Action brought on 30 May 2008 — Antwerpse Bouwwerken v Commission

(Case T-195/08)

(2008/C 183/52)

Language of the case: Dutch

Parties

Applicant: Antwerpse Bouwwerken NV (Antwerp, Belgium) (represented by: J. Verbist and D. de Keuster, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul (i) the decision of 29 April 2008, notified by the Commission by letter of 29 April 2008, received by the applicant on 5 May 2008, by which the Commission informed the applicant that the latter's tender had been unsuccessful, as further explained in a letter from the European Commission of 6 May 2008 and received by the applicant on 8 May 2008, in which the Commission sets out its reasons for its rejection decision, and (ii) the decision of 23 April 2008 on the award of the contract, notified by the Commission by letter of 15 May 2008, received by the applicant on 16 May 2008;

— declare the Commission to be non-contractually liable for the damage suffered by the applicant, to be quantified at a later date;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant submitted a tender in response to the Commission's call for tenders for the construction of a reference materials production hall ([1]). Ultimately, the applicant's tender was not selected by the Commission.

The applicant relies in its application on an infringement of Article 91 of Regulation 1605/2002 ([2]) and of Articles 122, 138 and 148 of Regulation 2342/2002 ([3]) in conjunction with Articles 2 and 28 of Directive 2004/18/EC ([4]).

According to the applicant, it is apparent from the official records of selection of tenders that the successful tender did not comply with an essential tendering specification and that, consequently, it should have been rejected for failure to comply with the conditions of the contract. The intervention by the tenderer of the successful bid was not merely a case of the tender being clarified but of it being supplemented, which was not permissible at that stage of the procedure.

In addition, the decision on the award of the contract does not satisfy the principle of transparency, as essential elements of the assessment records, as provided to the applicant, have been rendered illegible.

([1]) B-Geel: Construction of a reference materials production hall (2006/S 102-108785).
([2]) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).
([3]) 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).
([4]) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).

Action brought on 3 June 2008 — Ziegler v Commission

(Case T-199/08)

(2008/C 183/53)

Language of the case: French

Parties

Applicant: Ziegler SA (represented by: J.-L. Lodomez, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the European Commission Decision of 11 March 2008 on a proceeding under Article 81 of the EC Treaty and Article 53 of the EEE Agreement (Case COMP/38.453 — International Removal Services), which imposes a fine of EUR 9 200 000,00 on the applicant;

— in the alternative, cancel the fine;

— in the further alternative, substantially reduce the amount of the fine;

— in any event, order the European Commission to pay all the costs.

Pleas in law and main arguments

By the present action, the applicant seeks the annulment of Commission Decision C(2008) 926 final of 11 March 2008 in Case COMP/38.453 — International Removal Services, by which the Commission found that certain undertakings, including the applicant, infringed Article 81 of the EC Treaty and Article 53 of the European Economic Area Agreement by fixing prices in Belgium for international removal services, by sharing part of that market and by rigging the procedure under invitations to tender.

In support of its allegations, the applicant claims that the Commission made manifest errors of assessment and of law in the definition of the market in question and in the evaluation of its size and of the market shares of each of the companies in question.

The applicant relies, in addition, on pleas in law alleging breach of the duty to state the reasons for the decision, of the rights of the defence, of the right of access to the file, of the right to fair procedure and of the general principle of sound administration.

So far as concerns the fine imposed and its amount, the applicant claims that:

— the Commission did not show that the practices in questions had appreciably affected trade between the Member States;

— the amount of the find is disproportionate in relation to the effective extent of the practices and their actual effect on the market; and

— the practice of bogus quotes was known and accepted by the Commission for a long time; the lack of any reaction by the Commission led the applicant to believe that the practice was lawful.

Finally, the applicant maintains that the Commission did not take into account, as mitigating circumstances, that the concerted practice ceased long ago so far as the applicant was concerned and that bogus quotes were a response to market demand and not a cartel or concerted practice. The applicant also relies on breach of the principle of equal treatment.

Action brought on 22 May 2008 — Interflon v OHIM — Illinois Tool Works (FOODLUBE)

(Case T-200/08)

(2008/C 183/54)

Language in which the application was lodged: English

Parties

Applicant: Interflon BV (Roosendaal, Netherlands) (represented by: S. M. Wertwijn, lawyer)

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

Other party to the proceedings before the Board of Appeal: Illinois Tool Works Inc. (Glenview, United States)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 March 2008 in case R 638/2007-2; and

— grant applicant's request for the cancellation of the Community trade mark concerned.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'FOODLUBE' for goods in classes 1 and 4 — registration No 1 647 734

Decision of the Cancellation Division: Refusal of the request for the declaration of invalidity

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation No 40/94 as the trade mark concerned is devoid of any distinctive character; infringement of Article 7(1)(c) of Council Regulation 40/94 as the trade mark concerned is not capable of distinguishing the indicated goods in terms of their origin.

Action brought on 5 June 2008 — CLL Centre de langues v Commission

(Case T-202/08)

(2008/C 183/55)

Language of the case: French

Parties

Applicant: Centre de langues à Louvain-la-Neuve et -en-Woluwe (CLL Centre de langues) (Louvain-la-Neuve, Belgium) (represented by: F. Tulkens and V. Ost, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the rejection decision;

— Order the Commission to bear its own costs and to pay those incurred by CLL.