

## ITALIAN COMPETITION NEWSLETTER

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In this issue, dedicated to the ICA's decisions and the Administrative Judiciary's rulings in antitrust and consumer protection matters for the month of September 2024:

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### **ABUSE OF DOMINANT POSITION: THE ICA APPROVES A NEW SET OF COMMITMENTS PROPOSED BY AUTOSTRADE PER L'ITALIA S.P.A. REGARDING ITS PREPAID TOLL PAYMENT CARDS**

On 3 September 2024, the Italian Competition Authority (the "ICA" or the "Authority") accepted a request for revision of the commitments already made binding in the context of an investigation opened in 2007 for abuse of dominant position in the electronic toll collection market (A382/2007) against Autostrade per l'Italia S.p.A. ("ASPI").

The Authority had originally challenged ASPI's refusal to refunds unused or partially used "Viacards" (i.e. prepaid cards specifically designed for electronic payment of highway tolls), during their validity period.

Such concerns were then addressed by ASPI through two commitments: (i) remove the expiration date from its cards and (ii) provide adequate information to users through a specific communication campaign.

Following the announced intention to discontinue Viacard cards, in July 2024 ASPI submitted to the ICA a request for revision of the first commitments.

Specifically, ASPI proposed to:

- a) cease the production and distribution of Viacard cards to third-party resellers;
- b) repurchase unsold cards from distributors;
- c) ensure that Viacard cards already purchased by motorists can be used for a period of more than 5 years at toll booths, while maintaining, for over 14

years, certain procedures for those wishing to request a refund of the remaining credit on their cards; and

- d) provide users interested in obtaining a refund of the remaining credit with specific channels for submitting their request (such as its website or the "Muovy" app, as well as a telephone procedure);

Additionally, ASPI renewed its intention to conduct an information campaign to fully inform consumers about the discontinued possibility of purchasing the cards and the terms for their residual use and/or refund.

Finally, the ICA found that these new measures would provide consumers with an adequate period of time for any residual use of their Viacard cards and to request refunds. Furthermore, given the wide range of options available for submitting such requests, the Authority found the revised commitments acceptable and made them mandatory.

## **CARTEL OF CORRUGATED CARDBOARD: THE ICA REDUCES THE FINE IMPOSED ON ONDULATI NORDEST S.P.A.**

Following the judgment issued by the Council of State (Consiglio di Stato) in July 2024 (judgment no. 6808/2024), on 10 September 2024 the Italian Competition Authority (the "Authority" or the "ICA") reduced the fine imposed on Ondulati Nordest S.p.A. ("Ondulati") upon completion of its investigation into the vertically-related markets for corrugated cardboard sheets and packaging (I805/2019).

**In 2019, the ICA found that the main manufacturing companies have agreed to distort competitive dynamics. The fine imposed on Ondulati amounted to**

€2,831,489 (decision no. 27849/2019). The company then appealed the ICA's decision, first before the Regional Administrative Court of Lazio (TAR Lazio) and then - upon dismissal of all pleas of appeal by the latter – before the Council of State (Consiglio di Stato), the Italian Supreme Administrative Court.

The Council of State upheld Ondulati's claims solely with respect to the quantification of the sanction (judgment no. 941/2023). The Authority therefore reduced the sanction to € 2,548,340 (decision dated 20 February 2024, no. 31071).

However, Ondulati appealed again the ICA's decision, this time arguing that it had not considered the implementation of an antitrust compliance program when determining the amount of the fine, and hence failed to apply the appropriate discount.

In its latest ruling, the Council of State ordered the ICA to recalculate such fine applying an additional 5% reduction, thus bringing the fine down to €2,420,923.

## **UNFAIR COMMERCIAL PRACTICES: THE COUNCIL OF STATE CONFIRMS THE €1.5 MILLION FINE IMPOSED ON FLIXBUS**

With ruling no. 7503/2024 delivered on 9 September 2024, the Council of State (Consiglio di Stato) rejected the appeal brought by Flixbus Italia S.r.l.

("Flixbus") against the judgement of the Regional Administrative Court of Lazio (TAR Lazio) which upheld the decision of the Italian Competition Authority (the "Authority" or "ICA") imposing a fine equal to € 1.5 million for two unfair commercial practices (decision no. 28557, dated 2 February 2021).

In particular, in 2021 the ICA found that Flixbus had engaged in the following two unfair conducts affecting the low- cost long- distance bus services market:

- a) the sale of travel tickets through online channels, despite travel restrictions due to Covid-19 pandemic containment measures. The persistent availability of booking and payment options for services that could not be provided was indeed found to unduly influence the choices of consumers, who were misled into believing that they could use the service, although in fact this was not permitted; and
- b) the dissemination of incomplete, ambiguous, and untimely information regarding the cancellation of services and customers' rights in cases of service suspension, as well as the inconsistent and untimely handling of refund requests, such as the prompt offer of a voucher as the sole or primary means of compensation for cancelled tickets rather than a cash refund. Additionally, Flixbus failed to provide adequate information about alternative compensation options available to consumers and applied extra charges for exercising post-sale rights.

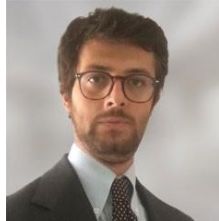
In its ruling, the Council of State confirmed the ICA's assessment, which had already been upheld by the Regional Administrative Court of Lazio in the first instance, and the Authority's fine of €1.5 million, concluding that Flixbus had unduly exploited the emergency situation caused by the Covid-19 pandemic with consequent harm to consumers.

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