

## **Execution of an agreement with PKP PLK S.A.**

Current Report No. 33/2017 of 16 November 2017

*Legal basis (selected in ESPI):*

*Article 17 Section 1 of Regulation (EU) No. 596/2014 of the European Parliament and of the Council on Market Abuse.*

The Management Board of PKP CARGO S.A. reports that on 16 November 2017 PKP CARGO S.A. in Warsaw ("Carrier", "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 2017/2018 timetable ("Agreement"). The Agreement will be in effect from 10 December 2017 to 8 December 2018.

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 2017/2018 timetable.

The Agreement enables PKP CARGO to use the requested train routes in the annual timetable and routes requested on an individual request (individual timetable), while the Company may cancel an allotted train route or part thereof. It is also possible to change the route parameters, following a change in the type of the traction vehicle or an increase or decrease of the train's gross weight (to 500 t).

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 Carrier 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, comprising the provision of assistance in connection with non-standard loads and the preparation and commissioning of trains.

The fee for the use of rail infrastructure includes principally:

- 1) A basic fee for the minimum access to rail infrastructure, including completed services;
- 2) A reservation fee collected for any train route ordered and allotted which has not been used by the Carrier;
- 3) Fees for using the service infrastructure facilities.

The Administrator charges the fees based on: "Price list for the use of rail infrastructure caused an increase of the costs of using the access to the infrastructure with the railway track gauge of 1,435 mm..." (for the basic fee), "Rules for providing access to rail infrastructure with the railway track gauge of 1,520 mm ...", price list for "Fees for access to service infrastructure facilities (OIU)..." and the "Network regulations 2017/2018"

The expected total value of the Agreement during its term is PLN 631.9 million net (PLN 777.3 million gross). Change of the estimate value of the Agreement by 15% does not constitute an amendment to the Agreement and does not require a written form.

Contractual penalties will be the applicable form of mutual compensation between the parties to the Agreement arising from incorrect fulfillment of the timetable (according to the rules described in the Network regulations).

In the event of delays exceeding 5 minutes in the case of passenger trains and 15 minutes in the case of freight trains which have finished driving in the network managed

by the Administrator or have been handed over to an area managed by other administrators:

- 1) The Carrier may pursue contractual penalties from the Administrator for any delays attributable to the Administrator and other carriers for incorrect fulfillment of the timetable, at PLN 6.50 for 1 minute of a train's delay,
- 2) The Administrator may pursue contractual penalties from the Carrier at PLN 6.50 per 1 minute of a train's delay.

The regulations provide for the settlements in question for trains operating according to the annual timetable and according to the individual timetable (the individual timetable comprises trains for which applications have been submitted with at least 5 days' notice before the planned departure).

The mutual penalties arising from incorrect fulfillment of the timetable may exceed the PLN equivalent of EUR 200,000.

The Agreement also contains contractual penalty clauses resulting from:

- 1) operation by the Carrier 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 Carrier of a train with hazardous goods and/or high risk goods and/or extraordinary cargo in breach of the governing rules;
- 3) cancellation of the carrier's train route for reasons attributable to the Administrator;
- 4) improper maintenance of intertrack space by the Administrator, 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 provisions of the Civil Code.

The Management Board reports the execution of this Agreement as it is key to performance of the Issuer's core operations. 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. 57/2016 of 29 November 2016.

Legal basis: Article 17 Section 1 of Regulation (EU) No. 596/2014 of the European Parliament and of the Council on Market Abuse.