3. *Non-contractual liability — Conditions (Art. 340, second para., TFEU) (see para. 112)*

Re:

First, application for the annulment of the Commission's decisions of 13 October 2008, rejecting the bids submitted by the applicant for each of the three lots relating to open invitation to tender DG ENV.C2/FRA/2008/0017 'Framework contract for Emission Trading Scheme – CITL/CR' (2008/ S 72-096229) and to award those contracts to another tenderer and, secondly, a claim for damages.

Operative part

The Court:

1. Dismisses the action;

2. Orders Evropaïki Dynamiki – Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE to pay the costs.

Judgment of the General Court (Fourth Chamber) of 8 March 2011 — World Wide Tobacco España v Commission

(Case T-37/05)

(Competition — Agreements, decisions and concerted practices — Spanish market for the purchase and first processing of raw tobacco — Decision finding an infringement of Article 81 EC — Price-fixing and market-sharing — Fines — Deterrent effect — Equal treatment — Mitigating circumstances — Maximum limit of 10 % of turnover — Cooperation)

1. *Competition — Fines — Amount — Determination — Deterrent effect — Criteria for assessing the deterrent factor (Council Regulations Nos 17, Art. 15(2) and 1/2003, Art. 23(2)) (see paras 106-107)*

2. *Competition — Community rules — Undertaking — Concept — Economic unit — Infringement committed by a subsidiary — Imputation to the parent company — Conditions (Art. 81(1) EC) (see paras 118-119, 122)*

3. *Competition — Fines — Amount — Determination — Deterrent effect — Undertaking acting independently on the market — No account taken, for the purposes of calculating the fine, of the size and global resources of the parent companies (Council Regulations Nos 17, Art. 15(2), and 1/2003, Art. 23(2)) (see paras 117, 123-124)*

4. *Procedure — Application initiating proceedings — Formal requirements — Brief summary of the pleas in law on which the application is based — None — Inadmissibility — Arguments developed in the reply — No effect (Statute of the Court of Justice, Art. 21; Rules of Procedure of the General Court, Art. 44(1)(c)) (see paras 130-131, 136)*

5. *Competition — Fines — Amount — Determination — Criteria — Mitigating circumstances — Assessment — Need to take separate account of each of the circumstances — None — Global assessment (Council Regulation No 17, Art. 15(2); Commission Communication 98/C 9/03, Section 3) (see para. 152)*

6. *Competition — Fines — Amount — Determination — Criteria — Mitigating circumstances — First case applying competition rules to a given sector of the economy — Infringement ceasing after the Commission's intervention — Inclusion — Conditions — Discretion of the Commission (Council Regulations*

Nos 17, Art. 15(2), and 1/2003, Art. 23(2); Commission Communication 98/C 9/03, Section 3, third indent) (see paras 160, 162-163)

7. *Competition — Fines — Amount — Determination — Criteria — Mitigating circumstances — Agreement not implemented in practice — Assessment at the level of the individual conduct of each undertaking — Obligation, on the undertaking to have been clearly and substantially opposed to the implementation of the agreement — Burden of proof (Council Regulations Nos 17, Art. 15, and 1/2003, Art. 23(2); Commission Communication 98/C 9/03, Section 3, second indent) (see para. 164)*

8. *Competition — Fines — Amount — Determination — Criteria — Reduction of the fine for cooperation of the fined undertaking — Conditions — Discretion of the Commission (Council Regulations Nos 17, Art. 15(2), and 1/2003, Art. 23(2); Commission Communication 96/C 207/04) (see paras 188-190)*

Re:

APPLICATION for a reduction of the fine imposed on the applicant in Commission Decision C(2004) 4030 final of 20 October 2004 relating to a proceeding under Article 81(1) [EC] (Case COMP/C.38.238/B.2 – Raw tobacco – Spain).

Operative part

The Court:

1. Sets the amount of the fine imposed on World Wide Tobacco España SA in Article 3 of Commission Decision C(2004) 4030 final of 20 October 2004 relating to a proceeding under Article 81(1) [EC] (Case COMP/C.38.238/B.2 – Raw tobacco – Spain) at EUR 1 579 500;

2. Dismisses the action as to the remainder;

3. Orders World Wide Tobacco España to bear three quarters of its own costs and three quarters of the costs incurred by the Commission, and orders the Commission to bear one quarter of its own costs and one quarter of the costs incurred by World Wide Tobacco España.

Judgment of the General Court (Sixth Chamber) of 9 March 2011 — Longevity Health Products v OHIM – Performing Science (5 HTP)

(Case T-190/09)

(Community trade mark — Invalidity proceedings — Community word mark 5 HTP — Absolute ground for refusal — Signs or indications which have become customary — Article 7(1)(d) of Regulation (EC) No 207/2009 — Distinctive character acquired by use — Article 52(2) of Regulation No 207/2009)

1. *Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Marks composed exclusively of signs or indications which have become customary in everyday language or commerce — Commonplace character — Criteria for assessment (Council Regulation No 207/2009, Art. 7(1)(d)) (see paras 26-27)*

2. *Community trade mark — Surrender, revocation and invalidity — Absolute grounds of invalidity — Registration contrary to Article 7(1)(d) of Regulation No 207/2009 — Exception — Acquisition of distinctive character through use (Council Regulation No 207/2009, Arts 7(1)(d) and 52(2)) (see paras 31, 37-40, 52)*