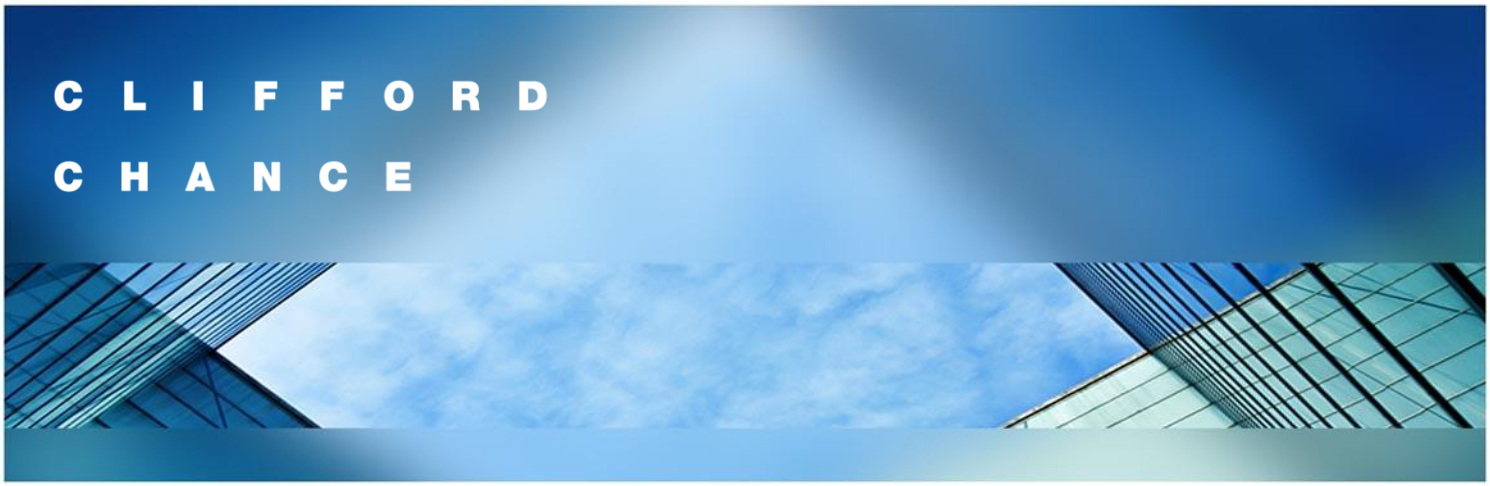

ITALIAN COMPETITION NEWSLETTER

2/2025

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MERGER CONTROL: THE ICA CLEARS SNAM'S ACQUISITION OF EDISON STOCCAGGIO SUBJECT TO COMMITMENTS

With decision no. 31455 of 11 February 2025, the Italian Competition Authority (the "**ICA**" or the "**Authority**") authorised, subject to commitments, the acquisition by Snam S.p.A. ("**Snam**") of sole control over Edison Stoccaggio S.p.A. ("**Edison Stoccaggio**"), a company active in the provision of natural gas storage services (the "**Transaction**"). Snam operates in the

management of natural gas infrastructure, including transport and storage services.

For the purposes of market definition, the ICA found the relevant geographic market to be national in scope. It then examined the natural gas storage sector, identifying four distinct functional categories: (i) strategic storage, aimed at safeguarding the security and stability of the gas system; (ii) operational balancing storage, used to stabilise the network; (iii) production-related storage, supporting domestic production; and (iv) modulation storage – the only category allocated through competitive auctions – used by commercial operators to meet fluctuating demand, particularly during the winter.

During the assessment, the Authority also noted that gas storage services represent just one of several flexibility tools available to shippers, alongside import contracts with flexibility clauses and spot procurement at the Virtual Trading Point (PSV) or on the gas exchange. However, the ICA considered that a precise definition of the relevant product market was not required for the purposes of the competitive analysis and left it open whether these alternative tools should be included.

The investigation revealed that, following the Transaction, Snam – through the integration of Edison Stoccaggio into its subsidiary Stogit S.p.A. ("**Stogit**"), which operates gas storage activities in Italy – would hold over 95% of the national modulation storage capacity. This would lead to a significant strengthening of an already dominant position, potentially affecting the limited residual competition in the sector. The Authority emphasised that, despite the sector being highly regulated, residual competition persists in terms of service quality, allocation procedures, auction timing and economic conditions. In this context, Edison Stoccaggio has historically acted as a competitive constraint on the dominant operator. The elimination of such a constraint, in a market characterised by high concentration and structural rigidity due to the concession-based nature of the activity, could have negatively impacted transparency, efficiency and market contestability.

To address the identified concerns, Snam submitted a set of commitments considered adequate by the ICA to preserve competitive dynamics. In particular, Snam committed to maintaining separate branding for Stogit and Edison Stoccaggio for a minimum period of three years, ensuring their commercial independence when participating in auctions. Furthermore, Snam undertook not to unilaterally amend Edison Stoccaggio's storage code – the document governing, in a transparent and non-discriminatory manner, the technical and economic terms of access, users' rights and obligations, and service operation – thus ensuring contractual stability for market participants. Finally, Snam committed to publishing the criteria used to determine reserve prices in short-term service auctions, in order to enhance transparency and predictability of the allocation mechanisms, thereby reducing the risk of discrimination and fostering greater market access for smaller operators and new entrants.

In light of these measures, the ICA concluded that, although the Transaction would significantly reinforce the market position of the incumbent operator, it is not likely to significantly impede effective competition in the national market for modulation gas storage services, subject to Snam's full compliance with the agreed commitments.

THE COUNCIL OF STATE GRANTS CIVIC ACCESS TO THE SYSTEMATIC DIGEST OF ADMINISTRATIVE CASE LAW ON COMPETITION AND CONSUMER PROTECTION

With judgment no. 01390/2025, the Council of State ruled on an appeal concerning a request for generalised civic access (*accesso civico generalizzato*) to the systematic digest of administrative case law on

competition and consumer protection, submitted by two lawyers active in the field of administrative litigation.

The appellants had submitted a request to the Italian Competition Authority (the "**ICA**" or the "**Authority**") seeking access to the most up-to-date version of the Authority's internal case law digest, which compiles and systematises administrative decisions concerning competition and consumer law. The ICA rejected the request with decision no. 36205/2024 of 30 April 2024, arguing that the application was not aimed at enabling democratic oversight of the Authority's administrative activity, but rather at serving a private interest. The Authority further asserted that the digest was to be regarded as an internal working tool without any external legal relevance.

At first instance, the Regional Administrative Court of Lazio (judgment no. 15851/2024) upheld the ICA's position, ruling that the systematic digest did not qualify as an "administrative document" within the meaning of Article 22 of Law no. 241/1990 and therefore did not fall within the scope of generalised access rights. The Court considered it merely an internal support instrument devoid of public significance.

However, on appeal, the Council of State overturned the lower court's decision and annulled the ICA's refusal. The Court found that, although primarily intended for internal use, the digest does fall within the notion of an "administrative document" insofar as it reflects the legal data collected and processed by the ICA in the course of its institutional activities. Specifically, the Council of State emphasised that the right to generalised civic access – aimed at ensuring democratic oversight of public administration – cannot be restricted solely to documents with outward-facing utility or effects. Transparency legislation, in fact, is designed to promote widespread scrutiny of public bodies and to enhance public understanding of their functions.

Accordingly, the Court found that the ICA had failed to provide sufficient justification for the blanket denial of access. It held that any concerns relating to the disclosure of personal data or confidential information could be adequately addressed by redacting the sensitive portions of the document. The ICA was therefore ordered to grant the applicants access to the most recent version of the systematic digest.

THE COUNCIL OF STATE PARTIALLY UPHOLDS BARCLAYS' APPEAL AGAINST ICA FINE FOR UNFAIR TERMS IN SWISS FRANC-INDEXED MORTGAGE CONTRACTS

With judgment no. 1699/2025, the Council of State partially upheld the appeal filed by Barclays Bank Plc ("**Barclays**" or the "**Company**") and annulled decision no. 27214/2018 of the Italian Competition Authority (the "**ICA**" or the "**Authority**"), which had found that certain clauses contained in Swiss franc-indexed mortgage loan agreements marketed by the bank between 2003 and 2010 were unfair.

The ICA had specifically challenged the formulation of the contractual provisions governing the dual-indexation mechanism – both financial and currency-based – applied to the loans. This mechanism involved, on the one hand, financial indexation to the CHF-denominated Libor rate, and on the other, currency indexation to the CHF/EUR exchange rate. Additional provisions concerned interest-bearing deposits and monetary revaluation. According to the ICA, these clauses were in breach of Article 35 of the Italian Consumer Code, as they were drafted in such a way that consumers could not

adequately understand the economic implications of the variables involved (i.e., the Libor rate, the CHF/EUR exchange rate, and the interest-bearing deposit). In particular, the contracts failed to provide sufficient information for consumers to assess the impact of exchange rate fluctuations and indexation mechanisms on the amortisation schedule, thus preventing them from understanding potential – and significant – variations in the total amount repayable.

A further concern raised by the ICA related to the indeterminacy of the amortisation plan and the instalments payable, whose amounts could vary substantially depending on currency movements. The Authority found that the contracts did not clearly or comprehensively disclose the arithmetic procedures underlying the periodic recalculation of payments, placing the consumer in a position of uncertainty. Similarly, the clause governing conversion of the loan from Swiss francs to euros was considered opaque, as it failed to clearly explain the economic consequences of conversion or the associated costs.

At first instance, the Lazio Regional Administrative Court (TAR Lazio) upheld the ICA's decision, holding that the challenged clauses were insufficiently intelligible and capable of generating a significant imbalance in the parties' rights and obligations. Barclays appealed, arguing that the contractual provisions were clearly drafted and that their complexity stemmed from the inherent nature of the financial product being offered.

The Council of State, partially upholding the bank's appeal, found that the ICA had failed to adequately demonstrate the alleged lack of clarity. In the Court's view, the clauses could reasonably be understood by the average consumer entering into an indexed mortgage agreement. In particular, the Court noted that:

a) the contractual documentation provided by Barclays clearly set out the indexation criteria and the functioning of the amortisation mechanism;

b) the speculative nature of the mortgage – stemming from the dual indexation – was an intrinsic feature of the contract and not inherently misleading;

c) including more detailed mathematical formulas would not necessarily have enhanced consumer understanding and, in fact, could have increased the risk of confusion, given that the average consumer typically lacks the financial-mathematical knowledge required to interpret such formulas.

Ultimately, the Court clarified that the assessment of unfairness must consider the overall contractual framework and the adequacy of the pre-contractual information provided. In this case, such information was deemed sufficient to allow the consumer to understand the effects of the relevant clauses. The only element of uncertainty related to the economic outcome – not to the comprehensibility of the indexation mechanisms themselves.

THE REGIONAL ADMINISTRATIVE COURT OF LAZIO OVERTURNS THE ICA'S DECISION SANCTIONING FIGC FOR ABUSE OF DOMINANCE IN THE MARKET FOR THE ORGANISATION OF COMPETITIVE YOUTH FOOTBALL TOURNAMENTS

On 17 February 2025, by judgment no. 3409/2025, the Regional Administrative Court of Lazio (the “TAR”) upheld the appeal filed by the Italian Football Federation (“FIGC” or the “Federation”) against decision no. 31263/2024 issued by the Italian Competition Authority (the “ICA” or the “Authority”), which had found an infringement of Article 102 TFEU and imposed a fine of € 4,203,447.54.

The case stems from a complaint submitted by CNS Libertas – a sports promotion body recognized by CONI – alleging that FIGC engaged in anti-competitive practices aimed at limiting the participation of its affiliated clubs in youth competitions of a recreational and non-competitive nature organized by Sports Promotion Bodies ("EPS"). In particular, the FIGC was accused of classifying the activities run by EPS for the 12–17 age group as competitive based solely on age, without applying objective criteria related to the technical or performance-based nature of the activity, thereby unjustifiably bringing them under the regulatory scope of the Federation.

According to the complainant, starting from the 2022/2023 season, the FIGC introduced a new provision in its internal rules requiring affiliated clubs to sign an agreement with the Youth and School Sector of the Federation (the “Agreement”), and to obtain prior authorisation from the FIGC, as a condition for participating in tournaments organised by EPS.

With respect to the Agreement, the ICA noted that, between 2015 and 2023, FIGC and EPS never reached a deal, despite numerous negotiation attempts made by SPEs, allegedly due to onerous conditions imposed by the Federation. Regarding the prior authorisation requirement, the Authority considered it as a tool to discourage amateur sports clubs ("ASCs") from participating in non-federation tournaments, thus resulting in a restriction of competition not justified by proportionate regulatory needs. The ICA relied on the case law of the Court of Justice of the European Union in European Superleague Company (C-333/21), highlighting that making access to alternative competitions conditional on the approval of a dominant organisation, in the absence of objective and transparent criteria, may amount to an abuse of dominance under Article 102 TFEU.

According to the ICA, such a strategy resulted in the unjustified extension of the Federation’s dominant position into the market for non-competitive youth sports events, limiting the role of EPS and the ability of ASCs affiliated with FIGC to freely choose which tournaments to participate in, ultimately strengthening FIGC’s market position.

FIGC challenged the ICA’s decision before the TAR Lazio, disputing the existence of any abusive conduct and arguing that a system of prior authorisation was consistent with its institutional function of coordinating and regulating sports activities.

Specifically, the Federation pointed out that the age threshold of 12 years for classifying an activity as competitive was not the result of an arbitrary decision, but derived from a well-established regulatory framework — including the Ministerial Decree of 18 February 1982 and the tables approved by CONI and the Italian Sports Medical Federation — which confer exclusive competence on national sports federations to determine the onset of competitive activity.

Regarding the failure to conclude agreements with EPS, FIGC argued that this could not be solely attributed to its conduct, since the EPS refused to accept the proposals put forward by the Federation, despite the fact that a new draft

agreement had been issued in December 2024 incorporating the ICA's observations during the investigation.

By upholding FIGC's appeal, the TAR Lazio annulled the ICA's decision, ruling out the existence of an abuse of dominance. In particular, the Court found that:

- the ICA had failed to demonstrate that the challenged conduct had any actual exclusionary effect on the market, especially considering that the EPS recorded an increase in both registered members and events organised in recent years;
- the imposition of an age threshold to define competitive activity falls within the Federation's regulatory powers and, in itself, does not amount to a restriction of competition;
- the failure to conclude the Agreement with EPS cannot be attributed solely to FIGC, as EPS refused to sign the proposals submitted in 2024, despite those proposals reflecting the ICA's recommendations.

THE TAR LAZIO UPHOLDS ICA FINES AGAINST HERTZ, CENTAURO, DRIVALIA, NOLEGGIARE, AND AVIS BUDGET FOR UNFAIR TERMS IN CAR RENTAL CONTRACTS, DEPARTING FROM THE COUNCIL OF STATE'S PREVIOUS STANCE

In February 2025, the Regional Administrative Court of Lazio ("**TAR**") issued a series of rulings (no. 3203/2025, 3204/2025, 3205/2025, 3206/2025 and 3207/2025) confirming the legitimacy of the fines imposed by the Italian Competition Authority (the "**ICA**" or the "**Authority**") on several companies operating in the short-term car rental sector without driver services – namely, Avis Budget Italia S.p.A., Centauro Rent A Car Italy S.r.l., Drivalia S.p.A., Hertz Italiana S.r.l. and Noleggiare S.r.l. (the "**Companies**").

The fines were the result of separate proceedings conducted by the ICA to assess the unfairness of certain clauses in rental agreements, which required consumers to pay a flat fee – generally between €26 and €50 – for the administrative handling of traffic fines incurred during the rental period. The TAR upheld the ICA's reasoning on three distinct grounds.

First, the Court agreed with the ICA's qualification of the contested clauses as penalty clauses within the meaning of Article 1382 of the Italian Civil Code, since they were designed to sanction a contractual breach attributable to the consumer. The underlying conduct – the violation of traffic laws while using the vehicle – was deemed contrary to the obligations assumed under the rental contract. The automatic charge triggered upon the infraction did not correspond to a service voluntarily requested or actually rendered, but functioned as a predetermined sanction, confirming its punitive nature.

Second, the Court placed significant emphasis on the disproportion between the amount charged and the actual costs borne by the Companies for handling the fine-related procedures. These administrative tasks were found to be minimal, essentially limited to identifying the driver (whose details were already collected at the time of rental) and transmitting such data electronically to the

competent authority. In the absence of concrete and documented evidence demonstrating more extensive administrative activity or higher incurred costs, the flat fee appeared detached from any proportional logic. This was considered decisive in establishing the "manifest excessiveness" of the penalty under Article 1384 of the Civil Code.

Third, the TAR rejected the Companies' argument that the fee constituted consideration for an administrative service rendered to the customer. The Court clarified that the activity in question – communicating driver data to the competent authorities – does not qualify as an autonomous and optional service requested by the consumer, but rather as a statutory obligation of the lessor under Article 196 of the Italian Highway Code. Therefore, the fee did not remunerate a personalised service, but was applied automatically and uniformly, irrespective of any actual choice or need on the part of the customer.

It is precisely on this last point that the TAR departed from the position previously taken by the Council of State in judgments nos. 9659/2024, 9660/2024, 10001/2024, 10039/2024 and 10162/2024 (see the December issue of this newsletter). In those decisions, while acknowledging the penal nature of the clauses, the Council of State held that the ICA had not sufficiently substantiated the "manifest excessiveness" of the penalty under Article 1384 of the Civil Code. According to the Council, such an assessment should also take into account the creditor's overall interest in performance, including aspects such as vehicle protection, brand image and operational efficiency.

The TAR, however, considered that – in consumer contracts – extending the proportionality test to such abstract interests would ultimately undermine the protective framework of the Consumer Code. In the absence of rigorous and documented proof by the professional party, merely invoking a general interest in performance is not sufficient to justify the imposition of a flat-rate penalty that disregards any objective proportionality criteria. Accordingly, the Court confirmed the unfair nature of the clauses and upheld the legitimacy of the ICA's sanctioning measures.

THE REGIONAL ADMINISTRATIVE COURT OF LAZIO UPHOLDS THE ICA'S DECISION ON UNFAIR TERMS IN APPLE'S ICLOUD SERVICE CONTRACT

By judgment no. 1125/2025 of 11 February, the Regional Administrative Court of Lazio ("**TAR** ") rejected the appeal filed by Apple Distribution International Limited ("**Apple**" or the "**Company**") against the decision of the Italian Competition Authority (the "**ICA**" or the "**Authority**") concerning the unfair nature of certain terms included in the iCloud service agreement. The TAR Lazio confirmed the lawfulness of the ICA's findings and upheld its sanctioning measure.

The ICA, with decision no. 29819 of 7 September 2021, had found that a number of clauses in the iCloud general terms and conditions – applicable both to the free version and the paid version of the service – created a significant imbalance in the rights and obligations of the parties, to the detriment of consumers. In particular, the Authority challenged the following contractual provisions:

a) Apple's right to unilaterally modify the terms and conditions without providing clear justification within the contract itself;

b) contractual disclaimers of liability for data loss and warranty exclusions, including in cases of service malfunctions or interruptions not caused by the user;

c) a contractual framework deemed detrimental to consumer rights, whereby users were required to autonomously back up their data in the event of device inactivity. Absent such action, Apple reserved the right to delete stored data after a fixed period, without prior notice, thereby exposing consumers to the risk of permanent data loss.

Apple challenged the decision before the TAR Lazio, denying that the clauses were unfair and asserting their compliance with applicable law. However, in judgment no. 15792/2022, the TAR rejected Apple's claims and confirmed the ICA's decision.

Apple then appealed the first instance ruling before the Council of State, arguing, inter alia, that the free nature of the basic iCloud service excluded any significant imbalance in contractual terms. The Company further contended that the right to unilaterally modify contractual terms was consistent with EU consumer law, since users were allowed to withdraw from the contract. Apple also complained of unequal treatment, citing more lenient ICA enforcement in comparable cases, such as the one involving Dropbox.

The Council of State rejected all grounds of appeal and fully confirmed the TAR's ruling. The Court held that Apple's unilateral modification right, not accompanied by a clear indication of valid reasons, constituted a presumed unfair term under Article 33 of the Italian Consumer Code. Moreover, the requirement for users to carry out backup operations on their own, along with broad disclaimers of liability and warranty exclusions, amounted to excessive limitations of liability, effectively exempting Apple from its obligations toward consumers.

With this decision, the Council of State reaffirmed the importance of ensuring fair and transparent contractual conditions for consumers and confirmed that the free nature of a digital service does not justify contractual imbalances detrimental to consumer rights.

THE REGIONAL ADMINISTRATIVE COURT OF LAZIO ANNULS THE ICA'S DECISION SANCTIONING SKY FOR MISLEADING ADVERTISING OF THE "SKY CALCIO" PACKAGE

On 17 February 2025, the Regional Administrative Court of Lazio ("**TAR**") issued its ruling on the appeal brought by Sky Italia S.r.l. ("**Sky**" or the "**Company**") against decision no. 30046/2022 of the Italian Competition Authority (the "**ICA**" or the "**Authority**"), which had found a misleading commercial practice in violation of Article 21 of the Italian Consumer Code and imposed a fine of €1,000,000.

According to the ICA, Sky had disseminated potentially misleading information regarding the actual content of its "Sky Calcio" package for the 2021–2022 football season. In particular, the Authority argued that the Company's advertising messages portrayed an ongoing state of uncertainty concerning the assignment of Serie A broadcasting rights, leading subscribers to believe that

the package content would remain unchanged compared to the previous season, despite the outcome of the rights tender issued by the Lega Calcio.

Sky challenged the ICA's findings, arguing that its communications were based on a genuine situation of uncertainty, arising from the potential for commercial agreements with rights holders and the pending allocation of the package that included co-exclusive rights to three Serie A matches per matchday.

In upholding Sky's appeal, the TAR found that the ICA had misinterpreted the nature of the Company's communications. The Court held that the messages sent to customers did not contain elements likely to mislead the average consumer. Specifically, the Court found that:

a) there was, at the time the messages were sent, a genuine state of uncertainty concerning the broadcasting arrangements, as Sky still had the possibility of negotiating sublicensing agreements with rights holders such as DAZN;

b) the content of the messages could not be deemed misleading, as they provided clear information to subscribers about the potential changes to the offering and their right to withdraw from the contract without penalty; and

c) there was no concrete harm to consumers, since – even assuming the messages were misleading – subscribers were in any case entitled to cancel their subscriptions free of charge.

In light of these considerations, the TAR annulled the ICA's sanctioning decision.

THE REGIONAL ADMINISTRATIVE COURT OF LAZIO PARTIALLY UPHOLDS AMAZON'S APPEAL AGAINST THE ICA'S FINE FOR PRE-SETTING RECURRING AND PRIORITY PURCHASE OPTIONS WITHOUT CONSUMER CONSENT

On 19 February 2025, with judgment no. 3773/2025, the Regional Administrative Court of Lazio ("**TAR")** partially upheld the appeal lodged by Amazon EU S.à r.l. and Amazon Services Europe S.à r.l. ("**Amazon**" or the "**Company**") against decision no. 31172/2024 of the Italian Competition Authority (the "**ICA**" or the "**Authority**"), which had imposed a €10,000,000 fine on the Company for an alleged unfair commercial practice.

At the outset of the investigation, the ICA had identified two potential infringements of the Italian Consumer Code: (i) the default selection of recurring purchases for a wide range of products under the "Subscribe and Save" programme ("IeR"); and (ii) the default pre-selection of paid express delivery, even when a free delivery option was available.

In its final decision, however, the Authority accepted the commitments proposed by Amazon during the proceedings solely with regard to the second practice. In particular, Amazon undertook to remove the default setting of paid express delivery and to ensure that the default option for consumers would be free delivery, where available. The Company also introduced a compensation mechanism for consumers who had been incorrectly charged for express delivery, offering automatic refunds to affected users.

As to the first practice, the ICA found it to constitute an aggressive commercial practice under Articles 24 and 25 of the Consumer Code. According to the Authority, the default opt-in to recurring purchases, unless actively modified by

the consumer, amounted to undue influence capable of significantly impairing the freedom of choice of the average consumer, leading them to select a subscription purchase rather than a one-time transaction.

Amazon challenged the decision before the TAR, arguing that the practice should not be classified as aggressive and claiming that the IeR programme did not restrict consumer choice. The Company maintained that the recurring purchase option was selected via an opt-out mechanism, which always allowed the consumer to change the selection before confirming the order.

The TAR partially upheld Amazon's appeal, ruling out the aggressive nature of the practice. The Court found that the ICA had failed to convincingly demonstrate that the default recurring purchase option imposed coercive pressure on consumers. It clarified that Amazon's opt-out system did not amount to undue influence, as consumers retained the ability to modify the setting prior to completing their purchases.

Nevertheless, the TAR held that the conduct in question was still contrary to consumer protection rules, reclassifying it as a misleading commercial practice under Articles 20–22 of the Consumer Code. The Court found that the layout and user interface of the Amazon website were likely to mislead consumers, causing them to complete purchases without realising that the recurring purchase option had been pre-selected.

In light of this revised legal classification, the TAR partially upheld the appeal and reduced the fine originally imposed by the ICA from €10,000,000 to €5,000,000.

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