

Execution of an agreement with PKP PLK S.A.

Current Report No. 57/2016 of 29 November 2016

Legal basis (selected in ESPI):

Article 17 Section 1 of Regulation (EU) No. 596/2014 of the European Parliament and of the Council on Market Abuse.

The Management Board of PKP CARGO S.A. reports that on 29 November 2016 PKP CARGO S.A. in Warsaw ("Carrier", "Company") and PKP Polskie Linie Kolejowe S.A. in Warsaw ("Administrator", "PKP PLK") signed the Rail infrastructure access agreement for cargo transport covering the 2016/2017 timetable ("Agreement"). The Agreement will be in effect from 11 December 2016 to 9 December 2017.

Under the Agreement, PKP PLK provides the Company with access to rail infrastructure to perform cargo transport operations in accordance with the 2016/2017 timetable. The Agreement sets out the requested train routes in the annual timetable and offers the possibility of requesting routes on an individual request, while the Company may a cancel an allotted train route and request a route based on an individual request. It is also possible to change the route parameters, following a change in the type of a traction vehicle or an increase or decrease of the train's gross weight (+/-500t).

Under the Agreement, the Administrator provides basic services of minimum access to rail infrastructure that comprises, among others, the preparation of an annual timetable in consultation with the Carrier, the provision of access to the rail infrastructure in accordance with the allotted train routes, the provision of access to traction network devices, the directing and carrying of traffic, including the use of the rail radio communication by the Carrier and delivery of information regarding train passage, if so requested by the Company.

Under the Agreement, the Administrator also renders basic services involving access to facilities related to the servicing of trains and additional services comprising the provision of assistance in connection with unusual loads and the preparation and commissioning of trains.

The fee for the use of rail infrastructure includes:

- 1) A basic fee for the minimum access to rail infrastructure, including completed services;
- 2) A reservation fee collected for any train route ordered and allotted which has not been used by the Carrier;
- 3) A basic fee for the access to devices related to the servicing of trains, including completed services;
- 4) An additional fee, including completed services.

The aforementioned fees are calculated based on the Price list for the use of 1435 mm gauge rail infrastructure managed by PKP PLK, effective from 11 December 2016 approved by the President of the Office of Rail Transport by Decision No. DRRK-WKL.730.5.2016.RK of 27 July 2016, "Rules of access to 1520 mm gauge rail infrastructure managed by PKP Polskie Linie Kolejowe S.A." and the Rules of train route allotment and use of allotted routes by licensed railway carriers within the 2016/2017 timetable ("Rules").

The expected total value of the Agreement during its term is PLN 615,1 million net (PLN 756,6 million gross). Change of the estimate value of the Agreement by 15% does not constitute an amendment to the Agreement and does not require a written form.

The Parties to the Agreement decided that contractual penalties will be the applicable form of mutual compensation arising from incorrect fulfillment of the timetable.

In the event of scheduled operation by the Carrier of a train (subject to the Rules) and delays exceeding 30 minutes, at the train's destination station:

- 1) The Carrier may pursue contractual penalties from the Administrator for any delays attributable to the Administrator and other carriers participating in the contractual penalty system for incorrect fulfillment of the timetable, at PLN 6.00 for 1 minute of a train's delay,
- 2) The Administrator may pursue contractual penalties from the Carrier at PLN 6.00 per 1 minute of a train's delay in the cases set out in the Agreement and at PLN 0.50 per 1 minute of the train's delay at faulted by the Carrier.

The mutual penalties arising from incorrect fulfillment of the timetable may exceed the PLN equivalent of EUR 200,000.

The Agreement also contains contractual penalty clauses resulting from:

- 1) operation by the Carrier of a train with another type of railway vehicle which is powered and/or has an increased gross weight in breach of the governing rules
- 2) operation by the Carrier of a train with hazardous goods and/or high risk goods and/or extraordinary cargo in breach of the governing rules
- 3) cancellation of the carrier's train route for reasons attributable to the Administrator
- 4) improper maintenance of intertrack space by the Operator

however their amount will not exceed 10% of the net value of the Agreement or the PLN equivalent of EUR 200,000.

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

The Management Board reports the execution of this Agreement as it is key to performance of the Issuer's core operations. This is a regular agreement concluded by the Company on an annual basis. The Company reported execution of the previous agreement with PKP Polskie Linie Kolejowe S.A. in Current Report No. 69/2015 of 11 December 2015.

Legal basis: Article 17 Section 1 of Regulation (EU) No. 596/2014 of the European Parliament and of the Council on Market Abuse.