

NEWS FROM THE FIRM

Pierfrancesco Giustiniani joins the firm

The recent arrivals of partner **Pierfrancesco Giustiniani** and associate **Martina Monico** have strengthened the firm's M&A capability. Before joining the firm, Pierfrancesco was a partner of Bonelli Erede Pappalardo and Hi.Lex – Avvocati Associati. In over 20 years of professional activity he has gained significant experience of M&A, corporate, and capital markets domestic and international transactions. He holds a board and a statutory auditor position in a number of companies.

Sacha D'Ecclesiis joins the firm

The arrival of **Sacha D'Ecclesiis** as the partner in charge of the Antitrust, Competition & Trade practice of the firm has strengthened our Rome office. Sacha has worked at a number of leading international firms, including Hogan Lovells, and advises Italian and international clients in a variety of industries (including IT, e-commerce and media, energy, oil and gas, health care, aerospace and transportation) on EU and competition & consumer law matters, as well as in administrative proceedings before the Italian Competition Authority and the European Commission.

Advising on the acquisition of Yogitech by Intel

A team led by partners **Domenico Colella** and **Stephen McCleery** (with **Manuela Villa**, **Cesare De Falco**, **Anna Chiara Margottini** and **Valentina Mauri**) assisted Yogitech's shareholders on the acquisition by Intel Corporation of 100% of the company by Intel.

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CAPITAL MARKETS

Italian Supreme Court on obligations of auditors

On 29 March 2016, the Italian Supreme Court issued a judgment (no. 6037) concerning the duties of statutory auditors of listed companies with regard to their obligation to oversee and, if necessary, to report non compliance with relevant laws to the Italian Companies and Stock Exchange Commission (CONSOB), as provided by Article 149 of Legislative Decree no. 58/1998 (applicable at the time the relevant facts occurred, i.e. the years 2008-2010). In particular, the Chairman of the Board of Statutory Auditors and the Statutory Auditors were found liable for not having complied with their duty of supervision and, specifically, for not having identified certain wilful misconduct of the directors of an investment vehicle. The Supreme Court held that the complexity of a company's structure does not exclude or limit the duty of each statutory auditor to exercise their functions as provided by the law.

Publication of interim management statements

The Italian Legislative Decree no. 25/2016, which came into force on 18 March 2016 (the Decree) introduced certain amendments to Legislative Decree no. 58/1998 (the Financial Act) and, *inter alia*, eliminated the obligation to publish interim management statements. The Decree gives Consob the power to require Italian issuers to publish additional periodic financial information, such obligation subject to Consob publishing a prior impact assessment in relation to the nature and costs of such information, also from a comparative prospective. On 14 April 2016 Consob published a consultation document concerning the amendment of the rules ahead of the publication of its impact assessment. With regard to companies traded on the STAR segment of the MTA, by notice dated 21 April 2016 Borsa Italiana S.p.A. clarified that its rules on publication of interim management statements (including Article 2.2.3 paragraph 3 requiring STAR companies to make interim management statements available) continue to apply. As regards the content of those statements, Borsa Italiana specified that STAR issuers may make reference to, *inter alia*, the provisions of the pre-existing paragraph 5 of Article 154-ter of the Financial Act concerning the obligation to publish the interim management statements.

DATA PROTECTION

EU General Data Protection Regulation (GDPR) approved

On 14 April 2016, the European Parliament definitively approved the GDPR, which is intended to ensure a uniform level of data protection throughout the EU. The GDPR will come into force 20 days after its publication in the EU Official Journal and its provisions will be directly applicable throughout the EU as from two years after that date. For further information please see the [Parliament Press Release](#) and the [GDPR approved text](#).

Art. 29 Working Party issues opinion on the EU-US Privacy Shield

On 13 April 2016, the Article 29 Working Party ("WP29" – made up of representatives from the Data Protection Authorities of all EU Member States) released its "Opinion 01/2016 on the EU-US Privacy Shield draft adequacy decision". The WP29 welcomed the improvements implemented by the Privacy Shield as compared to the Safe Harbour scheme (held invalid by the EU Court of Justice in its judgment C-362/14), but raised a number of issues. In particular, the WP29 noted that: (a) the language used in the Privacy Shield lacked clarity on certain aspects, such as the application of the purpose limitation principle; (b) the agreed text referred to Directive 95/46/EC without making reference to the General Data Protection Regulation ("GDPR") and should be updated once the GDPR comes into force; (c) the new redress mechanism may prove too complex for individuals; (d) the representations of the US Office of the Director of National Intelligence did not expressly exclude extensive and indiscriminate collection of data originating from the EU; and (e) concerns as to the independence of the new Ombudsperson. For further information please refer to [WP29 Opinion 01/2016](#).

COPYRIGHT

Linking does not infringe copyright (according to EU Advocate General)

On 7 April 2016, the EU Advocate General Wathelet released his opinion in the CGEU case no. C-160/15, regarding alleged copyright infringement made by posting links to a website containing copyrighted photos from Playboy magazine. According to the Advocate General, hyperlinks which lead, directly or indirectly, to protected works are not an "act of communication" to the public within the meaning of the 2001/29/EC directive (on the harmonisation of copyright law) when the works are already freely accessible on another website and links only serve to facilitate their viewing. In such circumstances, the intervention of the owner of the site which contains the hyperlink is not indispensable in making the relevant photos available to internet users. On this basis, the relevant links did not result in a breach of copyright. The opinion of the Advocate General is available at this [link](#).

FINANCE

Italian tax authorities circular on MBO/LBO/IBLOR transactions

On 30 March 2016, the Italian tax authorities issued circular no. 6/E containing official interpretations on specific tax issues concerning MBO/LBO/IBLOR transactions and, in particular (a) deductibility of interest costs of acquisition financing; (b) applicability of anti-abuse provisions; (c) intra-group services rendered to the target company; (d) treatment of fees charged to the target company; (e) IBLOR structures and withholding taxes; (f) tax treatment of shareholders' loans granted to the acquisition vehicle; and (g) applicability of tax exemptions/reductions on capital gains realised by a non-resident holding company of the acquisition vehicle. The interpretations rendered by the Italian tax authorities on the above-mentioned matters remove uncertainty on the application of tax provisions to MBO/LBO/IBLOR transactions.

LABOUR

Implementing the decree on "retirement and facilitated part-time agreement"

The so-called "Legge di Stabilità" (Law no. 208/2015) introduced new rules on a form of "retirement and facilitated part-time agreement" for employees in the private sector who are close to retirement. Employees in the private sector who are entitled to retire on the basis of the relevant age and contribution requirements, i.e. 20 years of contributions and 63 years and 7 months of age, may now enter into an agreement with their employers to convert their employment from full-time to part-time (with a reduction of between 40% and 60% of normal working hours), at a monthly salary of approximately 2/3 of their full time salary. The new salary will not be proportional to the reduction in working hours, as the employer will have to pay the employee a special allowance equal to the social security contributions that it would have paid to INPS (Italian Social Security Authority) with reference to the amount of the salary reduction. Although this allowance will be exempt from social security contributions, INPS will calculate benefits as if contributions were paid on the exempt amount ("contributi figurativi").

TRADE SECRETS

New Trade Secrets directive adopted

On 14 April 2016, the European Parliament approved the proposal of the new Directive on the protection of undisclosed know-how and business information (dubbed the "Trade Secrets Directive"). The directive is intended to harmonise the definition of a "trade secret" across the European Union and provide owners of trade secrets with defences against the unlawful acquisition, use and disclosure of confidential commercial information (including interim injunctive relief and damages). The Directive also provides for specific measures to ensure the protection of trade secrets in the context of legal proceedings (e.g. by limiting access to documents containing trade secrets and hearings at which trade secrets may be disclosed). EU Member States now have a 24-month period to implement the Directive. The full text of the directive is available [here](#).

INDUSTRIES

E-COMMERCE

Alibaba joins IACC

On 13 April 2016, the International AntiCounterfeiting Coalition (IACC) announced that it has created a new membership category for companies and intermediaries. According to IACC's press release, "companies that join under the new category will be known as IACC General Members. General Member status is reserved for companies that are not directly or substantially affected by counterfeiting, but whose industry position or policies make them a potential partner with IACC in its mission to combat counterfeiting and piracy". Alibaba, the Chinese e-commerce giant, has joined the new category as its first member.

EU Action Plan on VAT unveiled

The EU Commission recently published its Action Plan on VAT, which sets out urgent actions to tackle the VAT gap and to adapt and update the system to the requirements of the digital economy. In particular, within the framework of the Digital Single Market Strategy, the Commission will present a legislative proposal by the end of 2016 to modernise and simplify VAT for cross-border e-commerce by (a) extending the current "Mini One Stop Shop" concept to all cross-border e-commerce, including distance sales, (b) introducing common EU-wide simplification measures to help small start-up e-commerce businesses, (c) streamlining audits in this sector (home country audits), and (d) removing the VAT exemption for the importation of small consignments from suppliers in third countries. The Commission's Action Plan on VAT is available [here](#).

MEDIA

ICA authorises Mediaset takeover of Finelco

On 15 April 2016, the Italian Competition Authority (AGCM) approved (subject to conditions) the acquisition of the Finelco group (the owner of radio channels Radio105 and Radio Montecarlo) by RTI S.p.A. (a subsidiary of Mediaset). As a result of the concentration, Mediaset, through RTI, will become by far the largest Italian radio broadcaster, holding the highest market shares in a number of broadcasting and advertising markets. RTI has committed to implement certain remedies aimed at limiting the risk of creating a dominant position in the sector, i.e. to hold separate its affiliated companies that provide advertising services to TV and radio broadcasters and to refrain from the joint selling of such services; not to renew its existing contracts with certain radio broadcasters for the exclusive provision of advertising services; and refrain from acquiring or entering into new advertising agreements with other radio broadcasters until 2020 (see [here](#)).

Italian broadcasters and soccer league fined by anti-trust authority

On 20 April 2016, Italy's antitrust authority imposed fines totalling Euro 66 million on Italy's major pay-TV operators, the Lega Calcio soccer league and its advisor Infront, for an anti-competitive agreement in relation to Serie A soccer rights which was agreed for the period 2015 to 2018. Further information is available [here](#).

PUBLISHING

Public consultation on publishers' rights launched

On 23 March 2016, the EU Commission launched a public consultation as part of its programme to update EU copyright rules for the digital age. The consultation is focused on the role of publishers in the copyright value chain and seeks views on the possible extension to publishers of the neighbouring rights. The Commission is also consulting on the panorama exception, i.e. free use of images depicting buildings, sculptures and monuments located permanently in public places. The consultation period will run from 23 March to 15 June 2016 and it is open for responsive from authors, publishers and online service providers. For further information (and to submit a response to the consultation) please see [here](#).

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