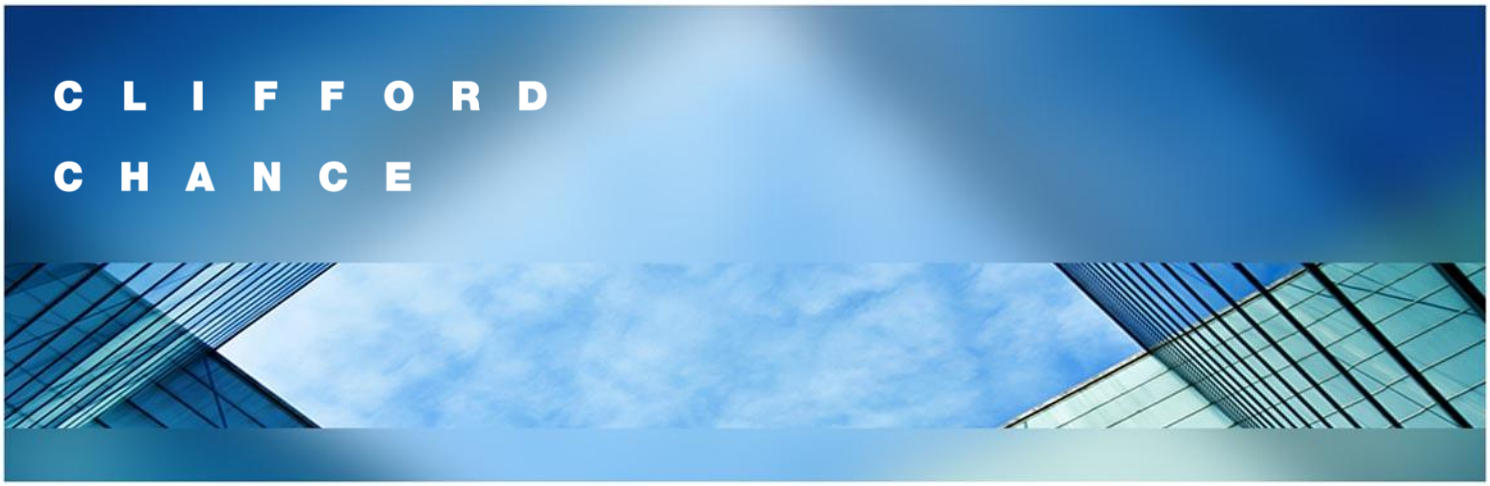

ITALIAN COMPETITION NEWSLETTER

1/2025

In this issue, dedicated to the ICA's decisions for the month of January 2025:

- Unfair Commercial Practices: the ICA fines Mulpor and IBCM €3,500,000 for repeated non-compliance
- Unfair Commercial Practices: the ICA fines Interflora for delays and discrepancies in order deliveries
- Unfair Commercial Practices: the ICA fines GLS €8 million for greenwashing

In this issue, dedicated to the Administrative Judiciary's rulings in antitrust and consumer protection matters for the month of January 2025:

- The Council of State rejects FlyGo's claim for damages following the annulment of the ICA's sanctioning decision No. 26713/2016 for unfair commercial practices
- The Council of State reaffirmed the division of competence between the ICA and the Data Protection Authority
- The TAR Lazio rejected the appeal by Facile Ristrutturare S.p.A. and Renovars S.p.A., sanctioned for spreading fake reviews
- The TAR Lazio Rejected the appeal by Grimaldi Group S.p.A., sanctioned for hindering consumers' right to financial compensation in case of delay

UNFAIR COMMERCIAL PRACTICES: THE ICA FINES MULPOR AND IBCM €3,500,000 FOR REPEATED NON-COMPLIANCE

On 14 January 2025, with decision no. 31435, the Italian Competition Authority (the "**ICA**" or the "**Authority**") concluded its proceedings against certain companies within the Mulpor ("**Mulpor**"), International Business Convention Management ("IBCM"), and Credit Collection Factoring ("**CCF**", and collectively, the "**Companies**") groups, establishing their repeated non-compliance with measure no. 27552 of 6 February 2019 and imposing fines amounting to €3,500,000 (the "**Decision**").

In particular, in 2019, the Authority had found that Mulpor had engaged in an unfair commercial practice by misleadingly soliciting Italian micro-enterprises to subscribe to a paid advertising service on the "International Fairs Directory" website. This practice involved sending what appeared to be requests to verify company details for a database linked to a trade fair event. However, these

communications were actually intended to misleadingly induce businesses into signing a contract for an expensive advertising service on the International Fairs Directory.

The affected businesses, believing they needed to update their details to avoid removal from an important advertising channel associated with the trade fair, unknowingly committed to paying approximately €1,200 per year for three years for an unwanted advertisement. In cases of non-payment, IBCM and CCF, acting on behalf of Mulpor, pursued aggressive demands and threats of international legal action to recover the requested sums.

Subsequently, first with measure no. 29848/2021 and then with the one in question, the ICA found that the Companies had failed to comply with the Measure, determining that, with the exception of CCF, Mulpor and IBCM had continued the contested practices.

Specifically:

i. Mulpor Company S.r.l. continued to send misleading communications that led micro-enterprises to unknowingly subscribe to a paid advertising service;

ii. IBCM persisted in its debt collection activities using aggressive methods, threatening international legal action against those who refused to make the requested payment.

In light of these facts, the Authority determined the repeated non-compliance of the Companies with the Measure, imposing a fine of €2,000,000 on Mulpor Company S.r.l. and €1,500,000 on IBCM.

UNFAIR COMMERCIAL PRACTICES: THE ICA FINES INTERFLORA FOR DELAYS AND DISCREPANCIES IN ORDER DELIVERIES

With measure no. 31439/2025 of 25 January, the Italian Competition Authority (the "**ICA**" or the "**Authority**") fined Interflora Italia S.p.A. ("**Interflora**" or the "**Company**") €400,000 after identifying a single misleading unfair commercial practice, consisting in:

a) the failure to meet the "guaranteed" delivery times for sold products and discrepancies in terms of quality and variety between the products chosen by consumers and those actually delivered. In numerous reported cases, the flowers delivered differed in type, colour, and freshness from those purchased. Furthermore, significant delivery delays were observed, despite advertising emphasising a prompt and guaranteed service;

b) the inadequate disclosure of information regarding the costs associated with the flower delivery service. On the Company's website, product prices were displayed without clearly specifying the fixed shipping costs, which amounted to €9.99 per single delivery or €17.99 for an annual subscription. These costs were only made visible in the later stages of the purchasing process, thereby misleadingly influencing consumer decisions.

Interflora contested the allegations, arguing that, on the one hand, the discrepancies between the delivered and ordered products were due to the local availability of affiliated florists, a factor that was not always predictable, and that delivery delays were not always attributable to the Company. On the other hand, it stated that references to "guaranteed delivery" and "guaranteed quality" had already been removed from the website in 2024, prior to the conclusion of the proceedings, and that it had simultaneously implemented new measures to

improve transparency regarding shipping costs, making them visible from the early stages of the purchasing process.

Despite the Company's defensive arguments, the Authority reaffirmed that the issue under scrutiny was not the delays or discrepancies in the delivered products compared to those ordered, but rather the Company's communication methods. Interflora had used assertive and absolute wording to guarantee both the adherence to delivery times and the provision of flowers matching those advertised, despite lacking a business system capable of ensuring compliance with the promised standards. Lastly, the ICA deemed that the measures adopted were insufficient to remedy the violations that occurred before the changes were made to the website.

UNFAIR COMMERCIAL PRACTICES: THE ICA FINES GLS €8 MILLION FOR GREENWASHING

On 21 January 2025, the Italian Competition Authority (the "**ICA**" or the "**Authority**") concluded proceedings PS12525 against General Logistics Systems Italy S.p.A., General Logistics Systems Enterprise S.r.l., and the parent company General Logistics Systems B.V. (collectively, "**GLS**"), imposing a fine of €8 million for greenwashing.

The investigation was initiated following reports concerning the "Climate Protect" programme (the "**Programme**"), promoted by GLS as a sustainability initiative aimed at offsetting CO_2 emissions from its logistics activities. Regarding the Programme, the Authority identified two main issues: (i) the use of potentially misleading and insufficiently verifiable environmental claims published on GLS's website, and (ii) the imposition of a financial contribution on customers to fund the Programme, alongside a discrepancy between the amounts collected and the actual expenditure on emission offsetting.

Regarding the first issue, the ICA determined that GLS's promotional statements about the Programme could be misleading due to the lack of a clear distinction between emission offsetting and reduction activities. The claims suggested that the Programme would directly reduce the environmental impact of shipments, whereas in reality, the contribution requested from customers was primarily allocated to offsetting projects through the purchase of certificates confirming emission compensation. Additionally, no clear information was provided on how funds were distributed between offsetting and emission reduction activities.

As for the second issue, the Authority found that GLS had unilaterally applied the "Climate Protect" contribution to numerous customers without their explicit consent, relying instead on a tacit acceptance mechanism. Furthermore, GLS had misleadingly suggested to its customers that the company itself would invest in the Programme, whereas the costs were entirely covered by the contributions collected, without disclosing that neither GLS nor its Top Clients (*i.e.* larger customers benefiting the most from shipping services) bore any financial burden.

Lastly, the amounts collected by GLS through the "Climate Protect" contribution were significantly higher than the actual costs of CO_2 offsetting, raising concerns about the transparency and fairness of the Programme's funding mechanism. Specifically, only a portion of the funds raised was effectively used for offsetting projects, while the remaining sum was neither clearly accounted

for nor allocated to initiatives directly linked to reducing the company's CO_2 footprint.

Despite the commitments proposed by GLS to address the ICA's concerns, the Authority fined the company due to the evident severity and high degree of offensiveness of the contested practices, particularly in light of the growing interest among consumers and businesses in environmental claims.

THE COUNCIL OF STATE REJECTS FLYGO'S CLAIM FOR DAMAGES FOLLOWING THE ANNULMENT OF THE ICA'S SANCTIONING DECISION NO. 26713/2016 FOR UNFAIR COMMERCIAL PRACTICES

On 14 January, the Council of State dismissed the appeal lodged by Fly Go Voyager S.r.l. ("**Fly Go**" or the "**Company**") - an online travel agency - against ruling No. 7672/2022 of the Regional Administrative Court of Lazio ("**TAR**"), which had rejected Fly Go's claim for damages against the Italian Competition Authority (the "**ICA**" or the "**Authority**").

The case originated from decision No. 26713/2016, in which the ICA had imposed three administrative fines on Fly Go, amounting to €230,000, €175,000, and €95,000, for three commercial practices deemed unfair.

Specifically, the Authority challenged:

a) the misleading use of trademarks belonging to well-known airlines, such as Ryanair and Wizz Air, in Google AdWords advertisements, displayed in a way that could confuse consumers;
b) deceptive pricing methods in the presentation of travel services online, where the management fee was initially omitted and only disclosed at an advanced stage of the booking process; and
c) the lack of an accessible customer support system, other than a premium-rate telephone line, for consumers who had already completed their purchases.

Following an appeal, the Council of State, in its ruling No. 8227/2019, annulled the ICA's decision concerning the second and third practices, declaring the related sanctions unlawful. Fly Go then filed a claim with TAR Lazio, seeking compensation for lost revenue, reputational damage, and harm to its brand image caused by the ICA's actions. However, the TAR rejected the claim in ruling No. 7672/2022, stating that the ICA had not acted with culpable negligence.

Fly Go subsequently appealed this decision, arguing that the illegality of the ICA's ruling, as established in court, should serve as *prima facie* evidence of negligence, unless the Authority could prove otherwise. The Council of State, in rejecting the appeal, reaffirmed a well-established legal principle: the annulment of an administrative decision does not automatically entitle the affected party to compensation. Instead, the claimant must prove both the Authority's negligence and a direct causal link between the unlawful decision and the damages suffered.

In this case, the ICA's error was deemed excusable, given the complexity of the required assessment and the specificity of the applicable regulations in the travel sector.

Moreover, the Council of State found that Fly Go had failed to provide sufficient evidence linking the decline in website traffic to the illegitimacy of the contested practices. The Company should have demonstrated that the decline in consumer visits to its website was directly caused by the ICA's now-overturned findings - rather than by other market factors.

Lastly, the court highlighted that one of the contested practices - the misleading use of airline trademarks - was upheld as unlawful. Therefore, Fly Go could not claim reputational damage as a direct consequence of the partial annulment of the ICA's decision.

THE COUNCIL OF STATE REAFFIRMED THE DIVISION OF COMPETENCE BETWEEN THE ICA AND THE DATA PROTECTION AUTHORITY

With ruling No. 80/2025, the Council of State partially upheld the appeal filed by Google Ireland Limited ("**Google**" or the "**Company**") against ruling No. 15326/2022 of the Regional Administrative Court for Lazio ("**TAR**"), which had confirmed decision No. 29890/2021 issued by the Italian Competition Authority ("**ICA**" or the "**Authority**"). The ICA had found two unfair commercial practices in relation to Google's collection and processing of user data for commercial purposes.

Specifically, the Company:

a) did not adequately inform users, at the time of Google Account creation - required to access the Google Store and other related services - about the collection of their personal data for commercial purposes. Instead, Google presented this processing in a way that highlighted only its advantages, stating that it would enhance service personalisation, while referring users to a separate source for further details;

b) had pre-set consent for such data collection, with an option for users to opt out only through a complex and non-immediate deactivation process, thereby unfairly influencing their choice.

The Council of State partially upheld Google's appeal, rejecting the ICA's findings regarding the second practice, while confirming the sanction for the first. Given the similarity between this ruling and ruling No. 9614/2021 of 2 December 2024 (regarding Apple), full reference is made to that decision (discussed in the previous issue of this newsletter).

At this stage, it is useful to focus on the first argument raised by Google in its appeal. The Company had challenged both in the first and second instance the ICA's jurisdiction, arguing that the contested practices were exclusively governed by privacy regulations and, under the principle of speciality, should have fallen under the authority of the Italian Data Protection Authority ("**Garante Privacy**").

Specifically, Google disputed the conclusions reached by the TAR, which instead had affirmed that privacy regulations and consumer protection laws are complementary:

- privacy laws establish obligations related to the protection of personal data, recognising it as a fundamental right;

- consumer protection laws, on the other hand, require clear and transparent information so that consumers can make informed economic decisions.

On this point, the Council of State, referring to EU case law, confirmed the complementarity between unfair commercial practices regulations and privacy laws. It ruled that, in the event of a potential conflict, it should be resolved based on the principle of incompatibility - meaning that a sector-specific authority may only intervene if the contested conduct does not fall under the ICA's jurisdiction in any way.

In this case, the Council of State emphasised that the ICA had not sanctioned Google for violating data protection rights, but rather for providing unclear and incomplete information on the commercial use of personal data. Since privacy laws do not specifically regulate this type of misleading commercial communication, the ICA had acted within its legitimate powers.

THE TAR LAZIO REJECTED THE APPEAL BY FACILE RISTRUTTURARE S.P.A. AND RENOVARS S.P.A., SANCTIONED FOR SPREADING FAKE REVIEWS

The Regional Administrative Court of Lazio ("**TAR**"), in its ruling No. 1586/2025, rejected the appeal filed by Facile Ristrutturare S.p.A. ("**Facile Ristrutturare**" or "**FR**") and Renovars S.p.A. (jointly with Facile Ristrutturare, the "**Companies**") – with Renovars acting as its parent company – against Decision No. 31013/2023, in which the Italian Competition Authority (the "**ICA**" or the "**Authority**") found two unfair commercial practices and imposed a total fine of €4,500,000.

In particular, the ICA had contested:

a) the distribution of misleading and fake reviews across platforms such as Trustpilot and Opinioni.it, alongside a misleading claim on the company website that 98% of customers were satisfied; and

b) the application of a hidden charge designed to undermine the advertised 10% reduced VAT on finishing materials. Specifically, when customers chose to buy these materials through Facile Ristrutturare's commercial partners, the company initially presented a quote – between FR and the partner – showing a 22% VAT rate. After negotiations, a second quote in the customer's name was provided with the same final price but at the reduced 10% VAT rate. The final price remained the same because Facile Ristrutturare inflated the taxable base, preventing customers from fully benefiting from the VAT relief.

The Companies appealed the decision to the TAR Lazio. Regarding the first practice, they argued that *i)* the ICA had failed to prove the falsity of the online reviews, as its findings were based solely on the removal of the reviews by platform managers due to suspected irregularities; and *ii)* that the 98% satisfaction figure was not misleading but stemmed from the low number of complaints made against them.

For the second practice, the Companies defended the overall cost by attributing it to a mark-up intended to cover the intermediation costs with their commercial partners.

The TAR rejected the appeal in its entirety, agreeing with the ICA's findings. On the first practice, the court affirmed that the ICA had proven that many of the positive reviews came from IP addresses linked to the Companies or their collaborators, establishing their misleading nature. Additionally, the court ruled that the 98% satisfaction rate was misleading, noting that it was unreasonable to derive such a figure from the limited number of customer disputes with the Companies.

With respect to the second practice, the TAR explained that the issue was not the mark-up itself but rather the lack of clear and understandable information regarding the actual composition of the price, which should have disclosed the application of this additional charge from the outset.

THE TAR LAZIO REJECTED THE APPEAL BY GRIMALDI GROUP S.P.A., SANCTIONED FOR HINDERING CONSUMERS' RIGHT TO FINANCIAL COMPENSATION IN CASE OF DELAY

The Regional Administrative Court of Lazio ("**TAR**"), in ruling No. 565/2025, has rejected the appeal filed by Grimaldi Group S.p.A. (the "**Company**" or "**Grimaldi**"), a company operating in the maritime transport sector for goods and passengers, against Decision No. 28556/2021 (the "**Decision**") issued by the Italian Competition Authority (the "**ICA**" or the "**Authority**"). The Decision had sanctioned Grimaldi for a misleading commercial practice, consisting of three aggressive practices and one misleading practice, in violation of Article 19 of Regulation (EU) No. 1177/2010 ("**Regulation**"), which grants passengers the "*right to economic compensation related to the ticket price in case of arrival delay*."

In particular, the Company:

a) offered a simple bonus in case of delay, despite explicit requests from passengers for a refund;

b) referred to this bonus as "*a gesture of goodwill*" rather than as compliance with a legal obligation, which was misleading and likely to discourage consumers from asserting their rights;

c) calculated the potential economic compensation only for the passenger service portion, excluding the cost of transporting the car and other ancillary components (cabin, taxes, meals/services);

d) rescheduled the departure time in the event of a significant delay, thus avoiding the obligation to compensate passengers for the actual arrival delay.

Upon appeal, the Company argued that the interpretation of Article 19 of the Regulation concerning consumer compensation in case of delay was ambiguous. Furthermore, it justified the issuance of the bonus instead of economic compensation, claiming that in some cases compensation was not due to an exemption cause, or because no explicit request for compensation had been made. Finally, it highlighted the low number of complaints received,

which amounted to just 0.08% of the passengers transported during the relevant period.

The TAR, rejecting the appeal in its entirety, stated that EU law, having shaped the framework for the protection of travellers as the weaker party in the relationship, requires compensation equal to the total amount paid by the consumer, with an obligation for the reparative action to be comprehensive. Therefore, compensation cannot be fragmented or limited. The court further asserted that this right could not be conditioned or contingent upon any request from the consumer. Regarding the final point, the court emphasized that, according to established case law, the number of consumers actually harmed by the contested practices was irrelevant, as the violation was one of "mere danger" – *i.e.* a behaviour punished by law because it poses a danger, regardless of whether the danger leads to any tangible damage or injury.

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ITALIAN ANTITRUST TEAM

Luciano Di Via

Partner, Head of Antitrust in Italy

Antonio Mirabile

Senior Associate

Maria Bazzini

Associate

Eleonora Zappalorto

Associate

Alessandra Oliva

Associate

Luca Borin

Associate

www.cliffordchance.com

Clifford Chance, Via Broletto, 16, 20121 Milano, Italia