

NEWS FROM THE FIRM

Antitrust Authority seminar on Antritrust and reduction of inequalities

On 13 September 2018, our partner [Sacha D'Ecclesiis](#) spoke at a [panel session](#) organised by the Italian Antitrust Authority on Antritrust and reduction of inequalities. The paper presented by Sacha will focus on digital economy, between competition and consumer protection law.

Orsingher Ortu – Avvocati Associati advises Txt e-solutions on the purchase of Teleo

A team from Orsingher Ortu – Avvocati Associati advised the listed company Txt e-solutions on the acquisition of the Italian company Teleo. The team was led by [Paolo Canal](#), and included counsels [Simone Masotto](#) and [Francesca Flego](#).

Vera Collavo joins the firm

The recent arrival of [Vera Collavo](#) has strengthened the firm's IP capability. Vera has worked in leading Italian law firms and has developed significant experience in the copyright and anti-piracy sector, also as an in-house lawyer in leading companies in the field of media and entertainment.

RECENT PUBLICATION

Partner of the firm publishes book on copyright and design

In August 2018, our partner [Fabrizio Sanna](#) published the book "Il messaggio estetico del prodotto – La tutela d'autore della forma industriale" on copyright protection of industrial design under EU and Italian laws. The book is published by Giappichelli.

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CAPITAL MARKETS

Code of Corporate Governance: an innovative approach to diversity

On 16 July 2018, the Italian Corporate Governance Committee approved amendments to the [Code of Corporate Governance](#) for listed companies, recommending a gender diversity approach within corporate bodies. The resolution by the Committee is aimed at strengthening the effects of Law No. 120 of 12 August 2011 (so-called "Golfo-Mosca" law) on the composition of corporate bodies of listed companies on regulated markets. The new Code recommends a quota of 1/3 for directors belonging to the under-represented gender, in accordance with domestic legislation and international best practice. However, diversity should be applied by prioritising competences and professional requirements. The code is non-binding.

DATA PROTECTION

Italian implementation of the GDPR published

On 4 September 2018, the [Legislative Decree No. 101 of 10 August 2018](#) implementing GDPR provisions in Italy has been published in Italian official journal. Legislative Decree No. 101/2018 will come into force on 19 September 2018.

Garante's inspection plan for 2018 unveiled

On July 2018, the Italian Data Protection Authority approved the [inspection plan for the second half of 2018](#), the first after the entry into force of the GDPR, stressing that monitoring will focus on data processing for telemarketing activities, as well as on companies and public administrations that manage large databases.

Garante fines telco operator for telemarketing

On 5 July 2018, following its investigations pursued after a number of user complaints, the Italian Data Protection Authority imposed an [administrative sanction on Vodafone](#) for having carried out "aggressive" telemarketing activities in violation of the legislation in force prior to the entry into force of the GDPR. According to the Authority, Vodafone breached fundamental principles underpinning the data protection law, namely the principles of consent and lawfulness, fairness and transparency in the processing of personal data. It appeared that Vodafone conducted data processing for telemarketing purposes without valid and explicit consent towards over 38 million prospects and former clients included in Vodafone's "black lists", representing users who should not be the subject of telemarketing campaigns due to the lack of or withdrawal of their consent or their opposition to the processing of their personal data for marketing purposes.

COPYRIGHT

Collective management of copyright: a partial liberalisation of the market

[Law Decree No. 148/2017](#) of 16 October 2017 (the "Fiscal Decree 2018") has amended Article 180 of the Italian Copyright Law, which for the last 70 years has provided for the de jure monopoly of the Society of Authors and Publishers ("SIAE") in the intermediation and management of copyright. Following this change in the law, collecting societies other than SIAE are now allowed to operate on the Italian market. However, the liberalisation appears to be only partial, given that it is limited to Italian and foreign collecting societies that are (i) owned or controlled by their members, and/or (ii) organised on a not-for-profit basis (i.e. "Collective Management Organisations", such as SIAE). On the contrary, collecting societies that are (i) not owned or controlled by right holders and (ii) organised on a for-profit basis (i.e. "Independent Management Entities", such as Sundreef Ltd), are authorised to operate on the Italian market only to the extent that they enter into (representation) agreements with legally established collecting societies (meaning Collective Management Organisations). The amendments introduced by Law Decree 148/2017 were necessary for the purpose of compliance with [Directive \(EU\) No. 2014/26/EU of 26 February 2014](#) (on the collective management of copyright and related rights), which fosters competition in the EU market and whose provisions were partially implemented in Italy by [Legislative Decree No. 35 of 15 March 2017](#), which preserved the SIAE de jure monopoly in the Italian framework.

ECJ further clarifies the concept of "communication to the public" pursuant to Article 3 of the InfoSoc Directive

On 7 August 2018, the EU Court of Justice issued its judgment in [case C-161/17](#) (Land Nordrhein-Westfalen v. Dirk Renckhoff) holding that the posting on a website of a copyrightable photo previously published on another website, without any restriction preventing it from being downloaded and with the consent of the copyright holder, falls within the concept of "communication to the public" pursuant to Article 3 of [Directive \(EC\) No. 2001/29 of 22 May 2001](#) (on the harmonisation of certain aspects of copyright and related rights in the information society "InfoSoc Directive"). Such posting therefore requires the prior authorisation of the copyright holder.

Copyright Directive draft approved by the European Parliament

On 12 September 2018, the European Parliament approved the draft of [Proposal for a Directive](#) of the European Parliament and Council on Copyright in the Digital Single Market ("Copyright Directive"). The EU Parliament, the Council and the Commission will now negotiate the final draft of the Copyright Directive. In case the Copyright Directive is finalized, EU Member States will have to bring into force laws and regulations necessary to comply with the provisions of the Copyright Directive, within a fixed period of time.

ANTITRUST

EU Commission fines electronics manufacturers for fixing resale prices

On 24 July 2018, the European Commission [fined consumer electronics manufacturers](#) Asus, Denon & Marantz, Philips and Pioneer for a total of over 111 million Euro for breaching EU rules prohibiting anti-competitive agreements ([Article 101 of the TFUE](#)), on the basis that the companies were found to have imposed fixed or minimum resale prices on their online retailers. The practice, known as "fixed or minimum resale price maintenance (RPM)", was carried out through the use of sophisticated monitoring tools that allowed the manufacturers to effectively track the prices set by their online retailers and intervene swiftly (with threats and sanctions, such as refusal of supplies) against retailers who offered their products at lower prices than those stipulated by the manufacturers. By restricting the ability of online retailers to set their own retail prices, price competition between online retailers was significantly reduced, leading to consumers paying higher prices for electronic products, such as kitchen appliances, hair dryers and computers. In addition, the Commission pointed out that since many online retailers use pricing algorithms that automatically adapt prices to those of competitors, the restrictions imposed typically had a broader impact on the online market.

TRADEMARKS

EJC on labelling and repackaging

On 17 May 2018, the EU Court of Justice issued its judgment in [case C-642/16](#) (*Junek Europ-Vertrieb GmbH v. Lohmann & Rauscher International GmbH & Co. KG*) to clarify in which cases the labelling of branded products by a parallel importer constitutes "repackaging". Specifically, the case related to the application, to packaging of certain medical devices imported as parallel imports into Germany of a small label (attached to a blank portion of the box in order not to hide any trademark) informing the purchaser of the name of the importer. The ECJ deemed that in such a case, no actual "repackaging" had occurred. Consequently, the Court ruled that the trademark owner "cannot oppose the further commercialisation, by a parallel importer, of a medical device in its original internal and external packaging where an additional label [...] by its content, function, size, presentation and placement, does not give rise to a risk to the guarantee of origin of the medical device bearing the mark".

PATENTS

ECJ's judgment on SPC eligibility for "combination products"

On 25 July 2018, the EU Court of Justice issued its judgment in [case C-121/17](#) (*Teva v. Gilead Sciences Inc.*, aka case Truvada) on the interpretation of Article 3 of [Regulation \(EC\) No. 469/2009](#) (the "SPC Regulation"), concerning the conditions for obtaining supplementary protection certificates for medicinal products ("SPCs"). The ECJ held that products composed of several active ingredients with a combined effect covered by a patent may be eligible for SPC protection under the relevant provision only if the claims of the patent "necessarily and specifically relate" to that specific combination of active ingredients (although the combination may not be expressly mentioned in the claims). For this purpose, from the point of view of a person skilled in the art and on the basis of the prior art (a) the combination of those active ingredients must necessarily, in the light of the description and drawings of the patent, fall under the invention covered by that patent, and (b) each of those active ingredients must be specifically identifiable, on the basis of all the information disclosed by that patent.

LABOUR

The Decreto Dignità becomes law (with amendments)

[Law No. 96 of 9 August 2018](#) has converted [Law Decree no. 87 of 12 July 2018](#), the so-called "Decreto Dignità" ("Dignity Decree") into law. Law 96/2018 amended the Dignity Decree (see [Our Echo No. 33](#)). The new regime confirmed the requirement that fixed-term contracts with a duration of more than 12 months must state a business reason to justify the company's decision to opt for a fixed-term relationship, but introduced a new regulation regarding renewals and extensions of current fixed-term employment agreements. In particular, the above-mentioned requirement shall apply only to renewals and extensions entered onto after 31 October 2018.

INDUSTRIES

TELECOMMUNICATIONS

Italian Competition Authority fines telco companies for a total of 3.2 million euros

On 1 August 2018, with decisions No. [27287](#), [27288](#) and [27289](#), the Italian Competition Authority (the "ICA") fined Wind Tre, Telecom and Vodafone for aggressive commercial practices under Sections 20, 24 and 25 paragraph c) of the [Italian Consumer Code](#). The ICA decided that the three companies sent payment reminder letters to customers considered to be in arrears, threatening to register their names in a database called "S.I.Mo.I.Tel." in order to force them to pay the arrears claimed by the operators, with the possible consequence of not being able to conclude contracts with other telephone operators. According to the ICA, the consumer's choice to pay the requested amount was unduly influenced by the telephone operators that addressed the letters not only to the "intentional arrears" customers, but also to those who did not meet the S.I.Mo.I.Tel registration requirements. For more information see ICA.

New obligation to register with the ROC

On 25 July 2018, the Italian Communications Authority ("AGCOM") enacted [Resolution No. 402/18/CONS](#), by which it extended the category of companies obliged to register with the Italian Register of Communication Operators ("ROC"). Specifically, as from 1 November 2018, all companies indirectly using national numbering resources - assigned by the Ministry of Economic Development to a mobile network operator - in order to identify users of a mobile and personal communications service, must register with the ROC and provide specific information, depending on whether or not they hold a general authorisation as a provider of electronic communication services pursuant to Art. 25 of [Law no. 259/2003](#). The extension covers, for example, companies providing communication apps that allow end users to make phone calls, video calls and send messages to other users by registering with the communication app through a national number obtained from a third party.

TECHNOLOGY

AGCOM issues regulation on freedom of choice of terminal equipment for Internet access

On 18 July 2018, the AGCOM issued its [Resolution No. 348/18](#) (the "Resolution"), adopting measures for the implementation of [Regulation \(EU\) No. 2015/2120](#) of 25 November 2015 (on open internet access and users' rights on electronic communication networks). The Resolution confirmed end-users' freedom of choice between various types of terminal equipment for Internet access from a fixed location. As a result, providers of Internet access services ("Providers") and operators of public communications networks ("Operators") must comply with specific obligations when end-users autonomously select their own terminal equipment. In that case, Operators and Providers may not, inter alia, (a) refuse to connect their internet access services with relevant terminal equipment, provided that it meets the basic requirements under Italian and European law; (b) impose additional charges on end-users; (c) provide an inferior quality of service. Furthermore, when Providers offer Internet services in combination with their own terminal equipment, they must provide end-users with adequate information which clearly distinguishes the contractual conditions of the internet service access from those for the use of the terminal equipment.

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