

The conclusion of material agreements by PKP CARGO S.A. and its subsidiary concerning the purchase of 99.85 % shares in Orlen Koltrans sp. z o.o. and an organized part of the enterprise of Euronaft Trzebinia sp. z o.o.

Current report No. 66/2015 of 16 November 2015

Legal basis (selected in ESPI):

Article 56, section 1.2 of the Act on Public Offering – current and interim reports

The management board of PKP CARGO S.A. (“**PKP CARGO**”) hereby announces that on 16 November 2015:

- i. PKP Cargotabor Usługi sp. z o.o. (“**PKP CU**”), a company wholly owned by PKP CARGO, as the purchaser, PKP CARGO, as the guarantor, and PKN ORLEN S.A., as the seller (“**PKN Orlen**”), concluded a conditional preliminary purchase agreement (*warunkowa umowa zobowiązująca sprzedaż*) concerning 40,796 shares with the nominal value of PLN 1,000 each, with the total nominal value of PLN 40,796,000, representing approximately 99.85% shares in the share capital of Orlen Koltrans sp. z o.o. (“**Koltrans**”) (the “**Koltrans Shares**”) for the total price of PLN 192,248,367.05 (the “**Share Purchase Price**”) (the “**Koltrans Purchase Agreement**”);
- ii. PKP CARGO concluded a conditional preliminary purchase agreement (*warunkowa umowa zobowiązująca umowa sprzedaż*) with Euronaft Trzebinia sp. z o.o. (“**Euronaft**”) concerning an organized part of the enterprise of Euronaft through which Euronaft provides railway transport services, railway siding management services, railway tracks work services and rolling stock repair services (“**OPE Railway**”), for the total price of PLN 59,397,000.00 (the “**OPE Purchase Price**”) (the “**OPE Purchase Agreement**”);

jointly the “**Purchase Agreements**”.

Each of the Purchase Agreements provides a purchase price adjustment mechanism allowing for the net debt and working capital as at the date of the purchase of Koltrans and OPE Railway, respectively. The OPE Purchase Price may also be increased by value-added tax which will be charged at the relevant rate, if applicable, and will be subject to deduction by the OPE Purchaser (as defined below).

OPE Railway will be purchased by PKP CARGO or another member of the PKP CARGO group, including Koltrans, following the prior purchase of the Koltrans Shares by PKP CARGO (the “**OPE Purchaser**”).

The Purchase Agreements are interdependent, which means that the purchase of OPE Railway is conditional on the purchase of Koltrans, and the termination of one of the Purchase Agreements triggers the termination of the second Purchase Agreement.

The ownership title to the Koltrans Shares will pass to PKP CU under the final agreement (*umowa rozporządzająca*) after the joint satisfaction (or waiver by the relevant party) of the conditions precedent set forth in in the Koltrans Purchase Agreement, that is: (i) PKP CU receives consent for the merger of PKP CU and Koltrans issued by the President of the Office for Competition and Consumer Protection; (ii) the competent court registers amendments to the Koltrans articles of association agreed in the Koltrans Purchase Agreement and concerning, among other things, the expiry of the rights to appoint and dismiss members of Koltrans’s governing bodies vested in PKN Orlen; (iii) none of Koltrans’s minority shareholders exercises their right of first refusal to purchase the Koltrans Shares under the Koltrans articles of association; and (iv) the satisfaction (or waiver by the relevant party) of the conditions precedent set forth in the OPE Purchase Agreement, and such transfer of ownership title of the Koltrans Shares will be further subject to the payment by PKP CU of the entire amount of the Share Purchase Price to PKN Orlen.

The ownership title to OPE Railway will pass to the OPE Purchaser under the final agreement (*umowa rozporządzeniowa*) after the joint satisfaction (or waiver by the relevant party) of the conditions precedent set forth in the OPE Purchase Agreement, that is: (i) the OPE Purchaser receives consent for the merger of the OPE Purchaser and OPE Railway issued by the President of the Office for Competition and Consumer Protection; (ii) the OPE Purchaser and Euronaft receive parallel individual advance tax rulings from the relevant tax offices, i.e. rulings which, in both cases, confirm or negate the classification of OPE Railway as an organized part of an enterprise within the meaning of the applicable laws; and (iii) the satisfaction (or waiver by the relevant party) of the conditions precedent set forth in the Koltrans Purchase Agreement, and such transfer of ownership title of OPE Railway will be further subject to the payment by the Purchaser of the amount of the OPE Purchase Price to Euronaft. The Purchase Agreements can be terminated if not all conditions precedent are satisfied (or waived) by the relevant deadlines stated in the Purchase Agreements.

The Purchase Agreements provide that on the date of the transfer of ownership of the Koltrans Shares to PKP CU and the transfer of ownership of OPE Railway to the OPE Purchaser (the “**Closing Date**”), five-year agreements will enter into force concerning the railway transport of goods and railway siding management concluded between members of the PKN ORLEN group on the one hand, and Koltrans or, as the case may be, Euronaft, on the other side. On the Closing Date the rights and obligations under the railway transport of goods and railway siding management agreements concluded by Euronaft with the members of the PKN ORLEN group will be assigned to the OPE Purchaser as part of OPE Railway.

PKN ORLEN and Euronaft covenanted in the relevant Purchase Agreement not to conduct any activity competitive with respect to the activities of Koltrans and OPE Railway, as the case may be, for 36 months from the Closing Date.

In the respective Purchase Agreements PKP CARGO undertook to retain control over Koltrans and the OPE Purchaser, respectively, for five years from the Closing Date (except for transfers of ownership within the PKP CARGO group) and not to discontinue, during that period, the core operations of Koltrans and the OPE Purchaser, respectively, with respect to the purchased OPE Railway.

Furthermore, in the Purchase Agreements, PKP CU and the OPE Purchaser respectively agreed to grant 24-month employment guarantees to the employees of Koltrans and OPE Railway, respectively, effective from the Closing Date.

PKP CARGO provided a corporate guarantee securing the fulfilment by PKP CU of all obligations under the Koltrans Purchase Agreement, and, should an entity other than PKP CARGO act as the OPE Purchaser, PKP CARGO will provide a corporate guarantee securing the performance of the OPE Purchase Agreement by such entity.

Each of the Purchase Agreements provide for payments under the performance bonds due to the other Party in the event of a failure to perform obligations set out in the given Purchase Agreement with a value exceeding 10% of the given Purchase Agreement, i.e.: (a) in the case of the Koltrans Purchase Agreement: (i) payments under the performance bond in favour of PKP CU expressed as percentage shares of the price, the highest of which is equal to 25% Share Purchase Price; (ii) payments under the performance bond in favour of PKN Orlen expressed as percentage shares of the price, the highest of which is equal to 35% Share Purchase Price; and (b) in the case of the OPE Purchase Agreement: (i) payments under the performance bond in favour of PKP CARGO expressed as percentage shares of the price, the highest of which is equal to 25% of the OPE Purchase Price; and (ii) payments under the performance bond in favour of Euronaft expressed as percentage shares of the price, the highest of which is equal to 35% of the OPE Purchase Price. The Parties are not entitled to seek amounts in excess of the contractual payments under the performance bonds.

The aggregate value of the Purchase Agreements and the net turnover generated in a period shorter than 12 between the members of the PKP CARGO group and the members of the PKN Orlen group exceeds the value of 10% of the value of PKP CARGO's equity and stands at PLN 349 million, which results in the requirement of the publication of this current report.

Legal basis: §5, section 1.3 and §9 of the Regulation of the Minister of Finance of 19 February 2009 regarding current and interim reports published by issuers of securities and the terms and conditions of deeming equivalent the information required under the laws of any non-member state (Journal of Laws of 2014, item 133).