

№	Question - EN	Answer
1	Art. 1.3.1(b) of the draft Concession Agreement provides that any compensation payable by the Grantor to the Concessionaire is net of any insurance proceeds payable to the Concessionaire under insurance policies. Please consider limitation of those compensations to insurance receivables once finally agreed or otherwise determined (i.e. not in dispute with the insurer).	This proposal will not be accepted. The current wording provides a solution to the issue, raised in this question, in an acceptable manner and in conformity with the law.
2	Art. 1.3.2 of the draft Concession Agreement determines when the Grantor is deemed to have knowledge of a certain matter. Please consider adding in said clause the knowledge of key employees of the Current Operator (on the basis that it is solely owned by the Bulgarian State, which is the Grantor).	This proposal cannot be accepted. The key employees are employed by the Current Operator. The functions of a sole owner of the shares in Grantor's capital, do not suggest (either legally or in fact), any acceptance or inclusion of such a commitment.
3	Art. 2.8.6 of the draft Concession Agreement is ambiguous in respect of what exactly liabilities of the Current Operator under Transferring Contracts will be assumed by the Concessionaire. In particular, if for example certain works or services may have been provided to the Current Operator before the Concession Commencement Date, but the respective Transferring Agreement may provide that the payment of such works or services will be done on a date that falls after the Concession Commencement Date. In such case it is unclear under Art. 2.8.6 of the draft Concession Agreement whether the payment of such works or services will be due by the Concessionaire or not. Please consider amendment of Art. 2.8.6 to clarify that any works and/or services provided to the Current Operator prior to the Concession Commencement Date will be payable by the Current Operator regardless of what the relevant Transferring Contract provides for in respect of the date when the respective payment becomes due.	This proposal cannot be accepted. The wording is clear enough and we kindly ask that it is read together with the rest of the Draft Concession Agreement.

4	Art. 3.5 of the draft Concession Agreement requires from the Concessionaire to “ <i>continuously seek improvements to the Airport Facilities</i> ”, which is too broad and might be deemed to require improvements that are not provided for in the Business Plan. Please consider amendment to the draft Concession Agreement to refer to improvements provided for in the Business Plan.	This proposal cannot be accepted. Please, take into consideration the fact that the draft Concession Agreement contains in numerous parts thereof, the explicit clarification: “subject to and in accordance with the provisions of this Agreement“.
5	Art. 3.9.3 of the draft Concession Agreement is entitled “ <i>Accommodation and access</i> ” and provides for that the Concessionaire must provide to BULATSA the required spaces for the provision of Air Navigation Services (at no cost for the Grantor), but it also refers to the provision of “ <i>Facilities</i> ” (which reads “ <i>equipment</i> ” in the Bulgarian version). Please consider amendment to the draft Concession Agreement by deleting the word “ <i>Facilities</i> ” (“ <i>equipment</i> ”/“ <i>съоръжения</i> “ in the Bulgarian version) because currently said clause might imply that the Concessionaire will have to pay for such equipment used by BULATSA, which was presumably not intended.	The Grantor will review and consider your proposal. However, please note that it is probably a matter of translation and we are emphasizing that the Bulgarian version of the agreement prevails.
6	The representation by the Concessionaire in Art. 4.1.7 should carve-out any liability under any financing agreements (whether bank or shareholder loans) for the avoidance of any doubt. Please consider amendment of the draft Concession Agreement to clarify this.	The Grantor will review and consider your proposal.
7	Articles 4.7.2, 4.7.3 and 4.7.4 of the draft Concession Agreement provide for that the Grantor gives no warranty that the Disclosed Information is full, complete and correct and limit the Grantor’s liability for or based on any undisclosed information. Please consider amendment of the draft Concession Agreement so that the Grantor gives a warranty that the Disclosed Information is correct, complete and not misleading or omitting anything material and be liable for a breach of such warranty and that the Grantor’s	This proposal cannot be accepted. There are expectations for the participation of professional and experienced bidders, capable of fully understanding what information and documents, related to the concession, are necessary and available even at this preliminary stage.

	liability for defects would be limited only if the risk was Fairly Disclosed. In relation to this consider also adding a definition of “Fairly Disclosed” – essentially if the risk was disclosed in a clear and transparent manner in the Disclosed Information.	
8	Art. 11.1 of the draft Concession Agreement implies that the Concessionaire must be a Project Company whereas according to the law (the Concessions Act) and the Tender Documentation this is not mandatory, but optional. Please consider an amendment of the draft Concession Agreement to remove this incorrectness.	This proposal cannot be accepted. The well established practice, especially when long-term agreements are concerned, with the concession-site being public state property, is that, if the Concessionaire is group of economic operators (companies), the establishment of a project company is required.
9	Article 11.2.2 of the draft Concession Agreement requires the Concessionaire to invite the Grantor to its shareholders' meetings. That is very unusual. It is not even limited to any meetings which will discuss matters related to the Concession. It is further not clear in what capacity will the Grantor be invited to such meetings? If the Concessionaire is a solely-owned company there are no shareholders meetings. It is not clear whether this clause is applicable if the Concessionaire is a solely-owned company. Would you please provide clarification what is the intention of said clause?	The Grantor will review and consider your proposal. The proposal seems acceptable.
10	The Bulgarian version of 19.5.1 (last sentence) of the draft Concession Agreement about the quorum requirements for the Joint Committee is ambiguous (“ <i>Присъствието на един представител от страна на който и да е от Концедента и Концесионера, съставлява кворум.</i> ”). The English version is clear: “ <i>The presence of one representative of each the Grantor and the Concessionaire shall constitute a quorum.</i> ” Please consider amendment to the Bulgarian version of the draft Concession Agreement to the following effect: “ <i>Присъствието на по един</i>	This proposal will be accepted

	<i>представител от страна на всеки от Концедента и Концесионера, съставлява кворум.”</i>	
11	Art. 21.5 of the draft Concession Agreement provides for a short term (7 days), of the interruption or intervention by the Grantor in which the Concessionaire may refer the matter to the Dispute Resolution under Clause 55 of the draft Concession Agreement. Please consider amendment to the draft Concession Agreement so that said term is prolonged to 1 month.	This proposal cannot be accepted. It is a matter of key transport infrastructure for Bulgaria (the largest airport), as well as critical infrastructure.
12	Pursuant to art. 29.2 of the draft Concession Agreement the Concessionaire may not delegate a material part of its contractual obligations of a value in excess of EUR 5 million p.a. or in aggregate EUR 10 million or being critical to the ongoing safe and reliable functioning of the Airport or the Airport Services as a whole to subcontractors, without the prior written consent of the Grantor (unless such subcontractors have been nominated in the Offer). There are no limitations on the grounds on which the Grantor may refuse such consent nor a requirement that such consent cannot be unreasonably withheld or delayed. Please consider amendment to the draft Concession Agreement with the view to define the grounds on which the Grantor may refuse to approve a subcontractor and provide that such consent cannot be unreasonably withheld or delayed.	This proposal cannot be accepted. In our view, there is a reasonable balance, ensuring high quality of performance of the services, subject matter of the concession, as well as of the performance of the construction.
13	Pursuant to art. 31.1.1 of the draft Concession Agreement <i>“The Concessionaire waives any set off rights that it may have against the Grantor.”</i> Pursuant to the Bulgarian law the waiver of rights is invalid if it concerns future rights save for the cases provided by the law. Hence this clause is null and void. Please consider removal of said clause from the draft Concession Agreement.	This proposal cannot be accepted. Clause 31.1.1 means that the Concessionaire agrees to waive his set-off rights, as material rights.

14	Pursuant to articles 34.1 and 34.2 of the draft Concession Agreement the Concessionaire is entitled to an economic rebalance of the Concession following the occurrence of an event which would significantly upset the general economic balance of the CA, if the Compensation Event Minimum Threshold is exceeded (€2 million or in the cases of Variation by the Grantor - €1 million) and if such event continues for more than 24 months. Such period is unreasonably long. Please consider shortening the period to 6 months.	This proposal cannot be accepted. This provision is closely linked to the other provisions, relevant for the economic rebalance of the concession.
15	Pursuant to Articles 36.6.2 and 36.6.3 of the draft Concession Agreement notwithstanding that a Force Majeure Event has occurred or otherwise exists the Concessionaire is not relieved from liability for failure to provide the Airport Services and for delay or failure in performing its obligations to perform Imminent Works. Those two clauses contradict to the concept of the force majeure under the law as an event of relief from liability and contradicts to the rest clauses of the draft Concession Agreement regulating the force majeure. Please consider removal of Articles 36.6.2 and 36.6.3.	The Grantor will review and consider your proposal.
16	Pursuant to art. 42.1 of the draft Concession Agreement the Grantor can terminate the agreement on the ground of “ <i>public interest</i> ”, with at least six (6) months' notice. Said ground is not defined and is vague. The clause refers to art. 146(1) of the Concessions Act, which however uses different triggers such as “ <i>intervening emergence of a danger to the national security and defence, to the life and health of citizens, to the environment, to protected areas, zones and sites and to public order, unless a ground for modification of the contract applies.</i> ” In the event of a termination on such grounds of public interest, the Concessionaire is entitled to receive the Grantor Default	The Grantor will review and consider your proposal.

	Compensation Sum. Please consider amendment to the draft Concession Agreement by using the same concepts and wording as in Art. 146(1) of the Concessions Act.	
17	Art. 43.2 and art. 43.3 of the draft Concession Agreement use the term “Concessionaire Compensation Sum” which is not correct. The correct term is Concessionaire Default Compensation Sum. Please consider making this rather technical correction to the draft Concession Agreement.	The Grantor will review and consider your proposal.
18	Pursuant to art. 44.1 of the draft Concession Agreement <i>“to protect public interest and the continuity of the Airport's operations, the Grantor may take over the operation of the Concession if, for reasons attributable to the Concessionaire, the cessation of the activity is imminent or if there is a serious disturbance which jeopardizes the functioning of the Concession or if there is a material breach of safety and /or security in the performance of operations of the Airport by the Concessionaire.”</i> According to Art. 44.3 of the draft Concession Agreement <i>“during the period of the seizure, the Concessionaire is liable for all properly documented costs and expenses arising out of the maintenance and reestablishment of operations which cannot be covered by the revenue collected from the seized operations.”</i> Please consider adding to Art. 44.3 that the costs must be, in addition to properly documented, also reasonable.	The Grantor will review and consider your proposal.
19	Article 1.1 (Definitions) of the draft Concession Agreement: The definition of "Anti-Corruption Guidelines" appears ambiguous. Do these mean the First Ranking Bidder's and the Concessionaire's own Guidelines that these have adopted and could change if required?	This proposal cannot be accepted. The provision is clear enough.
20	Article 2.8.4 (b) of the draft Concession Agreement: Please consider to make such termination subject to the consent by	The Grantor will review and consider your proposal.

	the Concessionaire, similar to Article 2.7.2 of the Draft Concession Agreement.	
21	Article 4.1.8 of the draft Concession Agreement does not provide for any disclaimer/qualification that “no Claim is presently being assessed”. Please consider to delete “Claim is presently being assessed and” or consider to make this representation subject to a knowledge qualifier.	This proposal cannot be accepted. The provision is standard for such agreements. A provision with a similar effect applies also to the Grantor.
22	Article 4.1.17 and Article 4.6.2 (b) of the draft Concession Agreement: We regard these confirmations as unusual and inconsistent with the concept of the representations and warranties and potential damage recovery mechanisms in the Concession Agreement. A confirmation that “all” information has been received “that the Grantor has prepared” could not be given as such confirmations may thwart the entire representations and warranties and potential damage recovery mechanisms. We request to consider the deletion of Art. 4.1.17 and 4.6.2.	This proposal cannot be accepted. This representation is typical for such agreements.
23	Article 4.2 of the draft Concession Agreement: Please consider to insert a representation and warranty that the Current Operator possesses the licenses and permits to be named and listed in the Concessions Agreement. Please furthermore consider to insert a representation and warranty that these licenses and permits (including, without limitation, Environmental Permits as defined in the draft Concession Agreement) are ALL licenses and permits needed to operate the Airport as it is currently being operated. Even though these licenses and permits will not transfer to the Concessionaire, such representations and warranties enables the Concessionaire to make a proper assessment as to which licenses and permits the Concessionaire has to apply for.	This proposal cannot be accepted. Every professional and experience operator should review the conditions and environment, in which it will perform its operations, especially when this concerns its main business. Also, the data room contains information, regarding the licenses, permits, certificates, owned by the current airport operator.
24	Article 4.2 of the draft Concession Agreement: Please consider to insert a representation and warranty that the	This proposal cannot be accepted. Please, refer to the answer to the previous question.

	Current Operator operates the Airport in compliance with the ICAO Safety Management Standards, EASA Standards and Regulations, Good Industry Practice and any national Aviation Security policies. If that representation and warranty cannot be given without qualifications please otherwise consider to provide a fair and comprehensive disclosure against that representation and warranty.	
25	Article 4.6.3 of the draft Concession Agreement is ambiguous and unclear. Please consider a clarification or deletion of Article 4.6.3 of the draft Concession Agreement.	The Grantor will review and consider your proposal.
26	Please clarify what “right of peaceful enjoyment of the Concession Site” in Article 5.1.3 of the draft Concession Agreement exactly means and includes property.	Clause 5.1.3 of the draft Concession Agreement is clear; the quoted provision is typical for transactions, involving the use of property.
27	Article 5.1.4 of the draft Concession Agreement: Please clarify and disclose if you are aware of or anticipate “changes in zoning and the elaboration and adoption of zoning plans” for which the Concessionaire shall bear any costs.	The performance of construction works may require development amendments and the preparation and adoption of development plans, which may be different, depending on the type of Construction activities and the respective applicable requirements of the Bulgarian legislation (mainly the Spatial Development Act and the Sofia Municipality Organization and Development Plan). Please, refer also to the answer to question No. 8, published on 31.08.2018 (part 1).
28	Please explain the meaning and potential consequences of Article 5.5.2 (a) and/or Article 5.5.2 (b) of the draft Concession Agreement.	Considering the concession site – civil airport for public use, the Concessionaire must accept certain limitations on the activities, imposed by the legislation or due to Governmental Users. This is the standard position at all airports.
29	Article 6.2 of the draft Concession Agreement provides in its fourth paragraph that Moveable Assets shall be handed back “without any additional compensation payable by the Grantor”. The Concessionaire shall have “however the option to retain such Moveable Asset against payment of an arm-length consideration”. Please explain that provision in light of the fact that the Concessionaire may have already paid for these assets (eventually to the Current Operator	The Grantor will review and consider your proposal.

	against payment of the “fair market value” pursuant to the first paragraph of Article 6.2). Please consider to fairly balance the payment provisions by the Concessionaire and the payments to the Concessionaire for moveable assets that will be transferred in both directions (also considering Article 18.9 of the Draft Concession Agreement together with the minimum Residual Values provided in Appendix 18).	
30	Article 7.2.1 of the draft Concession Agreement: Please consider to remove the requirement “to perform in the area where such Work is to be undertaken Archaeological Test Excavations or use other suitable means to investigate the data collected to determine the existence of Cultural Valuables”. Please otherwise explain the real benefit of such Test Excavations prior to Works.	The Grantor will review and consider your proposal.
31	Please explain and clarify the extension and consequences (in particular the legal consequences) of the Site Assessment provided in Article 8.1.2 of the draft Concession Agreement.	This proposal cannot be accepted. The objective here is to establish clear rules between the parties to this Agreement, as a detailed Site Assessment will be carried out during the transitive period. This is expected to minimize any disputes between the parties, regarding the existing contamination.
32	Please consider to provide for a longer period than 36 months in Article 8.1.4 (a) of the Concession Agreement.	This proposal cannot be accepted. The currently proposed period is reasonable.
33	According to Article 8.2.2 (b) of the draft Concession Agreement the Concessionaire shall ensure that no conduct of it “ is capable within one (1) year from the end of the Concession Period of putting either or the Grantor or the State in breach of Laws on environmental protection, protection of human health, social and labour aspects (as such Law on environmental protection, protection of human health, social and labour aspects stands immediately prior to the end of the Concession Period and disregarding any changes to Laws on environmental protection, protection of human health, social and labour aspects which may take	The Grantor will review and consider your proposal.

	place after the end of the Concession Period and assuming the Grantor acts as a reasonably prudent operator)." Please consider to replace "capable" in Article 8.2.2 (b) of the draft Concession Agreement by "causes that".	
34	Please clarify what asbestos pollutions exist or may exist that could become relevant under Article 8.3.3 (h)?	Please, refer to the answers, regarding the lack of studies to determine the presence of asbestos, published on September 14.
35	Please explain the background of Article 10.1.2 (e) of the draft Concession Agreement. What is the background of naming the "outer fencing, fencing or barriers" – is there an issue in this respect or are significant costs in this regard already known or anticipated?	Bidders should assess themselves the condition of the current infrastructure and prepare their investment programmes in accordance with their own analyses and Appendix 18 to the Concession Agreement, including item 16, detailing the requirements, concerning the fencing of the airport.
36	Please explain the need of the last sentence in Article 14.1.1.	The duration of the Financing Agreements should not exceed the Concession Period.
37	Please explain the need of Article 15.2.2 of the draft Concession Agreement. Please consider to remove that provision and/or to suggest balanced mutual participations with respect to other extraordinary benefits and costs during the Concession Period. Please consider e.g. insert in Article 15.2.2 a similar de minimis as provided in Articles 34.1 and 34.2 of the draft Concession Agreement for Rebalances.	The Grantor will review and consider your proposal.
38	Please clarify Article 18.5.4 of the Draft Concession Agreement.	If and to the extent that, within the five-year plan, the investments made, exceed those, specified in the plan, the investments in the subsequent five-year periods may be less than planned.
39	Are alternatives to the President of Lloyd's London an option in Article 20.4.3 of the draft Concession Agreement?	The Grantor will review and consider your proposal.
40	May there be an exemption for the need of "arm's length" terms with a Contractor, if the Contractor is an Affiliate of the Concessionaire, if the terms may be different to arm's length terms under applicable law (incl. tax applicable tax law)?	No exemption is possible.

41	Please clarify the typo “retie, ling” in Article 32.2.2 (c) of the draft Concession Agreement (the English version).	We will check and correct the typo, if any.
42	Art. 2.13.1(c) of the draft Concession Agreement is ambiguous. Literally it turns out that if the Non-Completion is due to the Grantor’s fault or due to the listed circumstances which do not depend on the Concessionaire, then the Upfront Concession Fee will not be refunded. Please consider making Art. 2.13.1(c) of the draft Concession Agreement a separate clause that applies irrespective of the reason for non-completion.	This proposal cannot be accepted. This provision, in combination with clause 2.13.1 settles in a fair manner, the issue at hand.
43	Pursuant to art. 2.12.2 (last sentence) of the draft Concession Agreement “ <i>If the Concession Commencement Date has not occurred on the extended CP Long Stop Date, the Grantor may, at its own discretion, decide to further extend the CP Long Stop Date for an additional period of up to six (6) months.</i> ” Such extension is entirely within the discretion of the Grantor. The main concern here is with the merger control clearance being a CP. If such clearance is obtained, but is appealed in court, the appeal process might be protracted beyond the 6 months above after the CP Long Stop Date. In such case, even if a preliminary enforceability of the merger control clearance is permitted before the appeal has been finally resolved, there is a risk that if the merger control clearance is finally rejected as a result of the appeal and this happens after the Concession Commencement Date the Concession Agreement will need to be terminated. The Concession Agreement does not deal with what happens in such case with the Upfront Concession Fee. The repayment of the relevant proportion of the Upfront Concession Fee is not provided for in such case. In response No. 4 dated 27 August 2018 to a question you have stated that in drafting the draft Concession	The Grantor will review and consider your proposal.

	<p>Agreement you had assumed that the CP will be satisfied only if the merger control clearance is final (i.e. non-appealable) even though the wording of the CP would allow also its satisfaction by an appealable (or appealed) merger control clearance if its preliminary enforceability had been permitted by the competition authority. Please consider amendment to the draft Concession Agreement to either clarify that in case of an appeal of the competition clearance the CP Long Stop date will be automatically extended until the appeal is finally resolved or alternatively allow completion before that, but provide expressly that if the appeal results in a revocation of the merger clearance the Upfront Concession Fee will be returned to the Concessionaire pro rata.</p>	
44	<p>Art. 3.2.22 of the Bulgarian version of the draft Concession Agreement (which corresponds to Art. 3.2.24 of the English version) is ambiguous. It is not clear what “<i>entered into force</i>” in respect of rights and obligations means. If the reference to “<i>rights and obligations</i>” was meant to refer to “<i>receivables</i>” which become due and payable prior to the Concession Commencement Date, this is to be clarified. In addition, the English version of the corresponding clause uses the wording “<i>rights and obligations triggered prior to the Concession Commencement Date</i>” which is different from “<i>entered into force</i>”. Please consider amendment to Art. 3.2.22 of the draft Concession Agreement to clarify the meaning. Please consider adding further (i) “excluding any receivables, liabilities and obligations that have become payable and/or due or which have been caused or triggered prior to the Concession Commencement Date” and (ii) “or where assumption of contract is not permitted under any</p>	<p>The Grantor will review and consider your proposal.</p>

	applicable law, by way of termination of the relevant contract and entry into a replacement contract in its stead" for consistency with this alternative for Transferring Agreements elsewhere in the CA.	
45	In the Bulgarian version of the draft Concession Agreement Art. 3.7.8, first sentence, the liability of the Grantor is "through the respective Government User", which is unclear. In addition, the second sentence excludes the liability of the Grantor for damages caused by Government Users if such damages are insured by the Concessionaire. Please consider removal of the words "through the respective Government User" in the first sentence of said clause for being unclear. In addition, please consider adding in the beginning of the second sentence of said clause "If and to the extent such damage is covered and compensated..."	This proposal cannot be accepted. This provision contains no unclarities, regarding the liability as per art. 3.7.8. The wording of sentence two is also quite clear.
46	Art. 3.9.4 of the draft Concession Agreement provides for that the Concessionaire shall be indemnified by the Grantor for any Losses incurred through actions or inactions of BULATSA, but excludes such liability if the Concessionaire has also contributed to such Losses. Please consider amendment to the draft Concession Agreement so that the Grantor's liability is not fully excluded, but is only limited pro rata to any Losses that are a direct result of such contributing actions or inactions of the Concessionaire. In this regard please consider the replacement in the second sentence of Art. 3.9.4.(a) of the Bulgarian version of the draft Concession Agreement of the words "в случаите, когато" ("in the cases where") by the words "до степента, в която" ("to the extent").	The Grantor will review and consider your proposal.
47	Pursuant to art. 34.4 of the draft Concession Agreement if the payment of a Rebalance would be excessively onerous on the Grantor, the Grantor is entitled, instead of providing	The Grantor will review and consider your proposal.

	<p>a Rebalance, to terminate the Concession Agreement and pay to the Concessionaire the relevant compensation as per Art. 34.6 (in the Bulgarian version the reference is wrongly to 35.6). Art. 34.6 contains two scenarios and we fail to understand the rationale of the first one that refers to Art. 34.1.5. In all other cases the Grantor must pay to the Concessionaire a compensation for termination as if the Concession Agreement was terminated due to a default of the Grantor (as per Art. 40.6.2). Please clarify the rationale of the reference to Art. 34.1.5. If it is a technical mistake, please consider its rectification via amendment to the draft Concession Agreement and keeping the references only to Art. 40.6.2.</p>	
48	<p>The draft Concession Agreement is ambiguous as to whether or not the Concessionaire is obliged to either buy or lease the Moveable Assets or also has the right to neither buy nor lease any Moveable Assets. The definition of Moveable Assets (which refers to those assets “<i>to be transferred to the Concessionaire (by way of purchase or lease, at the option of the Concessionaire)</i>”) creates the impression that the Concessionaire’s only discretion is whether to buy or lease the Moveable Assets. Clause 6.2 of the draft Concession Agreement seems to allow the Concessionaire not to buy any Moveable Assets (as long as it has the required moveable assets to perform the Concession), but it does not equally state that the Concessionaire is not also obliged to lease the Movable Assets. Please confirm that the Concessionaire is not obliged to either buy or lease any Movable Assets owned by the Current Operator as long as the Concessionaire has all required equipment for performing the Concession. In addition, please consider provision in the draft Concession Agreement of a mechanism in case of a disagreement</p>	<p>We confirm that is not obliged to either buy or lease any Movable Assets owned by the Current Operator as long as the Concessionaire has all required equipment for performing the Concession. However, the wording of this clause will be reviewed, and additional clarity will be introduced, if necessary. The value of the movable assets is determined by an independent third-party evaluator. This is in conformity with the Bulgarian law, governing the terms and conditions for such transactions, performed by state-owned sole owner companies and in particular – the Rules on the exercising of the ownership rights in business companies with state interest in their capital.</p>

	between the Grantor/Current Operator and the Concessionaire on the fair market value of the Moveable Assets that the Concessionaire wishes to buy or lease from the Current Operator (e.g. a third independent third party to determine such fair market value in case the Grantor and the Concessionaire disagree on it).	
49	“Regarding the recently uploaded document “1.22. Form_G_Financial Qualification”, could you please instruct how to proceed with the form if the required currency is not included in the spreadsheet (“Exchange rates”), or please add all available currencies to the spreadsheet “Exchange rates”?”	<p>If the currency is not included in Form G, please:</p> <ol style="list-style-type: none"> 1. Make your own calculations, indicating the respective exchange rate applied, which should be: <ul style="list-style-type: none"> - either ECB’s official exchange rate of the respective currency to the Euro as at the last business day of 2017 (29 December 2017); or - if there is no official reference exchange rate, published on ECB’s website, please use the official exchange rate of the central bank of the respective currency as at the last business day of 2017; <p>Or</p> <ol style="list-style-type: none"> 2. Provide us with the name of the currency and we will include in the Form.
50	According to Council Directive 96/67/EC of 15 October 1996 on access to the ground handling market at Community airports, it is possible, but not mandatory, that the managing body of the airport (as defined under the Directive) is given the opportunity to perform ground handling services and activities. There is no legal provision, which requires the member states to guarantee that the issuance of a permit for or the approval of the airport operator’s activity must necessarily be combined with the ground handling services and activities.	<p>The Concessionaire should obtain ground handling operator licenses and perform directly the ground handling activities, as specified in art. 48e, para. 3, items 2-7 of the Civil Aviation Act (art. 3.2.2. of the Draft Concession Agreement).</p> <p>With respect to all the other activities, as per art. 48e, para. 3, of the Civil Aviation Act, the Concessionaire must ensure that these are provided at the airport, either directly by the Concessionaire or by third parties (art. 3.2.2. of the draft Concession Agreement).</p>

<p>The Civil Aviation Act also does not contain a provision, which sets an obligation of the state/grantor to issue an airport operator licence and/or to assign the performance of airport administration activities to an entity, which necessarily performs the ground handling services and activities.</p> <p>According to the well-established European practice, the concessionaire of the airport infrastructure should be allowed (but not obliged) to perform the ground handling services and activities. In accordance with said practice, clause 3.2.2 of the Draft Concession Agreement provides for the following obligation of the concessionaire:</p> <p>“to ensure that all Ground Handling Services are provided at the Airport, regardless of whether such Ground Handling Services are provided directly by the Airport Operator/the Concessionaire or by Third Parties, whereby the Concessionaire shall be free to decide whether to perform directly any of the Ground Handling Services (subject to obtaining all Permits and Consents)”</p> <p>As evident from that provision, the concessionaire should ensure that all ground handling activities are provided at the airport, either directly or by third parties.</p> <p>Nevertheless, other provisions of the draft concession agreement, e.g. clause 3.2.3, specify that the concessionaire should in any case obtain ground handling operator licences and perform (or be able to perform) directly the ground handling activities as per article 48Д, para. 3, points 2 – 7 of the Civil Aviation Act.</p>	
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We believe that the said provisions contradict with each other.

It is our opinion that the concessionaire should have only the opportunity, but not be obliged, to obtain and maintain licences for the specified ground handling activities, if it considers this necessary to guarantee the proper functioning of the airport. Our arguments are as follows:

1. The obligation of the concessionaire to obtain and maintain those licences would create complex practical difficulties for the concessionaire to comply with its obligations in its capacity as airport administration, to guarantee the free access to the market of every licensed third party and simultaneously to perform its obligation to participate or to be able to participate and to provide the said services.

2. Further, there is a risk of a potential dispute between the concessionaire and the grantor regarding the meaning of the expression “to be able to provide”, used in clause 3.2.3 of the Draft Concession Agreement, and in particular regarding the monitoring of this requirement (i.e. proving the compliance by the concessionaire) – with respect to 1 per cent or with respect to 100 per cent of the current needs of the market. There is no provision in this regard in the tender terms and the Draft Concession Agreement. Taking into consideration all of the above, we ask the grantor to amend the tender terms and respectively the Draft Concession Agreement in accordance with clause 3.2.2 of the Draft Concession Agreement, and to specify that the concessionaire is required to ensure that all ground handling activities are provided at the airport, either directly or by third parties, and respectively that the concessionaire is

	entitled (but not obliged) to obtain and maintain the said licences throughout the concession period, only where necessary in order to ensure the proper functioning of the airport.	