

No	Clarification Question	Answer
1.	<p>We refer to our question 1 submitted on 25th July 2018 and your response dated 30th July 2018 regarding the joint and several liability point and we would be grateful for an update as to the official guidance obtained from the specialized administration of the Council of Ministers”. In addition, we would also be grateful if the Grantor could confirm the approach as soon as possible as these issues are critical to our assessment of the risk of this Project (both in terms of risk allocation and timing for the bid submission)</p>	<p>In light of the official guidance obtained from the specialized administration of the Council of Ministers, the Grantor is considering including in the Concession Agreement a cap on joint liability equal to the minimum equity capitalization requirement.</p> <p>The Grantor reserves the right to amend the draft Concession Agreement, where deemed necessary to reflect more clearly the above understanding, in which case the procedure set out in Clause 5.3 of the Tender Documents will apply.</p>
2.	<p>We note your response to Question No. 4 published on 30th July 2018, and thank you for the clarification of the intention. We would ask that the Grantor amends the Concession Agreement to reflect more clearly the intention to include the Upfront Fee within the compensation sums.</p>	<p>As specified in earlier answer “For the purposes of calculating any of the compensation sums [...] the key element is the Termination Date Debt [...]. The intention is that all Termination Date Debt under approved Financing Agreements, which has been used for the implementation of the Project used for investments in the Concession Site, would be taken into account, including such [debt] related to the Upfront Concession Fee payment.”</p> <p>We note and will duly consider your request to clarify the compensation sums clauses accordingly.</p>
3.	<p>We refer to your response to Question No. 5 published on 30th July 2018 and thank you for the clarification. As mentioned in our original question we require clarity in the Concession Agreement regarding the definition of “market value of the Concession at the Termination Date”. We would ask that the Grantor amends the Concession Agreement to reflect more clearly the concept of the "market value" of the Concession. In this regard, we would propose that the definition of the "market value" of the Concession at the Termination Date is the value set out at Article 30.2 of the Concession Agreement being the "value of the Aggregate Concession Revenues set out in the Financial Model, discounted at 4%". Please confirm that this amendment will be made to the Concession Agreement.</p>	<p>We note and will duly consider your request to clarify the definition of “market value of the Concession at the Termination Date”.</p>
4.	<p>Please confirm the definition of Termination Date Equity in Article 40.6.2 (b). In particular, please confirm that this will include all equity subscribed to the Termination Date.</p>	<p>For the purposes of Clause 40.6.2(b), Termination Date equity includes the equity subscribed to the Termination Date, as long as it has been utilized for performance of investments in the Concession Site.</p>

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5.	<p>We refer to your response to our previous question as published on 30th July 2018. We note and accept the proposition that Bulgarian Law prevents a payment of compensation in these circumstances and acknowledge the proposal of the Grantor to refund by way of unjust enrichment and also appreciate the effort to have the refund sum to be “practically the same effect” as compensation for Force Majeure. To that end we would ask the Grantor to include in the Concession Agreement clarity as to what is covered in the phrase “<i>the sum unamortised Upfront Concession Fee and of any unamortised actual Capital Expenditures relating to the Concession Site and the Concession Assets</i>”. We would propose that the definition, to have practically the same effect, would include all outstanding debt (including that used to fund any Upfront Fee and the Award Fee), all equity injected into the Project at the Termination Date and all third party breakage costs. Please confirm that this is the case.</p>	<p>From Bulgarian law point of view, the “refund sum” aims to remedy a possible situation of undue enrichment of the Grantor, thus should include:</p> <ul style="list-style-type: none"> • a portion of the Upfront Concession Fee corresponding to the remaining years, i.e. from the Termination Date until the end of the initial Concession Period; and • unrecovered investment expenses of the Concessionaire for newly acquired assets or increased value of assets that will remain property of the Grantor. <p>The wording in Clause 41.3 reflects this idea – in particular, the expression “the sum [of] unamortised Upfront Concession Fee and of any unamortised actual Capital Expenditures relating to the Concession Site and the Concession Assets”.</p> <p>In Bulgarian law, such a “refund sum” is not linked to the amount of all outstanding debt and injected equity, and, in particular, with regard to “third-party breakage costs” we see no grounds to include such in the refund sum.</p> <p>We believe the proposed drafting to offer a balanced form of sharing the risk between the two parties in case of termination for Extensive Force Majeure.</p>
6.	<p>We refer to the Grantor’s response to Question No.8 published on 30th July 2018. We do not follow the approach of the Grantor that the Compensation Events at Articles 34.1.5, 34.1.6 and 34.1.7 are more connected to a termination for Extensive Force Majeure. There should be equal treatment for all Compensation Events if the Grantor decides to terminate and the Concessionaire should not be taking or sharing the risk to this extent and in these circumstances. We would ask the Grantor to reconsider this issue and amend the Concession Agreement accordingly.</p>	<p>We note and we will duly consider your request.</p>
7.	<p>We refer to your response to Question No. 9 issued on 30th July 2018, in which you mention that the guarantees are “intended to cover (at least partially) defects in Works and Operation”. We would be grateful if this intention could be enshrined in the Concession Agreement ie that the proceeds of the call on the guarantee would be used to remedy the defects in the Works and the Operations.</p>	<p>We note and will duly consider your request to clarify the purpose for which the proceeds of the call on the Performance Guarantees would be used.</p>

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8.	<p>We refer to your response to Question 10 issued on 30th July 2018, we would request that the Grantor amends the Concession Agreement to reflect more clearly the concepts of the “national interest” and “reasons of public order”. Clarity is required for all parties as to the grounds upon which a refusal to permit changes in control will be made.</p>	<p>We note and will duly consider your request. Any clarification on these two terms will follow the principles developed and recognized by the Bulgarian legislation (including the provisions of the Concessions Act referred to in our answer to Question 10 published on 31 July 2018) and court practice.</p>
9.	<p>Please reconcile your answers to Question No. 12 (issued on 6th August 2018) and Question No. 11 (issued on 30th July 2018). Is the trigger actual IRRs (per updated Financial Models) of 1.3x Threshold Equity IRR (for two years running), or actual IRRs (per updated Financial Models) of > 30% (for two years running). The two triggers are quite different.</p> <p>In addition, also in relation to your response to Question No. 12 issued on 6th August 2018, you describe a process whereby the Concession Fee could reduce if in a subsequent year the IRR is less than the 30% threshold. This clarity is appreciated but is not included in the Concession Agreement, please confirm that the Concession Agreement will be amended accordingly.</p>	<p>The trigger is the actual IRRs (per updated Financial Models) equal to 1.3 times the initial Threshold Equity IRR (for two years running).</p> <p>We note and will duly consider your request to clarify that, in case actual IRR (per updated Financial Models) falls back to below to 1.3 times the initial Threshold Equity IRR, the Annual Concession Fee will revert to the initial Annual Concession Fee.</p>
10.	<p>We refer to your response to Question No. 12 issued on 6th August 2018. We have further reviewed the definition of Law, Change in Law and Qualifying Change in Law in the draft Concession Agreement and have concluded that the Airport Development Reference Manual is not an instrument which has the force of law in Bulgaria so is not caught within the definition of Law and therefore the provisions of a Change in Law do not apply. Changes to this manual during the term of the Agreement could have an impact upon the application of liquidated damages under Article 18.2 and Appendix 6 and may affect the timing of the expansion trigger. These changes are not within the control of the Concessionaire. Accordingly, we request that a change to the Airport Development Reference Manual should be a Compensation Event and request that it is included in Article 34.1.</p>	<p>We consider that the consequences of changes to the IATA Airport Development Reference Manual (ADRM) are part of the course of business for international airport investors and operators, and – as such – the risk of such changes should not be allocated to the Grantor and included in the definition of Laws, Change in Law and Qualifying Change in Law.</p>
11.	<p>We refer to your response to Question No. 13 (issued on 6th August 2018), we would request that the Grantor amends the Concession Agreement to reflect more clearly the link between the absolute obligation in Article 18.2</p>	<p>We note and will duly consider your request.</p>

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	(in terms of volume) and the flexibility contained in Articles 18.3 and 18.4 (in terms of items and timing) – perhaps making Article 18.2 subject to Articles 18.3 and 18.4.	
12.	We refer to your response to Question No.14 (issued on 6 th August 2018), and whilst we understand that under the current Law it is inconceivable that an asset such as the Airport which is under public state ownership would be transferred to a third party. We are concerned that this situation may not be the case during the entire term of the Concession and there could be a transfer to an entity who does not have the same financial standing as the Grantor or the capacity, power and authority to perform the obligations of the Grantor under the Concession Agreement. This is a particular concern in relation to the payment of the compensation on termination and refund sums. Accordingly, we would request that the Grantor amends the Concession Agreement to reflect more clearly the situation at Law and include an obligation on the Grantor to only transfer to an entity who has the relevant financial standing/capacity, power and authority.	As indicated in the previous answer, the terms of any transfer, including any change in the ownership of the airport, will be dictated by the Bulgarian Law and – as such – cannot be restricted by clauses of the Concession Agreement.
13.	We refer to your response to Question No.15 (issued on 6 th August 2018) and agree that during the occurrence of a Force Majeure Event, to the extent that the Concessionaire can perform its obligations then it should do so. However with the provisions of Article 36.1.3, the event would not be a Force Majeure Event in the first place because it would neither render the performance impractical or impossible. We would ask the Grantor to reconsider the inclusion of Article 36.1.3 in the definition of Force Majeure Event. We believe that the events covered by Article 36.2 are those traditionally covered by the definition of a Force Majeure event.”	We note and will duly consider your request
14.	We note your response to Question No 16 (issued on 6 th August 2018). In relation to the addition of carrying out reinstatement as a Relief Event, please can you confirm that your proposition is that in the event there is a major insurance event and the Concessionaire is applying the insurance proceeds to reinstate the facilities, that the Grantor wishes to retain the right to terminate the Concession Agreement for a Concessionaire Default because the Concessionaire is failing to perform its obligations under the Concession	We note and will duly consider your request.

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	<p>Agreement. This is not market standard practice, it is common for the Concessionaire to be given relief from termination whilst reinstating the facilities in accordance with the reinstatement plan. Similarly if there is a strike (other than as a result of an action by the Concessionaire), the Grantor wishes to retain the right to terminate the Concession Agreement for Concessionaire Default because the Concessionaire is failing to perform its obligations under the Concession Agreement during the strike. Again it is common international practice to relieve the Concessionaire from being in breach of its obligations during this time.</p>	
15.	<p>Further to your response to Question No. 18 (issued on 30th July 2018), please clarify that the Capitalised Annual Concession Fee will also be excluded from total assets for the “25% of total assets” test. In other words please confirm that the test will be Total Assets (per balance sheet prepared under IFRS) minus all intangible assets.</p>	<p>The test will be Total Assets (per balance sheet prepared under IFRS, i.e. at their net book value, which is the original cost, minus accumulated depreciation, impairment, etc.), excluding the capitalized Upfront Concession Fee.</p>
16.	<p>We refer to your response to Question No. 20 (issued on 6th August 2018) in which you confirmed that there would be a Concessionaire Default in the event that minimum equity falls below the tests specified in Article 12.1.2. Of particular concern are the 2 additional hurdles in addition to the BGN 200m minimum equity capitalisation amount, in particular the “25% of total asset value” test.</p> <p>This test will be impacted by depreciation and other subjective policies, and furthermore, as drafted (even after amendments per the Q&A process) the test can be easily failed in quite ‘benign’ scenarios (eg. with low leverage, high growth and high capex investment).</p> <p>We would ask the Grantor to reconsider the inclusion of the 2 additional hurdles (and in particular the “25% of total asset value”) in Article 12.1.2 for the reasons stated above.</p>	<p>We note and will duly consider your request.</p>
17.	<p>In relation to the definition of "Applicable Maximum Senior Debt Ratio" - 6x. We note the Concessionaire is required to maintain a leverage level in the financial model which is less than or equal to 6x. Please clarify the implications of a breach of this ratio. Please confirm that breach of the ratio should not trigger any negative</p>	<p>Breach of the ratio does not trigger negative consequences in a shock case or a temporary reduction in EBITDA.</p>

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	consequences in a shock case or a temporary reduction in EBITDA.	
18.	In relation to Article 18.2, if there is a deviation from the proposal such that 10% or more of the yearly investments sum has not been invested as contemplated and that would affect the Required Level of Service, the Concessionaire would be required to pay LDs in an amount of 10% of the value of the proposed (but not realised works) subject to a remedy period which has not been determined. It is important that minor deviations to the Required Level of Service and delays due to shock/unexpected events should not trigger liquidated damages. Please clarify if this will be amended in the next draft	We note and will duly consider your request.
19.	In relation to Article 26.10.2, the maximum contractual penalties for each of the Works which are delayed shall in no event exceed 5% of the value of such Works. If there are commercial reasons for why the delay has been incurred (e.g. shock event), penalties should not be incurred. Please clarify if this will be amended in the next draft	We note and will duly consider your request.
20.	In relation to Article 26.11, if the time periods agreed for the works are delayed by more than 30% a termination event is triggered. The Concession Agreement should allow for a situation where works are delayed due to lower than expected traffic growth at the airport / other shock events	We note and will duly consider your request.
21.	In relation to Article 40.1.3, this allows for termination of the Concession Agreement in relation to the failure to achieve the Scheduled Completion Date (which is not defined) and when the maximum amount of contractual penalties is reached. There is no concept of a long stop date which is not acceptable as it implies a default could be triggered one day after the missed Scheduled Works Completion Date. If there are commercial reasons for why the delay has been incurred (e.g. shock event), penalties/termination should not be triggered. Please clarify if this will be amended in the next draft.	We note and we will duly consider the request.
22.	In Article 40.6.2 of the Concession Agreement, please clarify the rationale for excluding third party breakage costs and employee/redundancy payments from this form of compensation. This	The Concessions Act provides for strict mechanisms as concerns termination. Any

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	is common international practice in compensation sums (other than for Concessionaire Default).	termination compensation needs to be compliant with this.
23.	Please clarify the rationale for the Concession Guarantee Period. We note that handback provisions is the market standard approach to addressing issues relating to the condition of the Concession Site as at the termination/expiry of the concession.	The obligations during the Concession Guarantee Period are in-line with the market / standard handback provisions.
24.	In relation to Article 34.2, whilst it is accepted that there is a financial threshold before a compensation event can be claimed we believe the time period is excessive and would ask the Grantor to remove this requirement. The financial threshold should be sufficient to give comfort to the Grantor about the frequency of events before the Grantor is required to make the rebalance - waiting for the financial threshold and the time period is too much for the Concessionaire particularly for items which are beyond its control.	<p>The specified “twenty-four (24) month period” is a rolling period specified for calculation purposes:</p> <ul style="list-style-type: none"> • e.g. if a rise in Capital Expenditures or a Loss of Aggregate Concession Revenue over a two (2) month period exceeds the Compensation Event Minimum Threshold, the Concessionaire shall only be entitled to a Rebalance.
25.	Please also confirm if any loans made by the SPV (for example of surplus cash) to its Shareholders would impact the minimum equity requirements under Cl. 12.1.2. We do not believe it should but would like confirmation.	For the purpose of clause 12.1.2.(i), loans made by the Concessionaire to its shareholders would not impact the ratio of equity capitalization to total asset value.
26.	We note in the that the Concessionaire must commit to paying an Annual Concession Fee equal to the higher amount of the Bidder’s offer (not less than EUR 7,669,378.22 (BGN 15,000,000.00) and the amount derived as a percentage of the total amount of the Aggregate Concession Revenue for the relevant year. It is understood from disclosure in the VDR that the BGN 150,000,000.00 2017 revenue is a net revenue number (cost of goods sold are deducted within revenue). Kindly advise as to the definition of the revenue that we should use in the calculation of the Annual Concession Fee?	<p>The applicable definition is the one of “Aggregate Concession Revenue” provided for in the draft Concession Agreement.</p> <p>The figure of BGN 150,000,000.00 is presented for reference only.</p> <p>In accordance with Clause 30.1.2. the Annual concession fee will be calculated as the highest of:</p> <ul style="list-style-type: none"> • the amount offered in the Bidder's Offer (minimum EUR 7,669,378.22 - BGN 15,000,000); <p>or</p> <ul style="list-style-type: none"> • the amount determined multiplying the total amount of the Aggregate Concession Revenue for the relevant year times the percentage proposed in the Bidder's Offer (minimum 10%).
27.	We understand there was a commercial and technical due diligence report prepared, covering capex and investments. When can we expect this to be released?	This report is prepared only for the needs of the contracting authority (the Grantor) and for defining the initial parameters of the concession. Each investor should prepare and base their tender on their estimates, analyses and surveys and in

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		compliance with the requirements as outlined in the Concession Documentation.
28.	When will the possible dates for site visits be announced in the data room?	. Clause 5.4 (b) of the Tender Documents stipulates that the Commission will inform the Economic Operators on the available dates and time for Concession Site visits. The text then provides that the Economic Operators wishing to have access to the Concession Site, will be required to submit an electronic request to the email address specified in Schedule 1 (Bid Data Sheet) specifying the requested day of Concession Site visit(s). In this regard it is sufficient for any Economic Operator to follow the procedure, as outlined in 5.4 (b) of the Tender Documents, in order to get access to the Concession Site. We confirm that the Commission will make every effort to satisfy to the fullest extent possible such requests of the Economic Operators.
29.	Please respond to requests for consortium partners to be named as a Permitted Disclosee.	Each member of the consortium is required to sign a separate Confidentiality Undertaking with MTITC. Consortium members do not fall within the definition of "Permitted Disclosee", unless the member of the consortium is a member of the Group to which another member of the same consortium belongs (pls. see the definition of "Group" in the Confidentiality Undertaking published on the project website).
30.	Please respond to requests for lenders to be named as Representatives, and thus not needing to sign NDAs themselves. Or please clarify the process by which lenders (including IFIs) will be able to access Confidential Information (noting that most international banks will not accept, amongst other things, the indemnity position in the NDA.	Financial consultants will fall under the definition of "Representatives" under the Confidentiality Undertaking. Users shall ensure that their Representatives comply with the requirements for Permitted Disclosee, as provided for in Article 4 of the Confidentiality Undertaking. Representatives will not be required to sign a separate Nondisclosure Agreement with MTITC. Potential lenders do not fall under the definition of "Representatives" under the Confidentiality Undertaking.
31.	Please respond to requests for the NDAs to not have to be executed by every single individual working on the transaction who wants access to the VDR. This is highly unusual.	Each participant/economic operator may register as users on the website of the concession web site: https://concession-sof.bg/ , as it deems necessary. Registration is performed according to the instructions posted on the concession website https://concession-sof.bg/ , namely: 1. The user fills in the required fields in the registration form; 2. After completing the required fields in the registration form and sending it, the user receives an email with instructions for activating an account containing a hyperlink to confirm the user's e-mail address; 3. The user shall complete

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		<p>the Confidentiality Undertaking according to the instructions, shall sign and scan it and shall send it to s the statement and sends it to the e-mail address for communication: questions@concession-sof.bg;</p> <p>The Confidentiality Undertaking must be completed and signed by the person in whose name the user account will be registered and who will be given access to the information and documents in the Electronic Data Room by activating the account. In the Confidentiality Undertaking, the person shall state their full name, the name of the Participant/ Economic Operator or another User whom they represent, as well as any other required information in the registration form.</p>