

## CURRENT REPORT 58/2017

### Report date:

23.11.2017

### Subject:

Execution of Investment Agreement

### Information:

In reference to current report 57/2017 of 7 November 2017 concerning the commencement of negotiations with a potential investor, the Management Board of Emperia Holding S.A. ("Management Board") ("Company") announces that on 23 November 2017 the Company executed an investment agreement with MAXIMA GRUPĘ, UAB ("Investor") ("Investment Agreement").

The Investment Agreement was executed in order to establish rules of cooperation between the Company and the Investor in relation to the Investor's investment in the Company's shares. In accordance with the Investment Agreement, the Investor undertakes to announce a tender offer to subscribe for the sale of all shares of the Company pursuant to art. 74 sec. 1 of the Act of 29 July 2005 on Public Offerings and the Terms and Conditions for Introduction of Financial Instruments to an Organised System of Trading and on Public Companies (Polish Journal of Laws of 2016, item 1639, as amended) ("Act on Public Offerings") ("Tender Offer"). According to the Investment Agreement, the per-share price in the Tender Offer will be at least PLN 100.00 (in words: one hundred zlotys) ("Tender Offer Price"). The Tender Offer is to be announced on 24 November 2017.

The parties to the Investment Agreement have agreed that the Tender Offer will include the following conditions:

- (i) receipt by the Investor of an unconditional permission from the President of the Office of Competition and Consumer Protection for concentration consisting of the acquisition by the Investor of direct control over the Company or a conditional permission that includes the obligation for the Investor to sell no more than 15 locations managed by the Company's entities or entities related to the Investor in Poland, or the lapse of deadline for the issue of such permissions (together "**Permission for Concentration**").
- (ii) achievement of the minimum number of shares covered by subscriptions in the Tender Offer, i.e. 8 145 737 of the Company's shares, entitling to 66% of the Company's total voting rights;
- (iii) adoption of a resolution by the Company's general meeting on amendment of §6e sec. 1 of the Company's Articles of Association so that the share sale option included in §6e of the Company's Articles of Association by the Company's shareholders to an entity acquiring control over the Company will expire: (a) on the day in which pursuant to a tender offer to subscribe for the sale or exchange of the Company's shares, announced pursuant to art. 74 sec. 1 of the Act of 29 July 2005 on Public Offerings, for a price of at least PLN 100, the entity acquiring the Company's shares acquires in this tender offer shares constituting more than 50% of the Company's share capital and entitling to more than 50% of the Company's voting rights, if the tender offer is announced prior to 30 June 2018; or (b) on 31 January 2019;

- (iv) if the Company's Ordinary General Meeting takes place prior to the end of the subscription period within the Tender Offer - adoption by the Company's Ordinary General Meeting of a resolution on the allocation of 2017 profit that does not include a dividend payment to the Company's shareholders or the payment of unallocated profit from previous financial years ("**Resolution on Retained Earnings**");
- (v) if the Company's Management Board submits a request to the Company's Supervisory Board regarding adoption by the Supervisory Board of any resolution pursuant to § 14 sec. 2 point j) of the Company's Articles of Association - the adoption by the Company's Supervisory Board, in connection with each such request - of a resolution on the lack of consent for the sale of any shares of group companies held by the Company.

The Investor has the right to decide on the purchase of the Company's shares despite any of the aforementioned conditions in the Tender Offer not being met.

In the event that during the subscription period within the Tender Offer (after the maximum legally-permitted extension) the Investor does not obtain the Permission for Concentration, the Investor will be obligated to announce a subsequent tender offer to subscribe for the sale of the Company's shares on the terms corresponding to those in the Tender Offer ("**Subsequent Tender Offer**"), subject to the following:

- (i) if prior to the Subsequent Tender Offer being announced, the Company's Ordinary General Meeting instead of adopting the Resolution on Retained Earnings adopts a resolution on the allocation of the Company's 2017 profit that includes the payment of a dividend to the Company's shareholders or the payment of the Company's unallocated profits from prior years, the Investor will have the right to offer a lower price in the Subsequent Tender Offer than the Tender Offer Price by the amount of dividend paid or due to be paid for each of the Company's shares in accordance with such a resolution ("**Reduced Price**");
- (ii) if, pursuant to common legislation in force, the Investor will be obligated to offer a higher price in the Subsequent Tender Offer than the Tender Offer Price or, if applicable, a higher price than the Reduced Price, the Investor will not be obligated to announce the Subsequent Tender Offer.

In the Investment Agreement, the Company's Management Board undertook to not recommend the payment of a dividend for 2017 and to take every effort to ensure that in the period between the date on which the Investment Agreement is executed and the date on which the Tender Offer is settled (or the Subsequent Tender Offer, if announced), companies from the Company's group conduct business on existing terms, in principle, and refrain from any activities outside the regular course of business, subject to the conditions specified in the Investment Agreement.

In the Investment Agreement, the Investor agreed not to withdraw from the Tender Offer (or the Subsequent Tender Offer, if announced). If in the event that the Investor executes agreements committing the Company's shareholders to make subscriptions in the Tender Offer (or the Subsequent Tender Offer, if announced), if each of such shareholders holds more than 10% of the Company's total voting rights at the date of the Investment Agreement ("**Commitment Agreements**") and at least one of such shareholders sells its shares covered by such Commitment Agreements to a third person, the Investor will be authorised to withdraw from the Tender Offer (or the Subsequent Tender Offer) on terms specified in common legislation in force or to not extend the subscription deadline in the Tender Offer (or in the Subsequent Tender Offer) if the Permission for Concentration is not obtained within the

original deadline. In such a situation, the Investor will not be obligated to announce the Subsequent Tender Offer.

On 23 November 2017, the Company was informed by the Investor about the Investor having executed Commitment Agreements with the investment funds IPOPEMA 72 FIZAN ("**IPOPEMA 72**") and ALTUS 29 FIZ ("**ALTUS 29**"). According to the Company's knowledge, IPOPEMA 72 and ALTUS 29 were the only shareholders of the Company with over 10% of the Company's total voting rights as at the date of the Investment Agreement. According to information provided to the Company by the Investor, in the Commitment Agreements IPOPEMA 72 committed to subscribe (and not withdraw) within the Tender Offer (or the Subsequent Tender Offer, if announced) to sell 1 154 003 shares of the Company, and ALTUS 29 - to sell 1 409 678 shares of the Company. The Commitment Agreements enable IPOPEMA 72 and ALTUS 29 to withdraw from their commitments and sell shares in one or - if the permission for concentration is required for such a transaction - two transactions if they receive better proposals with a per-share price that is higher than the price in the Tender Offer or the Subsequent Tender Offer.

The Company has received a declaration from Artur Kawa and Jarosław Wawerski, members of the Company's Supervisory Board and the Company's founders, stating that the Investment Agreement is attractive for the Company's shareholders and therefore Artur Kawa and Jarosław Wawerski support the transaction described in the Investment Agreement.

Moreover, on 23 November 2017, the Company was notified by Artur Kawa of the execution of a non-compete and non-solicitation agreement between Artur Kawa and the Investor ("**Non-Compete and Non-Solicitation Agreement**"). Pursuant to the Non-Compete and Non-Solicitation Agreement, Artur Kawa has obligated to observe the non-compete and non-solicitation clauses if the Investor acquires at least 50% of the Company's shares in the Tender Offer or the Subsequent Tender Offer ("**Acquisition of Control over the Company**") by 30 November 2018, in accordance with the conditions specified in the aforementioned agreement. The non-compete and non-solicitation clauses will be in force until the Investor holds at least 25% of the Company's shares however no later than 24 months starting from the date of the Acquisition of Control over the Company. The Non-Compete and Non-Solicitation Agreement does not include any remuneration for Artur Kawa.

**Legal basis:**

Art. 17 sec. 1 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse.