

Execution of an agreement with PKP PLK S.A.

Current Report No. 54/2019 of 2 December 2019

Legal basis (selected in ESPI):

Article 17 Section 1 of MAR – confidential information

The Management Board of PKP CARGO S.A. reports that on 2 December 2019, PKP CARGO S.A. in Warsaw (“Rail Operator”, “Company”, “Issuer”) and PKP Polskie Linie Kolejowe S.A. in Warsaw (“Administrator”, “PKP PLK”) signed the Throughput Capacity Utilization Agreement for Cargo Transport Covering the 2019/2020 Timetable (“Agreement”). The Agreement will be in effect from 15 December 2019 to 12 December 2020.

Under the Agreement, PKP PLK provides the Company with access to rail infrastructure to utilize the throughput capacity for cargo transport in accordance with the 2019/2020 timetable.

The Agreement enables PKP CARGO to use the requested train routes in the timetable, while the Company may cancel an allotted train route or part thereof (in accordance with the rules prescribed by the 2019/2020 Network Regulations). It is also possible to change the allotted route parameters following a change in the type of traction vehicle, an increase of the gross train weight (up to 1,000 tons) or a decrease thereof.

Under the Agreement, the Administrator provides basic services of minimum access to rail infrastructure that comprise, among others, the possibility to use 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 Rail Operator and delivery of information regarding train passage, if so requested by the Company.

Under the Agreement, the Administrator also renders services involving access to service infrastructure facilities, which include assistance with respect to non-standard cargo and the preparation and commissioning of trains.

The fee for the use of rail infrastructure includes principally:

- 1) fee for minimum access including the following:
 - a) basic fee for minimum access to rail infrastructure related to a train’s passage, including a reservation fee for not using the whole or part of the route and for reducing gross train weight,
 - b) shunting fee,
 - c) fee for a stop no shorter than 2 hours on tracks that are not service infrastructure facilities.
- 2) fees for using the service infrastructure facilities (classification or marshalling yards, tracks for wagons to stop, tracks to load wagons).

The Administrator calculates the fees on the basis of the “Fee schedule for using rail infrastructure with a railway track gauge of 1435 mm managed by PKP Polskie Linie Kolejowe S.A. ...” (fees for minimum access), the “Rules for making available rail infrastructure with a railway track gauge of 1520 mm managed by PKP Polskie Linie Kolejowe S.A.”, the “Fee Schedule for access to service infrastructure facilities managed by PKP Polskie Linie Kolejowe S.A.” and also the “2019/2020 Network Regulations”.

The expected net value of the Agreement during its term of validity is PLN 608.9 million (PLN 749.1 million gross). Changing the estimated value of the Agreement by up to 15% does not constitute an amendment to the Agreement and does not have to be made in writing.

Compensation will be the applicable form of settling mutual damages between the parties to the Agreement arising from incorrect fulfillment of the timetable (according to the rules described in the Network Regulations).

The compensation for train delays applies to all trains which have finished driving in the network managed by the Administrator or have been handed over to an area managed by other administrators with a delay exceeding 5 minutes in the case of passenger trains and 15 minutes in the case of freight trains:

- 1) The Rail Operator may pursue from the Administrator compensation for any delays attributable to the Administrator (including its subcontractors) and other rail operators for incorrect fulfillment of the timetable equal to PLN 5.30 per minute of a train's delay,
- 2) The Administrator may pursue compensation from the Rail Operator equal to PLN 5.30 per minute of delay of a train of another rail operator. The delay is counted on basis of the stops planned on the route, and for the needs of settlements it is possible to use a train which caused a delay of another train although it reached the destination station on time.

The above settlement pertains to trains for which applications have been submitted with at least 5 days' notice before the planned departure.

The Agreement also contains contractual penalty clauses for the following reasons:

- 1) operation by the Rail Operator of a train with another type of traction vehicle and/or increased gross weight of the train in breach of the governing rules;
- 2) operation by the Rail Operator of a train with dangerous goods and/or high risk goods and/or extraordinary cargo in breach of the governing rules;
- 3) cancellation of the rail operator's train route for reasons attributable to the Administrator;
- 4) improper maintenance of intertrack space by the Administrator,
- 5) Rail Operator's utilization of its throughput capacity for shunting and stops in disregard for the prevailing rules,

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 the Civil Code.

The Management Board is reporting the execution of this Agreement as it is crucial to the conduct of the Issuer's core business. 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. 36/2018 of 27 November 2018.

Specific legal basis:

Article 17 Section 1 of MAR – confidential information