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DEAL NEWS

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New Silk Road: GSK Stockmann successfully represents Duisburger Hafen AG in review procedure concerning the new Duisburg Gateway Terminal

GSK Stockmann has successfully represented Duisburger Hafen AG in a review procedure concerning the construction and operation of the planned Duisburg Gateway Terminal. The decision of the Public Procurement Board Rhineland is now final after an appeal with the Düsseldorf Higher Regional Court has been withdrawn.

Duisburg Port is the world's largest inland port and one of the end destinations of the New Silk Road in Europe. Already today, around 40 trains from China arrive at the port location every week, where the containers they ship are handled.

Given the fact that Germany will phase-out coal and that the importance of container transport to and from China by rail is growing, Duisburger Hafen AG has established a joint venture, Duisburg Gateway Terminal GmbH, with Hupac SA, H.T.S. Indermodal BV and COSCO SHIPPING Logistic (Europe) GmbH. Over the next few years, Duisburg Gateway Terminal GmbH will build the largest container terminal in the European hinterland with a capacity of 850,000 TEU replacing the so-called coal island. Once completed, the new terminal is expected to handle up to 100 container trains per week from China.

The facility comprises an area of 240,000 m², of which 20,000 m² will be covered with warehouses. Furthermore, there are six gantry cranes, twelve rail freight platforms of 730 m each, five loading areas and three berths for barges being planned, as well as an area of 60,000 m² for container storage. The investment volume amounts to approximately EUR 100 million.

Rhenus SE & Co. KG had initiated a review procedure against Duisburger Hafen AG because of the establishment of the joint venture and the transfer of the coal island to Duisburg Gateway Terminal GmbH. Rhenus SE & Co. KG argued that the conclusion of



the contract for the port areas and the interest in Duisburg Gateway Terminal GmbH should have been advertised in a formal call for bids. The Public Procurement Board Rhineland, however, rejected the requested review on 29 April 2020, arguing that neither the specific leasehold contract (Erbbaurechtsvertrag) nor the establishment of the company created any obligations for Duisburg Gateway GmbH that Duisburger Hafen AG should have advertised the contracts in an invitation to tender as a public contract or concession under procurement law.

Following the withdrawal of the applicant's immediate appeal to the Düsseldorf Higher Regional Court, the decision of the Rhineland Public Procurement Board is now final. The decision is of particular importance because it is the first time that a review body has decided on the matter, which has been discussed for years in which cases the transfer of a harbour site by public undertakings responsible for port infrastructure is subject to procurement law and in which not.

Duisburger Hafen AG was advised and represented in these proceedings by a GSK Stockmann team led by the procurement and state aid lawyer Arne Gniechwitz. Supporting the public sector and its companies on major infrastructure projects is one of GSK Stockmann's key areas of expertise. The law firm regularly advises public undertakings which are competent for port infrastructure on the coast and along inland waterways.

Consultants to Duisburger Hafen AG:

GSK Stockmann: Arne Gniechwitz (lead, procurement and state aid law), Christoph Strelczyk (real estate law), Wolfgang Jegodka (competition law); associates: Sören Wolkenhauer (procurement law), Manuel G. Feller (procurement and state aid law), Vanessa Lampe (real estate law)

Duisburger Hafen AG (inhouse): Markus Bangen (member of the executive board), Andreas Keller (legal department)



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