Re:

APPLICATION for a reduction in the fine imposed on the applicants under Article 2(d) of Commission Decision C(2006) 2098 final of 31 May 2006 relating to a proceeding pursuant to Article 81 EC and Article 53 of the EEA Agreement (Case COMP/F/38.645 – Methacrylates).

Operative part

The Court:

1. Dismisses the action;

2. Dismisses the Commission's request for withdrawal of immunity;

3. Orders Lucite International Ltd and Lucite International UK Ltd to bear 90 % of their own costs and to pay 90 % of the costs incurred by the Commission;

4. Orders the Commission to bear 10 % of its own costs and to pay 10 % of the costs incurred by Lucite International and Lucite International UK.

Judgment of the General Court (Seventh Chamber) of 15 September 2011 — CMB and Christof v Commission

(Case T-407/07)

(Public supply contracts — EAR procurement procedure — Supply of equipment for the treatment of medical waste — Rejection of the tender — Action for annulment — Jurisdiction of the General Court — Period allowed for commencing proceedings — Preliminary administrative complaint — Excusable error — Award criteria — Procedural rules — Duty to state reasons — Principle of sound administration — Non-contractual liability)

1. *European Union law — Principles — Right to effective judicial protection — Applicability to measures adopted by agencies established on the basis of secondary law producing legal effects vis-à-vis third parties (Art. 230 EC) (see paras 57-58)*

2. *Actions for annulment — Actionable measures — Measures producing binding legal effects — Decisions taken by the European Agency for Reconstruction in the context of procedures for awarding public contracts — Included (Art. 230, first para., EC) (see paras 59-61)*

3. *Actions for annulment — Action against a decision confirming an earlier measure not challenged within the time-limits — Inadmissibility — Meaning of confirmatory decision — Decision adopted following an application raising new and substantial facts — Not included (Art. 263 TFEU) (see paras 89-93)*

4. *Procedure — Time-limit for instituting proceedings — Claim barred by lapse of time — Excusable error — Concept — Procedures for amicable settlement provided for in the call for tenders — Tenderer using such a procedure — Included (see paras 99, 103)*

5. *European Union public contracts — Conclusion of a contract following a call for tenders — Discretion of the institutions — Judicial review — Limits (see para. 115)*

6. *European Union budget — Financial regulation — Provisions applicable to procedures for awarding public contracts — Scope — Public contracts awarded by bodies created by the Communities, having legal personality and receiving subsidies from the EU budget — Included (Council Regulation No 2988/95, Art. 167(1), and No 2666/2000, Art. 7(1); Commission Regulation No 2343/2002, Art. 74) (see paras 153-157)*

7. *Acts of the institutions — Statement of reasons — Obligation — Scope — Decision in a procedure for the award of a public service contract not to accept a tender (Art. 253 EC) (see paras 170-172, 177)*

Re:

First, application for annulment of the decision of the European Agency for Reconstruction rejecting the tender made by the applicants in response to invitation to tender EuropeAid/124192/D/SUP/YU concerning the supply of equipment for medical waste management (OJ 2006 S 233 248826) and awarding the contract to another tenderer, and, second, application for damages.

Operative part

The Court:

1. Dismisses the action;

2. Orders CMB Maschinenbau & Handels GmbH and J. Christof GmbH to bear their own costs and those incurred by the European Commission.

Judgment of the General Court (Eighth Chamber) of 15 September 2011 — Prinz Sobieski zu Schwarzenberg v OHIM — British-American Tobacco Polska (Romuald Prinz Sobieski zu Schwarzenberg)

(Case T-271/09)

(Community trade mark — Opposition proceedings — Application for Community word mark Romuald Prinz Sobieski zu Schwarzenberg — Earlier national word mark JAN III SOBIESKI and earlier national figurative mark JAN III Sobieski — Failure to comply with the obligation to pay the application fee or to do so by bank transfer within the period prescribed — Decision of the Board of Appeal declaring the action to be unfounded — Article 8(3) of Regulation (EC) No 2869/95 — Application for restitutio in integrum — Lack of exceptional or unforeseeable circumstances — Article 81 of Regulation (EC) No 207/2009)