

Case T-148/04 R

TQ3 Travel Solutions Belgium SA

v

Commission of the European Communities

(Public service contracts — Community tendering procedure — Interim proceedings — Application for suspension of operation and interim measures — Urgency — None)

Order of the President of the Court of First Instance, 27 July 2004 II - 3029

Summary of the Order

1. *Applications for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Serious and irreparable damage — Financial loss — Situation capable of jeopardising the existence of the applicant company or of irretrievably altering its market position*

(Arts 242 EC and 243 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))

2. *Applications for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Serious and irreparable damage — Non-financial damage — Damage to the reputation of an undertaking caused by the non-award of a public contract — Not included*

(Arts 242 EC and 243 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))

1. In the context of interim proceedings, financial loss cannot in principle be regarded as irreparable, or even as being hard to repair, where it can be the subject of future financial compensation and thus constitutes a loss which is economically capable of being compensated for through the means of redress laid down under the Treaty, in particular Article 288 EC. It would be otherwise if, were the interim measures sought not granted, the applicant would find itself in a situation which could jeopardise its very existence or irremediably alter its position in the market.
2. A decision not to award a public contract does not necessarily result in irreparable damage to the reputation and credibility of unsuccessful tenderers. Participation in a public tender procedure, by nature highly competitive, necessarily involves risks for all the participants, and the elimination of a tenderer under the rules on tenders is not, in itself, in any way damaging. Similarly, the fact that an undertaking is unsuccessful in renewing a contract for a set period in a new tender procedure arises from the periodic nature of invitations to tender in the public procurement sector and does not harm its credibility and reputation.

(see paras 43, 45, 46)

(see paras 53, 54)