

First Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 7 May 2008, annulling the decision of the Cancellation Division which had rejected an application for a declaration of invalidity of that mark, brought by the proprietor of the unregistered national figurative mark 'GOLDEN ELEPHANT', for goods in class 30 – Interpretation and application of Article 8(4) of Regulation (EC) No 40/94 (now Article 8(4) of Regulation (EC) No 207/2009).

### **Operative part**

1. The appeal is dismissed.
2. Tresplain Investments Ltd is ordered to pay the costs.

### **Order of the Court (Seventh Chamber) of 29 November 2011 — Evropaïki Dynamiki v Commission**

#### **(Case C-235/11 P)**

(Appeal — Article 119 of the Rules of Procedure — Public procurement contracts awarded by the European Union institutions on their own behalf — Call for tenders concerning the provision of IT and user support services relating to the Community emissions trading scheme (CITL and CR) — Rejection of tender — Obligation to state the reasons on which the decision is based — Principle of equal treatment — Appeal manifestly inadmissible and manifestly unfounded)

1. *Appeals — Grounds — Mistaken assessment of the facts — Inadmissibility — Review by the Court of Justice of the assessment of the evidence — Possible only where the clear sense of the evidence has been distorted (Art. 256(1) TFEU; Statute of the Court of Justice, Art. 58, first para.) (see paras 21, 27)*

2. *Appeals — Grounds — Inadequate statement of reasons — Error purely in drafting — Error not capable of warranting the annulment of the judgment (see para. 33)*
3. *Appeals — Grounds — Mere repetition of the pleas and arguments put forward before the General Court — Error of law relied on not identified — Inadmissibility (Art. 256 TFEU; Statute of the Court of Justice, Art. 58, first para.; Rules of Procedure of the Court of Justice, Art. 112(1), first para., (c)) (see paras 40, 54-55, 62)*
4. *Acts of the institutions — Statement of reasons — Obligation — Scope — Decision, in the course of the procedure for the award of a public service contract, not to accept a tender — Duty to communicate, in response to a written request, the characteristics and the relative advantages of the selected tender, together with the name of the successful tenderer — Contracting authority not obliged to provide a detailed comparative analysis of the successful tender and of the offer of the unsuccessful tenderer — Ground of appeal manifestly unfounded (Art. 256 TFEU; Council Regulation No 1605/2002, Art. 100(2); Commission Regulation No 2342/2002, Art. 149(3)) (see paras 50-52)*
5. *Appeals — Grounds — Plea submitted for the first time in the context of the appeal — Inadmissibility (Statute of the Court of Justice, Art. 58) (see para. 61)*
6. *Appeals — Grounds — Inadequate or contradictory grounds — Extent of the obligation to state reasons — Reliance by the General Court on implied reasoning — Whether lawful — Conditions (Art. 256 TFEU; Statute of the Court of Justice, Arts 36 and 53, first para.) (see points 66-67)*

**Re:**

Appeal brought against the judgment of the General Court (Eighth Chamber) of 3 March 2011 in Case T-589/08 *Evropaiki Dynamiki v Commission* dismissing an action, first, for annulment of the Commission's decision of 13 October 2008 rejecting the bid submitted by the applicant in the context of Invitation to Tender ENV. C2/FRA/2008/0017 for the conclusion of a framework contract for the provision of IT (information technology) services and user support in connection with the

Community emissions trading scheme (Community Independent Transaction Log (CITL) and Community Registry (CR)) (OJ 2008 S 72-096229), and of the decision to award the contract to another tenderer and, secondly, for damages.

### **Operative part**

1. The appeal is dismissed.
2. Evropaïki Dynamiki – Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE is ordered to pay the costs.