

	<b>ANSWER TO ALL QUESTIONS IN TABLE BELOW:</b>	Thank you for the various proposals made. We will review, analyse and assess to what extent there is a need to amend the draft Concession Agreement.
<b>No.</b>	<b>Question</b>	<b>Suggested drafting proposal</b>
1.	<p>Pursuant to clause 9.4(d) of the Tender Documentation, the shareholders' of the Project Company shall be jointly and severally liable with the Project Company for any liability incurred by the Project Company arising out of or in connection with the Concession Agreement, such liability to be limited up to the minimum equity capitalisation amount set out in Clause 12.1.2 of the Concession Agreement, as reduced from time to time pursuant to Clause 12.1.3 of the Concession Agreement.</p> <p>We understand that this provision of the Tender Documentation means that once the Shareholders fully or partially comply with the capitalisation requirements of the Concessionaire, then the Maximum Liability Amount is reduced by the amount so injected into the Concessionaire.</p> <p>In this respect, could you please consider clarifying the wording of clause 5.2 of Appendix 11(a) to expressly refer to the reduction of the Maximum Liability Amount when the Shareholders capitalise the Concessionaire as required under Clauses 12.1.2 and 12.1.3 of the Concession Agreement?</p> <p>Could you please also clarify in the Concession Agreement that the Maximum Liability Amount of BGN 200,000,000 is the aggregate liability of the Shareholders and Third Party providing financial capabilities and any Airport Operator Third Party?</p>	<p>1. Amend clause 5.2 of Appendix 11a to the Concession Agreement as follows:</p> <p><i>"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) ("<b>Maximum Liability Amount</b>") 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 <b>(i) the Initial Shareholders and the Shareholders pursuant to and in accordance with this Letter; (ii) the Airport Operator Third Party pursuant to and in accordance with the undertaking executed by the Airport Operator Third Party as per Appendix 11(b); and (iii) any Third Party Providing Financial Capabilities (as defined in Appendix 11(c)) pursuant to and in accordance with the undertaking executed by such Third Party as per Appendix 11(c).</b></i></p> <p><b><u>In any event, the Maximum Liability Amount is reduced by the aggregate amount of all equity capitalisations of the Concessionaire made as required by Clause 12.1.2 and Clause 12.1.3 of the Concession Agreement."</u></b></p>

Please consider the suggested drafting proposals in this respect.

2. Amend clause 5.2 of Appendix 11b to the Concession Agreement as follows:

*"By signing this Letter, the Grantor acknowledges and agrees that the total maximum liability of any all Acceding Parties (whether solely, jointly, jointly and severally with the Concessionaire, 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) (the "**Maximum Liability Amount**") as such liability arises for 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 (i) the Acceding Party pursuant to and in accordance with this Letter; (ii) any Shareholder pursuant to and in accordance with the undertaking executed by the Shareholder as per Appendix 11(a); and (iii) any Third Party Providing Financial Capabilities (as defined in Appendix 11(c)) pursuant to and in accordance with the undertaking executed by such Third Party as per Appendix 11(c).*

*In any event, the Maximum Liability Amount is reduced by the aggregate amount of all equity capitalisations of the Concessionaire made as required by Clause 12.1.2 and Clause 12.1.3 of the Concession Agreement."*

3. Amend clause 5.2 of Appendix 11(c) to the Concession Agreement as follows:

*"By signing this Letter, the Grantor acknowledges and agrees that the total maximum liability of all Acceding Parties (whether solely, jointly, jointly and severally with the Concessionaire, 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) (the "**Maximum Liability Amount**") as*

such liability arises for 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 (i) the Acceding Party pursuant to and in accordance with this Letter; (ii) any Shareholder pursuant to and in accordance with the undertaking executed by the Shareholder as per Appendix 11(a); and (iii) against the Airport Operator Third Party pursuant to and in accordance with the undertaking executed by the Airport Operator Third Party as per Appendix 11(b).

In any event, the Maximum Liability Amount is reduced by the aggregate amount of all equity capitalisations of the Concessionaire made as required by Clause 12.1.2 and Clause 12.1.3 of the Concession Agreement."

<p>2.</p>	<p>Please note that the including of the Qualifying Change in Law as a Compensation Event is not an adequate remedy for the Shareholders, an Airport Operator Third Party and a Third Party Providing Financial Capabilities. If the Grantor makes a claim in excess of the Maximum Liability Amount and the cap on the joint and several liability of the Shareholders, an Airport Operator Third Party and a Third Party Providing Financial Capabilities is not respected by the court, then none of the consequences of the Compensation Event provides protection or remedy to the Shareholders/relevant Third Parties. The Rebalancing Methods listed in Article 34.8 would not work in such a case. Some of them depend on the Grantor (Article 34.8.7) or other parties (for example, Article 34.8.2 and Article 34.8.3), and others are completely inappropriate (for example, Article 34.8.5). The Shareholders, an Airport Operator Third Party and a Third Party Providing Financial Capabilities are the parties who will bear the negative consequences of the uncapped liability and thus the appropriate remedy shall be made available to them.</p> <p>Therefore, please consider including in the Concession Agreement a new Grantor Event of Default if the Grantor makes a claim against any of them in excess of the Maximum Liability Amount.</p> <p>Please see the suggested drafting proposal in this respect.</p>	<p>Add new Clause 40.2.7 to the Concession Agreement as follows:</p> <p><b><u>"the Grantor makes a claim against any Shareholder, any Airport Operator Third Party and/or any Third Party providing the financial capabilities under Appendix 11c (Third Party Equity Financing Undertaking), in each case in excess of the Maximum Liability Amount."</u></b></p>
<p>3.</p>	<p>According to the latest amendments to the draft Concession Agreement a change, revocation, repeal, modification and/or a change in interpretation of the Guideline is a Qualifying Change of Law. Clause 34.1 stipulates that, subject to Clause 34.2 (<i>Restrictions</i>), the Concessionaire shall be entitled to an economic rebalance of the Concession (a "<b>Rebalance</b>") following the occurrence of one or more of the events listed therein. A Qualifying Change of Law is among those events.</p>	<p>Clause 34.2 of the Concession Agreement shall be amended as follows:</p> <p><i>"The Concessionaire shall only be entitled to a Rebalance in the following circumstances:</i></p> <p><i>34.2.1 a Rebalance shall only be possible if the Compensation Event Minimum Threshold is exceeded;</i></p>

<p>We believe that the restrictions set out in Clause 34.2 should not apply to a Qualifying Change of Law due to the nature of this event. A Qualifying Change of Law is very unlikely to result itself in any of the negative circumstances described in Clause 34.2. Rather, it is likely to result in the uncapped liability of the Shareholders, the Airport Operator Third Party and the Third Party Providing Financial Capabilities. Thus, if the Qualifying Change of Law is considered to be a Compensation Event only if and to the extent that the requirements of Clause 34.2 are met, this would mean that it will almost never trigger the consequences set out Clause 34.1 and the Concessionaire may never be entitled to a Rebalance due to a Qualifying Change of Law.</p> <p>Therefore, could you please consider clarifying in the Concession Agreement that the mere occurrence of a Qualifying Change of Law is sufficient to trigger a Compensation Event, regardless of the restrictions in Clause 34.2?</p> <p>Please consider the suggested drafting proposal in this respect.</p>	<p><i>34.2.2 the Concessionaire incurs either (i) an increase in Capital Expenditures or (ii) a Loss of Aggregate Concession Revenue over a twenty-four (24) month period that exceeds the Compensation Event Minimum Threshold in relation to any Compensation Event as a direct result of (a) a single Compensation Event or (b) a series of Compensation Events occurring within a twenty-four (24) months period, or</i></p> <p><i>34.2.3 additional Capital Expenditures arise which, in aggregate with Capital Expenditure obligations in respect of Compensation Events of the same type occurring within the previous twenty-four (24) month exceed the Compensation Event Minimum Threshold.</i></p> <p><b><u>This Clause 34.2 shall not apply to a Rebalance as a result of the occurrence 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."</u></b></p>
<p>4. Upon the occurrence of such Qualifying Change of Law, the Concessionaire is entitled to a Rebalance. According to Clause 34.4, if the Grantor is required to provide a Rebalance in respect of a Compensation Event, it shall exercise reasonable endeavors to provide a Rebalance, within six (6) months following a final agreement on the Rebalance (unless extended under the Laws), but if, despite exercising reasonable endeavors, the provision of a Rebalance would be excessively onerous on the Grantor, the Grantor shall, instead of providing a Rebalance, within that timeframe, terminate this Agreement by issuing a Termination Notice to the Concessionaire and to the Lenders.</p> <p>As a result of the latest amendments to the draft Concession Agreement a new sentence was added to Clause 34.4, i.e. that the Concessionaire</p>	<p>Amend Clause 34.4 of the Concession Agreement as follows:</p> <p><i>"If the Grantor is required to provide a Rebalance in respect of a Compensation Event, it shall exercise reasonable endeavors to provide a Rebalance, within a six (6) months following final agreement on the Rebalance (unless extended under the Laws), but if, despite exercising reasonable endeavors, the provision of a Rebalance would be excessively onerous on the Grantor, the Grantor shall, instead of providing a Rebalance, within that timeframe, terminate this Agreement by issuing a Termination Notice to the Concessionaire and to the Lenders (subject to the provisions of the Direct Agreement, if any), subject to Clause 34.6 (Payment on termination).</i></p>

	<p>shall be entitled to terminate the Concession Agreement in the case of the occurrence of a Qualifying Change in Law relating to the Guideline which results in the uncapped liability of the Shareholders or Third Party resources under the respective Appendices 11a to 11c.</p> <p>It is, however, not clear whether the right of the Concessionaire to terminate the Concession Agreement following the occurrence of a Qualifying Change in Law relating to the Guideline depends or not on the ability of the Grantor to provide a Rebalance within a six (6) months (unless extended under the Laws).</p> <p>Could you please consider clarifying in the Concession Agreement that the Concessionaire shall always be entitled to terminate the Concession Agreement following the occurrence 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?</p> <p>Please consider the suggested drafting proposal in this respect.</p>	<p><b><u><i>This provision shall not apply if the Concessionaire terminates this Agreement due to a Grantor Event of Default.</i></u></b></p> <p><b><u><i>Notwithstanding the foregoing in this Clause 34.4, the Concessionaire shall <u>always</u> 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.</i></u></b></p> <p><del>This provision shall not apply if the Concessionaire terminates this Agreement due to a Grantor Event of Default."</del></p>
5.	<p>We note that pursuant to Clause 34.4 the Concessionaire will be entitled to terminate the Concession Agreement in 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, it is not clear whether such Qualifying Change in Law will constitute a Grantor Event of Default and, consequently, what termination compensation will be payable to the Concessionaire by the Grantor upon such termination.</p> <p>Given that the Concessionaire will not be responsible for the circumstances giving rise to such a Qualifying Change in Law, could you please clarify in the Concession Agreement that a Qualifying Change in Law relating to the Guideline which results in an uncapped</p>	<p>Add new Clause 40.2.8 to the Concession Agreement as follows:</p> <p><b><u><i>"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, has occurred."</i></u></b></p>

	<p>liability of the Shareholders or Third Party resources under the respective Appendices 11a to 11c is a Grantor Event of Default?</p> <p>Please consider the proposed drafting suggestion in this respect.</p>	
6.	<p>For the reasons stated in the previous question, could you please also clarify that if the Concessionaire terminates the Concession Agreement in accordance with Clause 34.4 in the case of a Qualifying Change in Law having occurred which relates to the Guideline and which results in an uncapped liability of the Shareholders or Third Party resources, then the Grantor shall pay to the Concessionaire compensation on termination of this Agreement under the terms and conditions of Clause 40.6.2 ("<b>Grantor Default Compensation Sum</b>")?</p> <p>Please consider the proposed drafting suggestion in this respect.</p>	<p>Add new sentence to Clause 34.6 to the Concession Agreement following Clause 34.6.2 and reading:</p> <p><b><u>"If the Concessionaire terminates this Agreement in accordance with Clause 34.4 in the case of a Qualifying Change in Law having occurred which relates to the Guideline and which results in an uncapped liability of the Shareholders or Third Party resources, then the Grantor shall pay to the Concessionaire compensation on termination of this Agreement under the terms and conditions of Clause 40.6.2 ('Grantor Default Compensation Sum')."</u></b></p>
7.	<p>If a Concessionaire Event of Default occurs, but the Grantor does not exercise its right to terminate the Concession Agreement in these circumstances, the Lenders do not have any contractual right to require that the Grantor exercises such termination.</p> <p>Could you please consider amending the form of a Direct Agreement set out in Appendix 13 to the Concession Agreement to provide that, following the occurrence of a Concessionaire Event of Default from a list pre-agreed with the Grantor and upon request of the Lenders, the Grantor shall be obliged to terminate the Concession Agreement? Such pre-agreed list to be agreed between the Grantor and the Concessionaire separately and will include the Concessionaire Event of Default under Clause 40.1.17 of the Concession Agreement, for example.</p>	<p>Add a new clause to the form of a Direct Agreement as follows:</p> <p><b><u>"Following receipt of a written notice from the Security Agent, the Grantor shall promptly terminate the Concession Agreement in accordance with the procedures set out in Clause 40.5 of the Concession Agreement if:</u></b></p> <ul style="list-style-type: none"> <li>(i) <b><u>any of the Concessionaire Events of Default set out in Clauses 40.1.17 and [other Clauses to be agreed between the Grantor and the Concessionaire before the execution of the Concession Agreement] of the Concession Agreement occurs; and</u></b></li> <li>(ii) <b><u>the Security Agent has served notice on the Concessionaire under the Financing Agreements requiring repayment of all or part of the Senior Debt following a default (howsoever described) under the Financing Agreements."</u></b></li> </ul>

	<p>Otherwise the current regime of termination of the Concession Agreement creates a serious bankability issue that may limit the liquidity to finance the Concessionaire.</p> <p>Please consider the suggested drafting proposal in this respect.</p>	
8.	<p>If a Grantor Event of Default has occurred and is not cured during the applicable Cure Period, then the Concessionaire may only request termination of the Concession Agreement if and to the extent such termination would not represent a serious threat to the public interest or, if such a threat to public interests exists, when the conservation of the Concession Agreement in force is excessively onerous for the Concessionaire (please see Clause 40.5.3 of the Concession Agreement).</p> <p>Due to the strategic nature of the Airport, any termination of the Concession Agreement may represent a serious threat to the public interest. It is not clear from the provisions of the Concession Agreement who decides on whether there is such a threat or not. It is also not clear what is meant by the preservation of the Concession Agreement in force being “excessively onerous” for the Concessionaire.</p> <p>We also note that pursuant to Art. 147 of the Concession Act, in case of non-fulfillment of an obligation under a concession agreement, the non-defaulting party may terminate it by a written notice by giving to the other party a reasonable period of time for performance with a warning that after the expiry of the time limit the contract will be considered terminated. This Clause of the Concession Act does not provide any restrictions or qualifications to the right to terminate a concession agreement in these circumstances, such as a serious threat to the public interests.</p>	<p>Amend Clause 40.5.3 of the Concession Agreement as follows:</p> <p><i>"40.5.3 If a Grantor Event of Default occurs and has not been cured during the Cure Period, the Concessionaire shall be entitled to terminate this Agreement by issuing a Termination Notice to the Grantor and to the Lenders (subject to the provisions of the Direct Agreement, if any, and any relevant Financing Agreement); <del>provided however that the Concessionaire may only request the termination of this Agreement if and to the extent that such termination does not represent a serious threat to the public interest or, if such a threat to the public interest exists, when the conservation of this Agreement in force is excessively onerous for the Concessionaire.</del>"</i></p>

	<p>Could you please therefore consider removing the restrictions on termination of the Concession Agreement following the occurrence of a Grantor Event of Default contained in Clause 40.5.3 on the basis that this will not be accepted by the Lenders and the Concession Agreement provides for the handover procedure which is designed to minimise any risk of interruption of the provision of the Airport Services when the Airport is handed over to the Grantor as a result of termination of the Concession Agreement?</p> <p>Otherwise the current regime of termination of the Concession Agreement creates a serious bankability issue.</p> <p>Please consider the suggested drafting proposal in this respect.</p>	
9.	<p>In respect of the new definition of "Market Value of Investments", could you please consider clarifying in the Concession Agreement that such market value is determined by a valuation expert selected by the Grantor from a list of pre-approved experts contained in the Concession Agreement (such as KPMG, E&amp;Y, PWC or similar) (and any other expert outside the list is to be agreed by the Parties)?</p> <p>In addition, could you please consider clarifying in the Concession Agreement that the Concessionaire may challenge a valuation made by a valuation expert in accordance with Clause 55 of the Concession Agreement if the Concessionaire does not agree with the evaluation?</p>	N/A
10.	<p>Could you please explain the rationale for the threshold in Clause 40.2.2 of the Concession Agreement being 20%?</p>	N/A
11.	<p>Certain acts by Competent Authorities which affect Commercial Operations and reduce Aggregate Concession Revenues do not constitute a Grantor Event of Default unless the reduction against the previous year Concession Revenues is more than 20% (please see</p>	<p>Add new Clause 34.1.8 to the Concession Agreement as follows:</p> <p><b><u>"34.1.8. any curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, confiscation or nationalization by any</u></b></p>

	<p>Clause 40.2.2 of the Concession Agreement). This may potentially result in a situation when the revenues of the Concessionaire are reducing due to an act of a Competent Authority, but the Concessionaire does not have a right to take action to prevent this.</p> <p>Could you please therefore consider clarifying the Concession Agreement so that any reduction in the Aggregate Concession Revenues of the Concessionaire due to acts by Competent Authorities, to the extent such reduction is less than 20%, is a Compensation Event, and the applicable Rebalancing Method in these circumstances is a decrease of the Concession Fee?</p> <p>Otherwise the current regime of termination of the Concession Agreement creates a serious bankability issue.</p> <p>Please consider the suggested drafting proposal in this respect.</p>	<p><b><u>Competent Authority, which affects the Concession Operations in such a way that the Aggregate Concession Revenue of the previous Concession Year is reduced by no more than twenty (20) percent"</u></b>.</p>
12.	<p>We thank you for your response answer no. 1 in the Q&amp;A 15.08.18/2. We notice a discrepancy between the concept explained in that response and the Concession Agreement, particularly, Clause 41.3 of the Concession Agreement refers to "the sum of unamortised Upfront Concession Fee and any unamortised actual Capital Expenditures..." without a time reference, which suggests that the compensation amount includes the full Upfront Concession Fee irrespective of when termination occurs. Conversely, the previously mentioned response refers to "a portion of the Upfront Concession Fee..." and "unrecovered investment expenses...". As such, could you please confirm whether (i) "unamortised upfront Concession Fee" as referred to in the Concession Agreement implies the initially paid Upfront Concession Fee (approx. €281m) or such amount reduced by its corresponding accumulated amortisation until the Termination Date (i.e. EUR281m</p>	<p>Amend Clause 41.3.1 of the Concession Agreement as follows:</p> <p><b><u>"The sum of unamortised Upfront Concession Fee and any unamortised actual Capital Expenditures relating to the Concession Site and the Concession Assets <u>as reported in the Concessionaire's latest financial statements prepared before the Termination Date plus any Capital Expenditures incurred by the Concessionaire from the date immediately following the last day of the period covered such latest financial statements, until (and including) the Termination Date, minus"</u></u></b></p>

	<p>reduced by 1/35 of such amount per annum until the Termination Date); and (ii) “unamortised actual Capital Expenditures” implies the cumulative Capital Expenditures invested by the Concessionaire until the Termination Date or such cumulative amount reduced by the cumulative amortization of such fixed assets in accordance with applicable accounting rules until the Termination Date?</p> <p>Please consider our suggested drafted proposal which accommodates our request. Could you please confirm whether the Concession Agreement can be amended accordingly?</p>	
13.	<p>In your answer no. 8 in the Q&amp;A 16.08.18/3 you were considering clarifying in the Concession Agreement that in case of a termination of the Concession Agreement by the Grantor further to the occurrence of the events referred to in Clauses 34.1.4, 34.1.5 or 34.1.6 of the Concession Agreement, the Grantor would pay the Concessionaire compensation on termination of the Concession Agreement under the terms and conditions of Clause 40.6.2 of the Concession Agreement</p> <p>Otherwise the current regime of termination of the Concession Agreement creates a serious bankability issue.</p> <p>Please consider the suggested drafting proposal in this respect.</p>	<p>Amend Clause 34.6 of the Concession Agreement as follows:</p> <p><b>" 34.6 Payment on termination</b>  <i>If the Grantor terminates this Agreement in accordance with Clause 34.4 (Rebalance payment), the Grantor shall pay to the Concessionaire:</i></p> <p><del><b>34.6.1 if the Compensation Event results from one of the events specified in Clause 34.1.4, Clause 34.1.5 or Clause 34.1.6 (Compensation Events), compensation on termination of this Agreement under the terms and conditions of Clause 41.3 (Refund upon Termination for Extensive Force Majeure);</b></del></p> <p><del><b>34.6.2. for all other Compensation Events, compensation on termination of this Agreement under the terms and conditions of Clause 40.6.2 (Compensation upon Termination for Event of Default) (Grantor Default Compensation Sum)."</b></del></p>
14.	<p>Could you please clarify what is meant by "excessively onerous on the Grantor" in Clause 34.4 of the Concession Agreement as the test for terminating the Concession Agreement instead of providing a Rebalance?</p>	N/A

	<p>Uncertainty created by this expression can decrease bankability level of the concession.</p>	
<p>15.</p>	<p>If an uninsurable risk event has occurred (i.e. any required insurances are not available due to a material change in the international insurance market or an Excessive Insurance Premium is charged for any Insurance) (an “<b>Uninsurable Risk Event</b>”), then the Grantor may, pursuant to Clause 20.4.2 of the Concession Agreement:</p> <p>(i) adjust the acceptable credit rating of Acceptable Insurers so that the relevant insurances become capable of being procured by the Concessionaire from a lower rated Acceptable Insurer;</p> <p>(ii) become an insurer of last resort; or</p> <p>(iii) suspend all or part of construction and/or operations affected and declare the occurrence of a Force Majeure Event.</p> <p>If the Grantor suspends all or part of the construction or operation of the Airport effected by an Uninsurable Risk Event and declares a Force Majeure Event, in these circumstances, the Airport assets (or part thereof) would continue to remain uninsured and the Concessionaire would not be covered from any risk of damage or destruction of such Airport assets. This represents a bankability issue for the Lenders who have financed the construction or acquisition of such Airport assets.</p> <p>Therefore, could you please clarify whether the Concession Agreement can be amended to remove the consequences of the occurrence of an Uninsurable Risk Event described in item (iii) above?</p> <p>This request is made on the basis that this is an important bankability issue.</p>	<p>N/A</p>

<p>16.</p>	<p>A breach by the Grantor of its obligations under the Concession Agreement may result in a claim by a third party against the Grantor for which the Grantor could be entitled to be indemnified by the Concessionaire under Clause 37.1 of the Concession Agreement, even if it is not considered to be a "material" breach. There is also no aggregate cap in respect of the indemnity of the Concessionaire contained in Clause 37 the Concession Agreement.</p> <p>Could you please clarify that the Grantor is not entitled to claim indemnification under Clause 37.1 of the Concession Agreement where the Losses incurred by the Grantor have resulted from a breach by the Grantor of its obligations under the Concession Agreement, whether or not the breach is "material"?</p> <p>Can the Concession Agreement please be amended to provide a cap on the Concessionaire's indemnity (the amount of the cap is to be agreed between the Grantor and the Concessionaire before the date of the Concession Agreement)?</p> <p>Please consider our suggested drafting proposal in this respect.</p>	<p>1. Clause 37.2.3 of the Concession Agreement shall be amended as follows:</p> <p>"37.2.3 any <del>material</del> breach by the Grantor of its obligations under this Agreement;"</p> <p>2. Add new Clause 37.7 to the Concession Agreement as follows:</p> <p><b><u>" 37.7 Indemnity cap</u></b></p> <p><b><u>Notwithstanding any other provisions of this Agreement, the Concessionaire shall not be liable to the Grantor under this Clause 37 for more than:</u></b></p> <p><b><u>(a) [ ] in any Concession Year (in aggregate); and</u></b></p> <p><b><u>(b) [ ] during the Concession Period (in aggregate)."</u></b></p>
<p>17.</p>	<p>Pursuant to Clause 8.1.6 of the Concession Agreement, any delay in completion by the Concessionaire of any Imminent Works as a result of an Existing Contamination is a Relief Event, provided that such Existing Contamination materially adversely affects (or has already materially adversely affected) the progress of such Imminent Works for a duration which is in aggregate longer than 90 days after the applicable scheduled Imminent Works End Date.</p> <p>However, Clause 35.1.5 of the Concession Agreement states that "any discovery of Existing Contamination prior to the Concession Commencement Date identified in the Site Assessment until remedy</p>	<p>Amend Clause 8.1.6 of the Concession Agreement as follows:</p> <p>" 8.1.6 If there is a delay in or an increase in the cost of the execution of the Imminent Works as a consequence of an Existing Contamination and provided that the Existing Contamination <del>materially</del> adversely affects (or has already <del>materially</del> adversely affected) the progress of such Imminent Works <del>for a duration which in the aggregate is longer than ninety (90) days as against the Imminent Works End Date, as such may have been varied and/or revised in accordance with this Agreement,</del> then such event shall constitute a Compensation Event and/or a Relief Event and Clauses 34 (Compensation Events - Economic Rebalance) and 35 (Relief Events) except if the conditions specified under Clause 8.1.4</p>

	<p><i>thereof</i>" is a Relief Event (i.e. there is no reference to a period of 90 days or material adverse effect).</p> <p>Both provisions conflict to each other and it is not clear, therefore, whether the Concessionaire will be able to claim a Relief Event immediately after discovery of an Existing Contamination or only if such Existing Contamination materially adversely affects (or has already materially adversely affected) the progress of such Imminent Works for a duration which is in aggregate longer than 90 days after the applicable scheduled Imminent Works End Date.</p> <p>Please consider clarifying the Concession Agreement so that the Concessionaire becomes entitled to claim a Relief Event immediately after the discovery of an Existing Contamination. Please consider our suggested drafting proposal in this respect.</p>	<p><i>(Existing Contamination) has not been satisfied."</i></p>
18.	<p>New Clause 30.1.2 provides that "<i>without prejudice to other provisions of this Agreement, the Parties agree that the Annual Concession Fee shall not be subject to adaptation based on subsequent reductions of Airport Charges or similar which may have an effect on the Aggregate Concession Revenue.</i>"</p> <p>We understand that the Annual Concession Fee is not subject to adjustment if Airport Charges are reduced going forward. However, could you please clarify in the Concession Agreement that if the Airport Charges are reduced retrospectively, in relation to any historic period for which the Annual Concession Fee has been paid by reference to the "pre-reduced" Airport Charges, then such Annual Concession Fee in respect of such historic period is subject to adjustment?</p>	N/A
19.	<p>We refer to new Clause 14.1.4 of the Concession Agreement pursuant to which "The Concessionaire shall also be obliged to replace a Lender to the extent such Lender loses its qualification as an Acceptable Bank</p>	N/A

	<p>with a new Lender being an Acceptable Bank within sixty (60) days upon occurrence of such change of status."</p> <p>We note that Clause 14.1.1 imposes an obligation on the Concessionaire to ensure that all times sufficient financing, whether in form of debt or equity is available for the full and proper implementation of the Concession.</p> <p>When there is a debt financing in place the Grantor has the full prior right to approve the financing which will mean that the Grantor shall have the opportunity to approve the identity of the financial institutions taking part in the financing. After the debt is borrowed ratings of financial institution is a concern neither to the Grantor nor to the Concessionaire. In other words rating downgrade of a lender cannot constitute any harm to the Concessionaire or the Grantor. Moreover, it would be an onerous obligation to replace a downgraded lender as potential new lenders that would replace the downgraded lender, can impose worsened conditions to the Concessionaire knowing that Concessionaire is obliged to replace a lender. The Concessionaire may end up in a situation where it has to accept worsened conditions or risk of breaching the Concession Agreement. None of these consequences are to the benefit of the project.</p> <p>Could you please therefore consider removing Clause 14.1.4 of the Concession Agreement?</p>	
20.	<p>We note that Clause 31.1.2 of the Concession Agreements prohibits a set-off by the Grantor of any amount due, but unpaid by the Concessionaire to the Grantor, as at the Termination Date (an "<b>Unpaid Amount</b>") against part of the termination compensation payable by the Grantor to the extent it compensates the Termination Date Debt. However, it is not clear from the wording of Clauses 40.6.1 and 40.6.2</p>	<p>1. Amend paragraph (d) of Clause 40.6.1 of the Concession Agreement as follows:</p> <p><i>"(d) any amount due by the Concessionaire to the Grantor but unpaid as of the Termination Date (including any unpaid amount of the Concession Fee until the Termination Date), <del>subject Clause 31.1.2 (Set-Off)</del>, <u>provided that, in accordance with Clause 31.1.2 (Set-Off), such amount shall not</u></i></p>

	<p>of the Concession Agreement whether any Unpaid Amount is (or is not) prohibited from being applied to reduce the Termination Date Debt.</p> <p>We believe that any such application of any Unpaid Amount to reduce the Termination Date Debt would effectively mean the set-off of such Unpaid Amount against the Termination Date Debt which is prohibited under Clause 31.1.2 of the Concession Agreement.</p> <p>Could you please therefore clarify Clauses 40.6.1 and 40.6.2 of the Concession Agreement as suggested in the drafting proposal?</p>	<p><b><u>be deducted from the amount of the Termination Date Debt due under paragraph (a) above"</u></b>.</p> <p>2. Amend paragraph (e) of Clause 40.6.2 of the Concession Agreement as follows:</p> <p><b><u>"(e) any amount due by the Concessionaire to the Grantor but unpaid as of the Termination Date (including any_unpaid amount of the Concession Fee until the Termination Date), <del>subject Clause 31.1.2 (Set-Off)</del>, provided that, in accordance with Clause 31.1.2 (Set-Off), such amount shall not be deducted from the amount of the Termination Date Debt due under paragraph (a) above."</u></b></p>
21.	<p>We note that amended paragraph (c) of Clause 40.6.1 provides that the amount of the net present value of all Distributions projected in the Financial Model, discounted using the Equity IRR as per the Initial Financial Model, is subject to deduction from the Termination Date Debt and Termination Date Equity.</p> <p>The NPV of future distributions can easily consume the Termination Date Debt which is a bankability deal-breaker issue for the banks.</p> <p>We believe that the right mechanism in this respect should follow the market practice which is the Termination Date Equity minus all Distributions actually made until Termination Date. Could you please clarify this in the Concession Agreement?</p> <p>Please consider the suggested drafting proposal in this respect.</p>	<p>Amend paragraph (c) of Clause 40.6.1 of the Concession Agreement as follows:</p> <p><b><u>"(c) <del>the net present value, as of the Termination Date, of all Distributions actually made by the Concessionaire as of the Termination Date projected in the Financial Model, discounted using the Equity IRR as per the Initial Financial Model, up to the amount of the Termination Date Equity;</del>"</u></b>.</p>
22.	<p>The Concessionaire Event of Default referred to in Clause 40.1.9 of the Concession Agreement is very broad and extends to a breach by the Concessionaire of any mandatory regulations of the Laws regardless of</p>	<p>Amend Clause 40.1.9 of the Concession Agreement as follows:</p> <p><b><u>"40.1.9 the Concessionaire acts in violation of any mandatory regulations of the Laws, <del>save where such violation does not have and is not reasonably likely to have a material adverse effect on the Concessionaire, the</del></u></b></p>

	<p>how material the consequences of such breach for the Concession and/or the Concessionaire are.</p> <p>Could you please clarify whether the Concessionaire Event of Default referred to in Clause 40.1.9 of the Concession Agreement can please be qualified so that a breach by the Concessionaire of Laws would give rise to such Concessionaire Event of Default only if such breach has (or is likely to have) a material adverse effect on the Concessionaire and/or the Concession and/or the ability of the Concessionaire to perform its obligations under the Concession Agreement?</p> <p>Please consider the suggested drafting proposal in this respect.</p>	<p><b><u>Concession and the ability of the Concessionaire to perform its obligations under the Concession Agreement."</u></b></p>
23.	<p>The current remedy available to the Concessionaire in the circumstances when the Grantor transfers the rights under the Agreement to a person who is not an Acceptable Person, to terminate the Agreement and claim a Grantor Event of Default Compensation Sum, is not acceptable to the Concessionaire and will represent a serious bankability issue. In the described circumstances the Concessionaire's claim in respect of a Grantor Event of Default Compensation Sum would be against the transferee with whom the Concessionaire/the lenders may not be comfortable with, rather than the Grantor. Therefore, could you please clarify Clause 46.2 of the Concession Agreement so that the Grantor may not assign or transfer the Agreement to a person who is NOT an Acceptable Person without the Concessionaire's consent?</p> <p>Please consider the suggested proposed wording of Clause 46.2 to this effect.</p>	<p>Amend Clause 46.2 of the Concession Agreement as follows:</p> <p><b>" 46.2 Assignment by Grantor</b></p> <p><b><u>The Grantor may assign or transfer this Agreement to an Acceptable Person without the prior consent of the Concessionaire <del>provided that</del> and may assign or transfer this Agreement to any other persons with the prior consent of the Concessionaire.</u> 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 <u>without the prior consent of the Concessionaire.</u>"</b></p>
24.	<p>Pursuant to Clause 123 (a) of the Labour Code, the Concessionaire and the Current Operator remain jointly and severally liable for any obligations or liabilities in respect of any Employee which arose before</p>	<p>Amend Clause 9.1.4 of the Concession Agreement as follows:</p> <p><b>"9.1.4 Without prejudice to the joint and several liability of the Current</b></p>

	<p>the Concession Commencement Date. However, pursuant to Clause 9.1.4 of the Concession Agreement, the Current Operator remains responsible for any and all liabilities to an Employee existing on the Concession Commencement Date or arising out of an event which occurred or originated before the Concession Commencement Date. The obligations of the Current Operator referred to in Clause 9.1.4 of the Concession Agreement may not be enforceable against the Current Operator as it is not a party to the Concession Agreement.</p> <p>With this in mind, could you please consider clarifying Clause 9.1.4 of the Concession Agreement so that it is an obligation of the Grantor to reimburse the Concessionaire for all costs and fees incurred by the Concessionaire in respect of historic claims brought by Employees?</p> <p>Please consider the suggested drafting proposal in this respect.</p>	<p><i>Operator and the Concessionaire towards any transferred Employees, all obligations arising out of employment of the Employees, being within the employer's sphere and having arisen or accrued prior to the Concession Commencement Date shall be borne by <u>the Current Operator</u> and from the Concession Commencement Date shall be borne by the Concessionaire. The Current Operator also remains responsible for any and all liabilities, including but not limited to Claims or litigation in connection with an Employee existing on the Concession Commencement Date or arising out of an event which occurred or originated before the Concession Commencement Date <b><u>and the Grantor shall reimburse for, and hold the Concessionaire harmless in respect of (or shall procure that the Current Operator reimburses for, and hold the Concessionaire harmless in respect of) all</u></b> <del>shall bear any subject</del> related costs, including but not limited to <b><u>costs incurred by the Concessionaire in connection with</u></b> personal income tax and mandatory social security contributions and Tax penalty interest, as applicable, compensation or severance payments and redundancy payments."</i></p>
25.	<p>Clause 3.8.3 of the Concession Agreement requires that the subcontracting of any Airport Services by the Concessionaire to its Affiliates or any Third Party, with a contract value exceeding EUR 100,000, shall be at the discretion of the Grantor.</p> <p>Could you please consider increasing the threshold from EUR 100,000 to EUR 1,000,000 given that relevant threshold is too small (i.e. almost 0.1% of airport revenues in a given year)?</p> <p>Please also clarify what criteria shall be met before the Grantor decides to approve the subcontracting of Airport Services by the Concessionaire to its Affiliates or any Third Party.</p>	N/A
26.	Item 1.7 of Part A ( <i>Conditions Precedent of the Concessionaire</i> ) of Appendix 5 ( <i>Conditions Precedent</i> ) to Concession Agreement requires	Amend the following sentence of Clause 6.2 of the Concession Agreement as follows:

	<p>the Concessionaire to obtain certain licences as a condition precedent to the occurrence of the Concession Commencement Date. Under Bulgarian law, in order to obtain the licences to operate the Airport (e.g. the Ground Handling Operator Licences), the Concessionaire shall have in its possession all necessary Movable Assets to operate the Airport.</p> <p>However, according to Clause 6.2 of the Concession Agreement, the Movable Assets are transferred to the Concessionaire just prior to the Concession Commencement Date.</p> <p>This provision in fact prevents the Concessionaire from fulfilling the relevant Conditions Precedent. If the Concessionaire does not have in its possession the Movable Assets at the time it applies for the necessary licenses, the Concessionaire may not be able to obtain the licences.</p> <p>Please consider clarifying in the Concession Agreement that the Movable Assets can be provided to the Concessionaire well in advance of the CP Long Stop Date to provide the Concessionaire with sufficient time to obtain all necessary licences which are also Conditions Precedent to the occurrence of the Concession Commencement Date.</p> <p>Please consider our suggested drafting proposal in this respect.</p>	<p><i>"As element of the grant of the Concession and subject to compliance by the Concessionaire with <u>Part A of Appendix 5 (Conditions Precedent)</u> the Grantor shall use reasonable endeavours to procure that the Current Operator enables the Concessionaire to purchase or lease the Moveable Assets at a fair market value to be established subject to an expert valuation conducted by the Grantor/the Current Operator (at their own cost) during the Transition Period. The Grantor shall grant these rights and procure for the option to purchase <u>well in advance of either on or just prior to the Concession Commencement Date upon request of the Concessionaire in order to allow the Concessionaire to obtain all required licences to operate the Airport and fulfil the condition precedent in paragraph 1.7 of Appendix 5 to the Concession Agreement subject to fulfilment of the other Conditions Precedent (except to the extent waivable or as set forth in Clause 2.8.4 (Procedure for Transferring Contracts))."</u></i></p>
27.	<p>Clause 7.2.4 of the Concession Agreement requires an aggregate delay of more than 2 months in completing Works, with such delay(s) caused by the discovery of Cultural Valuables during the completion of such Works, before a Relief Event is deemed to have occurred.</p> <p>However, the Concessionaire is liable to pay liquidated damages in the amount of 0.01% of the value of the Works for each day of delay unless a Relief Event is claimed. As a result, the Concessionaire will be required to pay liquidated damages to the Grantor for a delay in completion of any Works due to discovery of any Cultural Valuable, as</p>	<p>Amend Clause 7.2.4 of the Concession Agreement as follows:</p> <p><i>"7.2.4 <del>An aggregate</del> <u>A</u> delay <del>of more than two (2) months</del> to the Works due to works related to Cultural Valuables discovered during the Works shall constitute a Relief Event and Clause 35 (Relief Events) shall apply."</i></p>

	<p>it is a condition to the Concessionaire being entitled to claim a Relief Event due to the discovery of the Cultural Valuables that the delay continues for more than 2 months.</p> <p>Please consider clarifying the Concession Agreement so that any delay in Works due to discovery of Cultural Valuables shall constitute a Relief Event irrespective of the length of such delay, as envisaged in Clause 35.1.1 of the Concession Agreement. Please consider our suggested drafting proposal in this respect.</p>	
28.	<p>Pursuant to Clauses 4.7.3 and 4.8 of the Concession Agreement, the Grantor gives no warranty that the Disclosed Information represents all relevant information in respect of the Project. The Grantor is not liable to the Concessionaire for any failure to disclose or any inaccuracy, error, omission, defect or inadequacy of the Disclosed Information, save that the Grantor warrants that the State has all necessary legal rights to the Concession Site and there are no disputes in respect of the Concession Site.</p> <p>Under Bulgarian law the Grantor is under a duty not to induce the Concessionaire to enter into the Concession Agreement based on deliberately false or incomplete information.</p> <p>With this principle of Bulgarian law in mind, please consider clarifying the Concession Agreement as set out in our suggested drafting proposal in this respect.</p>	<p>Add the following words at the end of Clause 4.8 of the Concession Agreement:</p> <p><b><u>"In addition, the Grantor represents that it has not withheld any information from the Concessionaire which, if disclosed, would reasonably be expected to adversely affect the decision of the Concessionaire or the Initial Shareholders as to whether to enter into this Agreement, and the Grantor is not aware that any Disclosed Information is false in any respect."</u></b></p>
29.	<p>Could you please clarify in the definition of "Financial Institution" that the requirement that the Republic of Bulgaria is a shareholder or member of a relevant institution applies only to multilateral financial institutions and development finance institutions, but not to other banks, equity investors or investment funds referred to the definition?</p>	N/A

	The application of such requirement to all kind of institutions listed therein restricts their scope with no justification.	
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