Action brought on 18 September 2010 — Nexans France v Joint Undertaking Fusion for Energy

(Case T-415/10)

(2010/C 301/93)

Language of the case: French

Parties

Applicant: Nexans France SAS (Clichy, France) (represented by: J.-P. Tran Thiet and J.-F. Le Corre, lawyers)

Defendant: European Joint Undertaking for ITER and the Development of Fusion Energy

Form of order sought

— rule that the procurement contract was awarded following a procedure during which the principles of legal certainty, legitimate expectations, transparency, equal treatment and proper administration were infringed;

— rule that the defendant erred in law by leaving the applicant in doubt as to the defendant's decision to reject the applicant's tender without evaluating it, and by informing the applicant of that decision only by its letter of 16 July 2010;

— rule that the defendant erred in law by rejecting the applicant's tender on the basis of Article 120(4) of the rules for implementing its Financial Regulation;

— declare the decision of 16 July null and void;

— declare the decision of 8 July null and void;

— declare all the acts adopted by the defendant subsequent to the decisions of 8 and 16 July null and void;

— award the applicant appropriate compensation of EUR 175 453, plus interest from the date of delivery of judgment until full payment (subject to determination of the precise value of the procurement contract and final calculation of lawyers' fees, which cannot be given until the conclusion of these proceedings);

— in the alternative, if it appears at the time judgment is delivered that it is unlikely that a new call for tenders will be issued for the procurement contract, award the applicant appropriate compensation of EUR 50 175 453, plus interest from the date of delivery of judgment until full payment (subject to determination of the precise value of the procurement contract and final calculation of lawyers' fees, which cannot be given until the conclusion of these proceedings);

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant seeks annulment of the decisions of the European Joint Undertaking for ITER and the Development of Fusion Energy rejecting the tender submitted by the applicant in tendering procedure F4E-2009-OPE-18 (MS-MG) for the conclusion of contracts for the supply of electrical equipment (OJ 2009/S 149-218279) and awarding the procurement contract to another tenderer. The applicant also seeks compensation for the loss allegedly caused by the contested decisions.

In support of its action, the applicant puts forward a number of pleas, alleging:

— infringement of the principles of legal certainty and transparency, since the defendant did not inform the applicant that its tender would be rejected without being evaluated if it refused to sign the draft contract annexed to the procurement contract, thus preventing the applicant from ascertaining the extent of its obligations as a tenderer;

— infringement of the principle of legitimate expectations, since the defendant gave assurances to the applicant that it would not automatically reject its tender;

— infringement of the principles of equal treatment and equal opportunity for tenderers for a public procurement contract in that:

  — the tendering procedure was arranged in such a way as to favour the tender submitted by ICAS Consortium (the successful tenderer), since the time-limits imposed in respect of the procurement contract were clearly inadequate and disproportionate as they could not be met in practice by tenderers not having a special production line, possessed only by ICAS Consortium;

  — there was a conflict of interests which favoured the tender submitted by ICAS Consortium, since a person working for a member of ICAS Consortium took part in the tender selection procedure and another person working for a member of ICAS Consortium took part in the preparation of the call for tenders;

  — ICAS Consortium possessed information which placed it in an advantageous position, since a person employed by a member of ICAS Consortium visited, as an expert for ITER, the applicant's factories in Korea and cable factories in China and Japan;

— infringement of the principle of proper administration and Articles 84 and 94 of the Financial Regulation, since the evaluation procedure was proceeded with, even though only one tender remained and the defendant took no action when the applicant informed it of a conflict of interests that favoured ICAS Consortium;

— an error of law committed by the defendant in rejecting the applicant's tender on the basis of Article 120(4) of the Implementing Rules of the Financial Regulation, since that article does not allow a tender to be rejected automatically without being evaluated, unless it fails to meet an essential requirement or a specific requirement in the specification;

— the alleged infringements of the legal rules caused direct and certain loss to the applicant, for which it is justified in seeking compensation.

Action brought on 13 September 2010 — Cortés del Valle López v OHIM (HIJOPUTA)

(Case T-417/10)

(2010/C 301/94)

Language of the case: Spanish

Parties

Applicant: Federico Cortés del Valle López (Maliaño, Spain) (represented by J. Calderón Chavero, lawyer)

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

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) (OHIM) of 18 June 2010 in case R 175/2010-2;

— consequently, annul the OHIM examiner's decision of 24 November 2009;

— uphold the applicant's claims;

— order the defendant to pay the costs of the present proceedings should they be contested and reject its contentions.

Pleas in law and main arguments

Community trade mark concerned: Figurative mark containing the word element '¡Que buenu ye! HIJOPUTA' for goods and services in Classes 33, 35 and 39.

Decision of the Examiner: Application for a Community trade mark refused.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: No infringement of Article 7(1)(f) of Regulation No 207/2009, [1] as the mark applied for is not contrary to accepted principles of morality.

[1] Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 15 September 2010 — voestalpine and voestalpine Austria Draht v Commission

(Case T-418/10)

(2010/C 301/95)

Language of the case: German

Parties

Applicants: voestalpine AG (Linz, Austria), voestalpine Austria Draht GmbH (Bruck an der Mur, Austria) (represented by: A. Ablasser-Neuhuber and G. Fussenegger, lawyers)

Defendant: European Commission

Form of order sought

— Annul Commission Decision C(2010) 4387 final of 30 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement in Case COMP/38.344 — Prestressing steel, in so far as it relates to the applicants;

— in the alternative, reduce the fine imposed on the applicants under Article 2 of the Decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicants contest Commission Decision C(2010) 4387 final of 30 June 2010 in Case COMP/38.344 — Prestressing steel. The contested decision imposed fines on the applicants and other undertakings for infringement of Article 101 TFEU and Article 53 of the EEA Agreement. According to the Commission, the applicants participated in a continuing agreement and/or concerted action in the prestressing steel sector in the internal market and the EEA.

In support of their action, the applicants have submitted three pleas in law.