

Judgment of the Court of Second Instance in the matter of the fine imposed by the President of UOKiK

Current Report No. 37/2022 of 24 October 2022

*Legal basis (selected in ESPI):
Article 17(1) of MAR – inside information*

Referring to Current Reports No. 28/2013 of 4 December 2013, No. 16/2014 of 17 March 2014, No. 52/2014 of 23 August 2014, No. 2/2016 of 4 January 2016 and No. 30/2018 of 15 October 2018, the Management Board of PKP CARGO S.A. (“Company”) hereby reports that today it received information from its attorney on the judgment handed down on 11 October 2022 by the Supreme Court in case I NSKP 16/21, in which the Supreme Court:

- a) dismissed PKP CARGO S.A.’s cassation appeal,
- b) awarded costs of legal representation in the amount of PLN 540 from PKP CARGO S.A. to the President of the Office of Competition and Consumer Protection (“UOKiK President”).

The case in question concerned the allegation that the Company abused its dominating position on the domestic rail freight market and has had a long history:

- 1) 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.
- 2) this decision was upheld by the Appellate Court in Warsaw and the Regional Court in Warsaw – the Court for Competition and Consumer Protection (“SOKiK”),
- 3) pursuant to a Supreme Court judgment of 3 October 2013, the judgments of the courts of first and second instance were set aside,
- 4) on 17 March 2014, SOKiK set aside the Decision of the UOKiK President of 7 July 2009,
- 5) consequently, on 3 December 2013, the UOKiK President 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,
- 6) after repeating the proceedings, on 31 December 2015, the UOKiK President issued Decision No. DOK-5/2015, in which he:
 - a. concluded that the Company abused the dominant position in the domestic rail freight market by preventing the development of conditions required for the emergence or development of competition through the 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 commercial undertakings considered to be the Company’s competitors,
 - b. concluded that the aforementioned practice was abandoned as of 1 July 2007, and

- c. 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),
- 7) this decision was challenged by the Company by filing an appeal to SOKiK on 4 February 2016,
 - 8) on 15 October 2018, SOKiK handed down a judgment in which it dismissed the appeal of PKP CARGO S.A. and upheld the Decision of the President of UOKiK of 31 December 2015,
 - 9) on 14 November 2018, the Company filed an appeal against the aforementioned SOKiK judgment,
 - 10) on 2 July 2020, the Appellate Court in Warsaw handed down a judgment in which it dismissed the appeal of PKP CARGO S.A. against the SOKiK judgment of 15 October 2018 and upheld the Decision of the UOKiK President no. DOK-5/2015 of 31 December 2015,
 - 11) PKP CARGO S.A. paid all the amounts due to the UOKiK President arising out of Decision No. DOK-5/2015 of 31 December 2015,
 - 12) PKP Cargo S.A. filed a cassation appeal against that judgment of the Appellate Court, which was dismissed by the Supreme Court with the judgment mentioned above, which ultimately ends the proceedings in this case.