





Inhoud

<i>Document</i>	<i>Datum</i>
Addendum 1	28 februari 2001
Addendum 2	23 maart 2001
Aanvulling op Addendum 2	9 april 2001
Clarification 1	15 januari 2001
Clarification 2	15 februari 2001
Clarification 3	23 maart 2001
Clarification 4	20 april 2001

Addenda 1

No.	Document	Page	Section	Issue in the Clarification Rounds	Addendum
A 1.1	ITT Main Document	50	<p>4.4 Terms and conditions for Tendering</p> <p><i>Bid submission</i></p> <p>3. Bid Format</p>	<p>Clarification 1.04</p> <p>Q: Is white paper without logo's required for the bid and the copies of it? A: Yes.</p>	<p>Add:</p> <p>h. The Bid has to be submitted on white paper without any logo('s).</p>
A 1.2	Annex A1	7	<p>Risk allocation</p> <p>The Concessionaire will bear the following risks:</p>	<p>Clarification 1.33</p> <p>Q: Under "Risk allocation": It should be considered to be an unreasonable condition to undertake responsibility for all changes in law. The tenderer should have the right to call upon re-negotiation if legislation, that have been an important assumption at the point of time of the offer, changes. This is specifically the case when it comes to legislation as regards taxes and fees imposed by the government. Can the State please clarify it's intention with the stipulated condition? The possibility for the parties to call upon re-negotiation due to unpredictable increase in costs should be included in the regulation about "Change procedure" (CA page 4). A: Changes of law that specifically regard the HSL-Zuid are not the risk of the Concessionaire. However, the State currently considers to issue an Addendum whether other changes of law should be made subject to the change procedure. If so, such an Addendum will be sent to Tenderers not later than February 28.</p>	<p>Last bullit, change text into:</p> <p>All changes of law, except: changes that specifically regard HSL-Zuid, and changes in the VAT group for public transport tickets.</p> <p><i>Note: see cover letter regarding change procedure and force majeure</i></p>

No.	Document	Page	Section	Issue in the Clarification Rounds	Addendum
A 1.3	Annex A4	3	Start of the Concession	<p>Clarification 1.52</p> <p>Q: Does HSL have any guidance of these international services and in parallel what are the international trains to remain in operation after the start of the new line?</p> <p>A: See 1.51. For bidding purposes Tenderers can assume that there will be no other international trains on conventional track after the start of the full service on HSL-Zuid.</p>	<p>Add as working assumption:</p> <p>There will be no other international trains on conventional track after the start of the full service on HSL-Zuid.</p> 
A 1.4	Annex A4	4	SNCF	<p>Clarification 1.18 and 2.14</p> <p>Q: Are the rights, mentioned in paragraph 2, for international services exclusive?</p> <p>A: No. However, the concessionaire will have an exclusive agreement with SNCB and SNCF (Working Assumption) and will have a guaranteed capacity for 32 international paths per direction per day for a period of 15 years.</p> <p>Q: Can we base our Bid on the assumption that the agreement with SNCF will be as exclusive as the agreement with SNCB?</p> <p>A: Yes. See the answer to clarification 1.18 of February [January] 15, 2001.</p>	<p>Add as working assumption:</p> <p>The Agreement with SNCF will be exclusive.</p> 
A 1.5	Annex A4	4	Stabling and maintenance	<p>Clarification 1.53</p> <p>Q: Is there a cost to pay for access to the stabling facilities or the servicing facilities (except the servicing facilities by themselves)?</p> <p>A: In the working hypothesis that Watergraafsmeer can be used no costs need to be assumed, except for servicing facilities themselves.</p>	<p>Add after "... rolling stock (international and domestic)." as working assumption:</p> <p>No costs need to be assumed, except for servicing facilities themselves.</p> 

No.	Document	Page	Section	Issue in the Clarification Rounds	Addendum
A 1.6	Annex A4	5	New heading	<p data-bbox="900 241 1106 270">Clarification 1.14</p> <p data-bbox="900 303 1533 789">Q: Compare the third and fifth parts of the text, which expresses the States reservations as regards the facts and assumptions that the tenderers shall base their bids on, with the statement of binding bids (page 33 in the ITT Main Document). Illustrative is also the statement on the top of page 30 in the ITT Main Document where it is expressed that the bids in this phase are to be based on the position of the state only. Question: (1) Can the tenderer assume that the bids shall be binding only under the condition that the facts, information and assumptions in the ITT-documents are correct? (2) This meaning that if any fact, information or assumption that the tenderer has based his bid on should change, the tenderer shall be entitled to, if he finds it necessary, to adjust his bid correspondingly?</p> <p data-bbox="900 822 1533 1030">A: Only the provisions which are set out as Working Assumptions (Annex A4) can lead to adjustments to the Bid. See 1.11. However, the State currently considers to issue an Addendum whether the scope of this clause will be extended to include other parts of the ITT as well. If so, such an Addendum will be sent to Tenderers not later than February 28.</p>	<p data-bbox="1539 241 1907 270">Add as working assumption:</p> <p data-bbox="1539 303 2170 849">Data and information in ITT All data and information given in the ITT Main Document can be taken as a basis for the Bid. The basis data and the uplift factors of the Supporting Documents 1.1 (Market Information: Origin and Destination Survey) can be taken as a basis for the Bid. The basis data of the Supporting Documents 1.2 (HSL-Zuid Passenger Choice Research) can be taken as a basis for the Bid. If these data and/or information are demonstrable incorrect, Tenderers can make the reasonable adjustments to their Bid without however changing the other underlying assumptions of their Bid. Tenderers have to inform the State immediately if they find any errors, defects, contradictions or unclarities in the ITT. If a Tenderer purposely fails to do so, the State can refuse the right to adjust his Bid.</p> 

No.	Document	Page	Section	Issue in the Clarification Rounds	Addendum
A 1.7	Annex A4	5	New heading	<p>Clarification 1.33</p> <p>Q: Under "Risk allocation": It should be considered to be an unreasonable condition to undertake responsibility for all changes in law. The tenderer should have the right to call upon re-negotiation if legislation, that have been an important assumption at the point of time of the offer, changes. This is specifically the case when it comes to legislation as regards taxes and fees imposed by the government. Can the State please clarify it's intention with the stipulated condition? The possibility for the parties to call upon re-negotiation due to unpredictable increase in costs should be included in the regulation about "Change procedure" (CA page 4).</p> <p>A: Changes of law that specifically regard the HSL-Zuid are not the risk of the Concessionaire. However, the State currently considers to issue an Addendum whether other changes of law should be made subject to the change procedure. If so, such an Addendum will be sent to Tenderers not later than February 28.</p>	<p>Add as working assumption:</p> <p>Changes in law Sectoral law (rules on railtransport and for instance TSI's), will not be changed in between submission of the Bid and Contract Award.</p> <p><i>ℓ</i></p> <p><i>Note: see cover letter regarding change procedure and force majeure</i></p>

Addendum 2

No.	Document	Page	Section	Addendum
A 2.1	ITT Main Document	46	Part E The Financial bids	<p>Tenderers are required to state their bid as a fixed annual amount (at least 100 million Euro from 2010 onward), as described in the ITT. They may do so, however, under the following assumptions:</p> <ul style="list-style-type: none"> • The State will be prepared to negotiate regarding the discount percentages in the years 2006-2012 if the Tenderer can demonstrate convincingly that an operational cash deficit in these years is to be expected and if the Tenderer wishes to avoid the burden of additional financing resulting thereof. In that case the State will be prepared to reprofile these discounts provided the NPV remains the same when calculated with a real term discount rate of 6,5%. • Tenderers are required to state their bid as fixed annual amount (100 + X million Euro per year). In stead of this amount, the State will be prepared to negotiate in good faith about a fixed payment at a level of for example 90% of the financial bid plus a benefit sharing mechanism under the following conditions: <ul style="list-style-type: none"> - the mechanism must be based on clear, non-arbitrary, indicators; - the mechanism does not contain perverse incentives for the operator; - the State is convinced, on the basis of a comparison of the bid with reference information, that the expected future value of the fixed payment plus the benefit share is equal to the original financial bid (in other words: the financially weighted probabilities of lower outcomes balance those of higher outcomes).
A 2.2	ITT Main Document	49	6	<p><i>Replace section 6 with text below:</i></p> <p>All written correspondence from Tenderers to the State shall be addressed as follows:</p> <ol style="list-style-type: none"> a. By hand: Mr. R Testroote, Projectorganisatie HSL-Zuid, Westraven, Griffioenlaan 2, 3526 LA Utrecht, The Netherlands b. By mail: Mr. R Testroote, Projectorganisatie HSL-Zuid, Westraven, Griffioenlaan 2, 3526 LA Utrecht, The Netherlands c. By fax: Mr. R Testroote, Projectorganisatie HSL-Zuid, (+31) 030 2728 577.
A 2.3	ITT Main Document	49	2	<p><i>Replace section 2, part a and b with text below:</i></p>

				<p>2. Delivery:</p> <p>a. The Bid must be submitted on Wednesday 2 May 2001, no later than the time specified for each Tenderer. Late Bids will not be considered or accepted and will be returned to the Tenderer unopened.</p> <p>b. Delivery must be made by hand: By hand: Mr. R Testroote, Projectorganisatie HSL-Zuid, Westraven, Griffioenlaan 2, 3526 LA Utrecht, The Netherlands.</p>
A 2.4	ITT Main Document	56	Glossary	<p><i>'Performance Bond': add new definition</i></p> <p>Performance Bond: a bond in favour of the State to be procured by the succesfull Tenderer no later than 1-1-2003.</p>
A 2.5	Annex A1	4	Change procedure	<p><i>The text below replaces the complete section 'Change procedure':</i></p> <p>In progress meetings with Tenderers we have explored the appropriate mechanisms in case of unforeseen circumstances. In the first place, the concession agreement must not prevent the operator from acting responsively to changing markets, as long as this is in the overall interest of the HSL-Zuid operator and the (potential) passengers (see also the ITT-Annex A1 under Change Procedure). On the other hand, there may also be circumstances that have a negative impact on the HSL-Zuid. Force majeure may prevent the operator from timely and fully meeting all his obligations in a reasonable way (see below under Force majeure).</p> <p>Unforeseen external circumstances may make it structurally unviable to do so, especially if not all cost increases can be translated into fare increases. In such circumstances it may be necessary to reduce the service and financial commitments of the operator.</p> <p>The State will be prepared to negotiate in good faith regarding such reductions, provided:</p> <ul style="list-style-type: none"> • These circumstances are clearly beyond control of the operator. • It is not reasonable to expect that another operator would perform better under these circumstances. • The operator and its parent companies take every reasonable measure to improve the viability of the services. • The parent companies of the SPV do not, directly or indirectly, withdraw funds from the company (cumulative from the start of the company). <p>Such (temporary) reductions will be solely to prevent discontinuity of the SPV and its services, not to guarantee profitability. Financial reductions may take the form of a subordinated debt to the State. If the State does not agree with the Concessionaire regarding the appropriateness and magnitude of such reductions, the Concessionaire may apply for Dispute Resolution.</p>
A 2.6	Annex A1	7	Terms of transfer to a successful operator	<p><i>Replace text ...in the first three years of the Concession Period... with the following text:start up years of the Concession Period according to the accepted Business Plan.</i></p>
A 2.7	Annex A1	7	Risk allocation	<p><i>Replace text after bullet 'All changes of law, except those that specifically regard HSL-Zuid' with text below:</i></p> <p>General changes in law, whether or not specifically or exclusively applicable to the railroad sector, are regarded as normal business risks of the concessionaire and will not be ground for compensation. The</p>

				<p>Concessionaire is allowed to compensate negative effects caused by a change in law or policy by means of fare increases.</p> <p>The concession agreement will protect the Concessionaire against discriminatory changes in law or governmental policy. If such changes lead to higher costs or lower revenues of the Concessionaire, and if these cannot be passed on in through fare increases, the Concessionaire will be entitled to financial compensation. With regard to specific questions posed by Tenderers:</p> <ul style="list-style-type: none"> • The start of operations of a magnetic monorail train between Amsterdam and Rotterdam will be considered as a discriminatory change of policy. • Significant additional technical requirements made by governmental bodies in the Netherlands coming into effect before the start of the HSL services, which are not known at the moment of the signing of the concession agreement, will be considered as discriminatory changes in law. • Significant cumulative measures by the government, which have an overall negative effect for the Concessionaire, may qualify as an event that leads to distortion of the economic balance of the concession agreement in which case the change procedure is applicable. Positive effects of such and other measures by the government will be taken into account. • A change in the VAT categorisation of public transport services, including HSL operations, from low (at present: 6%) to high (at present: 19%) will not be regarded as a discriminatory change in law. However, such a change will qualify as an event that leads to distortion of the economic balance of the concession agreement in which case the change procedure is applicable.
No.	Document	Page	Section	Addendum
A 2.8	Annex A1	7	General provisions	<p><i>Replace text after bullit force majeure</i></p> <p>Under Dutch law, force majeure is governed by article 75 of Book 6 of the Civil Code, which reads as follows: "A failure in the performance of an obligation cannot be attributed to the obligor if it is neither due to his fault nor for his account pursuant to law, a juridical act or generally accepted principles."</p> <p>The Civil Code allows parties to further determine which failures qualify as force majeure events. Please note that the concept of force majeure under Dutch law can be different from the concept of force majeure under (i.e.) English law. Parties can stipulate that force majeure events result in the relief of the obligor from certain</p>

				<p>terms and conditions of the agreement between them. The Concession agreement will hold provisions to this effect. If a force majeure event takes place, the party who gained knowledge of the event first, notifies the other party. Parties will as soon as possible start negotiations to minimise the effects of the force majeure event.</p> <p>If a serious force majeure event would continue for a period of three months, parties have the obligation to negotiate -in good faith- additional provisions to the agreement.</p> <p>If specific serious force majeure events would continue for a period of 6 months, each party has the right to terminate the agreement with observance of a termination period. Parties will negotiate in good faith the continuation of the train services and the minimisation of the negative effects of the force majeure event for both parties until the termination date.</p> <p>Possible force majeure events are:</p> <ul style="list-style-type: none"> • major and long lasting limitations in access to Belgian or French infrastructure; • breach of the co-operation agreement with NMBS, not caused by the Concessionaire nor for its account; • unavailability of energy; • blockage of rail track by third parties; • floods and earth quakes; • war, riots, civil unrest and general strikes (strikes by employees of the Concessionaire not included) in the Netherlands; • long lasting unavailability of the infrastructure.
No.	Document	Page	Section	Addendum
A 2.9	Annex B1	24, 25	Chapter 9	<p><i>In the original version of the ITT the structure of the Business Plan Narrative, as given on page 9/49, did not comply with the Chapter Titles, as used at each chapter. The structure of the Business Plan Narrative has to be:</i></p> <ul style="list-style-type: none"> Executive Summary 1. Mission and Objectives 2. The passengers 3. Service Offer 4. Pricing and Yield Management 5. Partners 6. Organisation 7. Rolling stock and other assets 8. Financing and Risks 9. Key quality aspects

				<p>10. Implementation Plan This means that pages 24 and 25 will become chapter 9 (key quality aspects). Page 23 will be Chapter 10 (Implementation Plan).</p>
A 2.10	Annex B1	26	Print out of the business model	<p><i>In addition to the information in the businessmodelBC.xls sheets and the accompanying guidelines the following information is given. The additional information is grouped by sheetname and table number as in the business model file.</i></p> <p><i>In general</i></p> <ul style="list-style-type: none"> • Revenues should be presented as positive numbers. • Costs should be presented as negative numbers. • Assets, capital and reserves should be presented as positive numbers. • Liabilities should be presented as negative numbers. • Cash in flows should be presented as positive numbers. • Cash out flows should be presented as negative numbers. • Where units in millions are asked it is required to give one decimal. • On summation lines numbers should only be summed, not subtracted. <p><i>Sheet A</i> Table 2.1</p> <ul style="list-style-type: none"> • The numbers filled in for the passenger journeys should refer to single journeys. E.g. a return journey should be presented as two single journeys. <p><i>Sheet B1</i> Table 3.1 and Table 3.2</p> <ul style="list-style-type: none"> • The Peak times refer to the highest peak, which can be the morning or the afternoon. The defined peak time remains applicable to the rest of the businessmodel file. <p>Table 3.2</p> <ul style="list-style-type: none"> • The services per day refer to single services. A return trip is counted as two single services. E.g. 10 trains per day from A'dam to Paris and 10 trains per day from Paris to A'dam gives 20 services per day between A'dam and Paris. • The departure times of the trains determine whether it is a peak or an off-peak train. <p>Table 3.3</p> <ul style="list-style-type: none"> • The requested train kilometers per year should be presented in units of million kilometers. <p><i>Sheet B2</i> Table 3.5</p> <ul style="list-style-type: none"> • The requested number of seats on workdays should be presented in units of million seats. • The requested Total seat kilometers (peak, off-peak and total) on workingdays should be presented in units of million seat kilometers.

				<p>Table 3.5</p> <ul style="list-style-type: none"> The average occupation rate on workingdays during the peak between Brussels-Paris should be presented as a percentage. <p><i>Sheet C</i> Table 4.1 and Table 4.2</p> <ul style="list-style-type: none"> The average yield per single journey and passenger kilometer should be presented with two decimals. <p><i>Sheet D</i> Table 6.1 and Table 6.2</p> <ul style="list-style-type: none"> The total average staff costs per FTE should be presented in units of thousand Euro's. <p><i>Sheet E</i> Table 7.1</p> <ul style="list-style-type: none"> The couple factor should be presented with two decimals. The set kilometers should be presented in units of million kilometers. <p><i>Sheets F1 through F7</i></p> <ul style="list-style-type: none"> All information requested in Euro's should be presented in units of million Euro's. <p><i>Sheet F2</i> Table 8.2</p> <ul style="list-style-type: none"> As the general guidelines in this addendum note, the line 'International passenger ticket revenues of the GVO' should be presented as a positive number. The three lines of '10% sales costs' should be presented as negative numbers. The net international sales revenues should represent the sum of these four lines. <p><i>Sheet F3</i> Table 8.3</p> <ul style="list-style-type: none"> The line 'Sub-total costs' is the sum of the <ul style="list-style-type: none"> <input type="checkbox"/> train personnel costs, <input type="checkbox"/> usage related costs, <input type="checkbox"/> station & infrastructure costs, <input type="checkbox"/> ancillary costs <input type="checkbox"/> Rolling stock costs for HSL-Z TOC <input type="checkbox"/> GVO management costs The line 'Total operational costs international services' is the sum of the
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				<ul style="list-style-type: none"> <input type="checkbox"/> Sub-total costs <input type="checkbox"/> Set-offs <input type="checkbox"/> Depreciation costs 'other assets' <p>Table 8.4</p> <ul style="list-style-type: none"> <input type="checkbox"/> The line 'Total operational costs domestic services' is the sum of the <ul style="list-style-type: none"> <input type="checkbox"/> train personnel costs, <input type="checkbox"/> usage related costs, <input type="checkbox"/> station & infrastructure costs, <input type="checkbox"/> ancillary costs <input type="checkbox"/> Rolling stock costs for HSL-Z TOC <input type="checkbox"/> Depreciation costs 'other assets' • The line 'Total operating costs domestic services' is the sum of the <ul style="list-style-type: none"> <input type="checkbox"/> Total operational costs domestic services <input type="checkbox"/> Total headquarter costs <input type="checkbox"/> Other costs <p><i>Sheet F5</i></p> <p>Table 8.6</p> <ul style="list-style-type: none"> • The line 'Total operating costs' is the sum of: <ul style="list-style-type: none"> <input type="checkbox"/> Operational contribution margin in Euro <input type="checkbox"/> Headquarter costs <input type="checkbox"/> Other costs <input type="checkbox"/> Annual payment to the State <p><i>Sheet F6</i></p> <p>Table 8.7</p> <ul style="list-style-type: none"> • The line 'Net current assets / (liabilities)' is the sum of <ul style="list-style-type: none"> <input type="checkbox"/> Total Fixed Assets <input type="checkbox"/> Total Current Assets <input type="checkbox"/> Total Current Liabilities • Net current liabilities, in stead of net current assets, should be presented as a negative number • The line 'Net assets / (liabilities)' is the sum of <ul style="list-style-type: none"> <input type="checkbox"/> Net Current Assets / (liabilities) <input type="checkbox"/> Creditors (amount falling due after more than one year) – third-party <input type="checkbox"/> Creditors (amount falling due after more than one year) – intra group <input type="checkbox"/> Provisions for liabilities and charges
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				<ul style="list-style-type: none"> • Net liabilities, in stead of net assets, should be presented as a negative number • The sum of the Capital and Reserves lines should equal the 'Net assets / (liabilities)' line. Subtracting these from each other should result in the last line with a value of 0 (zero). <p><i>Sheet F7</i> Table 8.8</p> <ul style="list-style-type: none"> • The line 'Net cashflow from operating activities' is the sum of <ul style="list-style-type: none"> <input type="checkbox"/> Operating profit/(loss) <input type="checkbox"/> Exceptional items <input type="checkbox"/> Profit/(loss) before interest <input type="checkbox"/> Working capital movements (increases presented as negative and decreases presented as positive numbers) <input type="checkbox"/> Depreciation (presented as a positive number) • The line 'Net cash (outflow) / inflow before financing' is the sum of <ul style="list-style-type: none"> <input type="checkbox"/> Net cash flow from operating activities <input type="checkbox"/> Net interest (paid) / received <input type="checkbox"/> Dividends paid <input type="checkbox"/> Taxation paid <input type="checkbox"/> Investing activities <input type="checkbox"/> Divestments • The line "balance brought forward" is equal to the cash position in the year before (this means the starting cash position at the start of the year). The line "balance carried forward" is equal to the cash position of the underlying year. The difference between these two lines in an underlying year must equal the "net cash outflow/inflow after financing" in that year.
A	Annex B1	F3, 1/2	Table 8.3 (F Financing and risk;	6.8.1 should be: 6.7.5.

2.11		F3 Costs; 8.3 International costs)	
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Summary of the Concession Agreement

Annex A1

23 april 2001

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Introduction

This section provides a brief description of the form of Concession Agreement for the HSL-Zuid. The key arrangements that Tenderers need to take into account for bidding purposes are summarised below.

Scope of the concession

The Concessionaire will have the exclusive right to offer public transport to domestic passengers via HSL-Zuid. During the concession period of 15 years, the Concessionaire has the exclusive right to provide high speed rail transportation of passengers on the HSL rail infrastructure. The Concession Agreement will make a distinction between Domestic Services and International Services. Due to EU-regulations, the exclusivity will only regard Domestic Services.

The State will guarantee the allocation of train path capacity on rail infrastructure in the Netherlands and the required quality of the infrastructure for the agreed number of both Domestic and International Services per hour and per day.

For both the International and the Domestic Services, there will be a description of:

- the type of services offered;
- the infrastructure concerned on the HSL-Zuid corridor;
- the stations concerned;
- the diversion routes in case of disruptions.

Relation to other agreements

The Concession Agreement can only be signed if the Concessionaire has also signed a number of other agreements that are required to provide the agreed services:

- The framework agreement with the Infrastructure Manager;
- The exclusive agreement with SNCB concerning the Joint Operating Company (GVO);
- The exclusive agreement between the GVO (or SNCB and the Concessionaire) and SNCF.

Amendments of the aforementioned agreements need prior written approval by the State.

Start and duration

The start of the Concession will be determined on the basis of the most up-to-date infrastructure planning at the time of Contract Award. This will be after a 26 weeks period that the Concessionaire will have to test rolling stock. The duration of the Concession period will be 15 years. In case the infrastructure is delayed, a compensation regime will

apply (see below), and the Concession period will be adapted to maintain the duration of 15 years.

This section will also include adequate provisions to ensure continuity of services in the transfer from the existing Benelux and Thalys services over conventional infrastructure to the new services over HSL-Zuid.

It is the intention of the State that services commence on 1 January, 2006 ultimately. The Concessionaire may start the services upon written confirmation by the State. The Concessionaire will be compensated by the State for delays due to the unavailability of the high speed rail infrastructure on this particular date.

The State expects that part of the infrastructure – in particular: the track between Rotterdam and the Belgian border – may be operational on 1 June 2005 or shortly thereafter. For this particular track, the Concessionaire may start with the train services upon written confirmation by the State, in which case the minimum service requirements mentioned hereunder (but not the minimum of 32 services for Domestic and International transport) apply.

Service requirements

This section will define a number of service requirements (e.g. a minimum of 32 International Services (Amsterdam-Brussels) per direction per day, of which 16 services will continue to Paris, 32 Domestic Services (Amsterdam-Rotterdam), stations served, capacity offered, load factors, maximum driving times, length of day, travel information and disruption arrangements).

These specific minimum requirements will be based on the high-level requirements set out in the ITT and the ITN, and the business plan of the successful Tenderer. (Note: Business Plan Narrative, chapter 9 '*Key quality aspects*': seat chance, affordability and attribute punctuality).

The Concession Agreement will set out a system by which the Concessionaire must obtain a certain minimum of Service Points on a monthly basis.

Change procedure

The Concession Agreement must not prevent the Concessionaire from acting responsively to changing markets, as long as this is in the overall interest of the Concessionaire and the (potential) passengers. On the other hand, there may also be circumstances that have a negative impact on the HSL-Zuid. Force majeure may prevent the Concessionaire from timely and fully meeting all his obligations in a reasonable way (see below under force majeure).

Unforeseen external circumstances may make it structurally unable to do so, especially if not all cost increases can be translated into fare increases. Under such circumstances, it may be necessary to reduce the service and the financial commitments of the Concessionaire. The State will be prepared to negotiate in good faith regarding such reductions, provided that:

- these circumstances are clearly beyond control of the Concessionaire; and
- it would be not reasonable to expect that another operator would perform better under these circumstances; and
- the Concessionaire and its parent companies take every reasonable measure to improve the viability of the services; and
- the parent companies of the Concessionaire do not, directly or indirectly, withdraw funds from the company (cumulative from the start of the company).

Such (temporary) reductions will be solely to prevent discontinuity of the Concessionaire and its services, not to guarantee profitability. Financial reductions may take the form of a subordinated debt to the State. If the State does not agree with the Concessionaire regarding the appropriateness and magnitude of such reductions, the Concessionaire may apply for Dispute Resolution.

The State will have the right to request changes in the train services and/or the service requirements. The Concession Agreement will set out the grounds for such proposals (inter alia: decrease of services and service requirements, continuing non-compliance with minimum Service Points, discontinuity of train services, changes in law and/or changes in governmental policy). The Concessionaire may not reject proposals made by the State in connection with legal requirements and/or changes in law and/or changes in governmental policy, in which case a compensation regime applies (see below; Change in law).

Any change notice by either the Concessionaire or the State will include a detailed description of the proposed change and the reasons thereof, the estimated change price and the consequences of the change for train services and service levels. Parties will, unless the addressee of the notice shows sufficient grounds to reject the change, in good faith negotiate on the contents of the change and the estimated change price and with disclosure of all relevant information.

Fare regulation

There will be no fare regulations for international passengers. The State will define fare restrictions for the low fare segments of domestic passengers only.

Concession payments

Payments will be defined as fixed monthly payments, annually updated on the basis of the CPB Consumer Price Index. Payments in the first [4] years will be discounted to reflect the development of traffic flows in this period.

The Concession Payments will include the user charges for – the use and maintenance of – rail infrastructure, which are levied in conformity with EU-Directive 2001/14 and the Dutch Railway Act.

The level of the Concession Payments will be determined on the basis of the accepted final bid at Contract Award, after deduction of any infrastructure charges that are due to the Infrastructure Manager. The Concession Payments are exclusive of VAT and all other charges (for example energy charges or charges for the use of stations).

Additional services over and above the agreed services, will not require additional Concession Payments, other than the user charges for maintenance and management that are due to the Infrastructure Manager in conformity with EU-Directive 2001/14 and the Dutch Railway Act.

Compensation regime

The compensation regime concerns the guaranteed train path capacity and infrastructure quality on HSL-Zuid infrastructure. Compensation consists of two elements:

- Reduction of Concession Payments. This applies if at any time the infrastructure is out of use or when speed limitations apply, provided these are caused by infrastructure defects on the HSL-Zuid infrastructure, that delay the domestic or international services with more than 10 minutes. The reduction will be proportional to the number of scheduled trains affected in these ways.
- Compensation for losses due to infrastructure unavailability or defects leading to significant speed limitations. This applies if in a year more than 5% of the trains scheduled could not run because infrastructure was out of use or when more than 10% of the trains scheduled concerned suffered from speed limitations, provided these were caused by infrastructure defects on the HSL-Zuid infrastructure, that delayed the domestic or international services with more than 10 minutes. Compensation will be calculated on the basis of the demonstrable losses of that year and the business plan underlying the concession value at the time of Contract Award. Parties will be obliged to make all reasonable endeavours to minimise losses.

Performance Bond

The Concessionaire will provide the State with a Performance Bond, no later than 1-1-2003, in favour of the State to the value of 100 million Euro. The State will use this bond in case of:

- Concession Payments overdue for more than 6 months;
- Any costs incurred by the State to ensure continuity of services in case of a temporary default of the Concessionaire;
- Any costs incurred by the State in case of early termination of the Concession Agreement caused by the Concessionaire.

Contract management and monitoring

The State will assign a contract manager to monitor the performance of the Concessionaire, handle change procedures and prepare in time for re-tendering.

The Concessionaire will provide the contract manager with externally audited annual reports clarifying both financial and operational performance. In case of accidents, bad performance or conflict situations in the railway sector, the contract manager may require ad-hoc information and/or co-operation with an independent investigation.

Early termination

This section will set out the procedure for early termination. Both parties can initiate an early termination procedure. The party that terminates the Concession Agreement is obliged to compensate the other party. If however the termination is granted because of severe under-performance of the other party, the party who under-performed has no right to any compensation.

The early termination clause will make a distinction between – inter alia – termination due to default events (in which case a cure mechanism prevails to compensation) and immediate termination. Discontinuity of train services, severe and continuing disregard of service and safety requirements, bankruptcy of the Concessionaire and non compliance with the change of control clause may be qualified as an event that gives the State the right to immediate termination. The Concessionaire has the right of immediate termination if the exclusivity of Domestic services would be withdrawn or if the State cannot guarantee train path capacity in such a quantity that the Concessionaire cannot continue its business.

This section will also provide for early termination in case of force majeure. In such case, parties are first obliged to search for, and negotiate, alternatives and measures to minimise and/or take away the consequences of the force majeure event. In the absence

of alternatives or adequate measures, a force majeure event may lead to early termination with observance of a termination period.

Terms of transfer to a successor operator

This section will cover the transfer arrangements upon termination of the Concession Agreement.

The operation will be set up as a Special Purpose Vehicle (SPV) to create transparency of the operation. The Concessionaire will co-operate with the State in the provision of information to potential successor operators. The Concessionaire will negotiate in good faith with the State in case the State will want to include the shares or assets of the SPV in the offer to potential successor operator(s).

More specifically, arrangements will be made for the transfer of staff and specified rolling stock to the State, who can transfer these to the successor operator. The transfer to the State must be secured by means of – put and call – option rights.

In the event of lease of rolling stock, the Concessionaire shall procure that the State can enter into a direct agreement with the lessor in view of transfer of rolling stock to the successor operator.

For rolling stock, the arrangements should enable bidders or lease companies to calculate with a 20-year amortisation period of rolling stock taken into use in the start up years of the Concession Period according to the accepted Business Plan.

The Concessionaire will also co-operate in good faith with the successor operator to ensure continuity of services at the time of transfer and prevent loss of economic value.

Risk allocation

The State will bear the following risks:

- Draft contracts between the State, SNCB and SNCF;
- Continuity of international services in the transfer from existing international services via conventional infrastructure to the new HSL-Zuid services;
- Timely completion of the HSL-Zuid infrastructure;
- Availability and quality of train paths;
- An independent Infrastructure Manager;
- Fair and non-discriminatory access to railway infrastructure and essential facilities;
- Sector specific supervision by the Dutch Competition Authority (NMa).

The Concessionaire will bear the following risks:

- All business risks in the Netherlands, including risks of subsequent agreements with SNCB and SNCF and other partners and the procurement of rolling stock;

- All legal requirements regarding the transport operation and the rolling stock.

Change in law or change in governmental policy

General changes in law or general changes in governmental policy, whether or not specifically or exclusively applicable to the railroad sector, are regarded as normal business risks of the Concessionaire and will not be ground for compensation. The Concessionaire is allowed to compensate negative effects caused by a change in law or a change in governmental policy by means of fare increases.

The Concession Agreement will protect the Concessionaire against discriminatory changes in law that specifically regard HSL-Zuid or discriminatory changes in governmental policy that specifically regard HSL-Zuid. If such changes lead to higher costs or lower revenues of the Concessionaire, and if these cannot be passed on through fare increases, the Concessionaire will be entitled to financial compensation.

The start of operations of a magnetic monorail train between Amsterdam and Rotterdam will be considered as a discriminatory change in policy that specifically regard HSL-Zuid. Significant additional technical requirements made by governmental bodies in the Netherlands coming into effect before the start of the HSL services, which are not known at the moment of the signing of the Concession Agreement, will be considered as discriminatory changes in law that specifically regard HSL-Zuid.

Significant cumulative measures by the government, which have an overall negative effect for the Concessionaire, may qualify as an event that leads to distortion of the economic balance of the Concession Agreement in which case the change procedure is applicable. Positive effects of such and other measures by the government will be taken into account. A change in the VAT categorisation of public transport services, including HSL operations, from low (at present: 6%) to high (at present: 19%) will not be regarded as a discriminatory change in law that specifically regard HSL-Zuid. However, such a change will qualify as an event that leads to distortion of the economic balance of the Concession Agreement in which case the change procedure is applicable.

General provisions

Transfer of rights

The rights of the Concessionaire are not transferable. The Concessionaire is not allowed to grant step-in rights, or security rights on rolling stock, in favour of its lenders or third parties without prior written approval by the State, which approval can be made subject to State conditions.

Change of control

Any change of control over the Concessionaire requires the approval of the State, which approval can be made subject to State conditions with a view to maintain the basis for Qualification (see Qualification Document: pré-qualification criteria). No change of control will be allowed during the first years of the Concession period.

Third party liability

All liabilities vis-à-vis third parties in connection with the services will be borne by the Concessionaire.

Insurances

The Concessionaire must obtain and maintain a adequate level of insurance. The Concession Agreement will set the insurance policies.

Force majeure

Under Dutch law, force majeure is governed by article 75 of Book 6 of the Civil Code, which reads as follows:

“A failure in the performance of an obligation cannot be attributed to the obligor if it is neither due to his fault nor for his account pursuant to law, a juridical act or generally accepted principles.”

The Civil Code allows parties to further determine which failures qualify as force majeure events. Please note that the concept of force majeure under Dutch law can be different from the concept of force majeure under (i.e.) English law. Parties can stipulate that force majeure events result in the relief of the obligor from certain terms and conditions of the agreement between them. The Concession Agreement will hold provisions to this effect. If a force majeure event takes place, the party who gained knowledge of the event first, notifies the other party. Parties will as soon as possible start negotiations to minimise the effects of the force majeure event.

If a serious force majeure event would continue for a period of three months, parties have the obligation to negotiate – in good faith – additional provisions to the agreement.

If specific serious force majeure events would continue for a period of 6 months, each party has the right to terminate the agreement with observance of a termination period. Parties will negotiate in good faith the continuation of the train services and the minimisation of the negative effects of the force majeure event for both parties until the termination date.

Possible force majeure events are:

- Major and long lasting limitations in access to Belgian or French infrastructure;
- Breach of the co-operation agreement with NMBS, not caused by the Concessionaire nor for its account;
- Unavailability of energy;
- Blockage of rail track by third parties;
- Floods and earth quakes;
- War, riots, civil unrest and general strikes (strikes by employees of the Concessionaire not included) in the Netherlands;
- Long lasting unavailability of the infrastructure.

Dispute resolution

The Concession Agreement will set out a procedure for dispute resolution. All disputes between the State and the Concessionaire will be ruled by a panel of three arbitrators. The panel will rule in accordance with the Arbitration Regulations of the Netherlands Arbitration Institute (NAI). This does not preclude disputes subject to Dutch public law (i.e. on permits, allocation of train path capacity under the Dutch Railway Act) from ruling by the competent judiciary.

Pre-concession period

The State and the Concessionaire will enter into a separate agreement which governs the period between the selection of the Tenderers and the start of the Concession Period. This agreement will cover the implementation milestones like the ordering of rolling stock, delivery time of the new infrastructure, testing of rolling stock and systems, and start of services.

Clarifications 1, January 2001

No.	Document	Page	Question	Answer
1.01			When will we receive the minutes of the meeting of December 15th (including the answers to the questions posed ?)	The minutes taken of the information meeting of December 15 are for internal use only. Those questions that were raised that the State considers relevant for all parties are included in this clarification.
1.02			Is it allowed to include in the bid trains that exceed the geographical frontiers of the HSL-Zuid f.e. to run trains to Groningen?	Tenderers are allowed to schedule through trains, as long as they comply with the requirements of the Base Case and Variants. A Tenderer could for instance schedule a train Groningen – Brussels or Amsterdam – Lille. However, the State will only look at the value that is offered on the Base Case and the Variants. The Tenderer has to satisfy the State of the feasibility of its Business Plan, in which through trains will be made visible. Tenderers have to demonstrate that they have or will obtain the rights to drive to the destinations other than the given stations in the Base Case and Variants. The risks in obtaining these rights will stay with the Tenderer.
1.03			Does a combination of Variants require prior approval of State (before sending in the bid).	The Business Plan should be based on the Base Case. The Variants should be individually worked out. A combination of Variants is not permitted.
1.04			Is white paper without logo's required for the bid and the copies of it?	Yes.
1.05			Can the State give forecasts on economical growth?	No.
1.06			As the Supporting Document do not form part of the ITT, does the same procedure for answering questions concerning the Supporting Documents apply ?	No, as Supporting Documents do not form part of the ITT, the procedure for answering questions does not apply. Note that answers to questions regarding the Supporting Documents will be given either in writing or during the progress meetings.
1.07			What will be the role of Parliament? When will Parliament decide: on a signed contract or on a contract to be signed?	The Minister will decide whether to sign the Concession Agreement. However, Parliament will be informed before this Agreement will be signed.
1.08			How can the bids be transparent and on a level playing field if each bidder can specify / use for calculations different rolling stock?	Tenderers will have to define a feasible and transparent proposal for rolling stock. In later phases the specifications for rolling stock for international services will be made together with SNCB (and SNCF). SNCB has committed to make this choice on the basis of the best economic proposal for these HSL-services. In other words, only if an SNCB proposal is economically more attractive than the original Bid this will lead to a different rolling stock solution.

Clarifications 1, January 2001

1.09			Service offer: Are the Tenderers free to propose the number of trains on Saturdays, Sundays, holidays...?	Not for Saturdays. See section 4.1, page 41 of the ITT Main Document. The Base Case consists of 32 International and 32 Domestic Services per direction per day, every day except Sundays and Public Holidays in the relevant countries. Tenderers are free to propose the number of trains on Sundays and Public Holidays in the relevant countries.
1.10			Regarding the rolling stock: Is it understood that another tender for rolling stock is in progress. Please describe the process the manufacturers of the rolling stock has to follow and how this relates to this tender.	There is no relationship between the two tenders. Tenderers for the Transport contracts are free in their procurement of rolling stock. The rolling stock procedure will only have an effect if the Transport tender is unsuccessful.
Introduction				
1.11	Main Document	6	How can the bid be binding if the information given is "indicative" and assumes "the timely implementation of a number of policies....., with no guarantee that these will be implemented"?	In the Working Assumptions (Annex A4) are a number of policies and/or proposals given (Annex A4, page 5) as provisions set out by the State. For purpose of developing Bids, Tenderers are to assume these Working Assumptions. If before Contract Award the Working Assumptions, Tenderers can make the reasonable adjustments to their Bid without changing the other underlying assumptions of their Bid (see introduction to Working Assumptions).
1.12	Main Document	6	Is whatever is indicative not timely implemented part of the "provisions or conditions" that have been set out by the State? See also 3.1 page 33/58.	See 1.11
1.13	Main Document	6	Can we be provided with a list of "indicatives" and a list of those matters that need to be timely implemented?	See 1.11
1.14	Main Document	6	Compare the third and fifth parts of the text, which expresses the States reservations as regards the facts and assumptions that the tenderers shall base their bids on, with the statement of binding bids (page 33 in the ITT Main Document). Illustrative is also the statement on the top of page 30 in the ITT Main Document where it is expressed that the bids in this phase are to be based on the position of the state only. Question: (1) Can the tenderer assume that the bids shall be binding only under the condition that the facts, information and assumptions in the ITT-documents are correct? (2) This meaning that if any fact, information or assumption that the tenderer has based his bid on should change, the tenderer shall be entitled to, if he finds it necessary, to adjust his bid correspondingly?	Only the provisions which are set out as Working Assumptions (Annex A4) can lead to adjustments to the Bid. See 1.11. However, the State currently considers to issue an Addendum whether the scope of this clause will be extended to include other parts of the ITT as well. If so, such an Addendum will be sent to Tenderers not later than February 28.
1.15	Main Document	7	Are the rights, mentioned in paragraph 2, for international services exclusive?	No. However, the concessionaire will have an exclusive agreement with SNCB and SNCF (Working Assumption) and will have a guaranteed capacity for 32 international paths per direction per day for a period of 15 years.

Clarifications 1, January 2001

1.16	Main Document	7	Can we assume that – other than regarding the domestic services – there will be no exclusivity guaranteed by the State for international services ?	Correct, under EU Directive 91/440/EC the State is legally not allowed to give exclusive rights on international services. See 1.15.
The Business				
1.17	Main Document	27	Can we get an explanation of the mechanism of calculation of the access charges?	This mechanism is not relevant for bidding purposes (as mentioned on page 27 of the main document of the ITT, the concession payment will be set on the basis of the accepted Financial Bid, after deduction of all charges in respect of track access in the Netherlands). The current system is described in a General Administrative Order, "Besluit gebruikvergoeding spoorweginfrastructuur", which you can find in the Data Room. See also 1.30.
1.18	Main Document	27	"An exclusive agreement with SNCB and an additional agreement with SNCF". Is the latter also exclusive? If not, why not?	Tenderers can base their bid on the working assumption that the agreement with SNCF will be exclusive too.
1.19	Main Document	30	How are we to calculate and with what, given that the bid is binding, if we cannot talk to SNCB/F?	Tenderers are to make their own cost estimates and revenue forecasts. HSL-TOC bears the costs incurred for the Dutch territory and receives a specified share of the revenues. See ITT paragraph 2.4 and 2.5 and Annex 2, article 6 (which also is the Working Assumption with SNCF). Optimisations -such as using maintenance facilities in only one country- can be discussed with SNCB/SNCF in a later phase of the Tender Procedure.
1.20	Main Document	31	In the first paragraph it is said "for most services". For which services not?	NS has committed to provide Tenderers the requested information within two weeks except for the services of Nedtrain (rolling stock maintenance). Questions of Tenderers about maintenance of rolling stock are assumed to be too complicated for answering within two weeks. Refer to Annex B.4, article 3.
The Contractual Framework				
1.21	Main Document	33-35	What are the criteria for assessing the feasibility of the Business Plan (both for compliance and criteria for quality of the Business plan)?	The Bids will be evaluated by Assessment Teams consisting of internal and external experts. These experts will work independently from each other and according to a protocol deposited with a notary. No further details of the assessment will be made available for the Tenderers prior to submission of the Bids.

Clarifications 1, January 2001

1.22	Main Document and Annex A1	34-35 5	In the Concession Agreement the State refers to domestic tariff restrictions. 1) What kind of restrictions should we assume here? 2) Could the State be more specific and clarify the terms used in the definition of "affordability", in particular "opportunities" and "low fare segment" ? 3) Is there a direct link between tariff restrictions and "affordability" ? 4) What are the criteria to assess the opportunities offered to passengers in the low fare segment ?	1) Tenderer should not assume tariff and fare restrictions in the bidding phase. 2) See 1.21. 3) Not in this phase as there are no restrictions as yet. 4) See 1.21.
1.23	Main Document	35-36	How should we understand the examples given on the pages 35-36/58 where it is mentioned (right above the 2nd table on 36/58) that Tenderers increase their bids between 0 and 4 Euro above their original Bids. For Tenderer D this would mean a maximum increase to 38 Euro whereas in table 2 (on 36/58) 40 Euro is mentioned, please clarify.	In the text right above the 2nd table on page 38/58 "4" should be read as "6": Tenderers valued the free soft drinks between 0 and 6 Euro above their original Bid, apart from Tenderer B, who did not provide a compliant answer to that variant bid.
1.24	Main Document	38	Clause 3.3 of page 38 of the ITT Main Document makes a reference to arrangements similar to those in other EU countries regarding the concession and rolling stock. Please specify what arrangements are referred to?	The State has chosen a phased approach for the Concession Agreement (see page 27 of the ITT). Some elements that are known from other concessions may prove to be useful and may be incorporated in the ITN and/or the final text of the Concession Agreement (for example a UK-style Direct Agreement with the lease company).

The Bid

1.25	Main Document	41	Wherever a reference (Main document and Annexes) is made to the availability or possible use of train paths please clarify for all these references how many train paths per hour we should assume and how these train paths can be scheduled within the hour ?	Tenderers are free to schedule the given number of trainpaths over the day, taking into account the limitations given in the Working Assumptions (Annex A4 page 4). The maximum number of trainpaths that can be scheduled per hour is 4 for the Base Case and the Variants, except for Variant 6 in which the maximum number is 6. Tenderers may assume that these services will be reasonably spaced over the hour.
1.26	Main Document and Annex A2	41-45	Does the draft contract with the SNCB apply to all variants described?	Yes, but only as far as it concerns International Services.
1.27	Main Document	47	Last part of the text. The term "legal documents" has not been defined in the glossary. Which documents are included? Only the draft agreements? And when these legal documents have been defined – in what order shall they have preferential right of interpretation?	The legal documents that are referred to are the documents that are comprised in Annex A. Preferential right of interpretation for the Bidding phase; 1) Working Assumptions; 2) Draft Contract SNCB; 3) Concession Agreement. (For the draft agreement with SNCF the Working Assumption is that Tenderers will assume arrangements as described in section 2.5 of the ITT.)

ANNEXES

Clarifications 1, January 2001

1.28	Annex A1	4	Compare the wording in the first part of the text under "Start and duration" about compensation regime with the wording on the next page (5) about "Compensation regime". The compensation regime seems to regulate cases where the infrastructure is "out of use", "when speed limitations apply" and when it is "unavailable" or "defect". It is not crystal clear that "delays" in the preparations of the infrastructure is included in regulation about compensation. Does the State have any particular compensation regime in mind as regards delays?	In case the infrastructure is delayed compensation will be calculated on the basis of the demonstrable losses regarding the business plan underlying the concession value at the time of Contract Award. Parties will be obliged to make all reasonable endeavours to minimise these losses.
1.29	Annex A1	4	Compare the wording "Relation to other agreements" with the wording in the draft contract SNCB, page 5, p 2.1. It is stated in the CA that SNCB agreement has to be signed before signature of the CA and on the other hand stated in the SNCB agreement that this agreement shall be concluded within six months of the signing of the CA. Contradictory!	The Draft Contract with SNCB (Annex 2) has to be signed before signature of the Concession Agreement. Parties will then negotiate a Cooperation Agreement (the definitive contract entered into between the HSL-Zuid Vervoermaatschappij and SNCB, see the definitions in Article 1.2 of the Draft Contract) on the basis of the signed Draft Contract. Article 2.1 in the Draft Contract refers to this latter Agreement.
1.30	Annex A1	5	Concession payments <i>"The level Concession Payments will be determined on the basis of the accepted final bid at Contract Award, after deduction of any infrastructure charges that are due to the Infrastructure Manager."</i> What kind of infrastructure charges are meant?	Infrastructure charges are charges based on the Order on Usage Charge of Railway Infrastructure (Besluit gebruiksvergoeding spoorweginfrastructuur). This Order has implemented a regime for usage charges according to EC-directive 91/440. The charges cover access to railway infrastructure including station access, but excluding station, stabling and maintenance facilities.
1.31	Annex A1	5	The fare restrictions for the low fare segments of domestic passengers is an important pre-requisite that the tenderer does not know anything about at this stage. Will the State undertake to compensate the HSL-Toc if there will be a discrepancy between an offered rate and a low fare rate that the State wants to fix? There might be a conflict of interest between the tenderers intention to raise the fares and the States intention to lower them.	See 1.22. Fare restrictions, if set by the State, will be part of the Enhanced Specifications in the Negotiation Phase. Remaining Tenderers will then submit their Enhanced Bids based on these Fare restrictions.
1.32	Annex A1	5	"Concession payments". Is it the States intention that the purpose of the price regulation in accordance with the CPI is that the concession fee shall change in accordance with the actual cost development in the high-speed railway sector?	It is the intention of the State that the Concession payments will be annually updated on the basis of the CPI.

Clarifications 1, January 2001

1.33	Annex A1	7	<p>Under "Risk allocation": It should be considered to be an unreasonable condition to undertake responsibility for all changes in law. The tenderer should have the right to call upon re-negotiation if legislation, that have been an important assumption at the point of time of the offer, changes. This is specifically the case when it comes to legislation as regards taxes and fees imposed by the government. Can the State please clarify it's intention with the stipulated condition? The possibility for the parties to call upon re-negotiation due to unpredictable increase in costs should be included in the regulation about "Change procedure" (CA page 4).</p>	<p>Changes of law that specifically regard the HSL-Zuid are not the risk of the Concessionaire. However, the State currently considers to issue an Addendum whether other changes of law should be made subject to the change procedure. If so, such an Addendum will be sent to Tenderers not later than February 28.</p>
1.34	Annex A1	7	<p>It is stated that "<i>there will be specific arrangements for the transfer of staff and rolling stock to a successor Concessionaire</i>" and Annex 1 page 7/7 states "<i>the arrangements should enable bidders of lease companies to calculate with a 20 year amortisation of rolling stock taken into use in the first three years of the Concession period</i>". (1) What are these specific arrangements? (2) Do these arrangements apply to both new and existing rolling stock? (3) Do these arrangements also apply to (new and existing) rolling stock taken into use after the first three years of the Concession period?</p>	<p>(1) These specific arrangements will be detailed in the Negotiation Phase. (2) They apply to both new and existing rolling stock (manufacturing date). (3) Arrangements for rolling stock taken into use after the first three years of the Concession period can only be made in the Negotiation Phase or through the change procedure.</p>
1.35	Annex A2		<p>Is, where ever it for examples says "Amsterdam - Brussel South line", also including the return direction?</p>	<p>Yes.</p>
1.36	Annex A2		<p>Beginning of the operation not later than 1/06/2005 is not compatible with the working assumptions in annex A4 (beginning : 1/01/2006) do we have to consider that there will be a change in the contract with SNCB to move this date to the real date (1/01/2006)?</p>	<p>In the Draft Contract with SNCB the official date of the opening of the HSL-Zuid between Antwerp and Rotterdam, 1 June 2005, is used. The State will discuss with SNCB, the Concessionaire and NS how international services are to use the new (south of Rotterdam) and existing (north of Rotterdam) infrastructure from that date. Before Contract Award arrangements will be made for the continuation of international services via conventional infrastructure until they will have been fully replaced by the new services of the Concessionaire (ITT Main Document, page 31). The northern part of the HSL-Zuid, between Rotterdam and Amsterdam, is envisaged to be ready at the first of January 2006. So only from that date onwards the whole HSL-Zuid will be ready. Because the State does not want to complicate the bidding in this stage, a Working Assumption has been defined that Tenderers can base their Bid on 1 January 2006 (see Annex A4, page 1), as the startdate of the Concession Period.</p>

Clarifications 1, January 2001

1.37	Annex A2	5	"Travel Time: the time which the trains spend on each net t(r) annually according to the travel times of all trains in commercial service as shown by the current timetables, including stops at the stations with an annual total of boarding and alighting passengers lower than 500,000." What is t(r)?	t(r) is traveltime per net.
1.38	Annex A2	6	Clause 2.5 and 6.7.4 refer to GVO being charged reasonable costs for pooled costs, representing cost price plus a reasonable profit margin. What is considered reasonable, both in terms of cost price and profit margin? Is there for each of these cost items (of these pooled costs) a maximum difference in cost price plus reasonable profit margin between the Participants of the GVO (per unit)? Could the unit costs plus reasonable profit margin for these cost items of the pooled costs be provided ?	In principle, the Participants in the GVO will balance their inputs in such a way that there will be a minimum of costs charged to the other Participant. For that minimum, a reasonable cost price plus reasonable profit margin will apply. The Participants will jointly agree on what constitutes reasonable prices and profit margins.
1.39	Annex A2	6	Article 2.5 reads: "The Co-operation Agreement, while observing the above principles, shall, however, allow the Participants to take priority over third parties with regard to providing the GVO with the above-mentioned services, materials, facilities and/or amenities should the Participants provide the required performance under at least equal conditions to such third parties, without prejudice to obligations arising under the terms of national and/or European legislation on competition and tendering, or regulations governing State support." Is there a clarification for this provision available?	The guiding principle for the GVO in obtaining services and the like, is to obtain the most economically advantageous offer to the GVO. The provision in article 2.5 makes it possible for the Participants in the GVO (the winner of the tender - HSL-Zuid TOC and the SNCB) to match the economically most advantageous offer of a third party and get the contract on providing the services in question.
1.40	Annex A2	8	Article 3.7 reads: The following principles shall apply: "The Participants in the GVO shall work out a system, on a commercial and financial basis, for transporting Domestic Passengers on board international trains, having regard to standards of comfort and yield management." What kind of standards of comfort and yield management are these?	In the Bidding phase the Tenderers will propose the standards that they consider optimal for HSL-Zuid services. In later phases these will be agreed with the SNCB.
1.41	Annex A2	9	Article 3.10 seems to contradict article 3.1 with regard to the tasks of the GVO. How to read these two articles?	Article 3.1 concerns the GVO which will operate as it is described in the Draft Contract. Article 3.10 is an intention for the future.
1.42	Annex A2	11	Article 5.2 reads: "The Amsterdam - Brussels transport services shall commence no later than 1 June 2005." Does this mean that the international services start 7 months earlier than the domestic services?	See 1.36.

Clarifications 1, January 2001

1.43	Annex A2	11	Article 6.2 reads: "The share of SNCB Westtak (the high-speed line between Brussels South and the Belgian - French border) shall, in relevant cases, be set at the present level." What is the present level of SNCB Westtak?	The present level of SNCB-Westtak is not relevant for bidding purposes. As described in the Working Assumptions (Annex 4, page 4) Tenderers can use the percentages as mentioned in section 2.5 of the ITT-Main Document (page 30) for journeys between Amsterdam/Rotterdam and Paris.
1.44	Annex A2	12 - 13	Article 6.6.1 Shared Costs and Article 6.7.5. In both list are marketing and communication costs listed. What are the differences between the definitions of those same costs in the different lists?	In principle, marketing and communication costs (article 6.6.1) will be shared costs. But when a Participant sets up individual marketing and communication actions (although in line with the GVO policy), these are its own costs (article 6.7.5).
1.45	Annex A2 and A3		What is the fleet size and book values of Rolling Stock in a pool with SNCB? And then with SNCF?	In the Bidding Phase the Tenderers will propose the type(s) and fleetsize of rolling stock they consider optimal for HSL-Zuid services in their Bid. See the Draft SNCB contract, article 4.4 (Annex A2) and the Working Assumptions (Annex A4, page 4). In the Negotiation Phase the remaining Tenderers will discuss with SNCB and SNCF whether other arrangements for rolling stock provide an economically better solution for these services. See 1.08.
1.46	Annex A3	6	III.2 Driving and train staff. Each partner bears the corresponding costs with its own costs per unit. How are the "own costs per unit" defined?	For HSL-TOC the costs of its own drivers, stewards etc with their own agreed Dutch salaries. Note: this question concerns the SNCF position, modelled on the current Thalys-agreements, and not the working assumptions for bidding.
1.47	Annex A3	6	III.3 Rolling Stock Capital Charges. C= ...retail price indexes in the 4 countries... Which four countries are meant?	Thalys currently operates in France, Belgium, Germany and The Netherlands. Note: this question concerns the SNCF position, modelled on the current Thalys-agreements, and not the working assumptions for bidding.
1.48	Annex A3	7	III.5 Common Costs. Common RESARAIL inventory and yield... What does RESARAIL stand for?	Thalys currently uses the RESARAIL inventory system. Note: this question concerns the SNCF position, modelled on the current Thalys-agreements, and not the working assumptions for bidding.
1.49	Annex A3, Annex A4		Rolling-stock depreciation: the working assumptions (annex A4) and the draft agreement with the SNCF (annex A3) say to calculate the depreciation of the rolling stock on 20 years. The annex A2 (Draft contract with SNCB) says that the depreciation of the rolling stock will be calculated on 30 years (15 + 15): how to manage this discordance?	The Concession Agreement (Annex A1, page 7) will allow the Concessionaire to calculate with a 20-year amortisation of its rolling stock even though the Concession Period is only 15 years. The SNCB contract concerns only the financial redistribution of rolling stock costs from SNCB to HSL-TOC (as SNCB will procure 50% of rolling stock). This redistribution charge will be based on SNCB's amortisation period of 30 years.
1.50	Annex A4	3	In the Working Assumptions in Annex A4 the Date of Availability has been specified as 1 January 2006, whereas Annex A2 Section 5.2 states that the Amsterdam – Brussels South service should commence "no later than 1 June 2005". Please clarify.	See 1.36.

Clarifications 1, January 2001

1.51	Annex A4	3	Fourth bulletpoint: Who will provide these services? See also 5.2 in draft SNCB.	This is not relevant for bidding purposes. The Working Assumption is that International Services via conventional or new infrastructure up to the Date of Availability will operate at the frequencies currently provided by Thalys and Benelux (25 services per direction per day).
1.52	Annex A4	3	Does HSL have any guidance of these international services and in parallel what are the international trains to remain in operation after the start of the new line?	See 1.51. For bidding purposes Tenderers can assume that there will be no other international trains on conventional track after the start of the full service on HSL-Zuid.
1.53	Annex A4	4	Is there a cost to pay for access to the stabling facilities or the servicing facilities (except the servicing facilities by themselves)?	In the working hypothesis that Watergraafsmeer can be used no costs need to be assumed, except for servicing facilities themselves.
1.54	Annex B1	5	"Compliance statement": A reference is given to the ITT Transport Contracts. Is this a reference to the CA, SNCB and SNCF agreements only and to no other parts of the ITT documents dated the 15 th of December?	This is a reference to the ITT Main Document and the Annexes (A and B).
1.55	Annex B1	40-49	It is stated there that each bid shall be binding until the 1 st of March 2002. This is not totally transparent to the fact that the tenderers that enters into the negotiation phase will be given additional pre-requisites and are thereby allowed to change their financial bids. Shall the bids considers to be cancelled for the tenderers that enters into the negotiation phase, at the point of time when they are formally invited from the State to enter into this stage?	Each bid stands as it is. In the Negotiation phase Tenderers can formulate Enhanced Bids, based on the original bid. So there is a Bid, valid until the 1st of March 2002. And there will be an Enhanced Bid, with its own validity date. In case of a situation whereby the negotiations are cancelled and there is a fallback to the original Business Plan, the original Bids will still be binding (until the 1st of March 2002).
1.56	Annex B4	4	General provisions <i>"On each sufficiently specified request made in writing by a Qualified Operator, NS shall give, as far as possible within two weeks, information about rates and terms of Important Facilities"</i> . Is it possible to get the departments and/or names of NS to contact?	Yes. The State will inform the Tenderers about these departments and their contact-persons on 29 January 2001.
1.57	Annex B4	5	Station facilities <i>"NS shall give the Selected HSL-TOC or cause the same to be given access to or make it or cause it to be made possible for the same to arrange/construct: desk rooms at stations, ticket selling facilities at stations"</i> . Which stations are meant; only HSL-Zuid - stations?	Only the HSL-Zuid stations are meant in this clause.

Clarifications 1, January 2001

1.58	Annex B4	6	<p>Ticket integration The obligation laid down in Articles 13 and 14 exclusively relate to ad hoc tickets whose integration, sale distribution can reciprocally be regarded as an Important Facility for the operation of the transport in question; in the current market circumstances, this must for example be considered to include the sale of single and return tickets at ticket offices. Does this mean the HSL-Zuid TOC has to provide the ability to sell single and return tickets for the whole network of NS?</p>	<p>This means that de HSL-Zuid TOC has to provide the ability to sell single and return tickets to HSL-Zuid passengers for their after transport from a HSL-Zuid station to any station on the network of NS. NSR is obliged to co-operate with this.</p>
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Clarifications 2, February 2001

No.	Document	Page	Question	Answer
General				
2.01			Does HSL accept a combined bid on rolling stock from two or more suppliers?	A Tenderer is free to propose any kind and combination of rolling stock, as long as the rolling stock complies with the requirements.
2.02			Is it possible for the tenderers to get information about the present agreement(s) covering the Thalys operations?	No. These are confidential agreements between the Thalys partners. For the Bid on the HSL-Zuid contract Tenderers can use the Draft Contract with SNCB (Annex A2) and the position of the State regarding SNCF (Annex A3 and section 2.5 of the ITT) as the basis of their Bid (see also Annex A4 Working Assumptions page 4).
2.03			Shall the future HSL operations be considered to be a "take over" of the present Thalys operations as regards the employers [employees]?	No.
ITT Main Document				
2.04	Main Document	9	Is it the States advice that the tenderers shall request for offers from manufacturers of rolling stock without launching a public tender or at least apply to rules about announcement?	No. It is the responsibility of each Tenderer to comply with domestic and European law.
2.05	Main Document	13, 18 and 41	What are the specification of the rolling stock used to make the journey time simulation given in the pages 13, 18 and 41 ? Is it corresponding to an existing rolling stock ?	The journey times are calculated on the basis of rolling stock capable of running at a maximum speed of 220 km/h for domestic services, and 300 km/h for international services. In Supporting Document 6.2, section 3.4 the acceleration and braking characteristics of HSL Rolling Stock are stated. In Supporting Document 2.1 the maximum allowable speed of the infrastructure is given. Details on the maximum allowable speed on the different sections of the new infrastructure can be found in the Data Room. Note however that Tenderers may propose any suitable type of rolling stock and length of station stops, provided the overall journey time is in line with sections 4.1 and 4.2 of the ITT Main Document.
2.06	Main Document	22 and 25	If there are two Concessionaires for Domestic and International Services, do they have to set up one SPV?	No. If there are two Concessionaires, they are free to set up a separate SPV's or to combine their businesses in one SPV.
2.07	Main Document	25	Is it necessary for the SPV to be a "Structuurvennootschap"?	This is not a Tender requirement. However, it might be required by Dutch law, depending on the way the SPV is set up.
2.08	Main Document	26	It seems like the Concessionaire will have to agree upon access to infrastructure with the Infrastructure Manager, NS Stations, Nedtrain and possibly other providers as well. Can the State please clarify the interfaces meaning listing all contracting parties to the Concessionaire as regards access to infrastructure and also list which facilities each contract shall include? Do draft contracts exist? And if so can we receive a copy?	Supporting document 4.1 of the ITT provides information about the access to infrastructure and the relevant contracting parties involved. At this moment no draft contracts are available.

Clarifications 2, February 2001

2.09	Main Document and Annex B1	27, 22	<p>The Performance Bond: There are a couple of pages in ITT where the Performance bond is mentioned. First on ITT Main 27/58 stating: "the concessionaire will provide the state with a Performance Bond of 100 million EURO" and second in Annex 1 page 6/7 and page 22/49 of Annex B1 stating: "If tenderers wish, in addition, to propose an alternative to the performance bond they will provide details of this alternative and give an indication of the effect in their bid". 1) Is the 100 million Euro a fixed amount, is it a maximum overall or is it a maximum amount per year or should this amount be indexed with the CPI? 2) Does the government accept a performance bond on a roll over basis (each x-1 years we go into the markets and choose the most compatible supplier for het next period of x year)? 3) Who should give the Performance bond? Should it be a financial institution, or may other corporate entities also give such a bond? Are there rating requirements for the supplier of the performance bond?</p>	<p>In the last round of the Negotiation Phase the State will detail the characteristics of the Performance Bond with the Tenderer. However, the foreseen costs, related to the Bond have to be included in the Bid. The State will require guarantees equivalent to a Performance Bond of 100 mln Euro price level 2000, adjusted for the inflation based on the CPI, arranged with a well-rated financial institution.</p>
2.10	Main Document	27	<p>What (infrastructure) is included in the infrastructure fee that shall be paid to the Infrastructure Manager through a deduction of the Concession fee?</p>	<p>All railway related infrastructure in The Netherlands (trainpaths on HSL-Zuid Infrastructure and for diversion routes, stabling capacity, access to platforms) needed for the agreed services.</p>
2.11	Main Document	27	<p>Does NS pay for the use of its infrastructure and will NS and the Concessionaire be treated similarly as regards infrastructure payments? Does it [there] already exist a contractual agreement for NS? Can we have it?</p>	<p>All passenger train operators are and will be treated equal with regards to infrastructure payments. The payment is based on a levy. See the answer to clarification 1.17 of February 15, 2001.</p>
2.12	Main Document	27	<p>How shall the infrastructure fee that shall be deducted from the Concession payment be settled (negotiations, published price lists)? How shall this fee be adjusted during the 15 year term of the Concession agreement – shall it be indexed in the same way as the Concession fee? Finally can the State guarantee that no other charges, linked to the infrastructure, will be imposed during the contractual period on top the infrastructure fee?</p>	<p>See the answer to clarification 1.17 of February 15, 2001. All charges in respect of track access in the Netherlands are covered in the concession payment.</p>
2.13			<p>Will the Concessionaire have a preferential right to expand the traffic (more train paths) before a new operator is granted access? What will be the calculation of the access fees in case of several operators on the HSL line?</p>	<p>The Concessionaire will have every opportunity to expand his services. Only the 'marginal' costs for extra maintenance etc will be charged. The financial bid covers both the variable charge for maintenance etc and the (fixed) annual contribution towards the new infrastructure. The following formulae apply: (1) Infra-contribution = Financial Bid -/- Variable costs per path*number of paths. Example: Suppose the Financial Bid is 200 euro per year for 100 trainpaths. If the variable costs for maintenance etc. per path are 1 euro, then 100 paths consume 100 euro of the Financial Bid. The remaining 100 euro is the contribution towards the new infrastructure.</p>

Clarifications 2, February 2001

	Main Document	27		<p>(2) User charge per path = Variable costs per path + Infracontribution / number of paths. Example A: If only the agreed 100 train services are applied for in a certain year, the user charge is 2 euro per path (1 euro + 100 euro/100 paths). The Concessionaire pays a total of 200 euro.</p> <p>Example B: If the Concessionaire wishes to apply for 200 paths the user charge per path is 1,50 euro (1 euro + 100 euro/200 paths). The Concessionaire pays a total of 300 euro. For domestic services the Concessionaire will have market exclusivity. This means that even if, under 91/440, a new international grouping would apply for paths through the Netherlands and Belgium/France, these services would not be allowed to offer excess capacity between Rotterdam and Amsterdam to domestic passengers. In case an additional international operator is granted train paths, formula 2 still applies.</p>
2.14	Main Document	27 and 39	How do we have to split the performance bond and the concession payment between domestic and international for the base bid?	The Performance Bond is to be split in proportion to the split of the concession payment. The concession payment has to be split into two separate Bids, as described in the Bid Format, Annex B1 part E 3.1 and E 3.2. These two separate Bids must be based on the Base Case, and will not include the Variants. In Part D of the Bid Format, Tenderers will have to explain the effects of separate contracts for Domestic and International Services. Tenderers will provide a calculation for synergy losses compared to the Base Case.
2.15	Main Document	30	Can SNCB claim the GVO rolling stock fleet to be dimensioned after the passengers flows Antwerp - Brussels or Antwerp - Paris?	The GVO rolling stock fleet will not take into account domestic traffic, unless the Concessionaire and SNCB jointly decide otherwise. However, traffic between any Dutch or Belgium station to Paris (and vice versa) is relevant for decisions about the fleet.
2.16	Main Document	31	Is the startdate of 1 January 2006 obligatory, even if rolling stock manufacturers can not deliver new rolling stock before that date?	If Tenderers foresee problems with the availability of rolling stock on the startdate, they can raise this issue and demonstrate the impossibility of timely delivery to the State in the progress meeting of March.
2.17	Main Document	38	What do you mean by joint binding offer? Does this mean the creation of a new consortium between the two bidders?	A joint binding offer is the combination of the Financial Bids of the invited Domestic and International Tenderer. Each of these stays responsible for his own Bid, but they are together responsible for arranging the interaction between the two types of services. If two Tenderers are asked to make a joint binding offer, they do not need to form a new consortium.
2.18	Main Document	38	Will the HSL TOC have to enter into any contractual relationship with the Private Infrastructure Provider and to pay fees to this Party?	There will be no contracts imposed by the State between the Infrastructure Provider and the Concessionaire. There will be no fees to pay to this party.

Clarifications 2, February 2001

2.19	Main Document	47	What legal value will the State's answers - not formulated in an Addendum - have in the Tender Procedure? Will they have the status of a Working Assumptions?	All written clarifications form part of the ITT. In case of conflicts or contradictions between the clarifications and the ITT, the text of the ITT will prevail over the written clarifications. Addenda prevail over the ITT.
2.20	Main Document	50	Will an offer for Concession fee below 100 M Euro be considered to be non compliant with the ITT meaning disqualification of the bid?	Yes, see page 50 of the ITT Main Document, under 4.b, and page 37 of the ITT Main Document.

Clarifications 2, February 2001

Annex A				
2.21	Annex A1		Will the Concessionaire be guaranteed a certain price for the shares or assets value in the HSL TOC 1) after expiration of the concession agreement and 2) in case of early termination?	See the Summary of the Concession Agreement (Annex A1) page 6 and 7: terms of transfer to a successor operator. There is no price guarantee, except for rolling stock. The rolling stock calculation method will also be applied in case of early termination.
2.22	Annex A1	5	Shall the Concession agreement be completed with a regulation covering the Concessionaire's right to get compensation, or the Concessionaire's right to call upon re negotiation, due to 1) changes in the pre-requisites which the bid has been based upon or 2) due to other circumstances beyond the Concessionaires control?	The provisions / pre-requisites that are given by the State as Working Assumptions (Annex A4) will be either confirmed, amended or deleted in a later phase of the Tender. Other pre-requisites that the Tenderer has based his Bid upon are for his own risk and can not lead to compensation. For force majeure situations, the Concession Agreement and/or Dutch legislation will give general provisions.
2.23	Annex A1	6	Could the State please clarify and/or quantify what shall be considered to be "severe under performance"?	As a serious break of the Concession Agreement can be considered as a severe under-performance. For example in case a larger or all part of the agreed services is not offered due to the Concessionaire. The under-performance should be of such an extent that it justifies an early termination of the Concession Agreement.
2.24	Annex A1	6	Can the State please clarify under which circumstances the State will have the right to call upon the performance bond (note the wording any costs)?	In Annex A1, page 6, the three circumstances in which the State has the right to call upon the performance bond are stated: (1) Concession Payments overdue for more than 6 months (2) Any costs incurred by the State to ensure continuity of services in case of a temporary default of the Concessionaire (For example: A period of several months in which a significant part of the agreed services is not offered due to the Concessionaire) (3) Any costs incurred by the State in case of early termination of the Concession Agreement caused by the Concessionaire.
2.25	Annex A1	7	Will the State undertake a contractual relationship with the Concessionair's lessor as regards rolling stock in order to give a certain guarantee to the lessor?	The exact contractual relationship is not yet defined. However, Annex A1 states explicitly that : "For rolling stock, the arrangements should enable bidders or <i>lease companies</i> to calculate with a 20-year amortisation period of rolling stock taken into use in the first three years of the Concession Period".
2.26	Annex A2 SNCB agrm. 4.4 and 4.5	9	Can the State guarantee that the Concessionaire shall not have to bear any risk for a negative discrepancy between the cost for purchase of rolling stock included in the first bid and the Concessionaire's cost for purchase of rolling stock according to the new "optimum" purchase that the GVO will agree upon?	The Tenderer has the opportunity to put in an Enhanced Bid in the next phase on the basis of the Enhanced Specifications, after he has reached an agreement with SNCB about the rolling stock. SNCB and the Tenderers will negotiate over this agreement on the basis of an optimal rolling stock arrangement for the GVO, as stated in article 4.4 of the Draft SNCB Agreement (Annex A2). The Tenderer shall not have to bear the risk that SNCB/SNCF might not cooperate in line with their agreements with the State.

Clarifications 2, February 2001

2.27	Annex A2 SNCB agrm. 5.2	11	What will be the track access fees during the testing period? The concession payment is 0 in 2005, does it cover the access charge for testing and training? If not what are the basis to be taken in account?	There will be no track access fee for testing and training in 2005 on the HSL-Zuid Infrastructure in The Netherlands.
2.28	Annex A3		Can we base our Bid on the assumption that the agreement with SNCF will be as exclusive as the agreement with SNCB?	Yes. See the answer to clarification 1.18 of February 15, 2001.
2.29	Annex A4	3	Can the State please clarify how "reasonable adjustments" and "underlying assumptions" shall be interpreted?	A change in the Working Assumptions can lead to a change in the Bid. The Tenderer has to demonstrate how the changes of the Working Assumptions effect his Bid. Because of the transparency of the Bid (according to the Bid Format) the State can evaluate whether the adjustment of the Bid is reasonable in comparison to the change in the Working Assumptions.
2.30	Annex A4, WA compared with "risk allocation"	5	It seems like the State will bear the risk for certain changes in law namely the legislation mentioned in the Working Assumptions, but that the Concessionaire is supposed to bear the risks for all changes in law except those that specifically regard HSL Zuid. Are the last mentioned laws as regards HSL Zuid the same as those mentioned in the Working Assumptions? Will the State balance the Concession agreement through a re-negotiation clause that will give the Concessionaire a possibility to get compensation for change e.g. in tax legislation that will have a deep impact on the cost or revenues for the Concessionaire?	The legislation mentioned in the Working Assumptions (Annex A4) is not HSL-Zuid specific. Changes of law that specifically regard the HSL-Zuid are not the risk of the Concessionaire. However, this matter is currently being considered by the State. If the State decides to extend the change procedure to include certain other changes of law, an Addendum will be sent to Tenderers not later than February 28.
Annex B				
2.31	Annex B2		Can rolling stock suppliers have access to the Data Room?	Any rolling stock supplier can visit the Data Room Transport under the responsibility of a TOC Tenderer, as part of the team of the Tenderer, or in case the rolling stock supplier is qualified as Tenderer for the Rolling Stock Tender, on its own. All the requirements for the TOC Tender are described in the ITT TOC and the Supporting Documents. The ITT Rolling Stock is sent out only with a view to the development company in case the TOC Tender is not successful (see ITT section 3.4). The ITT Rolling Stock does not reflect ideas of the State about the expected HSL operations. (Note: the documents for the Rolling Stock procedure are also included in the Data Room).
2.32	Annex B3 (8.1)	5 and 6	If the State decides to withdraw the whole tender – will the tenderers be granted remuneration for their expenses?	The State will only decide to withdraw the Tender if the decision criteria of the Tender are not met (see ITT Main Document page 37 and 39). Also in that case, the rules as stated in article 8 of the Process Agreement (Annex B3) are valid for the reimbursement of tender costs.

Clarifications 2, February 2001

2.33	Annex B4		To secure a fair level playing field the tenderers should also be entitled to request for information about the present and future domestic train operations in Holland and important contractual conditions including pricing policies regarding these operations. Can this additional obligation be added in an Addendum to the Additional Process agreement?	Public information about future domestic train operations and NS services and contracts (for instance the "Overgangscontract 2"; the "Referentie Model 2010" and the "Studie Toekomst Reizigers", the last two both of RailNed") is made available in the Dataroom. Documents in the Dataroom are for information purposes only, see the Data Room Procedure (Annex B2). On the basis of the Additional Process Agreement NS (Annex B4) NS is obliged to give all information about rates and terms of important facilities, not about their own transport operators in the future.
2.34	Annex B4	6	Will the NS be obliged to sell TOC tickets as well as the opposite?	Yes. See the Additional Process Agreement with NS (Annex B4), article 13, 14 and 15.
Supporting Documents				
2.35	Supporting Documents 1		Will the LEK results with regard to present traffic be included in the working assumptions?	This matter is currently being considered by the State. If the State decides to extend the scope of the Working Assumptions to include other parts of the ITT as well as the base data from the conjoint and the O.D. research projects, an Addendum will be sent to Tenderers not later than February 28.

Clarifications 3, March 2001

No.	Document	Page	Question	Answer
General				
3.1			In the Netherlands the students have a special travelling pass for the public transport. This is a free travelling pass, which is provided by the government. Is the free travelling pass for students valid on the HSL-Zuid? Are there any other free passes provided by the government which we should take into account, like for soldiers etc.?	No on both questions. "Free" traveling is based on contracts between a TOC and the Government. If the Government decides it wants similar contracts with the HSL-TOC, HSL-TOC is free to negotiate terms and conditions.
3.2			Is the HSL TOC obliged to (a) offer students free travel on either the domestic or international services within the Netherlands, or (b) accept Studentenkaart, Jaarnetkaart or Maandnetkaart tickets? If yes, is there any generally-accepted basis (e.g. by miles travelled) for allocating any revenue applicable to these ticket types?	(a) No, see question 3.1. (b) No, the Concessionaire does not have to accept passes from other operators. For ticket integration: see Annex B4 (page 6 Articles 13, 14 and 15)
3.3			Are Thalys train drivers paid more than the domestic train drivers and if so what is the comparison?	The State does not have this information.
3.4			Should the Tenderer (or ROSCO) assume the incorporation of midlife (technical and marketing) refurbishment costs in its Bid? Should the Tenderer assume a 25% residual value after 15 years and a proportional residual value in the case of early termination?	Mid-life refurbishment is not a requirement in the Tender. Yes, for initial investments the residual value can be assumed at 25% after 15 years, and a proportional residual value in the case of early termination. Refurbishment costs are not part of this. Mid-life refurbishment does not influence the residual value which is based on the initial investment and a 20 year amortisation period.
3.5			Does the concession fee include charges for terminating trains at stations and for making use of the platform by passengers?	Yes.
3.6			Can you please provide us with the NS punctuality and reliability figures of the last two years, if available? Especially with regard to the relevant routes between Amsterdam CS / Zuid WTC, Schiphol, Rotterdam CS, The Hague, Breda and the Belgium border? Is this information published or displayed at stations?	General figures are to be found in the NS Jaarverslagen and reports from consumer organisations, to be found in the Dataroom. Statistical information about punctuality is not published or displayed at stations.
3.7			Can you provide us with the foreseen price policy of NS in general and especially in case of competition with the winner of the HSL contract?	No. The price policy of NS is a matter of the company itself. Public information about this issue can be found in the draft "prestatie contract" between State and NS, which can be found in the Dataroom. In this draft contract the price increases are maximized at CPI + 2%.

Clarifications 3, March 2001

ITT Main Document				
3.8	Main Document	7, 27	What is the minimum required amount as payment to the State in case of an offer only for Domestic or International?	There is no minimum required amount for the separate offers. In case of a separate offer, the highest Domestic will be combined with the highest International Bid, and this combination has to meet the minimum of 100 million Euro per year (with discount in the first four years of operation). See ITT Main Document, page 37, Selection of Tenderers for Negotiation Phase.
3.9	Main Document	8	What is the distance between Rotterdam and Antwerp and the Belgium/Netherlands border?	Rotterdam - B/N border: 54,5 km and Antwerp - B/N border: 40,5 km.
3.10	Main Document (Annex A2 and A3)	10 and 29, (Annex 3, 3)	What should we assume with regard to the legal entity of the GVO with the NMBS (Main 10/58 and 29/58 and Annex A2) The ITT seems to imply a "privaatrechtelijk rechtspersoon". What should we assume with regard to the legal entity to be established with the SNCF (Annex A3- 3/5 and Main 29/58) ?	See Annex A2 Draft Contract SNCB article 3.2: "De GVO zal een privaatrechtelijke rechtspersoon zijn, opgericht naar het recht dat door Partijen in de Samenwerkingsovereenkomst zal worden gekozen." (English translation: "The GVO shall be a legal entity under private law and shall be incorporated under the law chosen by the Parties in the Co-operation Agreement.") In this phase of the Tender, there is no requirement for any legal entity to be established with the SNCF.
3.11	Main Document	22 (1.4)	May HSL TOC operate as the managing partner (beherend venoot) of a limited partnership (commanditaire vennootschap) with the mothercompanies as limited partners?	Yes.
3.12	Main Document	27	Can we give, instead of a performance bond, a guarantee from the parent shareholders?	No, not in this phase of the Tender. See the answer to clarification 2.09.
3.13	Main Document	28	Is it the intention that staff will be directly engaged by the GVO or will the GVO buy staff resources from the HSL TOC and SNCB?	There will be a small number of people directly working for the GVO, see Draft Contract SNCB article 6.6.1. It is up to the Participants in the GVO to decide whether these people are directly engaged by the GVO or brought in by the participants. All other staff will not be directly working for the GVO.
3.14	Main Document	28	It may be that according to the ITT and the GVO principles the TOC's share of the train pool is not an integer number of trains. In such a situation could we stay with this non-integer number for tender phase 1 even though it is not practical for a lessor to lease a non-integer number of trains to a single lessee?	Yes.

Clarifications 3, March 2001

3.15	Main Document	28	What degree of control will the HSL TOC have in relation to the total costs incurred by the GVO? For example, will the HSL TOC have any protection through the Joint Agreement with SNCB or other arrangements so that it is not exposed to excessive wage cost rises for SNCB staff?	See Draft Contract SNCB article 6.7.4 and 6.7.7. The GVO shall aim to restrict all costs in such a way that the optimum financial result is achieved for the parties jointly. The Concessionaire and the SNCB can operationalise this further when they draw up the Co-operation Agreement.
3.16	Main Document	28, 29	As question before, but in relation to the joint arrangements between the GVO and SNCF.	Same as with SNCB. See the Annex A4, Working Assumptions, page 4 SNCF, in combination with ITT Main Document page 30, 4th bullet.
3.17	Main Document (Annex A2)	section 2.5	The arrangements as described in section 2.5 of the ITT, concerning the draft agreement with SNCF, are considered to be a Working Assumption. Is the Draft Contract with the SNCB (Annex A2) also a Working Assumption?	The Draft Contract with SNCB is a binding part of the ITT, all Bids have to be based on the exact text of the Draft Contract. See ITT Main Document page 28, section 2.4. On the basis of the signed (Draft) Contract the Concessionaire and the SNCB will negotiate a Co-operation Agreement. Working Assumptions are hypotheses on which the Bid can be based, about uncertain facts, or facts that the State wants all Tenderers to calculate with in this phase of the Tender.
3.18	Main Document	41	Where resources (e.g. trainsets or crews) are to be shared between domestic and international services, on what basis should attribution be made to the different service groups	In case of the international services a distinction must be made between shared/pooled costs and each operator's own costs. Tenderers are free to choose a reasonable allocation mechanism for 'own costs'. For shared/pooled costs, sharing of resources between international and domestic services may not lead to a financial disadvantage to the other partner in the GVO. On the other hand, Annex A2 (article 8.1) requires that SNCB and the HSL-TOC will co-operate in case synergies may be obtained between International and Domestic services.
3.19	Main Document	41	The time planned for the stop in Brussels (current proposal 8min.) belongs to the travel time of SNCB or GVO? Or will it be split in between the parties?	The stop time in Brussels belongs to the travel time of SNCB. Travel time is in the Draft Contract with SNCB defined as "the time which the trains spend on each net [...] including stops at the stations with an annual total of boarding and alighting passengers lower than 500.000." (Annex A2 Draft Contract with SNCB, article 1, see also article 6.7.2)
3.20	Main Document	56	The definition of the Performance Bond in the glossary reads: "A bond to be procured by the Preferred Tenderer upon appointment, in favour of the State to secure the obligations to proceed to Contract Award." This definition refers to a bid bond and, however, is different from the definition of the Performance Bond in Annex 1, page 6. Do Tenderers have to provide a bid bond in addition to the Performance Bond?	No, Tenderers do not have to provide a bid bond. Refer to Addendum 2.4.

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3.21	Main Document	56	The definition of the Performance Bond in the glossary reads: "A bond to be procured by the Preferred Tenderer upon appointment, in favour of the State to secure the obligations to proceed to Contract Award." This definition refers to a bid bond and, however, is different from the definition of the Performance Bond in Annex 1, page 6. If so, please state details, in particular terms and conditions, the value, and the expected supplier. When are Tenderers expected to provide the bid bond (date)? Under which circumstances will the state have the right to call upon the bid bond? Will the state compensate the Tenderers for the costs of the bid bond?	See question 3.20
3.22	Main Document	56	When should the performance bond be in place? Either at the start of the operations (January 2006) or at the signing of the concession agreement (2001/2002) or at any other moment?	The Performance Bond has to be in place no later than 01-01-2003 (refer to Addendum A 2.4)
3.23	Main Document	58	From when exactly the performance bond has to be valid; from the date of the contract awarding or from the date of the start of the operation? What is the meaning of appointment in the explanation of the performance bond?	See question 3.20 and question 3.22

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Annex A				
3.24	Annex A1	4	Could you clarify under which specific circumstances the required service levels could be reduced by the Concessionaire? Will there be also provisions that will have effects on other requirements of the State, especially the concession payments?	See Addendum 2.5, 2.7 and 2.8.
3.25	Annex A1	4	Is the State prepared to bear the costs of any change in the customs and immigration regulations applicable to travel within and to/from the Netherlands which may affect operation of the service?	No. See change of law Addendum A 1.2 and Addendum 2.5 - 2.7. The Netherlands, Belgium and France are members of the Schengen treaty, so customs and immigration regulations are not in place between these countries.
3.26	Annex A1	5	Is the tenderer allowed a longer period for reduced concession payment, if it is a condition for avoiding financing cumulative losses?	Not in this phase of the Tender. In this phase of the Tender the Tenderer is not allowed a longer period for reduced concession payment. The reduced concession payment regime is stated in the Bid Format, Annex B1, page 39. However, see Addendum 2.1.
3.27	Annex A1	7	If the tenderer order rolling stock, for improving his financial model, with a delivery date between 4 and 8 years after the starting date, does the rule for the residual value still applies, or subject to the change procedure?	Yes, if included in the Tenderer's business plan, see Addendum 2.6.
3.28	Annex A2	9	What is going to happen to the four TGV sets currently owned by NS for the operation of the Thalys service. Will they become our assets or will we have to pay a lease charge for them.	This is not for the State to decide, it is a decision of NS.
3.29	Annex A2	4.1, 6.7.3 CQ 1.4.9	In the business model to be submitted the number of FTE's has to be specified. In detailing this information how should we treat subcontractors/outsourcing. Should these be included in the headcount?	The number of FTE's should note the subcontracted as well as the own employees. The costs should be specified on the lines personnel. Note in the business plan the use of subcontractors.
3.30	Annex A2	4.1, 6.7.3 CQ 1.4.9	Could you provide a numerical example on how to calculate the rolling stock costs for each of the two GVO partners (following the articles 4.1 and 6.7.3 in the SNCB contract and the answer to question 49 of the 1st clarification round).	Note: <u>All figures are illustrative</u> . GVO-trainsets 4. Investment sum per trainset 10 mln EURO. Total initial investment will be 4 x 10 mln = 40 mln EURO of which 20 mln is paid by HSL-TOC and 20 mln bij SNCB. The initial investment of 40 mln will lead to a yearly annuity payment (15 + 15 years, 6% weighted government bond rate) of 2,9 mln. Travel time dutch network = 50 minutes, Travel time Belgian network = 40 minutes. Annuity costs HSL-TOC = 50/90 * 2,9 mln = 1,6 mln EURO.

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3.31	Annex A4	3	The passenger revenues of HSL TOC at the beginning of the concession will depend to some extent on the performance of Thalys services in the interim. With this in mind, does the State have any contract with NS to ensure that the Thalys service is not developed or managed in the period leading up to the start of the concession in a manner which is detrimental to the subsequent launch of HSL services?	See Working Assumptions (Annex A4) page 3 Start of the Concession bullit 4.
3.32	Annex A4	5	Working assumptions are provided for various turnaround times, e.g. 34 minutes at Amsterdam CS. Could you provide a breakdown of this schedule to explain what the trainset is required to do in terms of manoeuvres during this time?	The turnaround times are given as Working Assumptions to get comparable bids from all Tenderers. The turnaround times are based on the requirement that the train leaves the platform after disembarkation, and drives to Watergraafsmeer. The calculation is based on 3 to 5 minutes dwell time at the station, and 7 minutes driving time from Amsterdam CS to Watergraafsmeer.
3.33	Annex A4	5	What are the station costs. On what basis will they vary in the future? With the number of trains or vehicles or on some other basis. Will we have any protection from NS applying arbitrary pricing?	Costs for stopping or terminating trains at stations and use of platforms for access and egress are included in the infrastructure fee, see also Clarification 3.5 and 2.13. For costs of important facilities see additional process agreement NS (Annex B4). As described in SD 3.1 and 3.2 the State will introduce a system of specific supervision for the rail sector that will provide protection from arbitrary pricing by NS for specific facilities.
3.34	Annex A.4 (and SD 3.1)	5 (and 5)	We have read the letter from the Minister of Public Transport to the Tweede Kamer concerning the Concession Act, dated 22. February 2001. What will be the consequences if the implementation of this act is delayed? Who will bear the risks of this delay?	See Working Assumptions (Annex A4), page 5, Legislation and Institutional Arrangments in the Netherlands. The risk of any delay after the mentioned date is for the State. In a letter to Parliament of of 8 March 2001 (available in the Dataroom) the Minister has stated that the delay in the Concession Act does not have consequences for the Tender of the HSL-Zuid.
Annex B				
3.35	Annex B1 Business model	1	What is the definition of workdays and non-work days	A work day is the same as a Business Day (for definition, see ITT Main Document, Glossary, page 52).
3.36	Annex B1 Business model	2	Table 8.1: should Rolling Stock Bookvalue per set for type 1 read Costs per set (as for types 2 and 3)?	Yes, it should be read as investment costs per set.

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3.37	Annex B1 Business model	2	Table 8.1: what is meant by Desinvestments	Desinvestments should be read as "divestments" .
3.38	Annex B1 Business model	6.8.1	Bid model 6.8.1 regulates the payment of infra charges. But there is no explanation and no chapter 6.8.1 in the SNCB - contract. Please explain the situation?	Table 8.3: 6.8.1 should be: 6.7.5. See Addendum 2.11.
3.39	Annex B1 Business model		<p>The interpretation of the lines of Table 8.2 Revenues is assumed to be:</p> <p>International passenger ticket revenues GVO - Gross revenue received by HSL-Z TOC after allocation from the GVO for international journeys (to both Belgium and France).</p> <p>-/- 10% Sales costs Netherlands - 10% sales commission on the revenue described above sold within the Netherlands.</p> <p>-/- 10% Sales costs Belgium - 10% sales commission on the revenue described above sold within the Belgium.</p> <p>-/- 10% Sales costs France - 10% sales commission on the revenue described above sold within the France.</p> <p>Net International Sales Revenue - Sum of the four items above.</p> <p>Revenue Share Netherlands - Revenue domestic to the Netherlands but traveling on International Trains</p> <p>+/+ 10% Sales costs Netherlands - Add back 10% sales commission on International passenger ticket revenue sold within the Netherlands.</p> <p>Total International revenues HSL-Z TOC - Total of Net International Sales Revenue, Revenue Share Netherlands and +/+ 10% Sales costs Netherlands.</p> <p>Total Domestic Revenues HSL-Z TOC - Gross revenue for journeys domestic to the Netherlands made on Domestic trains.</p> <p>Please confirm if this correct or provide the actual understanding to be used. If the above interpretation is correct, where should sales commission for domestic journeys on domestic trains appear when, for example, the sale is made by NS? -</p>	<p>Not completely correct. Please note the changes marked in the copy of the text below.</p> <p>International passenger ticket revenues GVO - Gross revenue received by HSL-Z TOC after allocation from the GVO for international journeys (to both Bel. <u>(SOUTH OF BRUSSELS)</u> and Fr.).</p> <p>-/- 10% Sales costs Netherlands - 10% sales commission on the revenue described above sold within the Netherlands.</p> <p>-/- 10% Sales costs Belgium - 10% sales commission on the revenue described above sold within the Belgium.</p> <p>-/- 10% Sales costs France - 10% sales commission on the revenue described above sold within the France.</p> <p>Net International Sales Revenue - Sum of the four items above.</p> <p>Revenue Share Netherlands - <u>HSL-TOC Revenue share of the Net International Sales Revenues</u> .</p> <p>+/+ 10% Sales costs Netherlands - Add back 10% sales commission on International passenger ticket revenue sold within the Netherlands.</p> <p>Total International revenues HSL-Z TOC - Total of Net International Sales Revenue, Revenue Share Netherlands and +/+ 10% Sales costs Netherlands.</p> <p>Total Domestic Revenues HSL-Z TOC - Gross revenue for journeys domestic to the Netherlands made on Domestic <u>AND INTERNATIONAL</u> trains.</p> <p>The 10% sales cost is only a correction factor for the revenue sharing. The actual sales costs, including commissions, must be entered in tables 8.3 and 8.4 under 'commercial costs'.</p>

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3.40	Annex B1 Business model		Table 8.3 Operating Costs Train Personnel: Are we to provide either: a) The total cost of these personnel employed in France, Belgium and the Netherlands;b) The cost of those personnel employed only in the Netherlands (i.e. those employed by HSL-TOC if not employed directly by the GVO); or c) HSL TOC's share (after set-offs) of the total cost borne by the GVO or, in the case of services to France, borne by the GVO and SNCF?	Take into account the costs of the GVO for train personnel allocated to the HSL-TOC based on the draft contract with SNCB, article 6.
3.41	Annex B1 Business model		Table 8.4: Can you confirm that Operating Costs – Infrastructure should be nil in respect of Domestic Services because they are included in the concession fee.	It can be confirmed that the domestic infrastructure costs should be nil. The station acces costs, the depot acces costs and the infrastructure costs for International and Domestic are the same as the concession fee. These have to be filled in at the line "infrastructure" in table 8.3. The other lines should state 0.
3.42	Annex B1 Business model		Table 8.6 – Operational Contribution Margin: assuming this is calculated from other items on this table, can you please advise how you expect it to be calculated?	The operational contribution margin in Table 8.6, can be calculated by subtracting from "Total revenues HSL-Zuid TOC" the "Total operational costs". The "Total operational costs" is the sum of all cost lines above the line "Total operational costs" (line 13 through 25).
3.43	Annex B1 Business model		Table 8.6 – GVO Management Costs: should this be the total costs borne jointly by SNCB and HSL TOC, or just HSL TOC's share?	Take into account the costs of the GVO for management allocated to the HSL-TOC based on the draft contract with SNCB, article 6.6.1 (Annex A2).
3.44	Annex B1 Business model		Table 8.7: please provide a definition of Intra-Group Debtors/Creditors?	Intra-Group debtors and creditors can be the mothercompanies of HSL-TOC and the SNCB in the position of debtor or creditor.
Clarification				
3.45	Clarification 1	question 4	To what extent should the bid be anonymous in particular regarding the experience/know-how of the consortium partners?	It is not a requirement to make a fully anonymous bid. The only requirement is to use white paper, see clarification 1.04.
3.46	Clarification 2	question 10	In the answer on question 2.10 the State states that a.o. stabling capacity is included in the infrastructure fee. In the answer on question 1.30 "station, stabling and maintenance facilities" are excluded from the infrastructure charges. Does the last line read as follows: "... excluding station facilities, stabling facilities and maintenance facilities"? If so, which exact facilities are excluded?	Correct, the last line has to be read as : "...excluding station facilities, stabling facilities and maintenance facilities". Examples of facilities that are not included in the infra fee are cleaning services, water supply and inspection services.

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3.47	Clarification 2	question 21	Please describe how the price guarantee will work with respect to the outstanding balance in the case of early termination and at the end of the Concession Period. How will the price be determined?	There is no price guarantee after expiration of the concession agreement, except for the rolling stock. The rolling stock calculation method will also be applied in case of early transformation. The method is specified in Annex A1, page 7.
3.48	Clarification 2	question 21	From the Tenderers' and the lease companies' point of view the mentioned price guarantee will significantly determine the extend of the financial exposure. This directly corresponds with the Concession Payments offered by the Tenderers. Will the state therefore add the price guarantee to Annex 4 in addition to the working assumptions already stated therein? If not, will the state or any other financial institution guarantee for financing purposes that the price guarantee will be of stable value at the end of the Concession Period and in the case of early termination? If not, the Tenderers will assume that their submitted bid/Concession Payments can not be adjusted even though the price guarantee turns out to have not the expected value. How can the Tenderers change there bid and/or Concession Payments if they have to take the additional remarketing risk with respect to rolling stock?	The price guarantee for rolling stock is part of Annex A1, the Summary of the Concession Agreement and forms part of the basis for the Bid. See also Addendum 2.

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No.	Document	Page	Question	Answer																	
General																					
4.1			What price does NS currently pay for traction electricity and what are the prices in respect of each of the last 5 years?	This question of prices for electricity for bulk purchaser, can be answered by one of the larger Dutch electricity companies.																	
4.2			We understand that the bid should be in pricelevel 2000. What is the percentage for inflation between 2001 and 2000?	The annual amount must be stated in price level 01-01-2000, and will be adjusted for inflation on the basis of the Consumer Price Index.																	
4.3			What is the VAT on international train tickets?	The HSL-Zuid operator will have to pay the Dutch VAT percentage (6%) over his share of the revenues. The same procedure counts for the foreign JV-partners. They have to pay the VAT in their countries over their share of revenues.																	
4.4			Is it possible to provide in respect of current NS and/or Thalys staff: a) Current traincrew diagramming conditions; b) Current employment contract terms and conditions for key groups of staff, including traincrew? and c) Sickness rates for traincrew for each of the past 5 years?; or d) A source for obtaining the above information?	No. The State does not have this information.																	
4.5			In separating the combined bid into a domestic and an international bid: Which operator obtains the revenues of domestic passengers on international trains? If these revenues are for the domestic operator, then which costs are charged to the domestic operator for this capacity on international trains? Could you illustrate your answer to the above question with the numerical example below: Total revenues are 100, of which 33 of domestic passengers on domestic trains, 33 of domestic passengers on international trains, 34 of international passengers. Assume costs for the combined operation are 60, of which 30 for operating the domestic trains, and 30 for operating the international trains. How should we fill in the table below? <table style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <td colspan="4" style="text-align: center;">Combined/Domestic operator/ International operator</td> </tr> <tr> <td>Revenues</td> <td>100</td> <td>/</td> <td>?</td> <td>/</td> <td>?</td> </tr> <tr> <td>Costs</td> <td>60</td> <td>/</td> <td>?</td> <td>/</td> <td>?</td> </tr> </table>		Combined/Domestic operator/ International operator				Revenues	100	/	?	/	?	Costs	60	/	?	/	?	In this phase the split between a Domestic and an International Bid is a case for the Tenderer. Not the costs should be split, but the revenues, according to the split of passenger flows in the Business Plan.
	Combined/Domestic operator/ International operator																				
Revenues	100	/	?	/	?																
Costs	60	/	?	/	?																

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4.6			<p>Is it correct to suppose an adequate adjustment of the concession fee will be possible if any other operator starts competing national or international services (despite exclusivity rights nationally) on the HSL-Zuid infrastructure.</p> <p>Given this scenario, would it entitle the bidder to a) early termination and b) compensation payments by the Dutch state?</p>	<p>If any other operator starts competing national services, despite exclusive rights, the HSL-TOC will be entitled to immediate termination and compensation payments by the Dutch state (see paragraph Early Termination annex A1, adjusted version 9 April 2001). For international services no exclusivity can be guaranteed (refer to Clarification 1.15). In the case of an other operator starts competing on international services, the new operator will be required to take over a part of the concession payment.</p>
4.7			<p>Will there be a guarantee by the Dutch Government to bear all risks concerning the further use of the rolling stock from the HSL-TOC in case of early termination of the concession (regardless by which party), i.e. full replacement of the HSL-TOC as a contract partner in a rolling stock lease agreement.</p>	<p>If the early termination is within the responsibility of the State, the State will bear all risks. If the early termination is within the responsibility of the operator, the operator will bear all risks and the State has a call option on the rolling stock.</p>
4.8			<p>In the first addenda is stated there will be "no other international trains on conventional track after start of the full service on HSL-Zuid".</p>	<p>This statement is a Working Assumption.</p>
4.9			<p>How is "full service on HSL-Zuid" defined?</p>	<p>Assuming this question refers to the previous question the answer is as follows. As soon as the concessionaires international partners feel that their service offer is sufficient to accomodate the passenger flows the State will make NS end his services on Brussels.</p>
4.10			<p>Is it a severe underperformance which would entitle the bidder to a) early termination and/or b) compensation payments if the Dutch state has provided the bidder with incorrect working assumptions prior to contract award?</p>	<p>The Working Assumptions are only relevant for bidding purposes. In the negotiation phase, these will be replaced by conditions.</p>
4.11			<p>Can the State please clarify whether it intends that article 75 of Book 6 of the Dutch Civil Code will remain applicable in addition to any arrangements in the concession agreement regarding Force Majeure events ?</p>	<p>The intention of the State is that article 75 of Book 6 will remain applicable in addition to any arrangements in the Concession Agreement regarding Force Majeure events. In the case of conflict between the interpretation of article 75 and the arrangements in the Concession Agreement, the Concession Agreement prevails.</p>

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4.12		Does the minimum payment of € 100 million also apply to all other variants?	The minimum payment of 100 million Euro applies to the Base Case.
4.13		In the event of early termination due to severe underperformance of one party, shall the terminating party be entitled to compensation?	Yes, in accordance with Dutch law. This issue will be addressed in the negotiations phase.
4.14		If the Dutch state should opt for early termination, which costs can be reimbursed under the compensation regime, i.e. does it cover costs for rolling stock, labour, etc.? What are the specific conditions for such reimbursement?	If the early termination is due to a severe underperformance of HSL-TOC, the HSL-TOC has no right to any compensation. If the early termination is due to a severe underperformance of the State, the HSL-TOC has the full right to any compensation. This issue will be addressed in the negotiations phase.
4.15		<p>In round one of the clarifications of January 2001, we were given the answer stated in item 1.11, that "If before Contract Award the Working Assumptions, Tenderers can make reasonable adjustments to their Bid without changing the other underlying assumptions of their Bid". We assume that the sentence should start "If before Contract Award the Working Assumptions prove to be incorrect, Tenderers can make ...".</p> <p>In case this is correct what happens if,</p> <ol style="list-style-type: none"> 1. the working assumptions only turn out to be incorrect after contract award? 2. due to dependencies the incorrect working assumptions have also had an influence on the other underlying assumptions of the bid? 	On the day of contract close, the working assumptions will expire. The relationship between the State and the Concessionaire will be ruled exclusively in the Concession Agreement.

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ITT Main Document				
4.16	Main Document	28	Ticket distribution commission: The ITT (2.4) refers to a level of reduction of revenue for distribution costs of 10% in respect of international services. Does this figure also apply to the sale at NS outlets of tickets for domestic HSL travel, or is it 9%, or is it subject to negotiation and agreement between the selected bidder and NS?	The level of reduction is subject to negotiations and agreement between the selected bidder and NS or any other sales outlet.
4.17	Main Document	40	Will the financial bid remain a binding offer until 1 March 2002 if the tender procedure proves to be unsuccessful?	If the Tender Procedure would fail, the Tender will be terminated by the State. All Bids will expire as a result thereof.
4.18	Main Document	42-45	Which revenue and cost splits should be taken for those variants that represent a changed international service in comparison to the Base Case (Variants 3, 4, 5a, 5b and casewise 6). For example, there's no revenue share for journeys between The Hague and Paris.	With regard to passenger flows from The Hague to Paris, the share for the GVO can be assumed to be right in the middle between the percentages regarding these international services from Rotterdam and the percentages regarding these international services from Amsterdam. For all other variants, the cost splits are identical to the Base Case. All variants should be calculated according to arrangements / contract with SNCB.

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Annex A				
4.19	Annex A2		Will the track access costs outside The Netherlands only be covered by the future foreign JV-partners and/or also (partly) by TOC or GVO?	The track access costs outside The Netherlands are only covered by the future foreign JV-partner (cfr. Article 6.7.5 d, Annex A2).
4.20	Annex A2	4.1	Contract SNCB, art. 4.1: Should we apply the percentage 50% in all the variants? If not, what percentage should be used in the specific variants?	Yes.
4.21	Annex A2	6.1	Contract SNCB, art. 6.1: Should we apply the percentage 58.75% in all the variants? If not, what percentage should be used in the specific variants?	Yes.
4.22	Annex A3 Annex A4		Will the State confirm that the requirements to couple referred to in the Draft Agreement SNCF (Annex A3) and Working Assumptions (Annex A4) will be satisfied if each train type used is able to couple to other train sets of the same type for multiple unit operation and to trains of other types only for rescue and recovery using adapters or other equipment and with one train pulling or pushing the other?	Yes.
4.23	Annex A4	3	With respect to the performance of Thalys and Benelux services in the period leading up to the start of the concession, we note Working Assumptions page 3 bullet 4. Please confirm that HSL-TOC will be indemnified if these services are developed or managed in a detrimental manner with respect to service attributes other than frequency (e.g. price, speed, customer service).	The Working Assumptions are only relevant for bidding purposes. In the negotiation phase, these will be replaced by conditions.
4.24	Annex A4, Clarifications 3 3.5 +3.33		Station costs: Will the State confirm that the concession fee includes all costs of stations except for any specific extra dedicated facilities which the concession holder may choose to provide solely for its own passengers or staff? For example, will the State confirm that the following are included within the concession fee; lighting, heating, cleaning of platforms, public announcements, information displays, waiting areas and seating for general use?	The following issues are included in the concession fee: station lighting, heating and cleaning of platforms, public announcements (see Annex A4, page 5 Stations: last bullet), information displays, public waiting areas and seating for general use.

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4.25	Annex A4, Clarifications1 , 1.14 Addendum 1 A 1.6	<p>It is referred to the Supporting Documents 1.1 (Market Information: Origin and Destination Survey) and 1.2 (HSL-Zuid Passenger Choice Research). In the Supporting Documents handed out 1.1 is the Market Information Overview and 1.2 the Market Information: Origin and Destination Survey.</p> <p>Please specify which documents can be taken as a basis for the Bid. Please specify what is meant by "basic data and uplift factors" and one sentence later "basic data"! Is it the whole document? If not, which information can be added as a working assumption?</p> <p>Does this provision only cover the assumptions as stated in the referred to documents for the period of bidding? If not, what would the consequence be if the incorrectness of the assumptions would only appear after the closing of the bidding or the acceptance of a Bid?</p>	<p>See Addendum A 1.6. There is no consequence for this tender. Possible incorrectness has equal consequences for each Bidder. When after the closing of the bidding possible incorrectness of the assumptions would appear, this can lead to the situation the change procedure is applicable.</p>
4.26	Annex A4, Clarifications1 , 1.14 Addendum 1 A 1.6	<p>It is noted that the HCG model on default settings suggests a very substantial growth in rail patronage in the corridor served by HSL-Zuid. Does the State wish to specify any minimum level of capacity to be provided and if so, is it willing to agree to an adjustment formula for concession payments in the event that the patronage is lower or higher than that assumed in a bid?</p>	<p>The State does not wish to specify any minimum level of capacity to be provided. It is up to the Tenderers in their Business Plan to propose a level of capacity. The State emphasises that the operational risk regarding the patronage is a business risk for the operator.</p>

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Annex B				
4.27	Annex B1 Business model	Table 8.1	In the business model table 8.1: If rolling stock is leased, how could we fill in investment costs, depreciation and divestments if this is the responsibility of the rolling stock leasing company and the details might or will not be known to the TOC?	As noted in sheet X "Guidelines for input sheets", investment costs should be filled in, depreciation costs and divestments should not be filled in when stock is leased.
4.28	Annex B1 Business model	Table 8.5	What is meant with WACC in table 8.5? Is this the final internal rate of return of project cash flow (after financing and after tax) and hence every cell in this row has the same number, or is this the to date cumulative project cash flow (after finance and after tax) and hence every cell has a different number, or is this something else?	The weighted average cost of capital (WACC) should reflect the cost of capital of the project. For the debt/equity ratio fill in the desired debt/equity ratio project ratio and the desired equity quantity. The WACC is calculated as: $\text{Cost of debt} \% \times (1 - \text{effective tax yield}) \times \text{Debt} / (\text{Debt} + \text{Equity}) + \text{Required return on equity} \% \times \text{Equity} / (\text{Debt} + \text{Equity})$ Please fill in one column (2001) with the details of the project WACC. Leave the other columns blank.
4.29	Annex B1 Business model	Table G	In the business model table G, should "yearly set kilometres" read "yearly seat kilometres" or as something else?	Column H of table G should be read as "yearly set kilometers". A train running 100km with 2 sets, runs 100 trainkilometers and 200 setkilometers. Column J of table G notes the formula "J = I / H", though should be "J = I / F" to reflect the cost per seat kilometer.

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Clarification				
4.30	Clarification 2	2.15	Can SNCB claim the GVO rolling stock fleet to be dimensioned after the passengers flows Antwerp - Brussels or Antwerp - Paris?	The GVO rolling stock fleet will not take into account domestic traffic, unless the Concessionaire and SNCB jointly decide otherwise. However, cross border traffic between the Netherlands and Belgium is relevant for decisions about the size of the fleet.
4.31	Clarification 3	3.29	Following on your answer to clarification question 3.29: How should we properly evaluate the number of outsourced fte's, when this number can never be the HSL-TOC responsibility?	The decision about the level of outsourced activities is part of the Business Plan of the Tenderer.
4.32	Clarification 3	3.30	<p>We would like to elaborate on your answer to clarification question 3.30. In calculating the actual costs for rolling stock for the HSL-South TOC for GVO services, also the lease quote of the HSL-South TOC is relevant and the share of trains owned by the HSL-TOC (namely 50%). Could you please verify our calculation of the capital cost for rolling stock for the HSL-South TOC using the illustrative figures below (i.e. the capital costs for rolling stock that appear in the P&L of the HSL-South TOC)?</p> <ul style="list-style-type: none"> <input type="checkbox"/> GVO trainsets: 4 <input type="checkbox"/> Investment sum per trainset: 10 mln Euro <input type="checkbox"/> Weighted government bond rate: 6% (leading to 7.25% for 30 year annuity) <input type="checkbox"/> Travel time Dutch network = 50 minutes <input type="checkbox"/> Travel time Belgian network = 40 minutes <input type="checkbox"/> Lease quote of TOC for capital costs 15% per year <p> $50\% * 4 * 10 \text{ mln} * 15\% = 3.00 \text{ mln}$ $((50/90) - 0.5) * 4 * 10 * 7.25\% = 0.161 \text{ mln}$ Total HSL-South TOC rolling stock costs for GVO services = 3.00 mln + 0.161 mln = 3.161 mln </p>	This is correct.

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4.33	Clarification 3	3.39	<p>In your clarification 3.39, the definition of "Total International Revenues HSL-Z TOC" includes "Net International Sales Revenue" twice (once as itself and once within "Revenue Share Netherlands"). Please explain. Also, in your definitions where would Netherlands to Belgium revenue, for example a ticket from Amsterdam to Brussels, appear in the table if the "International passenger ticket revenues GVO" line only includes revenue for international journeys to locations south of Brussels?</p>	<p><i>Clarification 3.39 did not state the correct answer. It should have been:</i></p> <p>The given example in the question is not correct. Herewith the understanding to be used.</p> <p>With the International passenger ticket revenues GVO is meant the gross revenue received by the GVO.</p> <p>The 10% Sales costs lines should contain the 10% costs of the GVO Revenues generated in the mentioned country. See article 6.1 Draft Contract SNCB and key elements 2nd bullit page 28 ITT Mairdocument.</p>
4.33	Clarification 3	3.39		<p>With Revenue Share Netherlands the GVO revenues that are allocated to the HSL-Zuid TOC are meant. Whether it is a domestic or international train is not relevant. See for the allocation rules article 6.1 of the draft agreement with the SNCB.</p> <p>The 10% Sales costs Netherlands are indeed the commissions on International GVO passenger ticket revenue sold within the Netherlands. See article 6.1 of the draft agreement with SNCB.</p> <p>The Total International revenues HSL-Zuid TOC is the total of "Revenue share Netherlands" and "10% Sales costs Netherlands".</p> <p>The Total Domestic Revenues HSL-Z TOC should represent the gross revenue for domestic journeys made in the Netherlands on both domestic as well as international trains.</p> <p>The actual costs for sales commissions for domestic as well as international journeys should be represented as costs on the lines "sales commisions" in Table 8.3 and Table 8.4.</p>

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4.34	Clarification 3	3.39	<p>Please could we have a further clarification to your answer to clarification question 3.39? Are the calculations of the 4 examples below correct? (Obviously all figures are illustrative.) In addition, could you fill in for each of the 4 examples separately table 8.2 of the business model?</p> <p>Example 1: Assume a ticket Amsterdam – Paris is sold in Amsterdam for 100. Total ticket sales = 100 -/- Commission = 10 Net international revenues = 90 Net international revenues for HSL-TOC = $90 \times 0.255 = 22.95$ Total revenues for HSL-Toc (including commission) = $22.95 + 10 = 32.95$</p> <p>Example 2: Assume a ticket Amsterdam – Paris is sold in Paris for 100. Total ticket sales = 100 -/- Commission = 10 Net international revenues = 90 Net international revenues for HSL-TOC = $90 \times 0.255 = 22.95$ Total revenues for HSL-Toc (including commission) = $22.95 + 0 = 22.95$</p>	<p>All four examples are correct. What has been stated as net international revenues, should be presented on the line "Net international sales revenues"; What has been stated as total revenues for HSL-TOC (including commissions) should be presented on the line "Total international revenues HSL-Z TOC".</p>
4.34	Clarification 3	3,39	<p>Example 3: Assume a ticket Amsterdam – Brussels is sold in Amsterdam for 100. Total ticket sales = 100 -/- Commission = 10 Net international revenues = 90 Net international revenues for HSL-TOC = $90 \times 0.5875 = 52.875$ Total revenues for HSL-Toc (including commission) = $52.875 + 10 = 62.875$</p>	
4.34	Clarification 3	3,39	<p>Example 4: Assume a ticket Amsterdam - Brussels is sold in Brussels for 100 Total ticket sales = 100 -/- Commission = 10 Net international revenues = 90 Net international revenues for HSL-TOC = $90 \times 0.5875 = 52.875$ Total revenues for HSLTOC (including commission) = $52.875 + 0 = 52.875$</p>	

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Addenda				
4.35	Addendum 2	A 2.1	At what stage / when "will the State be prepared" to negotiate "reprofiling" of discount percentages and/or a less than 100% fixed annual Concession payment?	In the negotiation phase.
4.36	Addendum 2		Can the State please clarify whether the principles of the second paragraph of the replaced text of the ITT are still applicable under Addendum 2 ?In the section "Change procedure" (Addendum 2 to the ITT- see headline: "the text below replaces the complete section "change procedure") it seems as if the second paragraph of the existing text will be replaced. This paragraph contains however the basic legal framework for change procedure.	Tenderers will take the wording of Annex A1 Change Procedure (revision 09/04/01) as the underlying assumption for their Bid. See answer under 4.42.
4.37	Addendum 2	A 2.1	How should Tenderers process the assumption of the extension of the discount period and or the adjustment of discount rates and or the less then 100 % fixed annual concession payment in their Bid during the bid phase?	The Bids should be strictly according to the bidding rules in the ITT, the explicitly listed working assumptions and provisos in the ITT and the Addenda. No other assumptions, nor provisos, nor interpretations, nor conditions are allowed.
4.38	Addendum 2	A 2.1	Should they explicitly state for instance that if they expect an operational cash deficit that part of their Bid is conditional to the outcome of the aforementioned negotiations (which so far does not seem to conform to the requirements of "unambiguous binding Bids" as mentioned in the ITT, Main Document p. 33)?	There is no room for such conditions in the Bids. The Bids have to be unambiguously binding as mentioned in the ITT.
4.39	Addendum 2	2.5	Can the State give a definition of the term "unforeseen circumstances"? How does this term in the Addendum relate to the term "unforeseen circumstances" as mentioned in Article 6:258 (Dutch) Civil Code? Can the State give a definition of the term "unforeseen circumstances"? How does this term in the Addendum relate to the term "unforeseen circumstances" as mentioned in Article 6:258 (Dutch) Civil Code? Will "Unforeseen Circumstances" comprises cases of Force Majeure and distortion of the economic balance, mentioned in addendum 2 / A.2.7?	Refer to answer under 4.42.

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4.40	Addendum 2	2.5	<p>The text of this Addendum does suggest that the State has the obligation not only to negotiate but also to give a reduction in case unforeseen circumstances that may cause discontinuity of the Special Purpose Vehicle (SPV). [1] Is this reading correct?</p> <p>[2] No basis is provided for calculating the amount of a reduction. Is a calculation method to be expected in a later Addendum?</p>	Refer to answer under 4.42.
4.41	Addendum 2	2.5	Can the State give some examples of what is meant by circumstances that are "clearly" beyond control of the Concessionaire?	Refer to answer under 4.42.
4.42	Addendum 2	2.5	<p>The Change procedure as described in Addendum 2.5. offers protection to the TOC's in case of unforeseen external circumstances that make it structurally unviable to meet their obligations in a reasonable way, especially if not all cost increases can be translated into fare increases. [1] Does the State also regard a substantial downfall of the economy as 'unforeseen external circumstances' and if yes, what does the State consider as 'substantial'. [2] To what extent can fares be increased and in what specific situations are these increases allowed? [3] Are –apart from cost increases- also not matching revenue expectations a ground for fare increases?</p>	Tenderers will take the wording of Annex A1 Change Procedure (revision 09/04/01) as the underlying assumption for their Bid. Further precision will be added in the ITN and as a result of the direct negotiations. For the draft contract in the ITN, the State intends to split what is currently under the A 1 procedure into a procedure to deal with consequences of unforeseen circumstances once article 6:258 of the Dutch Civil Code applies (based on the second and third paragraph of the A1-Change Procedure) and another procedure for the changes in scope (based on the paragraphs 4 and 5 of the A1-Change Procedure).
4.43	Addendum 2	2.5	<p>The State's willingness to negotiate in good faith reductions of the services and financial commitments of the Operator(Addendum A 2.5) under the change procedure is subject to certain provisos. As regards the second proviso: Can the State clarify how it will determine what the performance of another operator under the same circumstances would have been or would be. Can the State please clarify in what way it will determine such performance of another operator under the same circumstances ?As regards the third proviso: Can the State please clarify whether it is intended that the exposure of parent companies to take every reasonable measure to improve the viability of the services is in principle unlimited? As regards the fourth proviso: Can the State clarify whether it is intended that the SPV can not make any dividend or interest payment to the parent companies without putting at stake the possibility of protection under the change procedure? When this is not the intention what exactly should we understand under 'directly or indirectly withdraw funds'? Please specify.</p>	See answer under 4.42.

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4.44	Addendum 2	2.7	Do the Change Procedure and the yet unwritten Dispute Resolution agreement also apply in cases the State does not agree with the Concessionaire regarding the appropriateness of the Change Procedure and on Dispute Resolution Procedure and/or regarding the presence of "unforeseen circumstances"? Does the Change procedure also apply on "Force Majeure" situations?	[1] In case of disagreement, the Concessionaire may refer to Arbitration under the Dispute Resolution Procedure. [2] No.
4.45	Addendum 2	2.7	Will the Dispute Resolution agreement contain a provision as to a binding decision on the amount of financial compensation or reduction or on any other term of the Concession in case the State and the Concessionaire disagree?	The Dispute resolution will provide for resolution of disputes between parties in the execution of the Concession Agreement.
4.46	Addendum 2	2.7	The text of the first paragraph seems to define fare increases as a form of compensation. Is the Concessionaire despite of this suggested meaning of compensation in all situations allowed to increase the fare in cases of general changes in law or only in case of changes in law of a discriminatory nature?	The Concessionaire is allowed to increase fares in cases of general changes in law.
4.47	Addendum 2	2.7	What is the definition of the term "discriminatory"? Can the State give some general examples as to what should be considered as "discriminatory changes in law or governmental policy"?	"Discriminatory" means specifically directed at HSL-Zuid operations or at HSL-Zuid TOC. In Addendum 2.7 the State has given some general examples.
4.48	Addendum 2	2.7	Only the third and fourth example explicitly state that the Change Procedure would be applicable in the described situations. Do the "Change Procedure" and "Dispute Resolution" agreement apply in case the State and the Concessionaire disagree on the question whether a relevant change does occur and/or on the amount of financial compensation and/or the permitted fare increase?	The Change Procedure applies in the cases as described in Addendum 2.5. The examples in 2.7 are answers on specific questions of Tenderers during the progress meetings in March. The Dispute Resolution can apply in all situations the State and the Concessionaire disagree.
4.49	Addendum 2	2.8	[1] Are the 'Change Procedure' and the 'Dispute Resolution' applicable in all (alleged) cases of Force Majeure? [2] If so, would such procedure allow for a decision adding other events outside the confines of Article 6:75 Civil Code.	[1] The Dispute Resolution clause is applicable in all cases of disputes between parties in the execution of the Concession Agreement. The Change Procedure and the Force Majeure clauses contain different regimes. [2] No.

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4.50	Addendum 2	2.8	What is meant by "serious Force Majeure" as mentioned in paragraph 3? Is there an intended distinction between "serious" Force Majeure in paragraph 3 and Force Majeure as mentioned in the last paragraph? If so, can this be illustrated?	There is no difference intended between 'serious force majeure' and force majeure as mentioned in the last paragraph.
4.51	Addendum 2	2.8	Is it correct to assume that the exception of "strikes by employees" applies only if the strike is confined to the employees of the Concessionaire only?	No, for example strikes in the railway sector including a strike by employees of the Concessionaire are meant to be included.
4.52	Addendum 2	2.8	The last example suggests that the unavailability of the infrastructure would not always be considered as a Force Majeure event. Is that correct? If so, can this be illustrated? When would Force Majeure be presumed to start?	This example is not correct. For unavailability of the infrastructure a specific compensation regime will apply. This specific regime supersedes the general Force Majeure rules.
4.53	Addendum 2	2.8	Does the obligation to negotiate additional provisions only exist if a Force Majeure event continues three months or more? If so, what is the obligation within those three months, as the last sentence of the second paragraph suggests that parties have the obligation to negotiate on minimising the effects of Force Majeure generally?	Yes, the obligation to negotiate additional provisions to the Concession Agreement only exists if a Force Majeure event continues three months or more. Within the three months the Force Majeure relieves parties of the obligations of the Concession Agreement which they can not fulfil due to the Force Majeure event. Both parties have the obligation to negotiate to minimise the effects of the force majeure event right from the occurrence of such event.
4.54	Addendum 2	2.8	Would a Force Majeure event on the side of the Concessionaire give the Concessionaire the right to a reduction of the annual fixed payment?	No, it does not give that right. However, if the event lasts more than three months, a reduction of the annual fixed payment can be the result of the agreed additional provisions to the Concession Agreement.
4.55	Addendum 2	2.8	The Force Majeure provision would also apply in case the State would not be able to perform. As far as the train path capacity and quality however, the agreement seems to allocate the risks to the State (see Annex A1, page 3). Consequently the Concessionaire should be allowed to reduce payments once such capacity is not provided. Is this correct?	Yes. Minimum availability of train path capacity is a State risk. If the agreed minimum capacity of the infrastructure is not in accordance with the provisions of the Concession Agreement, the specific compensation regime will apply (see Annex A1).
4.56	Addendum 2	2.1	The addendum mentions the years 2006 - 2012 whereas the ITT states "the first 4 years of operation" (ITT, Main Document, p. 46). Does this mean that the State anticipates / accepts an extension of the discount period of 2 years?	Yes, but under the strict conditions as mentioned in the Addendum. This issue will be elaborated in the negotiations phase.
4.57	Addendum 2	2.1	"Benefit sharing mechanism." At what stage/when is the State prepared to negotiate these mechanisms.	In the negotiation phase, therefore not before bid submission.

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4.58	Addendum 2	Can the Tenderer assume a benefit sharing mechanism in the Bid phase and submit a Financial Bid with a fixed and a variable component. Are Tenderers allowed to offer a Financial Bid with a fixed amount less than 100 mln. Euro?	No. Tenderers must bid strictly according to the ITT rules.
4.59	Addendum 2	How should the variable/benefit shared part of the financial be presented?	See answer to question 4.58.
4.60	Addendum 2	If Tenderers are allowed to submit conditional Bids (as the addendum seems to imply; but see also question A2) how will the State value various levels of fixed payments (the exact levels of which might only be known after negotiations)? E.g. suppose Tenderer A's Bid is 100 of which 90% is fixed and Tenderer B's Bid is 120 of which 50% is fixed. Who wins?	Tenderers are not allowed to submit conditional Bids, Bids must be 100% fixed.