

The second plea alleges obvious error by the Commission in assessing the quality of the tenders, giving the tender by Carlson Wagonlit Travel the highest mark for the quality of the services offered, whereas that tender was unable to allow sufficient quality for the services concerned to be guaranteed.

⁽¹⁾ Contract No ADMIN/D1/PR/2003/131 (OJ S 143).

⁽²⁾ Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1).

Action brought on 26 April 2004 by GRAFTECH INTERNATIONAL LTD. against the Commission of the European Communities

(Case T-152/04)

(2004/C 179/22)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 26 April 2004 by GRAFTECH INTERNATIONAL LTD., Wilmington, Delaware, USA, represented by K.P.E. Lasok QC and Brian Hartnett Barristers with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul the contested decision;
- alternatively, amend the contested decision, in exercise of the Court's unlimited jurisdiction, so as to cause interest at 8.04 % to run only as from 30 September 2003, or as to reduce the rate of interest;
- order the Commission to pay the applicant's costs.

Pleas in law and main arguments:

The subject matter of this action is a decision of the Commission, contained in a letter of 17 February 2004, by which the Commission required the applicant to pay interest on a fine imposed by a Commission Decision of 18 July 2001 ⁽¹⁾ at the rate of 8.04 % instead of 6.04 %.

In support of its application, the applicant claims that the Commission has acted unlawfully in seeking to impose the higher of the two possible interest rates. According to the applicant, the delay in the payment of the fine or the provision of a satisfactory financial guarantee for the fine was due to the recognition by the Commission that the applicant could not pay the fine and the efforts by both parties to reach an agreement on what would constitute a satisfactory financial guar-

antee. The applicant claims that it should not be treated as a party in default in the light of its decision to appeal against the decision imposing the fine and the nature and content of the negotiations undertaken in good faith.

The applicant furthermore claims that the Commission acted contrary to Article 86(5) of Regulation 2342/2002 ⁽²⁾.

The applicant also claims that the conduct of the Commission allowed the applicant to legitimately expect that an interest rate of 6.04 % would be imposed.

The applicant invokes a violation of the principle of good administration because the Commission failed to agree on an appropriate form of a financial guarantee. Also, the applicant claims that the Commission failed to give clear notice that the higher interest rate would be levied during the period of negotiation.

Finally, the applicant claims that the contested decision is disproportionate. According to the applicant, the justification for the default rate of interest is to deter dilatory behaviour and not to penalise bona fide negotiations that the Commission has willingly embarked upon and continued at its own pace.

⁽¹⁾ 2002/271/EC: Commission Decision of 18 July 2001 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement - Case COMP/E-1/36.490 - Graphite electrodes (OJ 2002 L 100, p. 1).

⁽²⁾ Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 357, p. 1).

Action brought on 23 April 2004 by ALENIA MARCONI SYSTEMS SpA against Commission of the European Communities

(Case T-155/04)

(2004/C 179/23)

(Language of the case: Italian)

An action was brought before the Court of First Instance of the European Communities on 23 April 2004 against Commission of the European Communities by ALENIA MARCONI SYSTEMS SpA, represented by Francesco Sciaudone, Lawyer.

The applicant claims that the Court of First Instance should:

- Order the Commission to produce to the Court of First Instance all the records available to it concerning the complaint lodged by the applicant;
- Annul and/or amend the contested decision;