

**QUESTIONS DUE AUGUST 16**

#	QUESTION	ANSWER
1.	<p>Pursuant to Clause 1.1 (<i>Definitions</i>) of the English version of the draft of the Concession Agreement, the “<i>Applicable Maximum Senior Debt Ratio</i>” is defined in the English version of the draft of the Concession Agreement as “<i>the ratio of Senior Debt to EBITDA Ratio being of 6</i>”.</p> <p>This definition and the application that is made of it in Clause 14.1.2 of the draft of the Concession Agreement whereby the Concessionaire’s Senior Debt must not be, at any given time, higher than the Applicable Maximum Senior Debt raises an issue with regard to the financing of the Project. In practice, the maximum amount of Senior Debt will be set in accordance with this indicator as at the date of the initial financing or any Refinancing, as approved by the Grantor and in the event of a subsequent decrease of the EBITDA due to a lower demand, these provisions oblige the Concessionaire to prepay the Senior Debt, which is an onerous obligation. If at a later date, the EBITDA is reinstated at the projected level, it may prove particularly complicated and onerous for the Concessionaire to incur further indebtedness to restate the initial amount of Senior Debt. Alternatives which have been implemented in similar projects consist in either</p>	<p>We note your comment and will duly consider your suggestions.</p>

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	<p>setting this maximum on the basis of the Financial Model projections provided on the financing date and test it on that basis only or to only test it on each date of financing or refinancing is entered into. Could the Grantor consider this impracticality and propose an amendment to the draft Concession Agreement?</p>	
2.	<p>Pursuant to Clause 1.4.3 (<i>Grantor's Capacity</i>) of the English version of the draft of the Concession Agreement "<i>Save insofar as the same arises out of an express provision of this Agreement, the Concessionaire shall have no Claim against the Grantor arising out of or under this Agreement or any Concession Document for any act or omission or the exercise of the rights, powers, duties and obligations of the Grantor as a Government Authority</i>".</p> <p>The concession laws and concession agreements of other European Union countries customarily allow concessionaires to bring claims against a grantor, acting as a government authority, for any act or omission or the exercise of the rights, powers, duties and obligations that frustrate or have an adverse effect on concessions. Furthermore, our understanding is that this provision, which is <i>de facto</i> a waiver by the Concessionaire of future material and/or procedural rights is not valid under Bulgarian law. In addition, it is our understanding that</p>	<p>Our view is that the agreement provides for a number of potential claims against the grantor which provides for a broad scope. Accordingly, this covers all claims based on contractual grounds. Claims based <i>ex delictu</i> ("tort claims") or on mandatory provisions of law cannot be excluded by contract and accordingly, there is no intention to do so.</p> <p>We note your comment and will duly consider your suggestions.</p>

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	<p>pursuant to Bulgarian law (for example, pursuant to the Act on the Liability of the State and the Municipalities for Damages), a party (sustaining damage by unlawful acts/omissions of a government authority) would have recourse for damages.</p> <p>Could you please clarify that:</p> <p>(a) the provisions of Clause 1.4.3 (<i>Grantor's Capacity</i>) of the draft of the Concession Agreement do not entail a waiver by the Concessionaire of future rights?</p> <p>(b) the Concessionaire shall be entitled to Claim against the Grantor arising out of or under the Concession Agreement or any Concession Document for any act or omission or the exercise of the rights, powers, duties and obligations of the Grantor, acting as a Government Authority, as is customary in concession agreements of some other European Union countries?</p>	
3.	<p>According to Clause 1.8 (<i>Index</i>) of the English version of the draft of the Concession Agreement, “<i>every amount that is subject to an Index or Indexed in this Agreement shall be deemed, unless explicitly agreed otherwise, Indexed on each anniversary of the Indexation Date</i>”.</p>	<p>We note your comment and will duly consider your suggestions.</p>

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	<p>Could you please clarify that the investment referred to in the Investment Program, which is not expressly referred to as subject to the Index or Indexed, is not subject to the Index and that an alternative index related to construction costs can be used with respect to such amount?</p>	
4.	<p>Pursuant to Clause 8.1.4 (<i>Existing Contamination</i>) of the English version of the draft of the Concession Agreement “<i>The Grantor's obligation to indemnify the Concessionaire under Clauses 8.1.1 to 8.1.3 (Existing Contamination) shall only apply to the extent that: (a) the Concessionaire submits a Claim for recovery of all costs, expenses, Losses, damages, penalties and fines incurred within thirty six (36) months of the Concession Commencement Date; (...)</i>”.</p> <p>The Concessionaire may not be in a position to appreciate and to discover, within thirty six (36) months of the Concession Commencement Date, some Existing Contamination and all relevant costs, expenses, Losses, damages, penalties and fines incurred. In practice, Existing Contamination may only be discovered at a later date in the context of imminent Works or Future Works.</p> <p>Moreover, it is our understanding that under Bulgarian law, the rules in relation to the duration of the limitation periods for filing claims, including claims arising from or related to tort/delict, are mandatory and parties may not</p>	<p>We note your comment and will duly consider your suggestions.</p>

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	<p>amend or otherwise agree that a limitation period will be longer or shorter than the respective statutory limitation period.</p> <p>Could you therefore please consider amending Clause 8.1.4 (<i>Existing Contamination</i>) of the draft Concession Agreement so it is drafted as follows “<i>The Grantor's obligation to indemnify the Concessionaire under Clauses 8.1.1 to 8.1.3 (Existing Contamination) shall only apply to the extent that: (a) the Concessionaire submits a Claim for recovery of all costs, expenses, Losses, damages, penalties and fines incurred as a consequence of the Existing Contamination (...)</i>”?</p> <p>Furthermore, pursuant to Clause 8.1.6 (<i>Existing Contamination</i>) of the English version of the draft of the Concession Agreement “<i>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 materially adversely affects (or has already materially adversely affected) the progress of such Imminent Works 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, then such event shall constitute a Compensation Event and/or a Relief Event and Clauses 34 (Compensation Events - Economic Rebalance) and 35</i></p>	

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	<p><i>(Relief Events) except if the threshold specified under Clause 8.1.4 (Existing Contamination) has not been reached.”.</i></p> <p>The Existing Contamination may cause delays or an increase in the cost of the execution of, not only the Imminent Works, but also Future Works. Therefore, a delay in or an increase in the cost of the execution of the Future Works as a consequence of an Existing Contamination, to the extent that the Existing Contamination materially adversely affects (or has already materially adversely affected) the progress of such Future Works for a certain period of time, shall also be a Compensation Event and/or a Relief Event.</p> <p>Could you please consider amending Clause 8.1.6 (<i>Existing Contamination</i>) of the draft of the Concession Agreement so that it is drafted as follows “<i>If there is a delay in or an increase in the cost of the execution of the Imminent Works and/or the Future Works as a consequence of an Existing Contamination and provided that the Existing Contamination materially adversely affects (or has already materially adversely affected) the progress of such Imminent Works and/or the Future Works for a duration which in the aggregate is longer than ninety (90) days as against the Imminent Works End Date [or the end date specified in the Approved Refurbishment Development Plan or the Approved</i></p>	

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	<p><i>Master Plan (as applicable)], as the case may be, as such may have been varied and/or revised in accordance with this Agreement, 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 threshold specified under Clause 8.1.4 (Existing Contamination) has not been reached.”?</i></p>	
5.	<p>Pursuant to Clause 30.4.2 (<i>Disputed Calculations or Amounts</i>) of the English version of the draft of the Concession Agreement, “<i>The Concessionaire shall pay the amount that the Grantor calculated within five (5) days from receipt of the above notification. The Concessionaire shall pay the amount as it as calculated by the Grantor. If as result of contesting the amount by the Concessionaire, the dispute is resolved in favour of the Concessionaire, the Grantor shall return to the Concessionaire the respective difference in the amount paid by the Concessionaire in excess.</i>”.</p> <p>Could you please clarify that the amount referred to in Clause 30.4.2 (<i>Disputed Calculations or Amounts</i>) of the draft of the Concession Agreement that needs to be paid by the Concessionaire refers to the “undisputed portion” as is customary in concession contracts of this nature?</p>	<p>It derives from the wording of the Concession Agreement that the full (disputed and undisputed) amount needs to be paid.</p>

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6.	<p>Pursuant to Clause 30.5.2 (<i>Failures</i>) of the English version of the draft of the Concession Agreement “<i>If within thirty (30) days from the maturity of the relevant Annual Concession Fee instalment the Concessionaire has not paid the Annual Concession Fee due for such period the Grantor may collect such amount from the Operation Guarantee and such non-payment shall constitute a Concessionaire Event of Default.</i>”.</p> <p>Pursuant to Clause 16.3.2 (<i>Operation Guarantee</i>) of the English version of the draft of the Concession Agreement, the Concessionaire is under the obligation to replenish the Operation Guarantee within thirty (30) days from the day the Operation Guarantee is drawn down, either in full or in part, Clause 16.3.2 (<i>Operation Guarantee</i>) of the draft of the Concession Agreement providing that “<i>In the event that a payment of a sum is enforced under the Operation Guarantee the Concessionaire shall provide a replacement Operation Guarantee, with an amount available to be called hereunder equivalent to the initial amounts specified in this Clause within thirty (30) days from the day the Operation Guarantee, as relevant, was drawn down, either in full or in part</i>”</p> <p>It appears uncustomary for the non-payment referred to in Clause 30.5.2 (<i>Failures</i>) of the draft of the Concession Agreement to constitute a Concessionaire Event of</p>	<p>Thank you for your suggestion, however we believe that the 30 day period for payment of the Annual Concession Fee affords sufficient flexibility and convenience to the Concessionaire. We also believe that cashing-in on a guarantee should be a matter of last resort for the Grantor to protect its financial interest.</p>

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	<p>Default, to the extent that the Grantor collects the relevant amount from the Operation Guarantee and that the Concessionaire is under the obligation to replenish any Operation Guarantee that has been drawn down, either in full or in part.</p> <p>Could you please clarify that the non-payment referred to in Clause 30.5.2 (<i>Failures</i>) of the Concession Agreement shall not constitute a Concessionaire Event of Default to the extent that the Grantor collects the relevant amount from the Operation Guarantee and that the Concessionaire fulfils its obligation under Clause 16.3.2 (<i>Operation Guarantee</i>) to replenish the Operation Guarantee within thirty (30) days from the day the Operation is drawn down, either in full or in part?</p>	
7.	<p>Could you please clarify that the following events shall constitute Compensation Events?</p> <ul style="list-style-type: none"> <li>– any deviation from the economic regulation framework of the, or any decision or intervention by the Grantor or any Governmental Authority, that affects such economic regulation framework, other than a deviation, decision or intervention required to conform to regulations, directives decisions or other mandatory deeds of any competent authority of the European Union or to ICAO Standards and</li> </ul>	<p>The Change in Law definition explicitly excludes directives, decisions or other mandatory deeds of any competent authority of the European Union or ICAO Safety Management Standards, or ECAC or EASA regulations which are in force on Final Disclosure Date.</p> <p>All claims against the Concessionaire resulting from a breach of the applicable environmental and noise regulations, will be dealt with in accordance with Bulgarian Law.</p> <p>Failure by a Competent Authority to provide access to the Access Roads and public utilities networks beyond the boundaries of the Concession Site will not constitute Compensation Event.</p>

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	<p>Recommended Practices, or to ECAC or EASA regulations;</p> <ul style="list-style-type: none"> <li>– any Change in Law required to implement any regulations, directives decisions or other mandatory deeds of any competent authority of the European Union or ICAO Standards and Recommended Practices, or ECAC or EASA regulations occurring after the Final Disclosure Date, as a result of which the Concessionaire incurs Capital Expenditures;</li> <li>– any claims against the Concessionaire resulting from a breach of the applicable environmental and noise regulations, if such claims have been filed by the owners of real properties located within the vicinity or proximity of the Airport that have been constructed in violation of the applicable regulations at the time of their construction; and</li> <li>– any failure by a Competent Authority to provide access to the Access Roads and public utilities networks beyond the boundaries of the Concession Site, and maintain such Access Roads and public utilities networks beyond the boundaries of the Concession Site in accordance with the provisions of the Concession Agreement.</li> </ul>	

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8.	<p>Pursuant to Clause 34.6.1 (<i>Payment on Termination</i>) of the English version of the draft of the Concession Agreement “<i>If the Grantor terminates this Agreement in accordance with Clause 34.4 (Rebalance payment), the Grantor shall pay to the Concessionaire: 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)</i>”.</p> <p>It is very uncustomary in case of a termination of the Concession Agreement further to the events referred to in Clause 34.1.4, Clause 34.1.5 or Clause 34.1.6 (<i>Compensation Events</i>) of the draft of the Concession Agreement, which are termination events attributable to the Grantor, that the compensation payable by the Grantor to the Concessionaire be based on Clause 41.3 (<i>Refund upon Termination for Extensive Force Majeure</i>) (i.e. a scenario where there is no full compensation of the Concessionaire and its Shareholders) instead of Clause 40.6.2 (<i>Compensation Upon Termination for Event of Default</i>) of the Concession Agreement.</p> <p>Furthermore, there seems to be a discrepancy between the Bulgarian and the English versions of the draft of the</p>	<p>We note your concerns. This has been discussed when preparing the draft Concession Agreement and we will duly reconsider your requests.</p>

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	<p>Concession Agreement as Clause 34.6.1 (<i>Payment on Termination</i>) of the Bulgarian version of the draft of the Concession Agreement only refers to Clause 34.1.5 (<i>Compensation Events</i>) and not to Clause 34.1.4 or Clause 34.1.6 (<i>Compensation Events</i>).</p> <p>Could you please clarify that in case of a termination of the Concession Agreement by the Grantor further to the occurrence of the events referred to in Clause 34.1.4, Clause 34.1.5 or Clause 34.1.6 (<i>Compensation Events</i>), the Grantor shall pay the Concessionaire compensation on termination of this Agreement under the terms and conditions of Clause 40.6.2 (<i>Compensation Upon Termination for Event of Default</i>) of the Concession Agreement?</p>	
9.	<p>Could you please clarify that the following events shall constitute Relief Events?</p> <ul style="list-style-type: none"> <li>– any failure by the Grantor or a Bulgarian State entity to provide access to the Access Roads and public utilities networks beyond the boundaries of the Concession Site, and maintain such Access Roads and public utilities networks beyond the boundaries of the Concession Site in accordance with the Applicable Law and provisions of the Concession Agreement;</li> </ul>	The Grantor does not consider these circumstances as part of the Relief Events.

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	<ul style="list-style-type: none"> <li>– any delays caused to the Imminent Work or future Work Implementation Timeframe as a result of delays relating to an unlawful failure of the public authorities to issue a licence/ permit or grant an approval within the terms prescribed in Bulgarian laws; and</li> <li>– any third party action related to the Concession Site or any occupation of the Concession Site by third parties.</li> </ul>	
10.	<p>Pursuant to Clause 36.1.1 (<i>Definition of Force Majeure</i>) of the English version of the draft of the Concession Agreement, “A <b>Force Majeure Event</b> means an event or series of events: 36.1.1 beyond the reasonable control (direct or indirect) of the Party affected by such event, circumstance or combination of events or circumstances (the <b>Affected Party</b>, it being specified that for the purpose of this Agreement, the Affected Party may only be either the Grantor or the Concessionaire); (...)”.</p> <p>In accordance with the provisions of the draft of the Concession Agreement, certain obligations of the Concessionaire are transferred by the Concessionaire to its subcontractors on a back-to-back basis. A subcontractor of the Concessionaire to which the obligations of the Concessionaire have been transferred on a back-to-back basis may be affected by the occurrence</p>	<p>We understand that it is standard practice that certain obligations are carried out with subcontractors. Nonetheless, within the scope of the Concession Agreement, there are two main parties, the Grantor and the Concessionaire. So in this respect, the Affected Parties are the Grantor and the Concessionaire. Of course to the extent, there is a permitted subcontracting, the consequence of a Force Majeure Event may have impact also on a sub-contracting stage and this will be taken into account, however, without modification of the contractual structure, so the subcontractor may have a claim for compensation only against the Concessionaire, and not directly against the Grantor.</p>

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	<p>of a Force Majeure Event under the Concession Agreement and should therefore be considered as an Affected Party.</p> <p>Could you please clarify that subcontractors of the Concessionaire in the context of the Concession Agreement are included in the definition of Affected Party in case of the occurrence of a Force Majeure Event, to the extent that these subcontractors assume obligations of the Concessionaire under the Concession Agreement on a back-to-back basis?</p>	
11.	<p>Pursuant to Clause 37.2.1 (<i>Exclusions from Indemnities</i>) of the English version of the draft of the Concession Agreement “<i>The Concessionaire shall not be responsible or be obliged to indemnify the Grantor under Clause 37.1 (Concessionaire's indemnities) for any Loss or Claim to the extent arising out of any injury, Loss, damage, cost or expense caused by the gross negligence or willful misconduct of the Grantor occurring after the date of this Agreement</i>”.</p> <p>It is legally questionable in the context of a concession agreement that the concessionaire is required to bear the risk of a breach or negligence of the Grantor as the above provisions qualify the case for relief from indemnity by reference to a material breach and a gross negligence. Could the Grantor consider amending these provisions to</p>	We note your concern and will duly consider it.

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	remove the above qualifications, specifically to remove the expression “ <i>the gross negligence or willful misconduct</i> ”?	
12.	<p>– Pursuant to Clause 40.1.1 (<i>Concessionaire Event of Default</i>) of the English version of the draft of the Concession Agreement, the occurrence of the following event shall be deemed a Concessionaire Event of Default “<i>the Concessionaire fails to pay any sum or sums due to the Grantor under this Agreement, including the Concession Fee, within thirty (30) days of the relevant payment date and the Grantor has not been able to obtain the effective payment of the entire amount due and payable by the Grantor through the Performance Guarantees</i>”.</p> <p>The cure period referred to in this Clause 40.1.1 (<i>Concessionaire Event of Default</i>) of the draft of the Concession Agreement is not aligned with the cure period referred to in the similar Grantor Event of Default under Clause 40.2.1 (<i>Grantor Event of Default</i>) of the draft of the Concession Agreement.</p> <p>Could you please consider whether the Concessionaire can be entitled to the same cure period as provided for the similar Grantor Event of Default referred to in Clause 40.2.1 (<i>Grantor Event of Default</i>) of the draft of the Concession Agreement</p>	We have duly noted your requests. Nonetheless, we deem that these texts provide for a fair balance of cure periods.

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	<p>on the basis that this obligation is bonded throughout the Concession Period?</p> <p>– Pursuant to Clause 40.1.7 (<i>Concessionaire Event of Default</i>) of the English version of the draft of the Concession Agreement, the occurrence of the following event shall be deemed a Concessionaire Event of Default “<i>the opening of insolvency or liquidation procedures, cessation of operations or cessation of payments qualified as a ground for opening an insolvency or bankruptcy procedure, submission of a reorganizational plan in accordance with the Laws and any other insolvency procedure according to the Laws, or implementing any corporate reorganisation, by or with respect to the Concessionaire, or the commencement of any of the same, except if as a result of (a) the merger or reorganization of the Concessionaire on terms previously agreed by the Grantor or (b) a Third Party petition for any of the foregoing that is without ground or vexatious and is discharged, stayed or dismissed within thirty (30) days of its presentation</i>”.</p> <p>The cure period referred to in Clause 40.1.7 (<i>Concessionaire Event of Default</i>) of the draft of the Concession Agreement in case a Third Party petition for any of the above-mentioned proceedings appears rather short for the Concessionaire to ensure that the</p>	

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	<p>relevant proceeding is discharged, stayed or dismissed.</p> <p>Could you please consider that in case a Third Party petition for any of the above-mentioned proceedings without ground or in a vexatious manner, the Concessionaire can be entitled to a 120-day period to ensure that such proceeding is discharged, stayed or dismissed?</p> <p>– Pursuant to Clause 40.1.12 (<i>Concessionaire Event of Default</i>) of the English version of the draft of the Concession Agreement, the occurrence of the following event shall be deemed a Concessionaire Event of Default “<i>material breach of any representation or warranty by the Concessionaire or the Shareholders as set out in Clause 4.1 (Concessionaire representations and warranties) or Appendix 11a (Shareholder Undertaking)</i>”.</p> <p>Some of the representations or warranties by the Concessionaire or the Shareholders as set out in Clause 4.1 (<i>Concessionaire representations and warranties</i>) or Appendix 11a (<i>Shareholder Undertaking</i>) of the draft of the Concession Agreement are representations or warranties that can be cured and that are generally and customarily subject to a cure period.</p>	

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	<p>As such the following representations or warranties of the Borrower under Clauses 4.1.8, 4.1.10 and 4.1.11 of the draft of the Concession Agreement can be cured and must be subject to a cure period.</p> <p>Could you please consider whether Clause 40.1.12 (<i>Concessionaire Event of Default</i>) of the draft of the Concession Agreement can be amended to be drafted as follows “<i>material breach of any representation or warranty by the Concessionaire or the Shareholders as set out in Clause 4.1 (Concessionaire representations and warranties) or Appendix 11a (Shareholder Undertaking) which if capable of being remedied is not remedied within the period specified in the relevant representation or warranty ;</i>”?</p>	
13.	<p>– Pursuant to 40.2.1 (<i>Grantor Event of Default</i>) of the English version of the draft of the Concession Agreement, shall be deemed a Grantor Event of Default “<i>the Grantor fails to pay any sum or sums due to the Concessionaire under this Agreement (where the Grantor has not given notice to the Concessionaire that such sums are in Dispute), within three (3) months from the date it was due and payable</i>”.</p> <p>The cure period referred to in this Clause 40.2.1 (<i>Grantor Event of Default</i>) of the draft of the</p>	<p>We have duly noted your requests. Nonetheless, we deem that they provide for a fair balance of cure periods.</p>

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	<p>Concession Agreement is not aligned with the cure period referred to in the similar Concessionaire Event of Default referred to in Clause 40.1.1 (<i>Concessionaire Event of Default</i>) of the draft of the Concession Agreement.</p> <p>Could you please consider whether the Concessionaire can be subject to the same cure period as provided for the similar Grantor Event of Default referred to in Clause 40.2.1 (<i>Grantor Event of Default</i>) of the draft of the Concession Agreement?</p> <p>– Pursuant to Clause 40.2.4 (<i>Grantor Event of Default</i>) of the draft of the Concession Agreement, shall be deemed a Grantor Event of Default “<i>any repeated material breach by the Grantor under this Agreement which substantially frustrate or renders it impossible for the Concessionaire to perform any of its obligations or exercise any of its rights under this Agreement for a continuous period of ninety (90) days</i>”.</p> <p>The double qualification in this Clause 40.2.4 (<i>Grantor Event of Default</i>) of the draft of the Concession Agreement (i.e. “<i>repeated material breach</i>”) is uncustomary and appears as unnecessary</p>	

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	<p>since a material breach alone is sufficient to be considered as a serious event of default.</p> <p>Could you please consider whether this Clause 40.2.4 (<i>Grantor Event of Default</i>) of the English version of the draft of the Concession Agreement can be amended and drafted as follows “<i>any material breach by the Grantor under this Agreement which substantially frustrate or renders it impossible for the Concessionaire to perform any of its obligations or exercise any of its rights under this Agreement for a continuous period of ninety (90) days</i>”?</p>	
14. 1	<p>Pursuant to Clause 40.6.1 (<i>Compensation upon Termination for Event of Default</i>) of the English version of the draft of the Concession Agreement “<i>If the Grantor terminates this Agreement as a result of a Concessionaire Event of Default, the Grantor shall pay to the Concessionaire the "Concessionaire Default Compensation Sum" calculated as an amount equal to:</i></p> <p><i>(a) the Termination Date Debt utilized for performance of investments in the Concession Site until the Termination Date; minus (b) the IRR of the Concessionaire for the Concession Period defined in the Financial Model; minus (c) 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</i></p>	<p>It is not unusual for projects not to include a full payment of outstanding debt (limited “haircut”) as a way avoid moral hazard, and to introduce an additional incentive for vigilant supervision on the part of lenders.</p> <p>See, for example the EPEC guidance on debt compensation:  <a href="http://www.eib.org/attachments/epec/epec_terminaison_and_force_majeure_en.pdf">http://www.eib.org/attachments/epec/epec_terminaison_and_force_majeure_en.pdf</a></p>

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	<p><i>Termination Date), subject to Clause 31.1.2 (Set-Off), minus (d) any Insurance Proceeds paid to the Concessionaire which have not been applied towards reinstatement of Concession Assets and, subject to the provisions of the Direct Agreement, if any, all Insurance Proceeds and monies standing to the credit of the Special Purpose Insurance Account, provided however that with respect to the Termination Date Debt and subject to an agreement between the Grantor and the Lenders, the Grantor may decide to assume the Senior Debt in accordance with terms and conditions as shall be agreed between the Grantor and the Lenders in accordance with the Laws.”.</i></p> <p><i>Pursuant to Clause 40.6.2 (Compensation upon Termination for Event of Default) of the English version of the draft of the Concession Agreement “If the Concessionaire terminates this Agreement as a result of a Grantor Event of Default, the Grantor shall pay to the Concessionaire the <b>"Grantor Default Compensation Sum"</b>, calculated as an amount equal to: (a) the Termination Date Debt utilized for performance of investments in the Concession Site until the Termination Date; plus (b) the Termination Date equity utilized for performance of investments in the Concession Site until the Termination Date, plus (c) the present value, as of the Termination Date, of the Distributions projected in the</i></p>	

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	<p><i>Financial Model during the five years after the Termination Date, discounted using a discount rate equal to the initial Threshold Equity IRR; minus (d) any Insurance Proceeds paid to the Concessionaire which have not been applied towards reinstatement of Concession Assets and, subject to the provisions of the Direct Agreement, if any, all Insurance Proceeds and monies standing to the credit of the Special Purpose Insurance Account; minus (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), subject to Clause 31.1.2 (Set-Off), provided however that with respect to the Termination Date Debt and subject to an agreement between the Grantor and the Lenders, the Grantor or its designee may decide to assume the Senior Debt in accordance with terms and conditions as shall be agreed between the Grantor and the Lenders in accordance with the Laws, in which case the Grantor Default Compensation”.</i></p> <p>It is a major bankability concern for potential lenders and sponsors, that in case of a termination of the relevant concession agreement, the lenders be paid directly by the grantor, a compensation on termination amount sufficient to cover the outstanding debt and hedging breakage in all scenarios of termination.</p>	

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	<p>It is customary, in order to ensure the bankability of projects and concessions such as the concession contemplated under the Concession Agreement, that the compensation on termination amount be of an amount sufficient to cover entirely the senior debt amount calculated on termination date.</p> <p>The current drafting of Clause 40.6.1 (<i>Compensation upon Termination for Event of Default</i>) of the draft of the Concession Agreement and Clause 40.6.2 (<i>Compensation upon Termination for Event of Default</i>) of the draft of the Concession Agreement creates a major issue in terms of bankability of the Concession Agreement to the extent that, with the current calculation formula of the Concessionaire Default Compensation Sum and the Grantor Default Compensation Sum, the Lenders will receive, as compensation on termination, an amount lesser than the Termination Date Debt component due to amounts subtracted from it.</p> <p>Since the Termination Debt Date component is not covered by the Concessionaire Default Compensation Sum and the Grantor Default Compensation Sum payable under the Concession Agreement, could you please consider, in order to ensure the bankability of this project, that the Concessionaire Default Compensation Sum and the Grantor Default Compensation Sum payable under the Concession Agreement, cover entirely the Termination</p>	

#	QUESTION	ANSWER
	Date Debt without any deductions and set-offs and any deductions be payable by the Concessionaire in each scenario?	
14.2	<p>Clause 43.2.1 (<i>Payment</i>) of the English version of the draft of the Concession Agreement currently provides that “<i>The Grantor shall pay to the Concessionaire free and clear of all Taxes of any description the Grantor Default Compensation Sum, the Concessionaire Compensation Sum or the Extensive Force Majeure Refund Sum (as appropriate and, with respect to the Termination Date Debt component, subject to any agreement between the Grantor and the Lenders on assumption of the Senior Debt by the Grantor) within twelve (12) months from the date on which the Grantor approved the Termination Compensation Statement, or from the date of final Arbitration Award, as the case may be.</i>”</p> <p>Could you please consider amending the provisions of Clause 43.2.1 (<i>Payment</i>) of the English version of the draft of the Concession Agreement so that the amount corresponding to the Termination Date Debt component of the Concessionaire Default Compensation Sum and the Grantor Default Compensation Sum be paid directly by the Grantor to the Lenders?</p>	We note your request and will duly consider it. We deem, that this is however more a matter for the tripartite agreement between the Grantor, the Lenders and the Concessionaire

#	QUESTION	ANSWER
15.	<p>Pursuant to Clause 41.3 (<i>Refund upon Termination for Extensive Force Majeure</i>) of the English version of the draft of the Concession Agreement “<i>If the Party terminates this Agreement as a result of an Extensive Force Majeure Event, the Grantor shall refund the "Extensive Force Majeure Refund Sum"</i>” such amount being calculated in accordance with the formula of Clause 41.3 (<i>Refund upon Termination for Extensive Force Majeure</i>) of the draft of the Concession Agreement.</p> <p>The formula referred to in Clause 41.3 (<i>Refund upon Termination for Extensive Force Majeure</i>) of the draft of the Concession Agreement does not include a component which would cover the hedging breakage costs which are customarily covered under the compensation payable to concessionaires following the termination of the concession agreement due to an extended force majeure. This issue is a major bankability issue which will be raised by potential Lenders to the Project.</p> <p>Could you please consider whether the above concern can be accommodated by a change in the formula referred to in Clause 41.3 (<i>Refund upon Termination for Extensive Force Majeure</i>) of the draft of the Concession Agreement?</p>	<p>We note your comment and will duly consider your suggestions. However, please also refer to the answer to Question #5 published on 15 August 2018 (part 2 of Q&amp;As of this date).</p>

#	QUESTION	ANSWER
16.	<p>Pursuant to Clause 46.2 (<i>Assignment by Grantor</i>) of the English version of the draft of the Concession Agreement “<i>The Grantor may assign or transfer, in whole or part, this Agreement without prior consent of the Concessionaire</i>”.</p> <p>The overall bankability of the project is being assessed on the basis of the credit-standing and credit-worthiness of the Grantor being a Bulgarian State entity. In order to ensure the bankability of the project, comfort from the Grantor is needed to ensure that if the Agreement is assigned by the Grantor to any other entity, other than a Government Authority, the initial Grantor shall guarantee all obligations and payments under the Concession Agreement.</p> <p>Could you please consider amending the Agreement to accommodate the above major bankability concern?</p>	<p>Please refer to the answer of Question 12, published on August 15, 2018.</p> <p>As indicated in the previous answer, the terms of any transfer, including any change in the ownership of the airport, will be dictated by Bulgarian Law and – as such – cannot be restricted by clauses of the Concession Agreement.</p>
17.1	<p>– Pursuant to Clause 55.2.5 (<i>Pre-arbitral Dispute Resolution</i>) of the draft of the Concession Agreement, the Independent Adviser shall be “<i>picked from a pre-agreed panel</i>”. However, the Concession Agreement does not specify any mechanisms or timeframe for agreeing on such panel. Furthermore, the Concession Agreement does</p>	<p>As we have quite a strict mechanism for the arbitration, we wanted to provide more flexibility for the independent advisor. Nonetheless, we note your request and will duly consider it.</p>

#	QUESTION	ANSWER
	<p>not specify either any standards of independence and impartiality to the ‘Independent Advisor’.</p> <p>International project sponsors and Lenders alike typically require concession agreements to specify the standards of independence and impartiality to the Independent Advisor as well as mechanisms or timeframe for agreeing on such panel from which the Independent Advisor shall be picked from.</p> <p>Could you please consider an amendment of this Clause 55.2.5 (<i>Pre-arbitral Dispute Resolution</i>) of the draft of the Concession Agreement so it refers to the ICC Expertise Rules and to be drafted as follows “<i>The constituted Ad hoc Disputes Committee may within thirty (30) days of its constitution nominate an expert, by issuing a request for proposal of experts to the ICC International Centre for Expertise under the Rules for Expertise of the International Chamber of Commerce, in particular Section II (Proposal of Experts) of the said Rules (the "Independent Adviser"). The Independent Advisor shall have an advisory role towards the Ad hoc Disputes Committee on the subject matter</i>”?</p>	

#	QUESTION	ANSWER
17.2.	<p>Pursuant to article 154(2) of the Concession Act “<i>Any disputes concerning the conclusion, performance, amendment and termination of the concession agreement shall be resolved in accordance with the procedure under the Bulgarian Civil Procedural Code</i>”.</p> <p>This language creates an uncertainty as to whether the above-mentioned disputes are arbitral or whether they need to be resolved by the courts. Furthermore, the Concession Act explicitly provides that disputes related to amendment of the concession agreement should be resolved by the court.</p> <p>Could you therefore please clarify which disputes arising from or related to the Concession Agreement will be subject to arbitration?</p>	<p>The Ministry’s understanding is that Article 154(2) of the Concessions Act does not prevent the parties from agreeing on arbitration in the Concession Agreement, taking into account that the Civil Procedure Code itself contains the general provision allowing the parties to agree to submit their disputes to an arbitration court (Art.19 CPC). The provision of Article 154(2) of the Concessions Act is aimed at differentiating the disputes related to the Concession Agreement, which have civil law nature, from disputes related to concession award procedures, to which the Administrative Procedure Code is applicable.</p> <p>Therefore, the understanding is that all disputes arising from or related to the Concession Agreement will be subject to arbitration, with just one exception – the disputes referred to in Article 142 of the Concessions Act, namely, disputes as to whether or not grounds for amending the Concession Agreement have occurred</p>
17.3.	<p>– Pursuant to Clause 56.1.4 (<i>Arbitration</i>) of the draft of the Concession Agreement, the Technical Dispute Resolution Produce sets Bulgarian language as the language of the procedure (with a clarification that English may be used for communication, but with interpretation at the expense of the party not versed in Bulgarian language).</p>	<p>We note and will duly consider your request.</p>

#	QUESTION	ANSWER
	<p>Could you please clarify that English can be used as the language of the procedure, as this will facilitate the involvement of international experts and limit the interaction of Bulgarian nationals and therefore addresses the concern of impartiality of the procedure which is a strong requirement of sponsors and lenders alike?</p>	
17.4.	<p>– Pursuant to Clause 56.1.4 (<i>Arbitration</i>) of the draft of the Concession Agreement, the Technical Dispute Resolution Produce sets the place of hearings as Sofia, Bulgaria.</p> <p>It is a concern for the impartiality of this procedure, from an international project sponsor’s and lenders’ perspective that the principle of “neutrality of the forum” be applied in dispute resolution provisions for concessions such as the concession contemplated under the Concession Agreement. It is therefore a customary request that the forum of the hearings be located in a more neutral location (i.e. different that the jurisdiction of the Grantor when the assets are located in the same jurisdiction) such as London or Paris.</p> <p>Could you please consider that the place of the hearings be set in a more neutral venue, given the fact</p>	<p>The location of the hearings does not have an impact on the neutrality of the procedure. It only plays a limited role as concerns certain procedural issues which is even of less importance in cases where recognized arbitration procedural rules are foreseen, accordingly, we deem this request unacceptable</p> <p>With regard to the place of arbitration, in Clause 56.1.5 of the draft Concession Agreement it is proposed in line with Article 19 of the Bulgarian Civil Procedure Code.</p>

#	QUESTION	ANSWER
	that the majority shareholders in the Bulgarian project company will be foreign entities?	
17.5.	<ul style="list-style-type: none"> <li>– The provisions of Clause 56 (<i>Arbitration</i>) of the draft of the Concession Agreement do not specifically specify that the Grantor waives any right to claim sovereign or other immunity. This is a major concern for a contract of this nature.</li> <li>– Could you please clarify that the Grantor will waive any right to claim sovereign or other immunity?</li> </ul>	<ul style="list-style-type: none"> <li>– There are general international law principles governing this issue and accordingly we deem this request unacceptable.</li> </ul>
18.	<p>Please confirm our understanding of Article 45.4 from the Concession Agreement that upon expiry of the Concession Period the residual life of the respective asset resulting out of the inspection and condition assessment shall not be less than the difference between the design life of Appendix 18 and the actual age of the respective facility. Formula: (residual life as per assessment) <math>\geq</math> (design life) – (actual age)</p> <p>Example:  Asset A – Design life as per the Appendix 18: 20 years  Upon expiry of the Concession Period Asset A is 10 years old</p>	<p>We confirm that upon expiry of the Concession Period the residual life of the respective asset resulting out of the inspection and condition assessment shall not be less than the difference between the design life of Appendix 18 and the actual age of the respective facility.</p>

#	QUESTION	ANSWER
	<p>Conclusion: Asset A complies with 45.4.1 and no action has to be taken by the Concessionaire</p>	
19	<p>Please note that the definition of “Works” of the Draft Concession Agreement reads as follows: "Works" shall mean the Imminent Refurbishment Works [...], and any other works and Capital Expenditures necessary in order for the Airport or parts thereof to be constructed, refurbished or upgraded in accordance with the terms of this Agreement as more particularly set out in Appendix 18 (Minimum Technical Requirements)”</p> <p>The Tender Documentation sets the minimum amount for capital expenditures to EUR 600 million without VAT for the term of the concession period of 35 years. The definition of Works depicted above is unclear if it is covering the entire term of the concession period or a specified period which is therefore ambiguous to your answers where you refer to “rolling amount of Works” and “Works phase” which are not defined. This ambiguity is supported by the last sentence of clause 16.2.1 of the Draft Concession Agreement which refers to any future Works and reads as follows: “Works Performance Guarantees shall be renewed on the same terms as specified in Appendix 14 for any future Works again covering 10% of the rolling amount of such future Works for each subsequent construction period.” Please see the following example:</p> <p>(T0) Concessionaire’s obligation for 35 years over the concession term on Effective Date: EUR 600 million.</p>	<p>We note and will duly consider your suggestion to add the following definitions:</p> <ul style="list-style-type: none"> <li>• Rolling amount of Works;</li> <li>• Works phase;</li> </ul> <p>“Capital Expenditures”. Is already defined in the contract as follows: “shall mean capital expenditure (as such term is interpreted in accordance with generally accepted accounting principles in Bulgaria, including the international financial reporting standards/IFRS);”</p>

#	QUESTION	ANSWER
	<p>Amount of Works Performance Guarantee 10% of EUR 600 million = EUR 60 million</p> <p>(T+2) Finalizing of a project falling under the definition of Works in the amount of EUR 200 million. Calculation of “rolling amount of Works”: EUR 600 million – EUR 200 million = EUR 400 million. Reduction of Works Performance Guarantee from EUR 60 million to EUR 40 million.</p> <p>(T+3) Finalizing of a project falling under the definition of Works in the amount of EUR 50 million. Calculation of “rolling amount of Works”: EUR 400 million – EUR 50 million = EUR 350 million. Reduction of Works Performance Guarantee from EUR 40 million to EUR 35 million etc.</p> <p>Please provide a clear definition of “rolling amounts of Works” and “Works phase” and amend/specify the documentation accordingly.</p> <p style="padding-left: 40px;">Please clarify why the definition of the term “Capital Expenditures” is missing or specify/amend the documentation accordingly.</p>	