

NEWS FROM THE FIRM

**Advising CristalCo on the acquisition of Eridania**

A team led by partner **Nicola Barra Caracciolo**, with associates **Gaia Sansone** and **Elisa Capellini**, assisted CristalCo on the acquisition of Eridania, the largest Italian sugar product manufacturer, from Maccaferri.

**Advising ENEL in antitrust procedure**

A team led by partner **Sacha D'Ecclesi** assisted the Italian energy distributor ENEL in the proceedings started by the Italian Antitrust Authority for the alleged abuse of dominant position in the market of advanced monitoring of electricity consumption. The proceedings were closed with acceptance of the commitments proposed by the two companies and without a finding of a violation.

**Recent publications**

**Marco Consonni** and **Ludovico Anselmi**, *Italy's Supreme Court rules on 'right to be forgotten' in an online news context*, in E-Commerce Law Reports 2016

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**ANTITRUST**

**Italian court rejects claim for damages in antitrust case**

On 24 June 2016, the Court of Milan issued its judgment in the case brought by certain real estate firms against Banca Popolare Commercio e Industria and Banco di Brescia San Paolo CAB in relation to mortgage loan agreements with interest rates set by reference to Euribor. The claims were based on the European Commission decision on the manipulation of Euribor by four banks. According to the Court of Milan, the burden of proof regarding antitrust infringements lies with the party that claims its existence, unless an authority has already proved the anticompetitive conduct. Despite the existence of an EC infringement decision, claimants cannot rely on media reports to prove the defendants' anticompetitive practices, the ruling states. The court added that it would need the EC's full findings of fact and reasoning to assess the impact of the collusion upon the agreements in question. Without the benefit of the EC's reasoning in the decision, the court faces an "objective impediment" in determining whether the claimants have suffered a loss. In April 2016, the EC Competition Commissioner Margrethe Vestager said Brussels officials were doing "their utmost" to publish the decision "as soon as possible".

**DATA PROTECTION**

**Report published on the public consultation on the ePrivacy Directive**

On 4 August 2016, the European Commission published a summary report on the public consultation on the Evaluation and Review of the ePrivacy Directive which took place between 12 April 2016 and 5 July 2016. The following trends were observed: (a) the vast majority of responding citizens and civil society organizations and almost all public authorities believe that special privacy rules for the electronic communications sector are necessary, while the industry responses were more sceptical; (b) a new instrument covering new communication services (instant messaging, VoIP) should be implemented according to the majority of respondents announced; (c) the vast majority of citizens, civil society and public authorities believe that information service providers should not have the right to prevent access to their services if users refuse to have identifiers, such as cookies, stored in their terminal equipment, while three quarters of industry participants disagree; (d) close to 90% of citizens, civil society and public authorities favour an opt-in regime for direct marketing calls to citizens, whereas 73% of industry favour an opt-out regime. The full synopsis report will be published in Autumn 2016. For further information please see [here](#).

**DPA investigation open on Change.org**

On 27 July 2016, the Italian Data Protection Authority (DPA) declared in a press release that an investigation into Change.org's data processing activity has commenced. The website, owned by the company Change.org Inc. ("Change"), is the leading international online campaign platform for petitions, and was accused by the magazine L'Espresso of infringing data protection laws. In particular, the DPA investigation will assess how the data of registrants are treated and transferred, focusing on sensitive data such as those that may contain information related to political opinions and religious or sexual orientation. Finally, the DPA is also investigating the data storage location, the data retention period and any possible transfer of data to third persons without anonymization. For further information please see [here](#).

**TRADEMARK**

**Supreme Court on the "Fiorucci" case**

On 25 May 2016, the Italian Supreme Court issued its judgment (No. 10826/2016) in the case of *Edwin Co. Ltd. v. Merisant Europe B.V.B.A.*, and overturned the decision of the Court of Appeal of Milan, which held that Elio Fiorucci was entitled to use the trademark "LOVETHERAPY BY ELIO FIORUCCI" after having assigned all rights and interests in the trademark "FIORUCCI" to a third party. The use by a stylist of a trademark containing his/her surname which has been assigned to third parties is contrary to fair commercial practice, unless this is truly justified by a real need to describe the activities, products or services offered by that person.

**CAPITAL MARKETS**

**Consob consultation process on "additional periodic financial information"**

On 5 August 2016, the National Commission for Companies and the Stock Exchange ("Consob") published a consultation document (the "Consultation Document"), which contained the results of the consultation launched on 14 April 2016 (the "First Consultation"), (see *Our Echo April 2016* and *June 2016*), and invited market participants to express their opinion on the regulation to be enacted in Italy to implement the new rules concerning the publication of such additional periodic financial information. The Consultation Document proposes that a new Article 82-ter be included in Consob Regulation no. 11971/1999, stating that the decision whether or not to publish additional periodic financial information remains a matter for each individual issuer. If the issuer elects to publish additional periodic financial information, it will need to meet certain requisites (e.g. the issuer will have to provide the market with reasons for its election to publish, so that the decision results in a consistent and clear "publication policy" of the issuers). The consultation process will remain open until 19 September 2016. For further information please see [here](#). Issuers whose shares are admitted to trading on the STAR segment are still required to publish quarterly financial reports, pursuant to Article 2.2.3, paragraph 3, of the regulation of the market organized and managed by Borsa Italiana S.p.A.

**COPYRIGHT**

**Marketing videos and moral rights**

On 7 June 2016, the Court of Milan issued its judgment in a case brought by an author and producer of marketing videos for BMW, alleging the unauthorized modification and online publication of those videos and the unauthorized removal of the author's name from the credits. The Court stated that although BMW had lawfully acquired the right to modify and publish the relevant videos online, it had no right to cut the credits and remove the author's name without his prior consent. According to the Court of Milan, the author's moral right to be mentioned as the author of a work cannot be disregarded in relation to a video of 7 to 10 minutes in length (whereas this is possible and customary practice in relation to standard TV-format advertisements of 20 to 30 seconds).

**LABOUR**

**Renewal of National Collective Bargaining Agreement for Executives**

On 21 July 2016, the new Collective Bargaining Agreement for Executives was formalized. Its provisions appear to be more favorable to companies than to executives. In particular: (i) the rules concerning dismissal have been modified (with effect from 1 September 2016), with a reduction in the amounts provided for as termination indemnities paid to managers who are dismissed (i.e. notice periods and "supplementary indemnities" less than those provided for in the previous NCBA), and (ii) managers have a lower level of protection in case of sickness (the so-called "periodo di comporto" – i.e. the period during which the manager has the right to remain or sick leave – has been reduced from 12 months to 240 days).

**FINANCE**

**BRRD: the new ISDA Protocol on the application of the "bail-in" mechanism**

On 14 July 2016, the International Swaps and Derivatives Association, Inc. ("ISDA") published the "ISDA 2016 Bail-in Article 55 BRRD Protocol" (the "Protocol") to enable parties operating in derivatives to amend all relevant ISDA Master Agreements in compliance with the new variation margin requirements, set to apply from March 2017. In particular, the Protocol helps market participants to reflect the requirements provided for under Article 55 of Directive (EU) No. 2014/59 of 15 May 2014 (EU Bank Recovery and Resolution Directive, "BRRD") concerning the contractual application of the "bail-in" mechanism. Article 55 of the BRRD requires a financial institution covered by the BRRD, *inter alia*, to obtain from its counterparties explicit contractual recognition of the write-down and conversion powers in the relevant agreements governed by the law of a non-EU Member State.

INDUSTRIES

**E-COMMERCE**

**Italian Regulator sanctions e-dating platforms**

On 13 July 2016, the Italian Competition Authority ("ICA") adopted three different decisions against certain key players in the e-dating sector. All the above-mentioned decisions concern consumer rights infringements. In one case, a fine of Euro 350,000 was imposed on the e-dating platform *Edates.it* for unfair commercial practices, due to misleading information related to the features of the service, which resulted in the activation of premium subscriptions without proper notice (Decision no. PS8674). In the other two cases, the ICA accepted and made binding (a) commitments provided by the online platform *C-date.it*, relating to the clarification of its terms and conditions for premium services (Decision no. PS10258) and (b) commitments provided by *Meetic.it*, aimed at facilitating the right of withdrawal (Decision no. PS10187). For further information please see [here](#).

**FOOD**

**NHC Regulation applies to B2B communication**

On 14 July 2016, the EU Court of Justice (ECJ) issued its judgment in case *C-19/15 (Verband Sozialer Wettbewerb eV v. Innova Vital GmbH)* and stated that article 1(2) of Regulation (EC) No 1924/2006 of 20 December 2006 (on nutrition and health claims made on foods), as amended by Commission Regulation (EU) No 1047/2012 of 8 November 2012 (the "NHC Regulation"), must be interpreted as being applicable where nutrition or health claims are made in commercial communications which, although addressed exclusively to professionals, are in practice aimed indirectly at final consumers. According to the ECJ, the concept of a "commercial communication" within the meaning of the NHC Regulation may also take the form of an advertising document which food operators address to health professionals, containing nutritional or health claims within the meaning of that regulation, in order that those professionals recommend, if appropriate, that their patients purchase and/or consume that food.

**ISP**

**The Court of Milan rules on injunctions against websites offering illegal content**

On 27 July 2016, the Court of Milan issued its judgment in the urgent proceedings brought by the broadcaster Mediaset against a website ("calcion.at") that made available (in streaming format) certain soccer matches for which the complainant had purchased exclusive broadcasting rights and several Internet connectivity providers. The Court of Milan ordered that the website's owner cease any further exploitation of the relevant content, and that the Internet providers block access to the website. However, the court clarified that such a restrictive measure could not be extended (as per the complainant's request) to include any future aliases for the same website, meaning websites having the same name and content but different top level domains (e.g. ".com" instead of ".at"). The court stressed that such an order would leave private entities (i.e. the providers) with the power to assess whether such new websites hosted the same content as "calcion.at" and, if so, prohibit access to them. Pursuant to current rules of law, only public authorities are entitled to make such an appraisal and implement consequent measures.

**MEDIA**

**EU Commission accepts Paramount's commitments**

On 26 July 2016, the European Commission accepted the commitments offered by Paramount at the end of the investigation proceedings (case No. 400023) which it was opened in July 2015 on the basis that certain clauses in film licensing contracts between Paramount (amongst other studios) and Sky UK were in breach of EU antitrust rules. These clauses (a) required Sky UK to block access to Paramount's films through its online pay-TV services (so-called "geo-blocking") or through its satellite pay-TV services to consumers outside its licensed territory (UK and Ireland) and (b) required Paramount to ensure that broadcasters outside the UK and Ireland were prevented from making their pay-TV services available in the UK and Ireland. The commitments now accepted by the European Commission provide that (a) when licensing its film output for pay-TV to a broadcaster in the EEA, Paramount will not (re)introduce contractual obligations preventing or limiting a broadcaster from responding to unsolicited requests from consumers within the EEA but outside of the broadcaster's licensed territory (no "Broadcaster Obligation"), (b) when licensing its film output for pay-TV to a broadcaster in the EEA, Paramount will not (re)introduce contractual obligations requiring the relevant broadcaster to prohibit or limit broadcasters located outside the licensed territory from responding to unsolicited requests from consumers within the licensed territory (no "Paramount Obligation"), (c) Paramount will not seek to bring an action before a court or tribunal for the violation of a Broadcaster Obligation in an existing licensing agreement and (d) Paramount will not act upon or enforce a Paramount Obligation in an existing licensing agreement. For further information please see [here](#).

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