According to the Commission, in neither case did SACE take account of the risk profile of the investments and thus did not behave as a market economy investor.

1. First plea in law, alleging that the measures at issue could not be attributed to the Italian State

   — It is submitted in this regard that the measures at issue were adopted by the Board of SACE S.p.A., not upon a direction given by the public authorities or in order to comply with State-imposed requirements, but rather in the exercise of its own full commercial and strategic autonomy, in a way consistent with purely market logic and no differently from in the majority of its business decisions, and not within the framework of any relationship entailing control, supervision, authorisation or direction on the part of the single shareholder at that time — the Ministry of Economy and Finance.

2. Second plea in law, concerning the fact that the second measure allegedly conferred an advantage on SACE BT

   — The applicants maintain in this regard that the decision of SACE S.p.A. to offer reinsurance capacity, taking advantage of opportunities afforded by a phase in the economic cycle in which insurance premiums were high, was adopted without any intention of providing SACE BT with assistance or support. Moreover, only the parent company gained any economic advantage from the reinsurance relationship. Furthermore, the Commission's observations concerning the positive correlation between the volume of risk assumed and the rate requested are not confirmed either by the reference literature or market practice, not even so far as SACE BT in particular is concerned. Lastly, the applicants do not consider persuasive the Commission's attempt to 'export' to different contexts and measures the alleged rule of thumb applied by it, without a detailed statement of reasons, in the case of the Portuguese rules on short-term export credit insurance, in order to establish that the amount of the commission paid to SACE S.p.A. should have been at least 10 % higher than that of the commission applied by private reinsurers in relation to the smaller portion of reinsurance and risk assumed by them.

3. Third plea in law, alleging that the third and fourth measures did not confer an advantage on SACE BT

   — In undertaking the two recapitalisations of 2009, despite the lack of any forecasts relating to SACE BT's future cash flow which might give grounds for expecting adequate profitability of it at least in the long term, SACE S.p.A. preserved the value of the very considerable investment that it had made at the time of the company's formation barely five years earlier. Furthermore, SACE S.p.A. took the view that the liquidation of its subsidiary would also have exposed the entire SACE group to the risk of potential damage, in the form of massive loss in value and/or deterioration in its creditworthiness, the amount of which would have been far higher than that of the capital estimated outstanding for the end of 2009. The Commission failed to have regard to the broad margin of discretion of the public investor, substituting its own assessment for that of SACE S.p.A. solely on the basis of an incorrect theoretical reconstruction of the choice which the hypothetical prudent and well-informed private investor would have made in that set of circumstances.

Action brought on 4 June 2013 — Capella v OHIM — Oribay Mirror Buttons (ORIBAY)

(Case T-307/13)

(2013/C 207/90)

Language of the case: German

Parties

Applicant: Capella EOOD (Sofia, Bulgaria) (represented by: M. Holtorf, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Oribay Mirror Buttons, SL (San Sebastián, Spain)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 22 March 2013 in Case R 164/2012-4;

— Declare revoked the registration of Community trade mark 003611282 'ORIBAY ORIginal Buttons for Automotive Yndustry' for the following goods and services:

   — Class 12: Vehicles and parts for vehicles not included in other classes, with the exception of parts for vehicle windows and windscreens; and

   — Class 37: Repair; repair and maintenance

— Order the defendant to bear the costs of the proceedings including the costs incurred in the appeal proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: figurative mark, which contains the word elements 'ORIBAY ORIginal Buttons for Automotive Yndustry, for goods and services in Classes 12, 37 and 40 — Community trade mark No 3 611 282

Proprietor of the Community trade mark: Oribay Mirror Buttons, SL

Party applying for revocation of the Community trade mark: The applicant

Decision of the Cancellation Division: The application for revocation was partially upheld

Decision of the Board of Appeal: The appeal was upheld and the application for revocation completely rejected

Pleas in law: Infringement of Article 51(1)(a) of Regulation No 207/2009, infringement of Article 56 of Regulation No 207/2009 in conjunction with Rule 37(a)(iii) of Regulation No 2868/95 and infringement of Article 57(2) of Regulation No 207/2009