Polish Financial Supervision Authority
Current Report No. 3/2025

Prepared on: 20/02/2025; 17:41

Subject:

Conclusion of an investment and pre-merger agreement between BEST S.A., WPEF VI Holding 5 B.V. and Krzysztof Borusowski and Marek Kucner for the combination of BEST S.A. and Kredyt Inkaso S.A.

Legal basis:

Article 17(1) MAR – inside information

Report contents:

Regarding current report of BEST S.A. ('BEST') no. 12/2024 of 24 May 2024 concerning the submission by BEST to WPEF VI Holding 5 B.V. ('Waterland') an offer to acquire shares in Kredyt Inkaso S.A. ('KISA') and current report no. 41/2024 of 10 October 2024 concerning the conclusion of a cooperation agreement between BEST and Waterland, BEST announces that today it has entered into an investment and pre-merger agreement between BEST and KISA (the 'Agreement') with Waterland, the controlling shareholder of KISA, and Krzysztof Borusowski and Marek Kucner, the controlling shareholders and members of the Management Board of BEST (Pre-merger and Investment Agreement).

Cooperation on the merger

The Agreement sets out the detailed terms and conditions of the cooperation of the parties in carrying out the merger of BEST and KISA pursuant to Article 492 § 1(1) of the Commercial Companies Code, i.e. by transferring all the assets of KISA to BEST in exchange for the shares of BEST to be granted to the shareholders of KISA other than BEST ('Merger').

In the Agreement, Krzysztof Borusowski and Marek Kucner have agreed to vote at the general meeting of BEST, and Waterland and BEST, at the general meeting of KISA, in favour of the Merger if, inter alia, the share exchange ratio for the purpose of the Merger, as agreed between the Management Boards of BEST and KISA in the merger plan of BEST and KISA (the 'Merger Plan'), is 0.67537 shares of BEST for one share of KISA and the Merger Plan provides for certain amendments to the Statute of BEST (see section 'Corporate governance' below).

Corporate governance

In the Agreement, the Parties have made arrangements for corporate governance to apply to the merged company, i.e. BEST after the merger with KISA ('Merged Company'), from the date of registration of the Merger by the registry court ('Merger Date'). Amendments to BEST's Statute to implement the agreed corporate governance, including the granting of personal powers to Waterland, will be outlined in the Merger Plan. These will remain in force for as long as Waterland holds shares in the Merged Company representing at least 10 per cent (ten per cent) of its share capital, but not beyond the date falling 5 years after the Merger Date ('5-Year Anniversary of the Merger').

During this period, irrespective of the amendments to BEST;s Statute, the following actions cannot be taken by the Merged Company if Waterland objects (including in the form of a resolution of the Merged Company's Supervisory Board): (i) the disposal outside the Merged Company's capital group of any material assets with a book value exceeding 10% (ten per cent) of the Merged Company's equity; (ii) the conclusion, amendment or termination by a member of the Merged Company's capital group of an agreement with, inter alia, the current members of BEST's Management Board for an amount exceeding PLN 2,000,000; (iii) the granting of consent for members of the Merged Company's Management Board to engage in activities that compete with the Merged Company's capital group; and

(iv) changes to the remuneration and incentive programmes of members of the Merged Company's Management Board beyond certain parameters.

Preemptive right

Following the Merger, Waterland will become a shareholder of the Merged Company. In the Agreement, Waterland undertook that in the event of an intention to dispose of shares in the Merged Company or any part thereof, Waterland would notify Krzysztof Borusowski and Mark Kucner and the Merged Company, who would have the right to acquire such shares ('Preemptive Right'). If they do not exercise the aforementioned right, Waterland will be able to dispose, without repeating the aforementioned procedure, of the shares in the Merged Company to third parties during the following 12 months, on terms no less favourable to Waterland than those proposed to Krzysztof Borusowski and Marek Kucner and the Merged Company. The Agreement provides for certain exceptions to the Preemptive Right, in particular in the case of the Secondary Public Offering, the Right to Participate the Secondary Public Offering of the Merged Company (as defined below) and the disposal of shares of the Merged Company through an accelerated book-building process.

Secondary Public Offering

Pursuant to the Agreement, at the earliest after the publication of the Merged Company's periodic report for H1 2027 (or after the deadline for such publication) ('Earliest Exit Date'), Waterland may request to exit its investment in shares of the Merged Company by way of a secondary public offering pursuant to a prospectus or other offering document, if required by law ('Secondary Public Offering').

As part of the Secondary Public Offer, Waterland will offer its shares in the Merged Company. The Merged Company and Krzysztof Borusowski and Marek Kucner will be obliged, at Waterland's request, to participate in the Secondary Public Offering and to offer as part of it, subject to certain exceptions, a number of shares such that, in aggregate, the offering comprises 25% of the shares of the Merged Company ('Additional Offering Shares'). The Additional Offering Shares may be a combination of new issue shares issued by the Merged Company and existing shares sold by Krzysztof Borusowski and Mark Kucner.

The Merged Company will cover the costs of the Secondary Public Offering up to a total net amount of PLN 2 million.

Right to Participate the Secondary Public Offering of the Merged Company

In the event that the Merged Company intends to issue new shares, the Merged Company will notify Waterland, which will have the right to join such offer by offering, on a pro rata basis, its shares in the Merged Company ('Right to Participate the Secondary Public Offering of the Merged Company').

Exit Fee

In the event that Waterland sells, prior to the Earliest Exit Date, all shares in the Merged Company other than a block of 307,692 shares in the Merged Company ('Waterland Sellable Shares'), Waterland will pay the Merged Company an exit fee of PLN 10,000,000 ('Exit Fee').

Pursuit of claims

In order to amicably settle any existing discrepancies between the parties to the Agreement, effective as of the Merger Date, BEST and Krzysztof Borusowski and Marek Kucner, on the one hand, and Waterland, on the other hand, have waived the currently asserted civil claims against each other (and against certain related parties) related to KISA and have agreed not to assert any new claims related to the activities of KISA prior to the signing date of the Agreement. Waterland also made similar commitments relating to BEST's activities prior to the signing date of the Agreement. The Agreement also provides for actions by the respective parties to conclude pending litigation and certain other proceedings related to KISA.

Coverage of specific liabilities

In the Agreement, Waterland has agreed to pay a specified portion of the expenses that may be incurred by the Merged Company and its subsidiaries as a result of the payment of any liabilities disclosed after the signing date of the Agreement and resulting from KISA's activities prior to the Merger Date. Waterland's liability is limited to PLN 20,000,000 and is valid for a period of two years from the Merger Date. This liability will, subject to certain exceptions, cease if Waterland first disposes of all of the Waterland Sellable Shares and pays the Exit Fee to the merged company.

Settlement with the Merged Company for payment of the above liabilities may be in shares in the Merged Company or in cash, in which case it will be done with payment due on Waterland's exit from the Merged Company.

Term and right of withdrawal from the Agreement

The Agreement has been entered into for a fixed period until the 5-Year Anniversary of the Merger Date, with the proviso that in certain cases certain provisions of the Agreement may continue in effect beyond that date (in particular those relating to the Secondary Public Offering). The Agreement will also expire prior to the 5-Year Anniversary of the Merger Date upon the disposal by Waterland of all of the Waterland Sellable Shares.

The Parties may withdraw from the Agreement in the event that the general meetings of KISA and BEST fail to adopt resolutions relating to the Merger by 30 April 2025 and the Merger is not registered by the registry court by 30 June 2025.

Furthermore, BEST may withdraw from the Agreement in the event that new members of KISA's Management Board are appointed or any of the current members of KISA's Management Board are dismissed during the period up to the Merger Date, and in the event that the respective W&I (warranties & indemnity insurance) policy relating to the representations and warranties made by the current members of KISA's Management Board is not obtained within a certain period of time in a separate warranties agreement entered into today.

Liquidated damages

Among other things, the Agreement provides for liquidated damages for: (i) violation by Waterland of certain provisions concerning the Preemptive Right and violation by the Merged Company of certain provisions of the Agreement concerning the Additional Shares (in the aggregate, not to exceed PLN 15,000,000 for each of the foregoing parties), (ii) individual violations of the provisions of the Agreement concerning the assertion of claims (in the aggregate, not to exceed PLN 10,000,000 for each of the foregoing parties), (iii) violation by the Merged Company or its representatives of certain provisions of the Agreement relating to the Secondary Public Offering (in aggregate not more than PLN 4,000,000) and (iv) violation by the Merged Company of its obligations relating to the publication of an exemption document necessary to effect the Merger and the filing of an application with the registry court for the registration of the Merger (in aggregate not more than PLN 4,000,000). The liquidated damages do not preclude claims for damages in excess of their amount.

Merger

The conclusion of the Agreement does not imply that the Merger will take place. The completion of the Merger is contingent on a number of further legal and factual steps, in particular the parties not withdrawing from the Agreement, the adoption of the required resolutions by the general meetings of BEST and KISA and the registration of the Merger by the registry court.

BEST S.A. (full name of the issuer)	
BEST (abbreviated name of the issuer)	Other finance (fin) (sector as per GPW (Warsaw Stock Exchange) classification)
81-537 (postal code)	Gdynia (city/town)
Łużycka (street)	8A (number)
(0-58) 76 99 299 (phone)	(0-58) 76 99 226 (fax)
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585-00-11-412 Tax ID (NIP)	190400344 Statistical No. (REGON)

SIGNATURES OF THE PERSONS REPRESENTING THE COMPANY:

Date	Given name and surname	Position/Function	Signature
20/02/2025	Krzysztof Borusowski	President of the Management Board	
20/02/2025	Marek Kucner	Vice-President of the Management Board	