

Imposition of a fine on PKP CARGO S.A. by UOKiK

Current Report No. 2/2016 of 4 January 2016

Legal basis (selected in ESPI):

Article 56 Section 1 Item 1 of the Act on Offerings – confidential information

With reference to Current Reports No. 28/2013 of 4 December 2013, No. 16/2014 of 17 March 2014 and No. 52/2014 of 23 August 2014, the Management Board of PKP CARGO S.A. (“Company”) hereby announces that on 4 January 2016 it received a decision of the President of the Competition and Consumer Protection Office (“President of UOKiK”) No. DOK-5/2015 of 31 December 2015 pursuant to which the President of UOKiK:

- i. concluded that the Company abused the dominant position in the domestic rail freight market by preventing development of conditions required for emergence or development of competition through introduction, as of 1 May 2006, of changes to the “Rules of sale of freight services by PKP CARGO S.A.” in particular § 5 sec. 6-10 contained in chapter I of these rules which authorized the Company to refuse to sign special agreements with entrepreneurs considered as the Company’s competitors;
- ii. concluded that the aforementioned practice was abandoned as of 1 July 2007; and
- iii. imposed on the Company a fine in the amount of PLN 14,224,272.18 (fourteen million two hundred twenty four thousand two hundred seventy two and 18/100 zloty).

In accordance with the information contained in the Company’s Prospectus, on 7 July 2009 the President of UOKiK issued a decision in which it concluded that the Company’s refusal to provide rail freight services to its competitors on special terms, i.e. through conclusion of agreements envisaging discounts on the Company’s goods tariffs, as a practice restricting competition and imposed a fine on the Company in the amount of PLN 60,362,072.

Pursuant to a Supreme Court verdict of 3 October 2013, the verdicts of the courts of first and second instance were repealed. On 17 March 2014, the Regional Court in Warsaw, Court for the Protection of Competition and Consumers, repealed the decision of the President of UOKiK of 7 July 2009. Consequently, on 3 December 2013, the President of UOKiK refunded to the Company the paid fine, and on 4 August 2014 the Company received on its account the amount of PLN 12,555,311 as a refund of the interest on the aforementioned fine. After repeating the proceedings, on 31 December 2015, the President of UOKiK issued Decision No. DOK-5/2015 mentioned above.

In the opinion of the Company’s Management Board, the decision of the President of the UOKiK of 31 December 2015 is groundless. Consequently, the Company intends to appeal against the aforementioned decision to the Regional Court in Warsaw, Competition and Consumer Protection Court.

Legal basis:

Article 56 Section 1 Item 1 of the Act on public offering and terms of introducing financial instruments into organized trading system and on public companies.