

№	Question	Answer
1.	<p>Further to your answer on 15th August relating to our question on the Applicable Maximum Senior Debt Ratio, can you please confirm that breach of the ratio has no consequences. As per paragraph 14.1.5, can you please confirm the purpose of the Applicable Maximum Senior Debt Ratio is that the Initial Financial Model should not show leverage above this amount.</p>	<p>The Grantor will review and include clarifying texts within the respective clauses, if required.</p>
2.	<p>Please can you clarify your responses regarding Consortia NDA, specifically, could you confirm that your answer on 10 September supersedes your answer on 20 August.</p> <p>Answer from 20 August:  “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 “</p> <p>Answer from 10 September:  “The Grantor confirms that a Bidder can share Confidential Information with “any potential consortium partners and providers of financing” in accordance with limb (c) of the definition of “Permitted Disclosee” of the Confidentiality Agreement, as long as all of them have signed the Confidentiality Agreement.”</p>	<p>We confirm that the answer from 10 Sept prevails.</p>
3.	<p>Please can you clarify your responses regarding Lender NDA, specifically, could you confirm that your answer on 20 August is the correct one.</p> <p>Answer from 20 August implies lenders do not need to sign a separate NDA:  “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</p>	<p>Please refer to the answer published on 26 Sept:</p> <p>We clarify that the lenders are not included in the definition of Permitted Disclosees, since they are not Representatives of the potential bidder.  Letter “c” of the definition of Permitted Disclosee, makes provisions for the possibility that a Receiving Party may provide Confidential Information to any person, subject to the preliminary written consent of the Disclosing Party.  Therefore, there would be no obstacle to sending a request to the Commission at the email; address of the concession,</p>

	<p>Confidentiality Undertaking with MTITC”</p> <p>Answer from 10 September implies lenders need to sign a separate NDA:  “The Grantor confirms that a Bidder can share Confidential Information with “any potential consortium partners and providers of financing” in accordance with limb (c) of the definition of “Permitted Disclosee” of the Confidentiality Agreement, as long as all of them have signed the Confidentiality Agreement.”</p> <p>Please note that the financial institutions we are in contact with will not be able to sign the NDA for many reasons among which: drafting making it not applicable to them and the indemnity provision which is not acceptable to international lending institutions. As a consequence, we'll have to bear the risk instead of the Grantor as we will procure their adherence to the NDA we have entered into (via a separate back to back NDA with us).</p>	<p>for obtaining a written consent for disclosing Confidential Information, indicating the potential lender.</p>
4.	<p>Term “Financing Agreements” is not defined. Please clarify what documents constitute Financing Agreements. This critically relates to the timeline, submission of docs, debt itself, and financing workstream</p>	<p>The definition of “Financing Agreement” will be expanded for better clarity.</p>
5.	<p>Generally, in view of the timeline, effectiveness of the Financing Agreements and Disbursement date of the debt can be different dates. Please clarify if Signing Date of Financing Agreements or Disbursement Date are considered as Financial Close.</p>	<p>The definition of “Financial Close” in the draft Concession Agreement requires both effectiveness of the Financing Agreements and effective disbursement (actual draw-down) of the Senior Debt for the benefit of the Concessionaire.</p>
6.	<p>Current definition in the Concession Agreement leaves it to be interpreted as debt exclusively from the Lenders under the Financing Agreements. Depending on how the latter is defined (and we have not seen that definition in the CA), this essentially limits the amount of debt that is counted towards Senior Debt, ratio calculations, etc. Please clarify if this was an intention.</p>	<p>The definitions of “Financing Agreement”, “Senior debt” and “Shareholder Debt” will be expanded for better clarity</p>
7.	<p>Can you please provide definition of “Equity”? It is not clear what type of the capitalisation will be treated as equity.</p>	<p>We do not consider that there is a need for a separate definition of Equity.</p>

8.	Clause stipulates the approval of the Financing Agreements by the Grantor, but will approval come directly from the Minister of Transport? Will Grantor's legal counsel be involved in the approval process?	The party to the Concession Agreement is the Grantor, who normally would be supported by his administration, in accordance with the applicable Bulgarian laws.
9.	Can you please confirm if the Refinancing Gain is calculated on the basis of an updated Financing Model prior to such refinancing (as per the "Refinancing Gain" definition)?	Yes, Refinancing Gain is calculated on the basis of updated Financial model immediately prior to the Refinancing, as per the definition of "Refinancing Gain".
10.	We have further reviewed the provisions relating to the Performance Guarantees in both Article 16 and Appendix 14. There are a number of issues raised previously (regarding the operation of the Works Guarantee and the revolving nature of the guarantees) which still concern us. In addition there are a number of points which Banks issuing the guarantees will comment upon and we believe it would be prudent to anticipate these between ourselves now. In order to assist the Grantor on these points, we have provided a mark up on Article 16 at Appendix 1 to the paper attached in the clarification question submitted and Appendix 14 at Appendix 2 to the paper attached in the clarification question submitted. We would request that the Grantor kindly considers the drafting and comments to deal with the points.	The Grantor will review and consider the requests.
11.	Upon termination of the employment relationship occurred after the change of employer, please clarify who has to cover the expenses for payment of compensation pursuant to Art.224 of the LC for the days unused paid annual leave accrued prior to the change of employer - the Current Operator or the Concessionaire.	Pursuant to Art.123a, paragraph 3 of the Labour Code, the old and the new employers are jointly liable for obligations to employees, which occurred prior to the change of the employer. This understanding is underlying the provision of Clause 9.1.4 of the draft Concession Agreement. In our opinion, an obligation for compensation under Art.224 of the Labour Code would occur only upon termination of the employment, while upon the change of the employer pursuant to Art.123a LC the employment is not terminated. Please note that this answer may not be considered as official interpretation or legal advice, and each Bidder has to rely on its own assessment, on the basis of an independent advice and consultation.