

Consent of the PKP CARGO S.A. Supervisory Board to the execution of an agreement with PKP PLK S.A.

Current Report No. 25/2021 of 30 November 2021

Legal basis (selected in ESPI):

Article 17(1) of MAR – confidential information

The Management Board of PKP CARGO S.A. hereby reports that, on 30 November 2021, the PKP CARGO S.A. Supervisory Board gave its consent to the signing of the Throughput Capacity Utilization Agreement for Cargo Transport Covering the 2021/2022 Timetable (“Agreement”) between PKP CARGO S.A. with its registered office in Warsaw (“Rail Operator”, “Company”, “Issuer”) and PKP Polskie Linie Kolejowe S.A. with its registered office in Warsaw (“Administrator”, “PKP PLK”). The Agreement will be in effect from 12 December 2021 to 10 December 2022.

Under the Agreement, PKP PLK provides the Company with access to rail infrastructure to utilize the throughput capacity for cargo transport in accordance with the 2021/2022 timetable. Also thereunder, the Administrator provides basic services in the field of minimum access to rail infrastructure. Under the Agreement, the Administrator also renders services involving access to service infrastructure facilities, which include assistance with respect to non-standard cargo and the preparation and commissioning of trains.

The Agreement enables PKP CARGO to use the requested train routes in the timetable, while the Company may cancel an allotted train route or part thereof (in accordance with the rules prescribed by the 2021/2022 Network Regulations). It is also possible to change the allotted route parameters following a change in the type of traction vehicle, an increase of the gross train weight (up to 1,000 tons) or a decrease thereof.

The fee for the use of rail infrastructure includes principally:

1) fee for minimum access:

- a) basic fee for minimum access to rail infrastructure related to a train’s passage, including a reservation fee for not using the whole or part of the route and for reducing gross train weight,
- b) shunting fee,
- c) fee for a stop no shorter than 2 hours on tracks that are not service infrastructure facilities.

2) fees for using the service infrastructure facilities (classification or marshalling yards, tracks for wagons to stop, tracks to load wagons).

The Administrator calculates the fees on the basis of the “Fee schedule for using rail infrastructure with a railway track gauge of 1435 mm managed by PKP Polskie Linie Kolejowe S.A. ...” (fees for minimum access), the “Rules for making available rail infrastructure with a railway track gauge of 1520 mm managed by PKP Polskie Linie Kolejowe S.A.”, the “Fee Schedule for access to service infrastructure facilities managed by PKP Polskie Linie Kolejowe S.A.” and also the “2021/2022 Network Regulations”.

The expected net value of the Agreement during its term of validity is PLN 541.5 million (PLN 666.1 million gross). Changing the estimated value of the Agreement by up to 15% does not constitute an amendment to the Agreement and does not have to be made in writing.

Compensation will be the applicable form of settling mutual damages between the parties to the Agreement arising from incorrect fulfillment of the timetable (according to the rules described in the Network Regulations).

The Agreement also contains contractual penalty clauses for the following reasons:

- 1) operation by the Rail Operator of a train with a different type of traction vehicle or a higher gross train weight in disregard for the prevailing rules;
- 2) operation by the Rail Operator of a train with dangerous goods or high-risk goods or extraordinary cargo in breach of the governing rules;
- 3) cancellation of the rail operator's train route for reasons attributable to the Administrator;
- 4) improper maintenance of intertrack space by the Administrator,
- 5) Rail Operator's utilization of its throughput capacity for shunting and stops in disregard for the prevailing rules.

Liability of the Parties for reasons other than those specified for contractual penalties will be determined on the basis of the Civil Code.

The Management Board is reporting the consent to the execution of the Agreement as it is crucial to the conduct of the Issuer's core business. This is a regular agreement concluded by the Company on an annual basis. The Company reported the execution of the previous agreement with PKP Polskie Linie Kolejowe S.A. in Current Report No. 41/2020 of 10 December 2020.

Specific legal basis:

Article 17(1) of MAR – confidential information.