

NEWS FROM THE FIRM

Advising Edison on selling of LNG terminal in Italy

A team led by Nicola Barra Caracciolo (with [Stephen McCleery](#), [Enrica Di Cagno](#) and [Federico Roviglio](#)) advised Edison on the disposal to SNAM of ITG and a stake in the operating company of a major LNG terminal in Italy. The deal has been widely reported in the [press](#).

Next events

Seminar on General Data Protection Regulation

On 24 October, the firm will host in Milan an introductory seminar on the practical implications of the GDPR. A representative of the Italian regulator will speak at the event.

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CAPITAL MARKETS

The New EU Prospectus Regulation

On 30 June 2017, [Regulation \(EU\) No. 1129 of 14 June 2017](#), on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, was published in the Official Journal of the European Union. This regulation repealed [Directive \(EC\) No. 71 of 4 November 2003](#). Certain of its provisions will apply from 21 July 2019, others from 20 July 2017 and from 21 July 2018 (mainly, exceptions from the obligation to publish a prospectus). Among the provisions applicable from 21 July 2019, it is worth mentioning, *inter alia*, those related to: (a) the universal registration document (i.e. a registration document describing the company's organisation, business, financial position, earnings and prospects, governance and shareholding structure); (b) the simplified disclosure regime for secondary issues; (c) the prospectus summary; (d) the EU Growth prospectus regime; and (e) the more prescriptive regime for risk factors featured in a prospectus.

TRADEMARK

Trademarks removed from Patent Box. Transitional rules implemented

Article 56 of [Law Decree No. 50 of 24 April 2017](#) has removed trademarks from the list of IP rights that may benefit from the package of fiscal incentives known as the 'Patent Box'. However, a transitional system will apply to companies that have already exercised the Patent Box's three-year incentive option. This decision strengthens the credibility and therefore the attractiveness of these incentives for investors, as it makes the Patent Box system more compatible with the Organisation for Economic Cooperation and Development (OECD) guidelines.

Italian Supreme Court on trademark registered in bad faith

A trademark cannot be registered in bad faith. This principle, set forth in Article 19 of the Italian Industrial Property Code, has been reasserted in the Supreme Court's judgment no. 20715 of 4 September 2017. Notably, in line with the case law of the EU Court of Justice (ECJ) (see [ECJ 11 June 2009, in case C-529/07, Chocoladefabriken Lindt & Sprüngli AG v. Franz Hauswirth GmbH](#)), the Court ruled that bad faith was demonstrated by the fact that the registrant had registered the community trademark although fully aware of the previous use by a third party (with whom it had done business) of the same sign in Italy.

PRIVACY

Italian Data Protection Authority on DPO

On 15 September 2017, the Italian Data Protection Authority (the "Garante") issued its [guidelines](#) on the requirements of the role of the data protection officer ("DPO") set forth in the [General Data Protection Regulation](#) to be appointed by companies which have more than 250 employees or carrying out particular processing operations. The Garante clarified that the DPO does not need to be enrolled in a special register but should be skilled and trained on data protection matters.

ANTITRUST

New merger filing thresholds in Italy

On 14 August 2017, [Law No. 124 of 4 August 2017](#) was published in the Italian Official Gazette. The law entered into force on 29 August 2017 and the new notification turnover thresholds are as follows: (a) a combined turnover in Italy of all the undertakings concerned exceeding EUR 492 million (previously EUR 499 million); and (b) an individual turnover in Italy of at least two of the undertakings concerned exceeding EUR 30 million (previously EUR 50 million) trigger the obligation to notify. Once the first threshold is met, it is sufficient that the second turnover threshold is reached by two "undertakings concerned" in order for the concentration to be notifiable. A practical implication is that, in cases such as the creation of a joint venture or the acquisition of joint control, the merger turnover thresholds may be exceeded by the acquiring parties, regardless of the turnover generated by the target company in Italy.

LABOUR

WhatsApp: a new tool for employers to communicate dismissals to employees?

On 27 June 2017, the Tribunal of Catania declared the lawfulness of a dismissal notified via social networks. In particular, the Judge stated that the WhatsApp message used by the employer to dismiss the employee meets the formal requirement of the written form provided by the law. The Judge reiterated the case law of the Supreme Court which states that no particular modalities (other than the written form) are required by law to notify a dismissal and therefore, the intention to dismiss may also be expressed indirectly as long as it is clear and unequivocal. In this specific case, the Judge highlighted that the intention of the employer has been clearly understood and the communication formally received, based on the immediate response of the employee.

COPYRIGHT

Italian Supreme Court on videogames

On 1 August 2017, the Italian Supreme Court issued a judgment (No. 33768/2007) confirming its most recent approach to copyright protection of videogames. Notably, the Court stated that, under the Italian Copyright Law ("ICL") (a) videogames qualify as multimedia products (rather than software) and (b) videogames and consoles are meant to interact as a key-lock system. Therefore, the manufacture and/or sale of devices intended to circumvent protective technological measures (and specifically, to artificially allow the use of homebrew software on consoles) is sanctionable under section 171-ter ICL even when the elusive measures are not contained in the software but in the hardware.

COPYRIGHT DESIGN PATENTS

Italian law on inventions made by self-employed individuals enters into force

On 14 June 2017, [Law No. 81/17 of 22 May 2017](#) (the so-called Self-employment Jobs Act) entered into force. Article 4 deals with inventions made by self-employed individuals, and provides that, unless the inventive activity is the subject matter of the employment contract and is remunerated accordingly, the rights arising from original contributions and inventions during the performance of the contract belong to the self-employed individual, according to the provisions set forth by [Italian copyright law](#) and the [Italian Industrial Property Code](#).

INDUSTRIES

MEDIA

Tax credit decree for development and production of film and audio-visual works

On 4 August 2017, the Italian Government enacted regulations implementing the new regime on tax credits for cinema and audio-visual works established in [Law No. 220 of 14 November 2016](#) (the framework law on incentives for the cinema, audio-visual and entertainment sector, the so-called "legge cinema" passed in [November 2016](#)). The decree provides for a tax credit of 30% of the relevant eligible costs for the development of scripts for films and TV series. The tax credit for the production of a film has been increased to 30% of the eligible costs (provided the independent producer is entitled to at least 51% of the rights to the film). The tax credit for the production of TV and web series has been increased to 30% of the eligible production costs (alternatively, a 15%, 20% or 25% tax benefit is available) depending on the independent producer's share of investments in the production and/or the international nature of the project. The tax credit for distribution companies has been increased to 40%. The new rules apply to tax credit applications filed as from January 2017. Applications filed from 1 January 2016 to 31 January 2016 are governed by the provisional rules set forth in the decree of [4 April 2017](#) (providing for a maximum tax credit of 20%). For the full text of the new decree click [here](#).

Tax credit benefit for media and distribution companies enacted

On 4 August 2017, the Italian Government enacted further regulations implementing the new regime on tax credits for cinema and audio-visual work established in [Law No. 220 of 14 November 2016](#). These includes a tax benefit for videogames: an incentive scheme for videogame development companies located in Italy which (subject to certain conditions) offers a tax break of up to 30% of the eligible production costs related to the creation and distribution of videogames. An automatic tax benefit scheme is also available for independent audiovisual producers, film producers and HV distribution companies, related to the quality and number of works developed/distributed. For the full text of the new decree click [here](#).

FOOD

New obligations to indicate the origin of certain foods

On 16 and 17 August 2017, the [Decree of the Ministry of Agriculture No. 113532 of 26 July 2017](#) and [Decree No. 113552/2017 of 26 July 2017](#) were published in the Italian Official Gazette. The decrees introduce in Italy the obligation to indicate the origin of rice and certain types of wheat (including durum-wheat flour for pasta). These follow measures introduced last April on the indication of the origin of milk and milk-based products. The rationale of the decrees is to allow consumers to know whether they are buying milk, rice or pasta originating in Italy or abroad.

TECHNOLOGY

Italian Regulators against Telco operators on renewal period

On 2 August 2017, the Italian Competition Authority (the "AGCM") fined a major Italian telecommunications operator for unfair commercial practices pursuant to Sections 20, 24 and 25 of the Italian Consumer Code. According to the AGCM, the unfair commercial practices consisted of the unilateral reduction of the period for instalment from 30 days to four weeks and consisted of charging customers who exercised their right of withdrawal further to this change with the remaining instalments due for the subscription. For further information please click [here](#).

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