

NEWS FROM THE FIRM

Advising on the public exchange offer by BF Holding for Bonifiche Ferraresi

A team led by partners [Mario Ortu](#) and [Manfredi Leanza](#) (assisted by counsel [Francesca Flego](#) and associates [Elisa Cappellini](#) and [Gaia Sansone](#)) advised on the public exchange offer by BF Holding for Bonifiche Ferraresi.

Advising Bonifiche Ferraresi S.p.A. on the acquisition of control of Bonifiche Sarde S.p.A.

A team led by partners [Mario Ortu](#) and [Pierfrancesco Gustiniani](#) (assisted by [Anna Chiara Margottini](#)) advised the listed investment company Bonifiche Ferraresi on the acquisition of control of Bonifiche Sarde.

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ANTITRUST

EU Commission launches 3 investigations on anticompetitive practice in e-commerce

On 2 February 2017 the EU Commission opened three separate investigations aimed at assessing online sales practices in breach of EU competition provisions. In particular, the investigations involve: (a) companies in the electronics manufacturing sector, which may have breached EU competition rules by imposing restrictions on online retailers in defining their prices; (b) companies in the video games sector, which may have breached EU rules by introducing geo-blocking filters; and (c) companies in the tourism industry, which may have breached EU provisions by practising price discrimination based on consumer location. According to the EU Commission, the above-mentioned practices breached Article 101 of the TFEU, which prohibits agreements between companies that prevent, restrict or distort competition within the EU single market. For further information please click [here](#).

COPYRIGHT

File sharing and liability for copyright infringement (in a recent EU advocate general's opinion)

On 8 February 2017, the [advocate general's opinion](#) in case C-610/15 (*Stichting Brein v. Ziggo BV, XS4ALL Internet BV*) was published. The case relates to: (a) liability (under EU copyright rules in relation to unlawful communication to the public) of a website (specifically, "The Pirate Bay") that indexes and categorises copyright infringing materials made available on a peer-to-peer network by the relevant users; and, should any such liability be acknowledged, and (b) the possibility of ordering mere conduit providers to block access to that website. According to the advocate general, a copyright breach occurs whenever the relevant site's operator "was aware of the fact that a work was made available on the network without the consent of the copyright holders and did not take action in order to make access to that work impossible". As to the blocking injunction, the advocate general considers it can be justified provided that the measure "is proportionate to the significance and seriousness of the copyright infringements committed".

LABOUR

Clarifications on the concept of "business unit"

The Italian Foundation of Labour Consultants (the "Foundation") has issued a non-binding note on the concept of a "business unit", the importance of which has increased following the so-called "Jobs Act", in particular as regards the ordinary wage supplementation fund ("CIGO"). The Foundation underlines that any business unit must have two features, i.e. (a) it must be functionally and technically independent; and (b) a production or sales cycle must be initiated and concluded within the business unit, at least with reference to a part or an essential stage thereof. The relevant development, however, is that the two requirements of "financial" and "functional and technical" autonomy need not necessarily co-exist. This means that even a point of sale, if staffed, can be considered a business unit for the purposes of CIGO.

TRADEMARKS

The Italian Supreme court rules again on the connections between trademark infringement and unfair competition claims

On 25 January 2017, the Italian Supreme Court issued its judgment (No. 1940/2017), reasserting certain basic (and already well-established) principles concerning the requirements for (and mutual connections between) trademark infringement and unfair competition claims. More specifically, the Court confirmed that the two claims are different as to their nature, basis and scope. This is because unfair competition claims require *inter alia* (in addition to the likelihood of confusion between the trademarks) actual confusability between the products branded by the trademarks under scrutiny, as well as the competitor's willingness to create confusion.

CAPITAL MARKETS

ESMA updates Q&A on MAR

On 27 January 2017, the European Securities and Market Authority ("ESMA") updated the second and third sections of the Question and Answer document (the "Q&A") regarding the implementation of the Market Abuse Regulation (the "MAR"). With particular regard to the second section concerning managers' transactions, ESMA clarified the rules on the calculation of the price of options granted for free to managers or employees for the purpose of the notification and disclosure of managers' transactions under Article 19 of the MAR. The full text of the updated version of the Q&A is available [here](#).

Borsa Italiana on additional periodic financial information

By a notice dated 2 January 2017, Borsa Italiana S.p.A. ("Borsa Italiana") made certain recommendations to issuers that voluntarily communicate to the market the additional periodic financial information referred to in article 82-ter of Consob Regulation no. 11971/1999. In particular, Borsa Italiana's recommendation states that those issuers should include (a) the policy concerning the publication of the additional periodic financial information; and (b) the dates of meetings of the relevant corporate body of which the above information is to be approved. The full text of Borsa Italiana's notice is available [here](#).

DATA PROTECTION

Proposal on e-Privacy Regulation released

On 10 January 2017, the EU Commission released its proposal for a Regulation concerning the protection of the privacy and personal data of EU citizens in electronic communications (the "ePrivacy Regulation"), repealing Directive 2002/58/EC. The ePrivacy Regulation includes (a) new rules for operators such as WhatsApp, Facebook and Skype; (b) stricter provisions on metadata (which must be anonymised or deleted if consent is not granted by users); and (c) simplified rules related to cookies excluding the need for consent in case of non-intrusive cookies such as those counting the visitors to relevant websites. The ePrivacy Regulation would be immediately effective in all EU Member States if and when approved. The EU Commission invited the EU Parliament to ensure the adoption of the new ePrivacy Regulation by 25 May 2018, when the General Data Protection Regulation will enter into force. For further information please click [here](#).

PATENTS

Italy 12th country to ratify the UPC Agreement

On 10 February 2017, Italy ratified the Unified Patent Court Agreement (UPC Agreement), becoming the 12th contracting member state to do so (after Austria, Belgium, Bulgaria, Denmark, Finland, France, Luxembourg, Malta, The Netherlands, Portugal, Sweden). See the ratification progress chart [here](#).

Timetable for the entry into force of the UPC Agreement released

On 16 January 2017, the UPC Preparatory Committee released the following long-awaited timetable for the entry into force of the UPC Agreement (and consequent application of Unitary Patent EU regulations): (a) provisional application phase: end of spring 2017 (presumably May); (b) start of the sunrise period (at least 3 months long) for European patents to opt out of the UPC: early September 2017; and (c) entry into force of the UPC Agreement: December 2017. The timetable is conditional on a number of factors, including the completion of the ratifications by Germany and the United Kingdom. Given the expected short sunrise period, patent holders may find it convenient to start considering now whether they wish to opt out of the UPC with regard to their European patents out of the UPC. Under Rule 5 of the current draft of the UPC Rules of Procedure, co-owned patents shall be opted out by all proprietors, and European patents shall be opted out for all designated States.

INDUSTRIES

HEALTHCARE

OECD releases recommendation on Health Data Governance

On 17 January 2017, the Ministers of Health of the Organization for Economic Co-operation and Development ("OECD") approved the OECD Council Recommendation on Health Data Governance dated 13 December 2016 (the "Recommendation"). The Recommendation sets forth the guidelines aimed at ensuring more extensive availability of health data while limiting relevant privacy-related risks. In particular, the Recommendation includes 12 high-level principles to be adopted by national authorities, such as: (a) the implementation of clear provisions on obtaining patients' consent; (b) an approval process for the use of personal health data for research purposes, involving a public interest assessment; (c) the implementation of technical controls and safeguards for data processing, including the consideration of alternatives to data transfers to third parties such as the setting up of secure data centres. The Recommendation is not binding but it may influence the interpretation by national Data Protection Authorities of any cases advising in relation to the processing of health data. For further information please click [here](#).

MEDIA

EU Parliament and Council agreement on cross-border portability

On 3 February 2017, the European Parliament and Council negotiators agreed on rules allowing EU citizens with subscriptions for online music, games, films and TV shows to access relevant content while temporarily in another EU country. The new rules will remove restrictions to cross-border portability by territorial and exclusive licensing practices for all new and existing subscriptions. However, these rules will apply only to online fee-based services. Free-of-charge services will not be subject to the rules, but their providers will have the option of making them portable EU wide. The new rules now need to be formally approved by the Legal Affairs Committee, the European Parliament as a whole and the Council. For more information please click [here](#).

Amendments to guidelines on sales of Serie A rights requested

On 26 January 2017, the Italian Media and Communications Authority (the "AGCOM") requested Lega Nazionale Professionisti Serie A (the Italian league of Italian premier division clubs) to partially amend the guidelines for the centralisation of sales of Serie A rights for the seasons 2018/2019, 2019/2020 and 2020/2021. The amendments requested by AGCOM concern, in particular, the provisions on consumer and user protection and the conditions of access to the signal. Accordingly, AGCOM has postponed the final approval of the guidelines until the Lega Nazionale Professionisti Serie A submits a version of the guidelines containing the suggested amendments. For further information please click [here](#).

SIAE and Netflix: agreement for protection of music catalogue on online platform

The Italian Collecting society (SIAE) and Netflix, the main international operator of online video-on-demand services, announced that they have reached an agreement on the use by Italian subscribers of musical and audio-visual compositions protected by SIAE's Music and Cinema Divisions. For further information please click [here](#).

TELECOMMUNICATIONS

EU Parliament and Council agreement on mobile roaming charges

On 31 January 2017 the European Parliament and Council negotiators agreed on wholesale price caps defining how much telecom operators may charge each other for carrying cross-border "roaming" calls. Mobile roaming charges for EU consumers will end on 15 June 2017 and this will enable consumers to use their mobile phones in other EU countries just as they do at home without paying extra fees. The agreed caps should enable telecom operators to offer roaming services to their customers without any extra charges. The agreement still needs to be formally approved by the Industry Committee, the European Parliament as a whole and national ministers before entering into force. The European Parliament press release is available [here](#).

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