

## CURRENT REPORT

### **KOFOLA S.A.**

January 15th 2009

Current Report No. 5/2009

**Subject: Report of the Management Board of KOFOLA S.A. providing rationale for the merger of KOFOLA S.A. with Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o. and PAOLA S.A.**

Legal basis: Art. 56.1.2 of the Public Offering Act – current and periodic information

Acting pursuant to Par. 19.2.2 in conjunction with Par. 5.1.13 of the Minister of Finance's Regulation on current and periodic information to be published by issuers of securities, dated October 19th 2005 (Dz.U. of 2005, No. 209, item 1744), the Management Board of KOFOLA S.A. hereby releases a report of the Management Board of KOFOLA S.A. providing rationale for the merger of KOFOLA S.A. with Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o. and PAOLA S.A. The report has been prepared in accordance with Art. 501 of the Commercial Companies Code.

The plan of merger of KOFOLA S.A. with Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o. and PAOLA S.A. was published in Current Report No. 49/2008 of November 28th 2008. The auditor's opinion on the plan of merger was published in Current Report No. 1/2009 of January 6th 2009.

#### **REPORT OF THE MANAGEMENT BOARD OF KOFOLA S.A.**

#### **PROVIDING RATIONALE FOR THE MERGER AND ITS LEGAL BASIS AND ECONOMIC GROUNDS, PREPARED ACCORDING TO ART. 501 OF THE COMMERCIAL COMPANIES CODE**

Acting pursuant to Art. 501 of the Commercial Companies Code, the Management Board of KOFOLA S.A. has drawn up and approved the report providing rationale for the merger of KOFOLA S.A. with Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o. and PAOLA S.A.

#### **1. General Assumptions**

The merger of KOFOLA S.A. with Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o. and PAOLA S.A. marks another stage in the restructuring process of the KOFOLA Group aimed at streamlining the organisational and administrative structure of the KOFOLA Group, as well as at optimisation of the operating costs of the KOFOLA Group, including through reduction of the general and administrative expenses related to the operations in Poland.

There is sound economic rationale for the merger of KOFOLA S.A., Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o. and PAOLA S.A.

## 2. Legal Basis of the Merger

The merger of KOFOLA S.A., Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o. and PAOLA S.A. will be effected under Art. 492.1.1 of the Commercial Companies Code, i.e. by way of transferring all assets of Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o. and PAOLA S.A. to KOFOLA S.A. in exchange for new issue shares in KOFOLA S.A., to be delivered to shareholders of Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o. other than KOFOLA S.A. Following the merger, Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o. and PAOLA S.A. will cease to exist.

KOFOLA S.A. will take steps aimed at introducing the new issue shares, to be delivered to the shareholders of Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o. other than KOFOLA S.A., to trading on the regulated market in accordance with the Act on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organised Trading, and Public Companies of July 29th 2005 (Dz.U. of 2005, No. 184, item 1539, as amended).

As a result of the merger of KOFOLA S.A. with Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o. and PAOLA S.A., the share capital of KOFOLA S.A. will be increased from PLN 26,171,918 (twenty-six million, one hundred and seventy-one thousand, nine hundred and eighteen złoty) to PLN 26,172,602 (twenty-six million, one hundred and seventy-two thousand, six hundred and two złoty), i.e. by PLN 684 (six hundred and eighty-four złoty), through the issue of 684 (six hundred and eighty-four) Series G ordinary bearer shares with a par value of PLN 1 (one złoty) per share.

## 3. Economic Rationale for the Merger

The merger of KOFOLA S.A. with Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o. and PAOLA S.A. marks another stage in the restructuring process of the KOFOLA Group aimed at streamlining the organisational, administrative and legal structure of the KOFOLA Group, as well as at reducing general and administrative expenses.

Currently, both Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o. and PAOLA S.A. have ceased their production activities (as part of the first stage of the restructuring process, the entire business of both companies was transferred to Hoop Polska Sp. z o.o., a company where all production activities of the KOFOLA Group in Poland are concentrated). In view of the foregoing, there is no economic rationale for the two companies to continue to exist as separate entities.

The merger will contribute to reducing general and administrative expenses by:

- decreasing administrative expenses per unit through a more efficient use of resources,
- streamlining the organisation structure,
- reducing the costs of functioning of the Group,
- reducing costs related to the consolidation of financial statements.

## 4. Rationale Behind the Adopted Valuation Method and Exchange Ratio

### 4.1 Introduction

Pursuant to Art. 516.6 of the Commercial Companies Code, when the acquirer acquires its subsidiary in which it is the sole owner, Art. 499.1.2–4 of the Commercial Companies Code does not apply. Accordingly, there is no obligation to specify the following:

- a) the ratio of exchange of shares in PAOLA S.A. for shares in KOFOLA S.A. or the related additional payments, if any,
- b) the rules of allotment of KOFOLA S.A. shares to the shareholder in PAOLA S.A.,
- c) the date as of which the shares referred to in item b) above confer the right to participate in the distribution of KOFOLA S.A.'s profit.

#### 4.2 Method Used to Value the Merging Companies' Assets

The ratio of exchange of shares in Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o. for shares in KOFOLA S.A. has been determined based on:

- 4.2.1 with respect to KOFOLA S.A.: the value determined using the book-value method (net asset value) as at October 1st 2008,
- 4.2.2 with respect to Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o.: the value determined using the book-value method (net asset value) as at October 1st 2008 – with respect to Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o.

The use of the book-value method with respect to both KOFOLA S.A. and Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA is justified by both the nature of the transaction (merger with a wholly-owned and nearly wholly-owned subsidiary), and by the fact that since the contribution of Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA's business to Hoop Polska Sp. z o.o. (in November/December 2007) Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA has not been conducting any production activity and has not held any assets other than the shares in Hoop Polska Sp. z o.o. acquired in exchange for the contribution of its business.

Another reason for using the method is the fact that the book-value method is among the most common methods of valuation of enterprises and the most common assets-based methods.

In the opinion of the Management Board of KOFOLA S.A., for the purposes of the merger, it would not be correct to value KOFOLA S.A. exclusively based on the market price of KOFOLA S.A. shares at the WSE, as Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o. is not listed on the WSE and, consequently, different criteria would have been used to value the two companies. The use of the same valuation method best serves the interests of both merging companies.

Moreover, as at the valuation date, a tender offer was announced for KOFOLA S.A. shares and therefore the valuation of KOFOLA S.A. based on its share price at the WSE would have been unfavourable to the shareholders of Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o.

No significant difficulties were encountered in valuating the merging companies or in determining the exchange ratio.

#### 4.3 Key Rules of Determining the Share Exchange Ratio

In order to determine the ratio for exchange of shares in Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o. for shares in KOFOLA S.A., first the value of one share in KOFOLA S.A. and the value of one share in Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o. were computed. Next, based on the performed valuations of the merging companies, the Management Boards of KOFOLA S.A. and Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o. determined what number of KOFOLA S.A. shares issued in connection with the planned merger will be

allotted to the shareholders of Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o.

Given the nature of the merger process, the results of mathematical operations were rounded using generally accepted rounding methods.

#### 4.4 Additional Payments

In connection with the adopted share exchange ratio and merger structure, Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o.'s shareholders will not receive any additional cash payments (referred to in Art. 492.2 of the Commercial Companies Code).

In connection with the adopted share exchange ratio and merger structure, no additional cash payments (referred to in Art. 492.3 of the Commercial Companies Code) are expected to be made by the shareholders of Przedsiębiorstwo Produkcji Wód Mineralnych WODA GRODZISKA Sp. z o.o.

The Management Board's report was approved by virtue of Resolution No. 2 of the Management Board of KOFOLA S.A., dated January 14th 2009.