

— Order the defendant and — if applicable — the other party to the proceedings before the Board of Appeal to jointly and severally pay all the costs.

### Pleas in law and main arguments

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The word mark 'FIREDETEC' for goods in classes 1, 9, 17 and 42 — Community trade mark application No 4904389

*Proprietor of the mark or sign cited in the opposition proceedings:* The other party to the proceedings before the Board of Appeal

*Mark or sign cited in opposition:* Spanish trade mark registration No 1759982 of the figurative mark 'DETEC', for goods in class 9; Spanish trade mark registration No 1759983 of the figurative mark 'DETEC', for services in class 37; Community trade mark registration No 3813219 of the figurative mark 'DETEC Sistemas de Seguridad, Detección y Extinción de Incendios, SL', for goods and services in classes 9, 37 and 45

*Decision of the Opposition Division:* Partially upheld the opposition

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly assessed the existence of likelihood of confusion between the applied mark and the opposed mark.

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### Action brought on 6 October 2011 — Alouminion v Commission

(Case T-542/11)

(2011/C 370/44)

*Language of the case:* Greek

#### Parties

*Applicant:* Alouminion A.E. (Marousi, Greece) (represented by: G. Dellis and N. Korogiannakis, lawyers)

*Defendant:* European Commission

#### Form of order sought

— annul Commission Decision C(2011) 4916 final of 13 July 2011 relating to State aid C 2/2010 (ex NN 62/2009) implemented by Greece in favour of Alouminion tis Ellados A.E.;

— order the Commission to pay the applicant's costs.

### Pleas in law and main arguments

By this action, the applicant seeks, pursuant to the fourth paragraph of Article 263 of the Treaty on the Functioning of

the European Union ('TFEU'), the annulment, with the consequences laid down by the first paragraph of Article 266 TFEU, of Decision C(2011) 4916 final of the European Commission of 13 July 2011 under number C 2/2010 (ex NN 62/2009) concerning the grant of State aid to the company Alouminion tis Ellados.

In support of its claims, the applicant puts forward the following grounds for annulment:

— Infringement of Article 1 of Regulation No 659/1999, and infringement of the rules concerning the allocation of competence between the Commission and the national courts and the right to judicial protection. The Commission clearly erred in its assessment of the facts, took account of factors that were clearly erroneous and made clear errors of law in classifying the supposed aid as 'new'. The measure at issue was adopted under precisely the same regime as the supposed existing aid and the reasoning given for the Commission's view is defective;

— Infringement of Article 107(1) TFEU inasmuch as the Commission erred in finding there to be an advantage, did not apply the private investor test and did not examine whether there are objective commercial grounds justifying the contractual tariff of 1960;

— Infringement of Article 107(1) TFEU inasmuch as the Commission erred in finding that the aid is selective, notwithstanding the obligation of the DEI (Dimosia Epikhirisi Ilektrismou (Public Power Corporation)) to set in a similar manner the tariffs of similar categories of undertakings and in a different manner those of different categories to the extent that they are different;

— Infringement of Article 107(1) TFEU inasmuch as the Commission erred in finding that trade between Member States is distorted and affected, although the applicant does not obtain any advantage compared with the other aluminium undertakings because of the uniformity of aluminium's characteristics and because of the exchange-set price;

— Incorrect methodology in calculating the amount of the supposed advantage;

— Infringement of the duty to state reasons;

— Infringement of the principle of the protection of legitimate expectations on account of the Commission's previous position that the DEI's contractual tariff with the applicant did not constitute unlawful State aid, and of the applicant's rights of defence.

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