

- Erroneous application of the Leniency Notice of 2002 ^(?), as the reduction of the fine by 30 % was too low.

In connection with the allegation of trilateral cooperation in the sector of zip fasteners, it is submitted as follows:

- Unlawful taking into account of the conduct of a joint venture of the first and second applicants and erroneous calculation of the fine imposed on the third applicant;
- Infringement of Section C or D of the Leniency Notice of 1996 ^(?).

With regard to the allegation of bilateral cooperation with an undertaking of the Coats group, it is submitted as follows:

- Infringement of Article 23(2) of Regulation No 1/2003, since that cooperation and one of the infringements penalised by Commission Decision C(2004) 4221 final of 26 October 2004 (Case COMP/F-1/38.338 — PO/Needles) were split up into two separate infringements, although they should be treated as a single infringement;
- Infringement of the *ne bis in idem* principle by imposing a second fine in respect of the same act;
- Infringement of Article 253 EC by failing to provide sufficient reasons for the splitting up of a single infringement;
- Infringement of the principle of cooperation and of equal treatment.

With regard to the determination of the fine, the following is submitted:

- Infringement of the Guidelines on the method of setting fines ⁽⁴⁾ and of the principle of proportionality and of the principle of equal treatment;
- Infringement of Article 253 EC by failing to provide sufficient reasons for the setting of the starting amount and for the definition of the objectively relevant markets;
- In the alternative, infringement of the principle of proportionality by the excessive overall burden imposed on the applicants and failure to provide adequate reasons.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

⁽²⁾ Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

⁽³⁾ Commission Notice on the non-imposition or reduction of fines in cartel cases (OJ 1996 C 207, p. 4).

⁽⁴⁾ Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty (OJ 1998 C 9, p. 3).

Action brought on 14 December 2007 — Centre d'Etude et de Valorisation des Algues v Commission of the European Communities

(Case T-455/07)

(2008/C 51/86)

Language of the case: French

Parties

Applicant: Centre d'Etude et de Valorisation des Algues (CEVA) (Pleubian, France) (represented by: J.-M. Peyrical, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- Principally, declare that the procedure is irregular and that there has been an infringement of the right to be heard and, therefore, annul the Commission's debit note No 3240909271, dated 4 October 2007, and order the Commission to reimburse that note to CEVA;
- In the alternative, declare that the errors noted in the RAIA audit report are not so serious that Article 3.5 of Annex II to the contract may be applied to them, annul the Commission's debit note No 3240909271, dated 4 October 2007, to the extent that it seeks full reimbursement of the amounts paid to CEVA under the BIOPAL contract and order the Commission to reimburse that note to CEVA;
- In the very much further alternative, appoint an expert of the Court's choice whose mission will be: to take CEVA's method of calculation; apply that method to the BIOPAL contract and to the reality of the costs in the expenditure accounts; express as a percentage the difference between the amount of the errors in the recording of working time as submitted to the Commission and the amount of that working time as recorded under the method of calculation now applicable to CEVA; carry out an assessment of the direct working time necessary to carry out CEVA's missions in the framework of the BIOPAL contract; state whether that real working time, needed to carry out those missions, could be less than the 5 796,67 direct hours calculated by CEVA.

Pleas in law and main arguments

In the present action, the applicant is seeking the annulment of the debit note whereby the Commission demanded reimbursement of all the payments on account made to the applicant in the framework of BIOPAL contract No QLK5-CT-2002-02431, concerning the key action 'Sustainable Agriculture, Fisheries and Forestry, and Integrated Development of Rural Areas including Mountain Areas', which is part of the 'Quality of Life and management of living resources' ⁽¹⁾

In support of its application, the applicant puts forward a plea in law alleging an infringement of the rights of the defence inasmuch as the Commission, contrary to the principle of the right to be heard, based the demand for reimbursement on time sheets and conclusions drawn by OLAF of which the applicant had no knowledge.

In the alternative, the applicant contests the Commission's application of Article 26 of Annex II to the contract and its finding that the facts of the case were sufficiently serious to invoke the concept of serious financial irregularity justifying a full reimbursement of the payments on account.

(¹) Fifth European Community Framework Programme covering Research, Technological Development and Demonstration activities 1998-2002.

Action brought on 10 December 2007 — Evropaïki Dynamiki v EFSA

(Case T-457/07)

(2008/C 51/87)

Language of the case: English

Parties

Applicant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis, lawyer)

Defendant: European Food Safety Authority (EFSA)

Form of order sought

- Annul the decision of EFSA to evaluate the applicant's bid as not successful and award the contract to the successful contractor;
- order EFSA to pay the applicant's legal and other costs and expenses incurred in connection with this application.

Pleas in law and main arguments

The applicant submitted a bid in response to the defendant's call for an open tender for the provision of IT consultancy assistance (OJ 2007/S 97-118626). The applicant contests the defendant's decision of 1 October 2007 to reject the applicant's bid and to award the contract to another tenderer.

In support of its application, the applicant submits that EFSA failed to state reasons in accordance with Article 253 EC and, in

particular, inform the applicant of the relative merits of the successful tenderer. According to the applicant, EFSA mixed selection criteria with award criteria when evaluating the bids and used evaluation criteria that were not expressly included in the call for tender. Furthermore, the applicant alleges that EFSA committed manifest errors of assessment.

Action brought on 17 December 2007 — Dominio de la Vega v OHIM — Ambrosio Velasco (DOMINIO DE LA VEGA)

(Case T-458/07)

(2008/C 51/88)

Language in which the application was lodged: Spanish

Parties

Applicant: Dominio de la Vega, S.L. (Requena, Spain) (represented by: E. Caballero Oliver, lawyer and A. Sanz-Bernell y Martín, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal of OHIM: Ambrosio Velasco, S.A. (Dicastillo, Navarra, Spain)

Form of order sought

- Annul the decision of the Board of Appeal of OHIM of 3 October 2007 (Case R 1431/2006-2) and consequently dismiss the opposition filed by Ambrosio Velasco, S.A.;
- Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Dominio de la Vega, S.L.

Community trade mark concerned: Figurative mark 'DOMINIO DE LA VEGA' for goods in Classes 33, 42 and 43 (Application No 2.789.576).

Proprietor of the mark or sign cited in the opposition proceedings: Ambrosio Velasco, S.A.

Mark or sign cited in opposition: Figurative Community trade mark 'PALACIO DE LA VEGA' for goods in Class 33.

Decision of the Opposition Division: Opposition upheld for all those goods, in Class 33, against which it was directed, and rejection of the application for those goods.