documentation for which the participant receives 75% of the maximum number of points for this component – 11.25 points (15 points x 75% = 11.25 points)</p> <p>Component assessment: Overall Strategy (P1):</p> <p>The proposal of Section X for a Overall Strategy meets the requirements of Appendix No. 4, Part 3.II.3 of the Concession Documentation for which the participant receives 50% of the maximum number of points for this component – 7,5 points (15 points x 50% = 7,5 points)</p> <p>Component assessment: Traffic forecast plan, EBITDA and Equity expenditure (P3):</p> <p>The proposal of bidder X for the Forecast Plan, EBITDA and Equity Costs meets the requirements of Appendix No. 4, Part 3. II.3 of the Documentation for the Concession, for which the participant receives 50% of the maximum number of points for this component – 2,5 points (5 points x 50% = 2,5 points)</p> <p>The overall evaluation of the Technical Proposal is the sum of the scoring points of all components, in this example - 81,25 points.</p>
8	Kindly provide templates for specific excel outputs (example traffic forecasts, capex plan, etc.) required for submission for uniformity / clarity	Bidders are free to propose their own format for these calculations.

9	As part of the financial model, there is a requirement to calculate certain ratios (such as project life coverage ratio, etc). Given different accounting understanding/ methodology to calculate these ratios, kindly provide exact definition and methodology expected.	We will provide the definitions later on.
10	Definition of Senior Debt includes "Senior Debt (reduced by all credit balances on any banking accounts held by or on behalf of the Concessionaire)". Kindly also include adjustment for credit balances in liquid mutual funds and instruments of treasury nature.	We will review and assess whether there is any need for amendments.
11	Certain files in the data room are password protected e.g. Appendix 12.4 (file 4.2, 4.3). Kindly provide the password for the same.	The files are published again and are available for review in the Virtual Data Room.
12	<p>As per Form A: Binding Proposal of the Tender Documentation, Clause 1.2, The Financial Proposal requires submission of an Offered Annual Concession Fee Amount in EURO as well as an Annual Concession Fee Percentage. However, as per the evaluation mechanism mention in Schedule 4, Part 3, the proposal of the bidder will be evaluated based on only the Offered Annual Concession Fee Amount submitted.</p> <p>Kindly clarify the requirement for submission of Annual Concession Fee Percentage.</p> <p>Further also clarify if the percentage of the reference revenue amount calculation will be used for payment of Annual Concession Fee every year or the quoted Annual Concession</p>	Please refer to Q&As published on 23 July and 14 September 2018 (#13 and #1567 of the Summary Table of Questions & Answers, respectively).

	Fee Percentage submitted as part of the Financial Proposal.	
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