OUR ECHO
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NEWS FROM THE FIRM

Appointment of counsel

Ludovico Anselmi and Francesca Flego have been appointed counsel of the firm as of 1 March 2016.

Ludovico's practice focuses on intellectual property, including litigation. Francesca has significant experience in domestic and multi-jurisdictional mergers and acquisitions and public takeovers.

Advising TXT e-solutions on the acquisition of PACE Aerospace

A team led by partner Paolo Canal and counsel Simone Masotto assisted the TXT e-solutions group in the takeover of 100% of the German software company PACE Aerospace Engineering and Information Technology GmbH.

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ANTITRUST

CJEU rules on Commission's limits on power to request information

On 10 March 2016, the Court of Justice of the EU issued judgments annulling the Commission's decisions of 30 March 2011 on requests for information addressed to cement manufacturers with a view to collecting evidence in relation to a suspected cartel in the cement business. The CJEU concluded that the grounds for the Commission's decisions did not meet the requisite legal standard since it was vague and generic compared to the considerable length of the requests and does not enable a determination of whether the requested information was necessary for the purposes of the investigation (see here).

CAPITAL MARKETS

Implementation of the transparency directive 2013/50/EU

Decree no. 25 dated 15 February 2016 implemented the new transparency directive (2013/50/EU) by introducing certain amendments to Legislative Decree no. 58 dated 24 February 1998 (the Financial Act). The principal amendments to the Financial Act are as follows: (a) trusts are now included in the definition of listed issuers; (b) the definition of listed Italian small and medium enterprises (so-called "SMEs") includes any SME with listed shares, with turnover (also prior to the admission of their own shares for trading) of less than €300 million or the market capitalisation of which is less than €500 million. Issuers that exceed both of these limits for more than 3 years consecutively are no longer considered SMEs; (c) the minimum threshold for major shareholding disclosure has been increased from 2% to 3%; (d) the annual financial and the half-yearly financial reports shall be made available to the public within, respectively, 4 and 3 months; (e) the obligation to publish an interim financial report has been removed (although Consob will now be entitled to require additional information that must be disclosed more frequently than on an annual or semi-annual basis) for companies which are not listed on the STAR segment; (f) certain provisions concerning the sanctions regime have been amended (including provisions concerning information on corporate governance, criteria for the determination of sanctions, and publishing of the sanctions).

The Decree will enter into force on 18 March 2016 and its text is available here.

Amendments to CONSOB regulation on sanctions procedure

Consob resolution no. 19521 dated 24 February 2016 (the Resolution), by which Consob amended the regulation of the administrative sanctions procedure (the Regulation), was published in Official Journal no. 55 dated 7 March 2016. The main amendments to the Regulation are as follows: (a) the Regulation now specifies the concept of turnover for the purpose of determining the maximum amount of any sanction; in particular, the annual turnover of the last financial year is considered; (b) Consob has the option to order the elimination of the irregularities as alternative to the financial penalties; (c) it is expressly provided that, in the context of the defence activity, the production of superfluous, or irrelevant documentation may be assessed negatively in terms of level of cooperation with Consob; (d) new Article 8-bis of the Regulation provides that, following the notification of any sanction, an excerpt of the relevant sanction be published in the Consob Official Journal. The Resolution entered into force on 8 March 2016 and applies in relation to any violation committed after that date. The text of the Resolution is available here.

LABOUR

Draft bill on smart working presented

The Italian Government has approved a draft bill which establishes rules for a new form of employment aimed at replacing teleworking ("telelavoro") with "smart working" ("lavoro agile"). "Smart working" is a particular form of work based on significant flexibility, including with regard to working hours and location (employees may work from home for one or more days per week). This flexibility may be used by all employers and employees, subject to a prior written agreement. Teleworking may be temporary or permanent, but the relevant employee's salary must be the same as for "non-teleworkers". The employer has the right to verify the activities of teleworkers within the limits of law and relevant health and safety requirements. Collective bargaining agreements may establish additional regulations. Further news will follow in the near future.

DATA PROTECTION

EU-US Privacy Shield text released by the European Commission

On 29 February 2016 the European Commission released the official text of the so-called "Privacy Shield" (i.e. the arrangement agreed between EU and US to restore a legal framework for transatlantic data flows subsequent to the invalidation of the Safe Harbour scheme by the EU Court of Justice in its judgment C-362/14 of 13 November 2015). Before coming into force, the Privacy Shield will be approved by the EC in an Adequacy Decision pursuant to EU Directive 95/46/CE. The new provisions include (a) an obligation on companies concerned with data flows to be enrolled on the Privacy Shield List, which will be made publicly available by the U.S. Department of Commerce; (b) an undertaking by companies to comply with the following principles as listed in Annex 2 to the Adequacy Decision: (i) an obligation to inform individuals about the relevant data processing (e.g. types of personal data; its purpose; the right of individuals to access their personal data); (ii) right of the data owner to decide whether the relevant personal information can be disclosed to a third party and/or used for purposes other than those for which it was originally collected; (iii) accountability for onward transfers of personal information to third parties; (iv) security measures for data loss, misuse, unauthorized access, alteration and destruction; (v) data integrity and limitation of purpose of processing; (vi) data owners' right to access, correct, amend or delete their personal data; (vii) companies' obligation to respond to complaints regarding compliance with the Privacy Shield principles referred by EU Member States authorities. For further information see the Privacy Shield Adequacy Decision documentation.

(E)FINANCE

New framework for equity crowd funding by innovative start-ups

Consob Resolution No. 19520 of 24 February 2016 modified Regulation No. 18592 of 26 June 2013 on the raising of venture capital by innovative start-ups via on-line portals. The new rules aim to simplify the relevant legislative framework, lowering the cost of raising capital and increasing the categories of investors who may contribute to the financing of an innovative start-up. The main changes regard the verification of investment suitability in terms of investor knowledge and experience. This verification may now be directly processed by duly authorised webmasters that comply with specific requirements provided for by the Regulation, replacing banks in this role. The list of persons entitled to subscribe a portion of the investment offer as professional investors has been extended. In fact, two new categories of professional investors have been introduced (a) "clients who may be treated as professionals on request" as provided by the European framework on investment services (Mifid); and (b) the "investors supporting innovation" identified on the basis of objective criteria established by art. 24 of the Regulation.

TRADEMARKS

EGC denies trademark protection to new Coke bottle

In its judgment of 24 February 2016 (case T-411/14), the EGC dismissed the appeal brought by the Coca Cola Company against the decision of the Second Board of Appeal of the Office for Harmonization in the Internal Market to reject the application filed by Coca-Cola for a trademark consisting of the shape of its famous contour bottle without the traditional grooves. The application was rejected by the OHIM on 23 January 2013, on the grounds that the sign lacked distinctive character: Coca-Cola appealed to the EGC which confirmed the OHIM's decision. According to the Court, the trademark was devoid of distinctive character since it consisted of a combination of elements that are all well-known in the relevant market sector, thus preventing the average consumer from distinguishing the branded products from those of Coca-Cola's competitors.

CJEU rejects former dealer's liability for unauthorised use of TM on the Internet

In its judgment of 3 March 2016 (case C-179/15), the CJEU ruled that a former Mercedes-Benz dealer is not responsible for Internet advertisements that continue to associate it with the well-known automobile manufacturer. The Hungarian company Egyud Garage had a contractual relationship with Daimler on the basis of which it was, with others, entitled to call itself an "authorized Mercedes-Benz dealer" for advertising purposes. After the end of the contract, notwithstanding the garage's requests to remove online advertisements which might suggest that the ties with Mercedes and Daimler were ongoing, the advertisements continued to appear online and in search engine results. The Luxembourg judges deemed that the garage, having requested the removal from the Internet of the relevant advertisements, is not liable for any Internet operators' failure to comply with its request. The court added that Daimler may claim reimbursement from the advertisers that ignored the garage's requests for removal.

INDUSTRIES

ADVERTISING

Bill on "innovation" approved by lower house

On 2 March 2016 the Italian lower house (Camera dei deputati) approved at first reading a bill creating a so-called Fund for media pluralism and innovation (the "Fund"). On the basis of the version of the bill approved by the house, the Fund will be financed from several sources, including a contribution of 0.1% of the overall income of the following entities: (a) advertising sales companies ("concessionari della raccolta pubblicitaria") operating with newspapers and periodicals and on radio, television and digital channels; (b) companies in the media and communications market that directly sell advertising space; (c) any intermediary in the advertising market which searches for or purchases media advertising space on behalf of third parties, on any kind of broadcasting platform, including the Internet. The bill was referred to the Italian upper house (Senato della Repubblica), which has not yet begun its examination of the bill. The text of the bill, as approved by the Camera dei deputati, is available here (in Italian language).

E-COMMERCE

Final approval of implementing rules for E-Pharmacies

On 26 January 2016 the Italian Ministry of Health (the Ministry) enacted a circular (implementing the Legislative Decree no. 219/2006) on e-commerce of pharmaceutical products which may be sold without a prescription. According to the new provisions, pharmacies are required to submit a request to the Ministry in order to be enrolled as authorized e-sellers in a specific register held by the Ministry. The request must be filed electronically with the Ministry's website and must include the following information: (i) authorization granted by the competent local authority for distance selling ("vendita a distanza"); (ii) the ID provided to the pharmacy by the Ministry for the traceability of medicines; (iii) certain tax information on the owner of the pharmacy; and (iv) the web address of the pharmacy. For further information see the Ministry of Health's website.

DESI 2016 search published

On February 25, 2016 the European Commission published the results of the 2016 edition of the Digital Economy and Society Index (DESI). DESI is an online tool for measuring the progress of EU Member States towards a digital economy and society and brings together a set of relevant indicators on Europe's current digital policy mix.

FINANCIAL INSTITUTIONS

ICA imposes €27 million fine on banks for anticompetitive agreements

On 24 February 2016, the Italian Competition Authority (ICA) issued fines totalling €27 million to several banks and their trade associations in the provinces of Bolzano and Trento for two alleged infringements of the prohibition on anticompetitive agreements (Art. 2 of law 287/90). The ICA found that from 2007 to 2014 a number of banks in the Bolzano province and their local associations coordinated their commercial policies in the consumer loans market by exchanging confidential and competitively sensitive information (e.g. interest rates and other financial conditions applicable to consumers). In addition, the ICA found that from November 2013 to December 2015 a local trade association of banks of the province of Trento regularly communicated benchmark interest rates for loans to its members. This is one of the first decisions to apply the reduction of fines provided for by the ICA's Fining Guidelines. See further information here.

SOFTWARE

Purchasers of notebooks not required to buy preinstalled OS

The Italian Supreme Court, in its judgment no. 4390 of 7 March 2016 (confirming the first and second instance decisions) ruled that the purchase of a PC does not bind the customer to accept the preinstalled operating system, provided the customer expresses his intention to refuse the software when starting the device. A customer sued a computer manufacturer seeking the return of the price of the preinstalled operating system (Microsoft Windows Vista), stating that he was not interested in using such software and that he was entitled to a price reduction based on a specific provision of the general terms and conditions of the software license (according to which "*by using the software, the licensee accepts these conditions. In the event that the licensee does not accept them, he may not use the software and must contact the manufacturer or the installer to be informed of the returns procedure in order to receive a reimbursement*"). The court held that, by installing the software in its devices, the PC manufacturer had accepted to be bound by the applicable terms and conditions.

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