

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

Current Report No. 17/2020 of 02 July 2020

Legal basis (selected in ESPI):

Article 17 Section 1 of MAR – confidential information

With reference 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 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 judgment of the Regional Court in Warsaw, the Court of Competition and Consumer Protection (“SOKiK”) of 15 October 2018 and thus upheld the Decision of the President of the Office of Competition and Consumer Protection (“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 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;
- 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Pursuant to a Supreme Court judgment of 3 October 2013, the judgments of the courts of first and second instance were repealed. On 17 March 2014, SOKiK repealed the decision of the President of UOKiK of 7 July 2009.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, which was appealed by the Company by filing an appeal to SOKiK on 4 February 2016. 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. On 14 November 2018, the Company filed an appeal against the aforementioned SOKiK judgment.

The Appellate Court's judgment is final. However, the Company has the possibility of filing a cassation complaint against the judgment.

In the opinion of the Company's Management Board, the Appellate Court's judgment of 2 July 2020 raises doubts, in particular with regard to failure to take into consideration the Company's allegation that the President of UOKiK did not have the right to issue a new decision imposing a fine without resuming the proceedings and the fact that the President of UOKiK left the fine practically in the same amount, although in the earlier judgment the court ordered it to reconsider all the circumstances influencing the amount of the fine. Consequently, the Company is analyzing the possibility of filing a cassation complaint against the aforementioned judgment with a petition for suspension of enforcement of the Appellate Court's judgment regarding the fine.

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