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NEWS FROM THE FIRM

The firm assists The Middleby Corporation with the purchase of Vemac
A team led by Pierfrancesco Giustiniani and Manfredi Leanza (with Federico Roviglio, Enrica di Cagno, Olympia Foà, Valentina Mauri and Francesco Senesi) advised The Middleby Corporation on the purchase of Vemac.

The firm assists Endurance Worldwide Holdings with the purchase of A&A
A team led by Nicola Barra Caracciolo (with Enrica Di Cagno and Cesare De Falco) advised Endurance Worldwide Holdings on the purchase of A&A.

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CAPITAL MARKETS

Communication of inside information – Judgement of the Italian Supreme Court

On 14 February 2018, the Italian Supreme Court issued a judgement (No. 3577/2018) dismissing the claim filed by Saipem S.p.A. (the "Company") against the fine imposed by CONSOB in 2014 for the Company's failure to timely release inside information (i.e. a review of the pro-forma financial statement indexes). Even though the Company had the information, it withheld its communication for two weeks to let the Board of Directors examine and approve the results. Among the grounds of appeal, the Company sustained that the ne bis in idem principle, as established by ECHR case law (and specifically Grande Stevens v. Italia), had been violated because its failure to release the inside information had been sanctioned under criminal law in a different proceeding. Having ascertained that the purposes of the two sanctions were different and, therefore, that legal action was not brought twice for the same cause of action, the Italian Supreme Court dismissed the appeal on the basis that the communication of inside information should not be withheld once it acquires a sufficiently specific nature. Any relevant resolution of the Board of Directors should not be an obstacle to the release of such information and, if deemed necessary, should be adopted immediately by the Board of Directors.

ESMA proposes simplifications to prospectuses format and content

ESMA is publishing the first part of its technical advice ("TA") under the prospectus regulation. The TA is published pursuant to a mandate from the European Commission ("EC") of 28 February 2017, and has been developed following extensive public consultation. The TA sets out a number of changes aimed at easing requirements for issuers, with a view to reducing the cost and administrative burden of using a prospectus, as well as a number of additional disclosure requirements. The proposals submitted by ESMA in the TA concern, inter alia: (i) the content of the new universal registration document; (ii) the criteria for scrutiny and procedures for approval and filing of the prospectus. ESMA proposes that standard criteria for scrutiny of the completeness, comprehensibility and consistency of the prospectus should be adopted, and that, beyond these standard criteria, the national competent authorities should be afforded a certain level of flexibility, which in ESMA's view is necessary to ensure investor protection. As regards approval and filing procedures, they are largely based on the existing provisions of Commission Delegated Regulation 2016/301. Subject to endorsement by the EC, the TA will form the basis for delegated acts to be adopted by the EC by 21 January 2019.

LABOUR

Circular No. 5/2018: new instructions on monitoring devices

The National Labour Inspectorate issued new indications for installing and using CCTVs, audio and other remote monitoring devices. The Circular deals, in particular, with the following four matters: (a) the preliminary examination of the installation requirements, which must focus on verifying the reasons justifying the installation (which cannot be modified), and not the technical evaluation of the devices; furthermore, the position and number of cameras to be installed is not relevant, but must be connected with reasons justifying the monitoring; moreover, in the case of a real and strong need to monitor working activity, an employer may even install a CCTV system that directly surveils employees; (b) the second point is relating to the protection of company assets: the National Labour Inspectorate holds that devices connected to burglar alarms are always authorised, because they come into operation when there are no employees in the office, whereas if the request concerns devices operating in the presence of employees, the justification for protecting the company assets must be verified, taking into account the extent and type of monitoring; (c) the National Labour Inspectorate focuses also on cameras and remote monitoring devices in the light of new data transmission technologies, and clarifies that the use of software and devices that enable the employer to view the employee's computer or workstation in real-time is permitted only in specific cases; (d) the last point concerns biometric data: installing biometric recognition tools in order to ensure the use of certain devices only by approved employees does not require authorisation, since it is an integral part of the employee's activity.

EPO announces changes in official fees

As of 1 April 2018, changes in the fees payable to the European Patent Office ("EPO") will take effect, including the removal of certain search fee reductions, the increase of appeal fees, incentives for electronic filing and reductions of fees payable to the EPO as International Searching Authority in PCT applications. The changes are detailed here.

DATA PROTECTION

Council of Ministers repeals Italian Privacy Code

On 21 March 2018, the Italian Council of Ministers preliminarily approved the Legislative Decree ("GDPR Implementing Law") aimed at adapting the national legislation to the provisions of the General Data Protection Regulation (the "GDPR"). The GDPR Implementing Law will now be subject to the review of the State Council, the relevant parliamentary committees and the Italian Data Protection Authority ("DPA"), which will issue opinions on the draft legislation. As from 25 May 2018 (i.e. the date on which the GDPR will come into force), the GDPR Implementing Law will repeal Legislative Decree No. 196 of 30 June 2003 that has governed the protection of personal data in Italy to date. On 5 April 2018, the DPA issued its new guidelines which may be subsequently amended and supplemented- on the methodology to be adopted in complying with the GDPR, also stressing the most significant changes introduced.

ANTITRUST

Cross-border action for antitrust damages: the Advocate General clarifies the question of jurisdiction

On 28 February 2018, Advocate General Bobek (the "AG") issued his opinion in case C-27/17 (AB flyLAL-Lithuanian Airlines, in liquidation v. Starptautiska lidosta Riga VAS) affirming that the a claim for compensation for damages caused by abuse of a dominant position, in the form of predatory pricing, should be made before the judge of the jurisdiction where the predatory prices were offered and applied (i.e. the place where the breach of competition law had an impact and victims allege loss of sales). The conclusions make reference to the request for a preliminary ruling made by the Court of Appeal of Lithuania as part of the lawsuit brought by AB flyLAL-Lithuanian Airlines for the damages suffered as a consequence of the anti-competitive strategy used by Latvian airline, Air Baltic, together with Riga International Airport, which allegedly aimed to significantly reduce the prices paid by Air Baltic for services at Riga airport. The AG also suggested that the notion of "place where the harmful event occurred" set out by Regulation (EC) No. 44/2001 on jurisdiction in civil and commercial matters, also allows the claimant to seek compensation before the judge of the jurisdiction where the anticompetitive agreement was concluded. As a result, companies may be sued for antitrust damages either in the country where their registered office is located or where the damages/anticompetitive conducts had effects, thus allowing claimants to choose the jurisdiction having a lightened burden of proof.

DESIGN

United Kingdom ratifies The Hague International Design Agreement

On 13 March 2018, the UK completed the final step in joining The Hague System for the International Registration of Industrial Designs ("The Hague System". Joining in a national capacity will ensure UK businesses and individuals access to The Hague System (which allows filing a single application for registration of up to 100 industrial designs in 67 countries) post-Brexit.

FINANCE

The purchase of a real estate asset by means of Bitcoin, or other cryptocurrency, may trigger certain anti-money laundering duties

On 20 March 2018 the Italian National Council of Notaries answered a query concerning the purchase of a real estate asset by means of Bitcoin. Specifically, the study addresses the issue whether the use of Bitcoin, or of any other cryptocurrency, conflicts with the applicable legislation on anti-money laundering regarding (i) the limitation to the use of cash pursuant to article 49 of the Legislative Decree no. 231/2007 and (ii) the duty to analytically describe the means of payments pursuant to paragraph 22 of article 35 of Law Decree no. 223/2006. The Italian National Council of Notaries argued that the intrinsic characteristic of the Bitcoin system is the anonymity and the impossibility to identify the parties involved in any transaction occurred by means of Bitcoin. With specific reference to the payment of the price of a real estate asset by means of Bitcoin, there is no proof of the source of the payment or of the beneficiary, other than the statements made by the purchaser and the seller to be the owner of the relevant accounts. Being the tracing of transactions the purpose of the discipline on anti-money laundering, the Italian National Council of Notaries concluded that the use of the Bitcoin system for payments inherently conflicts with the purpose of the discipline, including with the provisions regarding (i) the limits to the use of cash pursuant to article 49 of the Legislative Decree no. 231/2007 and (ii) the duty to analytically describe the means of payments pursuant to paragraph 22 of article 35 of Law Decree no. 223/2006. In addition, being it objectively impossible, in the view of the Italian National Council of Notaries, to comply with the mentioned anti-money laundering provisions, the same suggested to evaluate the opportunity to report the purchase of a real estate asset by means of Bitcoin as suspicious transaction.

INDUSTRIES

E-COMMERCE

Commission proposal for new consumer protection directive released

On 11 April 2018 the European Commission published two proposals for Directives (the so called New Deal for Consumers) amending existing EU consumer protection laws, including the Directive on Unfair Terms in Consumer Contracts, the Directive on Unfair Commercial Practices and the Consumer Rights Directive. The new rules are aimed at providing more transparency in online marketplaces by requiring online marketplaces to inform consumers, inter alia, of the criteria they use to rank different offers/search results. In addition, the proposal extends the application of the Consumer Rights Directive to digital services for which consumers provide personal data "instead of paying with money", such as cloud storage, social media and e-mail accounts, and requires the trader to comply with the obligations set out by the General Data Protection Regulation. Finally, the proposal provides more effective and dissuasive penalties for cross-border infringements of the Unfair Commercial Practices Directive by granting national consumer protection authorities the power to impose a fine of at least 4% of a company's turnover for "widespread infringements" and by allowing qualified entities (such as consumer organizations) to seek remedies such as compensation, replacement or repair on behalf of groups of consumers that have been harmed by an unfair commercial practice. The proposals are yet to be adopted by the Council of the EU and will be debated in the European Parliament in the forthcoming months.

TECHNOLOGY

EU Commission presents Fin-Tech Action Plan

On 8 March 2018, the European Commission ("EU Commission") presented an action plan related to a series of initiatives aimed at harnessing the opportunities made available by technology-enabled innovation in financial services, as well as at strengthening the cyber security of financial markets ("FinTech Action Plan"). According to the FinTech Action Plan, the EU Commission will, inter alia: (a) host a FinTech lab where EU and national authorities can cooperate with technology solution providers in a neutral and non-commercial environment; (b) consult on how to promote the digitalisation of information published by listed companies in Europe, including by using innovative technologies to interconnect national databases; (c) present a best-practice guide on regulatory sandboxes based on guidance from European supervisory authorities (i.e. a framework set up by regulators that may allow FinTech start-ups and other innovators to conduct experiments in a controlled environment, under the supervision of regulators); (d) report on the challenges and opportunities of crypto assets; and (e) remove existing obstacles which prevent a broader use of cloud services. For further information, please see here.

EU Commission on Artificial Intelligence

On 8 March 2018, the EU Commission announced a procedure for applications to join a group of experts in artificial intelligence (AI) that will: (a) advise the EU Commission on how to build a broad and diverse community of stakeholders in a "European AI Alliance"; (b) support the implementation of the upcoming European initiative on artificial intelligence planned for April 2018; (c) draft guidelines for the ethical development and use of artificial intelligence based on EU fundamental rights ("AI Guidelines"). The AI Guidelines will be drafted taking into consideration the set of basic principles proposed on 8 March 2018 by an independent advisory body of the European Commission, the so-called "European Group on Ethics in Science and New Technologies" ("EGE"). As far as privacy issues are concerned, the EGE pointed out that both physical AI robots (as part of the Internet of Things) and AI softbots that operate via the World Wide Web, must comply with data protection regulations, may not collect and spread data or be run on sets of data where no consent has been given for its use and dissemination. For further information, please see here.

Authored by Ludovico Anselmi, Domenico Colella, Cesare De Falco, Giulia Ferrari, Davide Graziano, Andrea Lamonica, Manfredi Leanza, Giulia Loi, Alessandro Negri, Federica Paniz, Fabrizio Sanna, Gaia Sansone, Arturo Santoro, Marina Sartor, Francesco Senesi, Olga Sihtar, Dora Vuolo.

ORSINGHER ORTU
avvocati associati
Corporate, IP & TMT lawyers

ORSINGHER ORTU - Avvocati Associati - info@orsingher.com - P. IVA 05769090969
MILANO Via Privata Fratelli Gabba, 3 - 20121 Milano - T +39 02 89075050 - F +39 02 62086008
ROMA Piazza di Campitelli, 3 - 00186 Roma - T +39 06 45599200 - F +39 06 69970021