

#	Question	Answer
1	<p>Reference draft concession agreement: 3.11 Competition</p> <p>a. Article 3.11.1 is ambiguous and unclear because the exclusivity is suspended with the second half of the sentence beginning with “except”. Please provide a clear definition of exclusivity and amend the documentation accordingly.</p> <p>b. Article 3.11.3: Please provide a clear definition of the term “area of competition”.</p>	<p>As included in the Definitions section of the draft Concession Agreement: "Exclusivity Area" shall mean a circular area of 100 kilometres radius from the Airport.</p> <p>Thank you for noting the inconsistency in the English version. Please note that as the Bulgarian version is leading the text highlighted in yellow will be removed from the English version.</p> <p>3.11.1.</p> <p>If the Grantor and/or the State directly or through a concession to a Third Party constructs, develops, upgrades and/or operates any other airport in the Exclusivity Area of the Airport <b>except for the construction, development, upgrade and/or operation of any airport</b> a Compensation Event will have occurred unless such action is taken pursuant to and in accordance with Clause 21.2 (Permissible intervention).</p> <p>To correspond to the Bulgarian version:</p> <p>3.11.1 .</p> <p>If the Grantor and/or the State directly or through a concession to a Third Party constructs, develops, upgrades and/or operates any other airport in the Exclusivity Area of the Airport <b>except for the construction, development, upgrade and/or operation of any airport</b> a Compensation Event will have occurred unless such action is taken pursuant to and in accordance with Clause 21.2 (Permissible intervention).</p>
2	<p>Reference draft concession agreement: 40.6.1 Compensation upon Termination for Event of Default</p> <p>a. The deduction stipulated under (b) appears not to work as IRR is a percentage amount. Please provide a proper definition, clarify the mechanism and amend the documentation accordingly.</p>	<p>Please refer to our answers posted on 27 July 2018 (Q&amp;A 1) and 6 Aug (Q&amp;A 15)</p>
3	<p>Reference tender documents (page 81, English document):</p>	<p>a. The information is available on the CAA website, please refer to the following link: <a href="https://www.caa.bg/en/node/2831">https://www.caa.bg/en/node/2831</a></p>

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	<p>a. We understand that there is a dispute ongoing or a recent court ruling in relation to the aeronautical charges for the financial year 2017 (or before). Please provide a list of all disputes and litigation procedures ongoing or decided recently in relation to aeronautical charges for Sofia Airport and provide the background on each dispute and litigation procedure as well as the regulators' position to it.</p> <p>b. Please provide a risk assessment on setting aeronautical charges for the future in light of the additional cost components introduced for the airport users in the context of the airport privatization.</p> <p>c. Please provide clarity on the basis of the charges to be assumed for 2019 and following periods in the Financial Model in light of the ongoing disputes given the above described uncertainties.</p>	<p>With regard to b. and c., it is for each Bidder to assess all commercial risks for their own financial models.</p>
4	<p>We thank you for your response number 18 in the Q&amp;A dated 31 July 2018 in relation to calculation of the total asset value of the Concessionaire under clause 12.1.2 of draft Concession agreement. In addition to your response, can you please confirm whether the entire capitalised concession (Upfront + NPV of Annual Payments) should be excluded from Total Assets calculation, or just the capitalised Upfront Payment should be excluded, and the capitalised NPV of Annual Concession Payments should be included in the Total Assets calculation. In addition, can you please clarify whether other intangible assets should be excluded from The Total Assets calculation</p>	<p>Concession Fees – upfront and annual – should be excluded from the calculation of Total Assets.</p> <p>Other intangible assets can be included in the calculation.</p>

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5	<p>We thank you for your response number 8 in the Q&amp;A dated 09 August 2018 in relation to the calculation of the Airport charges where you indicated that “The Upfront Concession Fee and the Annual Concession Fee, as well as the costs incurred by the Concessionaire in connection with debt and equity financing raised for the purposes of financing of the regulated activities are eligible cost components for the purpose of calculation of the airport charges at Sofia Airport”.</p> <p>With regards to the cost of equity financing as noted by you could you please confirm how the cost of Equity will be calculated? What Cost of Equity rate will be used?</p> <p>With respect to the Upfront Concession Fee, please also confirm that it is to be reflected as a regulated cost in the calculation of the Airport Charges activities as 1/35 part, proportionally to the term of the concession.</p>	<p>The cost of equity has to be determined in accordance with the methodology enclosed as Attachment No.1 to the Ordinance on the charges for using the airports for public use and for air navigation services in the Republic of Bulgaria and the ICAO documents referred therein. This is just one of the elements, based on which the airport charges are to be determined, following negotiations process between the airport operator and the users (airlines). The ordinance and an unofficial English translation of it are provided on the Project Website, section Legal Information.</p> <p>The Upfront Concession Fee should be reflected as regulated cost, as suggested in your question.</p>
6	<p>As per the minimum technical requirements (Project Documentation, Schedule 5, page 153), existing Terminal 1 needs to be decommissioned by 2027. However, the new Terminal 3 can be opened until the 10th year of the concession (Project Documentation, Schedule 5, page 154-155). Therefore, if the new Terminal 3 is opened by the 10th year of concession in line with the minimum technical requirements, Terminal 1 will be decommissioned a few years earlier, creating a mismatch in capacity. Would it be possible to decommission the existing Terminal 1 by the 10th year of concession or opening of the new Terminal 3 (whichever is earlier)?</p>	<p>Thank you for your comment. Please refer to the Bulgarian version of the Tender Documents, which is the leading document. On p. 163 of the Bulgarian version, it is stated that Terminal 1 is to be decommissioned once Terminal 3 is opened.</p>
7	<p>As per the minimum technical requirements (Project Documentation, Schedule 5, page 154-155), the new Terminal 3 needs to be at most 800 meters to the metro station. Please confirm that this restriction does not apply to VIP and General Aviation facilities and applies only to the new Terminal 3?</p>	<p>Your understanding is correct. The restriction does not apply to the VIP and General Aviation facilities.</p>

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8.	As per the minimum technical requirements (Project Documentation, Schedule 5, page 164), noise contour modeling with software is required once the concession period starts. However, it is not clear to us if it is requested within tender document to be submitted at the bid deadline? Please clarify.	Noise modeling and the required mitigation measures are to be undertaken following the Concession Commencement Date. There is no requirement for submission of a noise model as part of the Offer.
9.1	<p>Questions related to Confidentiality Agreement:</p> <p>Definition of “Concession” does not specify what type of works will be covered, so arguably this NDA could extend to other works relating to the Airport</p>	<p>A detailed description of the scope of the concession is contained in Appendix 1 of the draft Concession Agreement.</p> <p>We do not believe there is any lack of clarity as to what is covered by the NDA.</p>
9.2	<p>Definition of “Permitted Disclosee”: under this definition, we can only disclose CI (confidential information) to our employees and group companies, but not other affiliate (e.g. investment fund under our management) or other external financing sources; nor can we disclose to other external parties we want to form a consortium</p>	<p>Answers are published on 15.08.2018, answer 2, question 29 and 30.</p> <p>Financial advisors and the potential lenders contacted by the financial advisors will fall within the definition of Representatives under the Confidentiality Undertaking. Users shall procure that their respective Representatives comply with the terms of the Undertaking as provided under Clause 4 of the Confidentiality Undertaking. Representatives will not be required to enter into the Confidentiality Undertaking with MTITC;</p> <p>Each consortium member is required to enter into a separate Confidentiality Undertaking with MTITC. Consortium members do not fall within the definition of Permitted Disclosee (unless a consortium member is a member of the Group to which belongs another member of the same consortium, see definitions set out in the form of Confidentiality Undertaking published on the Project Website).</p>
9.3	Clause 9: this NDA will be valid for 5 years from signing, can we make it to our standard 2 year period?	It is not allowed any amendments in the NDA.
9.4	Clause 11.3: we are requested to indemnify against all losses and damages if there is any breach or threatened breach by us or our permitted disclosees. This could make us be subject to additional responsibility such as indirect or consequential losses, and	It is responsibility of each bidder to assess risks and consequences of breach or threatened breach of the NDA on the basis of Bulgarian Law.

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	as this NDA is governed by Bulgarian law, it is not clear to us what would be the boundary and burden of proof of such claims	
9.5	Clause 17: this NDA is governed by Bulgarian law and subject to the jurisdiction of Bulgarian court. Hence we can only do a general legal review and may not identify other potential risks under Bulgarian law.	It is responsibility of each bidder to assess risks and consequences of breach or threatened breach of the NDA on the basis of Bulgarian Law.