

Report no. 95/2020 – Information concerning the concession agreement for construction by adaptation of the A4 motorway on the section between Katowice (Murckowska junction, km 340.2) and Krakow (Balice junction, km 401.1), with a length of 60.9 km, to Toll Motorway requirements and for operation of the motorway on that section, of 19 September 1997, as subsequently amended, between the State Treasury and Stalexport Autostrada Małopolska S.A. (“SAM”) (“Concession Agreement”)

2020-12-30

The Management Board of Stalexport Autostrady S.A. (“Issuer”) hereby informs you that on 30 December 2020, it received from Stalexport Autostrada Małopolska S.A. (“SAM”) (a subsidiary of the Issuer): (i) information on consent given by the Minister of Infrastructure to the waiver of the confidentiality clause previously in force in the Concession Agreement and (ii) a copy of the Concession Agreement.

In connection with the above, the Issuer provides the following information resulting from the Concession Agreement, which in the Issuer’s opinion may be significant for the Issuer’s shareholders and potential investors:

1. Profit sharing from the Project

The Concession Agreement provides for a share of the State Treasury in profits from the Project (understood as motorway financing, design, construction by adaptation to toll motorway requirements and operation together with the passenger service areas) (“Share”), with all settlements between the parties under the Project being based on the cash actually held by SAM in accordance with the cash flow mechanism agreed upon in the Concession Agreement (“Cash Flow Mechanism”). The Cash Flow Mechanism provides for an order of individual payments under the Project. Under this mechanism, expenditures on the following: reimbursement of expenses incurred by the Issuer as the previous concessionaire, some works related to motorway adaptation, motorway operation, servicing of debt taken from banks, accumulation of funds in reserve accounts (debt servicing, coverage of uninsured losses, heavy maintenance, performance of phase II(b) construction works), dividends constituting a minimum return for SAM owners, concession payments (constituting a refund for the State Treasury of the loan taken by the State Treasury from the European Bank for Reconstruction and Development), are made before the last payments on account of the Share and the dividend from SAM (the Share and the dividend from SAM jointly constitute the “Cash Available for Distribution”).

The basis for calculating the Share is the assumed actual return on equity contributed to SAM (ROE) expressed using a specific formula, taking into account a number of parameters. As of 30 November 2020, ROE calculated from the start of the Project was 14.7%, which translates into a Share of 40% of Cash Available for Distribution. Bearing in mind that ROE is calculated on a cumulative basis throughout the Project, in the Issuer’s opinion it is likely to increase in the future, with ensuing future change in the Share percentage (subject to a potential negative impact on ROE in connection with future events, including e.g. Motorway handover referred to in paragraph 3 below). From an ROE of 15.1%, the Share will amount to 50% of the Cash Available for Distribution, and after ROE exceeds 20%, the Share will amount to 70% of the Cash Available for Distribution.

2. Maximum toll rates

The Concession Agreement determines a mechanism for setting the maximum toll rate for the specific vehicle categories. The maximum toll rate is determined taking into account, among other things, the maximum toll rate in the preceding period, the annual consumer price index, GDP growth and the currency adjustment factor (in the case of financing with foreign currency denominated debt). The maximum toll rate is determined in twelve-month periods. Currently, the toll rate for category 1 vehicles, in the amount of 12 PLN, is at a level of approx. 60% of the maximum toll rate for this vehicle category, while the toll rate for categories 2, 3, 4 and 5 in the amount of 35 PLN corresponds to approx. 70% of the maximum toll rate for vehicles of these categories.

3. Motorway handover

Under the Concession Agreement, the concession was granted for the period from 15 March 1997 to 15 March 2027 ("Concession Period"). After the expiry of the Concession Period, SAM is obliged to return the Motorway in an appropriate condition, determined in accordance with the parameters indicated in the Concession Agreement ("Agreed Acceptance Condition"). In the Issuer's opinion, achieving the Agreed Acceptance Condition may involve additional repair or renovation, which may translate into increased costs of SAM's activity, and consequently influence ROE, and in accordance with the rules of the Cash Flow Mechanism the amount of dividends that can be paid from SAM to the Issuer.

4. Performance, Termination of the Concession Agreement, Equitable Compensation

As part of the performance of the Concession Agreement, SAM is obliged in particular to implement the Project, including carrying out the construction works specified in the Concession Agreement, and to maintain the motorway operation standards specified in the Concession Agreement, as well as to make the payments to the State Treasury, including the Share.

According to the Concession Agreement, the Minister of Infrastructure may terminate it for instance if SAM fails to perform material obligations involving payment of amounts due under the Concession Agreement within the relevant deadlines, or otherwise materially infringes the Concession Agreement for reasons attributable to SAM (excluding, among other things, what is referred to as a material adverse event specified in the Concession Agreement, and force majeure). The Agreement provides for a mechanism for remedying infringements indicated by the Minister of Infrastructure.

The Concession Agreement provides for procedures to be followed in the event of force majeure as well as a mechanism for compensating SAM for events involving compensation for damages. The Concession Agreement also provides for the possibility of termination of the Concession Agreement by SAM as a result of a material infringement of the Concession Agreement by the Minister or of the occurrence of what is referred to as a material adverse event (understood, among other things, as a change in the law resulting in the cancellation or change of the toll motorway system presenting excessive difficulties in performing of the Project).

Legal basis: Article 17(1) of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.