



Issued by: ARCUS S.A.

Issued on: 12 November 2015

Subject: Bringing a legal action against Energa-Operator

Current report no 24/2015

Legal basis: Article 56(1) point 2 of the Act on Public Offering – Current and Periodic Information

Report content:

The Management Board of ARCUS S.A. (hereinafter 'the Company', 'the Issuer') acting under Par. 5.1.8 of the Regulation of the Minister of Finance of 19 February 2009 on current and periodic information to be published by issuers of securities and on conditions of recognition of information required under non-member state law regulations as equivalent (Journal of Laws No. 33 item 259 as amended) hereby informs reputable investors and shareholders of the Company, that on 12 November 2015 was informed by a professional legal representative in litigation (highly-regarded law firm) on referring on 10 November 2015 together with T-matic Systems S.A. with its registered office in Warsaw ('T-matic') to the Regional Court in Gdańsk (IX Commercial Department) the case against Energa-Operator S.A. with its registered office in Gdańsk ('Energa-Operator') to annul – on the basis of Art. 189 of the Civil Code, the execution contract of 1 February 2013 ('Execution contract') on the conclusion of which the Company informed in a current report no 4/2013 of 4 February 2013. The value of the subject-matter of dispute amounts to PLN 77 million.

The supply and installation of 310 000 PRIME-technology smart meters with within the next stage of the performance of a project concerning consumers' smart metering was the subject-matter of the Execution contract. Under mentioned Execution contract, the Issuer and T-matic undertook to deliver the devices and software as well as to activate the metering infrastructure for a specific installation area.

In line with the position presented by the Issuer and T-matic in the lawsuit, the Execution contract contains essential structural irregularities, which indicate that the Execution contract is subject to the sanction of absolute nullity, in particular due to the following two sets of circumstances:

- a. there shall be no binding obligation (in all its essential aspects and elements required under the applicable law) between the Parties due to the fact that the Issuer's and T-matic company's supply has not been sufficiently clearly defined in the Execution contract, which results in the lack of conclusion of Execution agreements as such,
- b. Execution contract infringes grossly a balance of contractual relationship, and therefore it remains contrary to the nature / essence of the obligation and is against the principles of social co-existence, and thus is subject to the sanction of nullity.

It should be noted that the Execution contract in its basic form is a supply contract, regulated by Article. 605 et seq. of the Civil Code, which also follows from the wording of Section 25.2 of the Execution contract. The regulatory scope referred to above indicates that the supply contract constitutes a mutual contract with characteristics similar to the sale contract. It is therefore, in principle, an equivalent legal relationship, in which the supply of one Party (production and delivery of a product) corresponds to the supply of the counterparty (reception of goods and payment).

In view of the above and having regard to the type of correspondence submitted by the defendant to the complainants, it should be noted that the correct, complete and adequate description of the subject-matter of the contract (ie. a description of the subject-matter of the delivery, and thus the responsibilities of the consortium of the Issuer and T-matic) should identify and determine the content of the supply of the Issuer and T-matic. Additionally this requirement refers to the so called *essentialia negotii* of supply contracts named in the Civil Code, which is essential to define their existence in the legal system. It must therefore be assumed that lack of sufficiently precise definition of subject of Issuer's and T-matic company's service results in the lack of conclusion of Execution contract as such.

In the Execution contract, a specific mechanism was provided for the purposes of verification of performance of the service by the Issuer and T-matic, and thus binding verification procedures were not determined which made it impossible for the Company to assess whether the service of the Company and T-matic corresponded to the Execution contract or not.

The subject-matter of the Execution contract was determined inadequately and ambiguously, and at the stage of performance by the Issuer and T-matic was subject to unilateral modifications by Energa-Operator.

Execution contract also has a fundamental shortcoming associated with the position of the Parties in the framework of contractual relationship, especially in the context of the recognition of supply contract to be the progenitor of Execution contract, which particularly applies to:

- a. penalties reserved exclusively to one party, ie. Energa-Operator;
- b. the possibility of accumulation of penalties imposed on the Issuer and T-matic (no possibility of charging any contractual penalty for the benefit of the Contractor);
- c. the possibility of accumulation of penalties both from the point of view of the withdrawal from the Execution contract, as well as failure to execute the contract within the specified time limit (and therefore the protection of two opposing interests of Energa-Operator, ie. protection against failure to perform and improper performance of the above mentioned Execution contract);
- d. contractual penalties for failure to comply with the quality parameter of the Issuer's and T-matic company's supply for reasons beyond the control of the Issuer and T-matic;
- e. possibility of unilateral withholding of products by Energa-Operator, without the consent of the Issuer and T-matic in case of withdrawal from the contract.

The Issuer also reminds that on 15 October 2015 along with T-matic, send a letter of official notice to Energa-Operator requesting this company to undertake negotiations as to the legal validity / effectiveness of Execution contracts for the delivery and launching of the meter infrastructure, including Execution contract. The Issuer still remains convinced of the possibility of amicable settlement of the dispute between the Parties in order to prevent an escalation of a dispute relating to a total of more than 450,000 metering of devices installed by a consortium of the Issuer and T-matic in Polish homes. The Issuer's intention, and among others, is not to cause the risk for the situation / condition of installed metering devices. The information on successive stages of the proceedings, will be disclosed by the Issuer in the relevant current reports.

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