

ITALIAN COMPETITION NEWSLETTER

2/2024

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

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UNFAIR COMMERCIAL PRACTICES: THE ICA IMPOSE A €2 MILLION FINE ON STAR ITALIA S.P.A.

On 8 October 2024, the Italian Competition Authority (the "ICA " or the "Authority") concluded the investigation initiated following complaints from the consumer associations Atecon, Adiconsum Sardegna, and the Bolzano Consumer Protection Center, against Star Italia S.p.A. (the "Company"), which operates in the sale and installation of sanitary ware and building renovation services. The investigation found that the Company had breached the Consumer Code by engaging in unfair commercial practices and using unfair contractual terms.

In particular, the ICA challenged the Company on three unlawful conducts, constituting a single unfair commercial practice:

- i. during off-premises sales the Company provided misleading information about the characteristics of renovation services and the eligibility for tax bonuses related to renovations aimed at removing architectural barriers

- ii. the Company systematically failed to complete the commissioned projects according to the agreed conditions or meet the contractual time schedule; and
- iii. lastly, in light of such breaches, the Company hindered the exercise of rights granted to consumers, including the right of withdrawal, which was explicitly excluded by the contractual documentation, and the right to terminate the contract.

The ICA later extended the scope of the investigation to certain clauses of the general terms and conditions of the Company's Procurement Contract, concluding that these were vexatious in nature, insofar as they were intended, inter alia, to: (a) condition the commencement of the work execution period on the full payment of the agreed price, (b) impose a fixed penalty to be paid by the Company in the event of non-compliance with the agreed time schedules, regardless of the actual delay incurred, and (c) exclude the exercise of the right of withdrawal by consumers.

The Company then submitted a set of remedies, which was however deemed unacceptable by the ICA, on the grounds that it had been filed only belatedly and was completely insufficient to address the contested conducts. Indeed, even in the course of the proceedings, the ICA continued to receive complaints from consumers concerning the Company's ongoing unlawful practices.

Therefore, the Authority imposed a € 1.5 million fine on the Company for violations of Articles 20, 24, 25, and 52 of the Consumer Code, relating to unfair commercial practices and professional negligence, as well as a fine of € 500.000 for vexatious contractual terms.

UNFAIR COMMERCIAL PRACTICES: THE ICA FINES BYMÈTIS CANCELLATIONS B.V.

On 8 October 2024, with decision no. 31346/2024, the Italian Competition Authority (the "ICA" or the "Authority") imposed a € 20.000 fine on ByMètis Cancellations B.V. (the "Company") for engaging in unfair commercial practices related to the provision of services involving the drafting and sending of "cancellation letters" to terminate long-term contracts, such as subscriptions, utilities, or membership agreements.

The ICA concluded that:

- a) the content and graphic layout of the Company's website was not appropriate to provide clear and immediate evidence of the fee-based nature of the services offered; and
- b) the Company sent numerous payment reminders in a short period, followed by threats of additional charges and legal action, which unduly influence the consumers' choice, thus inducing them to proceed quickly with payment without raising objections.

UNFAIR COMMERCIAL PRACTICES: THE ICA TAKES ACTION AGAINST CREDIT CARD SURCHARGES

On [2 October 2024](#), the Italian Competition Authority (the "ICA" or the "Authority") imposed a € 20.000 fine on BLUPARK S.r.l. (the "Company") for failing to comply with [decision no. 3100/2023](#), by which the Authority had sanctioned the Company for unfair commercial practices consisting in

charging higher prices based on the consumer's payment method for fuel purchases, thus infringing Article 62 of the Consumer Code.

Indeed, even after the decision, the Company continued to apply a € 0.02 per liter surcharge for credit card payments, arguing that "*in case of credit card payments, the €0.02/liter discount, which is instead provided for cash or Pagobancomat payments, is not applied.*" Therefore, the Company alleged that it had simply not applied a discount, not charged a price premium.

The Authority rejected this defence, emphasising that, pursuant to Article 62 of the Consumer Code, "*professionals cannot charge consumers fees for using specific payment methods*" and that this rule applies regardless of the nature or title of the fee imposed by the seller for credit card payments, prohibiting any price differentiation based on the consumer's choice between cash and other payment methods.

UNFAIR COMMERCIAL PRACTICES: THE ICA APPROVES A NEW SET OF COMMITMENTS PROPOSED BY HYUNDAI MOTOR COMPANY ITALY S.R.L.

On [2 October 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 2022 for unfair commercial practices (PS12254) against Hyundai Motor Company Italy S.r.l. (the "Company"), concerning issues in the communication of car purchase through financing offers.

The Authority had originally challenged the potentially misleading and deceptive nature of the information provided by the Company to consumers during their first interaction on the website. Specifically, this concerned the total financing costs, such as the amount of the down payment and the number of instalments, as these details were only accessible after the consumer performed one or more actions.

The Company initially committed to: i) removing promotional messages and other information related to vehicle costs from the homepage and social media; ii) organizing all information about financing and promotions into pages specifically designed for that purpose; iii) clearly outlining the conditions for accessing these promotions, including the associated financial charges; iv) adding an educational video on the website to help consumers understand the structure of financing options; and v) designing and implementing a formal training program for personnel involved in the management and creation of advertisements, ensuring full understanding and adherence to the established commitments.

The recent changes, regarding commitments i), ii), and iii), are aimed at:

- i. providing key details about vehicle financing, such as the down payment, the number and the amount of each instalment, APR and GAPR, starting from the homepage and relevant landing pages, social media and, finally, banners on third-party websites;
- ii. clearly stating the conditions for accessing promotional prices and the associated financial charges in these same locations;
- iii. adding a link on the initial consumer contact pages to a more detailed section of the website.

Finally, the ICA found that these new measures would provide consumers, from the very start, with the essential information needed for a proper evaluation of the purchase offers, demonstrating the Company's commitment to ensuring clarity and transparency in its communications with the public.

UNFAIR COMMERCIAL PRACTICES: THE COUNCIL OF STATE FURTHER REDUCES SANCTIONS IMPOSED BY THE ICA ON UNIEURO S.P.A. AND MONCLICK S.R.L.

With ruling no. 8520/2024 delivered on 25 October 2024, the Council of State (Consiglio di Stato) partially upheld the appeal by Unieuro S.p.A. ("**Unieuro**") and its subsidiary Monclick S.r.l. in liquidation ("**Monclick**," collectively the "**Companies**") against ruling no. 13368/2023 by the Regional Administrative Court of Lazio (TAR Lazio). The latter had previously reduced the fines imposed by the Italian Competition Authority (the "**ICA**" or the "**Authority**") in relation to two unfair commercial practices (decision [no. 29937/2021](#)) and the Companies' failure to comply with the ban of such practices (decision [no. 30421/2022](#)).

The Companies, active in the distribution of consumer electronics products, were found to have engaged in:

- (a) the spread of misleading information about the characteristics of the products, particularly regarding availability and delivery times, while charging the payment immediately or placing a block on consumers' credit cards; and
- (b) unlawful practices in the post-purchase phase, such as delaying or failing to deliver products, along with failing or inadequately providing after-sales services, and hindering consumers' rights to withdraw and receive refunds.

Unieuro was fined € 2,000,000 for each unfair practice; Monclick received fines of € 200,000 for the first practice and € 100,000 for the second practice. Nevertheless, because the unlawful behaviour persisted for nearly a year despite the initial prohibition, the ICA imposed additional fines of € 3,000,000 and € 1,200,000, respectively, for an overall total of € 8.5 million.

The Companies appealed the sanctioning decision to the Regional Administrative Court of Lazio, alleging that the amount of the fines was excessive, considering the corrective measures they had implemented to address the ICA's concerns. The Court held that the Parties' allegations were founded and reduced the fines for unfair practices by 20% and ordered the re-quantification of those imposed for non-compliance.

Nevertheless, both the Authority and the Companies appealed the Court's ruling before the Council of State. The former contested the reduction of fines, while the latter claimed that their conducts lacked any form of unlawfulness and hence could not be considered as unfair commercial practices, while maintaining that the amount of the fines remained excessively severe. In this regard, the Council of State acknowledged the difficulties caused by the pandemic crisis in managing delivery and post-sales assistance services. Therefore, albeit upholding the TAR's decision concerning the Companies' non-compliance, it ordered an additional 10% reduction of the fines.

RESTRICTIVE AGREEMENTS: THE REGIONAL ADMINISTRATIVE COURT OF LAZIO'S RULING ON THE DIFFERENCE BETWEEN "SPECIFIC TURNOVER" AND "GLOBAL TURNOVER"

On 7 October 2024, in the appeal filed by Antonio Sada e Figli S.p.A. ("ASF") and its parent company Sada Partecipazioni S.r.l. ("Sada", collectively the "Companies") against the decision by the Italian Competition Authority (the "ICA" or the "Authority") to re-determine the fine following the finding of two anticompetitive agreements in the markets for the production and commercialization of corrugated cardboard sheets and packaging, the Regional Administrative Court of Lazio (TAR Lazio) clarified the distinction between the so-called "specific turnover" and "global group turnover" related to the calculation of administrative pecuniary sanctions (Judgment No. 17202/2024).

Initially, ASF and Sada had been fined €9,209,483, along with other competitors, for participating in the cartel. This amount was subsequently revised by the ICA to €7.804.466 following an order by the Council of State (Consiglio di Stato) rendered in judgment no. 376/2023. The Companies, however, filed a request for the annulment and/or revocation in self-protection with the ICA and later brought the matter before the Regional Administrative Court of Lazio, contesting the calculation process that had led to the reduced fine.

In particular, ASF and Sada challenged the inclusion of the turnover of Sada's subsidiaries, Sada Packaging S.r.l. and Sada Packaging Verona S.r.l., in both turnover categories used for the fine calculation—specific and global turnover—arguing that these companies were not involved in the cartel, unlike two other companies, Sabox S.r.l. and Sifim S.r.l., having the related claim led to the initial recalculation of the fine.

The Regional Administrative Court of Lazio rejected the appeal. The Court highlighted that, although both sets of companies were similarly not involved in the cartel, there were key differences between them. At the time of the infringement, Sada Packaging S.r.l. and Sada Packaging Verona S.r.l. were controlled by the Companies, while Sabox S.r.l. and Sifim S.r.l. were not, hence they could not be considered as part of the same economic unit. Thus, the Court ruled that the ICA had acted correctly by including the turnover of Sada Packaging S.r.l. and Sada Packaging Verona S.r.l. in the global group turnover, but not in the specific turnover, unlike what was argued by the Companies.

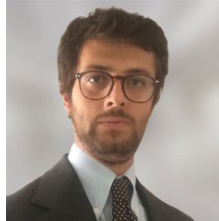
In this regard, the Regional Administrative Court of Lazio emphasized that the global group turnover is the key parameter for determining the maximum cap of the fine which, according to Article 15 of Law No. 287/1990, cannot exceed 10% of the total turnover generated by the economic entity to which the fined company belongs. The global turnover, therefore, shall reflect the economic and financial capacity of the company to bear the imposed fine. On the other hand, the specific turnover — refers to the value of sales of goods or services, directly linked to the infringement, made by the company in the relevant market — is used as the basis for calculating the fine and reflects the illicit profits the company gained through the unlawful conduct.

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