

NEWS FROM THE FIRM

The firm wins again for Lastminute against Ryanair

A team led by [Marco Consonni](#) and [Ludovico Anselmi](#) successfully defended Lastminute in interlocutory proceedings before the Court of Milan regarding their liability for 'screen scraping' Ryanair's website (in order to collect and compare flight cost data from various air carriers). The Court of Milan confirmed that Ryanair is abusing its dominant position in the relevant market by trying to prevent online travel agencies from scraping its website.

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COVID-19 SPECIAL

CORPORATE

Three more months of holding shareholders' meetings by audio-video conference

[Law Decree no. 183/2020 of 31 December 2020](#) (known as the "Decreto Milleproroghe") provides for the extension to 31 March 2021 (or any earlier date on which the state of emergency resulting from the Covid-19 pandemic is declared to have ceased) of all the provisions of Article 106 of [Law Decree no. 18 of 17 March 2020](#). Consequently, the notice of call for meetings of shareholders' of joint stock companies may provide that: (a) votes may be expressed electronically or by correspondence; (b) attendance at the meeting may be by means of telecommunication; (c) the meeting is held exclusively by way of telecommunications without the Chairman, Secretary and/or Notary necessarily being present in the same place. In addition, listed joint-stock companies may (i) appoint - for ordinary and extraordinary shareholders' meetings - a representative to whom shareholders may grant a proxy for the exercise of attendance and voting rights (known as the "designated representative"), and (ii) provide in the notice of call that attendance at the shareholders' meeting shall be exclusively through the delegated representative appointed in this way.

For more tips on COVID-19 see our [special newsletters](#):

- [Law Decree no. 137/2020 \("Decreto Ristori"\) – Latest employment provisions related to the Covid-19 Emergency](#)
- [Latest Employment News in Italy related to Covid-19 Emergency](#)
- [Special Newsletter: COVID-19 e HR \(2\)](#)
- [Liquidity Decree](#)
- [New disclosure obligations on holding thresholds and on shareholders "investment intentions" declarations for listed companies](#)
- [COVID-19 forward looking statements](#)
- [Contracts at the time of the Coronavirus](#)
- [COVID-19 and HR](#)
- [COVID-19 and Impact of Coronavirus on certain Corporate Issues](#)
- [COVID-19 and Suspension of Contractual Obligations](#)

CAPITAL MARKETS

Consob extends the enhanced transparency regime on changes in significant shareholdings and declaration of investment objectives for a further three months

On 13 January 2021, Consob issued [Resolution no. 21672](#), extending the enhanced transparency regime introduced on 9 April 2020 to 13 April 2021, due to the continuing uncertainty regarding the evolution of the economic and financial situation generated by the Covid-19 pandemic. Specifically, the transitional rules on obligations under [Article 120 of the Consolidated Financial Act](#) (applying to certain public companies listed by Consob) provide for: (a) the addition of a 1% threshold of, as against the 3% threshold, as the minimum threshold which, when exceeded, triggers the obligation to disclose shareholdings acquired in public companies (such threshold is 3% for SMEs); and (b) the addition of a 5% threshold, as against 10%, as the first threshold above which there is an obligation to communicate to the market the "declaration of intentions", i.e. the investment objectives for the following six months.

Extension of COVID-19 legislation in the 2021 Budget Law

On 30 December 2020, [Law no. 178 of 30 December 2020](#) (the "Budget Law") was published in the Official Gazette. Among other provisions, the Budget Law has extended to 30 June 2021 the validity of certain measures set out in previous legislation to support companies negatively impacted by the COVID-19 outbreak, including: (a) a guarantee from SACE, which has been extended to the assignment of receivables without recourse and to loans with debt rescheduling, as long as additional credit of at least 25% of the amount of the rescheduled loan is granted and the guarantee reduces the cost and/or increases the duration of the loan as compared to the rescheduled debt; (b) the guarantee from the central fund for small and medium enterprises, providing that companies with more than 250 and fewer than 499 employees, from 1 March 2021 to 30 June 2021, will no longer be able to access the Fund's guarantees, but will be eligible for the SACE guarantee on the subsidised terms offered by the Central Fund; (c) the moratoria on loan repayment; (d) the tax credit on losses, for capital increases resolved in the first half of 2021; and (e) the SME Equity Fund, up to a maximum of €1 billion for 2021.

FINANCE

ADMINISTRATIVE LAW

Italian limitation on subcontracting in public contracts is unlawful

In its recent [judgment no. 8101/2020](#), Italy's Council of State pronounced for the second time on the long-standing issue of the compatibility of the limit on subcontracting provided by [Article 105](#) of the Italian Public Contracts Code (Legislative Decree no. 50/2016) with [Articles 49 and 56 TFEU](#) and [Directive \(EU\) no. 2014/24](#) of 26 February 2014. Previously, on 16 January 2020, the Court had acknowledged the judgment of the EU Court of Justice of 26 September 2019 ([Case C-63/18](#)) which ruled that the provisions of European law must be interpreted as precluding national legislation to limit subcontracting in public works. The provisions of Article 105 – aimed at preventing contractors from serving merely as "brokers" of publicly funded work – limited the possibility of subcontracting to 30% of the total amount of the relevant contract. Contractors are now allowed to carry out their work using the means and methods of their choice without limitation on the use of subcontractors.

CAPITAL MARKETS

Amendments to Borsa Italiana's Markets Rules and related Instructions

On 18 December 2020, Borsa Italiana issued [Notice no. 33352](#) regarding certain amendments to the "Rules of the Markets organised and managed by Borsa Italiana" and to the related Instructions. The amendments, which entered into force on 4 January 2021, provide, *inter alia*, for: (a) a minimum share capital requirement for companies listed on the MTA; (b) a minimum free-float market capitalisation in order to maintain STAR segment status; (c) trading on behalf of multiple operators belonging to the same group of companies; (d) sponsored access to negotiations through proxies; (e) updates on corporate governance for companies having the benefit of STAR segment status; and (f) requirements for admission to the MOT market.

Mandatory tender offers: Consob clarifications on exemption for "causes beyond the control of the purchaser"

On 24 November 2020, Consob issued [Communication no. 1187953](#), providing clarifications in relation to the exemption from the obligation to launch a public tender offer for exceeding the relevant shareholding, as determined pursuant to [Article 106.5 of Legislative Decree no. 58/98](#) (the "Consolidated Finance Act") and specified under [Article 49.1\(d\)](#) of the Regulation enforced through [Consob Resolution no. 11971 of 14 May 1999](#) (the "Issuers' Regulations"). Consob has clarified that the purchase of shares subject to withdrawal and offered to non-withdrawing shareholders on the basis of option rights cannot be considered as a purchase "beyond the control of the purchaser" as a result of "the exercise of originally pertaining rights". In fact, unlike the exercise of option rights in the context of capital increases, such cases necessarily entail an increase in the percentage of the shareholding held by the party exercising the option. Such an increase must therefore be taken into consideration for the purposes of mandatory tender offers.

CORPORATE

"Fit and Proper" and "Suitability" of the corporate officers

With [Decree no. 169 of 23 November 2020](#), the Italian Ministry of Economy and Finance has issued new rules regarding the eligibility requirements and criteria for the election of corporate officers in financial intermediaries, credit consortia, electronic money institutions, payment institutions and deposit guarantee schemes, thus implementing [Article 26 of Legislative Decree no. 385 of 1 September 1993](#) (the "Consolidated Banking Act"). The Decree, which entered into force on 30 December 2020, essentially focuses on (a) the substantial distinction between requirements (which are characterised by objectivity and exhaustiveness) and eligibility criteria (subject to discretionary power); (b) the definition of the concepts of integrity, respectability, professionalism, competence and independence of judgment; (c) the discipline regarding the adequate composition of corporate bodies, time constraints for officers and limits on the accumulation of offices; and (d) related assessment rules.

FINANCE

New provisions concerning purchased tax credits

On 5 January 2021, the Coordination table held between the Bank of Italy, Consob and Ivass on the application of IAS/IFRS published clarification of the accounting treatment and the representation in financial statements of tax credits purchased pursuant to [Law Decree no. 18 of 17 March 2020](#) ("Cura Italia") and [Law Decree no. 34 of 19 May 2020](#) ("Rilancio"). Those Decrees introduced tax incentives connected both with investment expenditures (such as the "eco-" and "sisma-bonus") and with current expenditures (including rents for non-residential use), which are made available to families and businesses in the form of tax credits. The document is therefore intended for the entities supervised by the three Authorities, namely banks, insurance companies and other financial intermediaries, which may be particularly interested in purchasing such credits. For more information, click [here](#).

Investments in innovative start-ups and SMEs: targets and instruments of the Relaunch Fund

On 19 November 2020, the [Decree of the Ministry of Economic Development](#) (the "Decree"), providing access to the additional resources granted under Article 38.3 of [Law Decree no. 34 of 19 May 2020](#) to the Venture Capital Support Fund created by [Law no. 145 of 30 December 2018](#), was published in the Official Gazette. The Venture Capital Support Fund will have an additional €200 million available, which will be invested by subscription of its units in an alternative investment fund (the "Relaunch Fund") to be managed by Cdp Venture Capital SGR (the "SGR"). Under the Decree, the Relaunch Fund will invest in innovative start-ups and SMEs which, *inter alia*, (a) have their registered office in Italy and perform activities or development programmes in Italy, (b) have real development potential, as ascertained on the basis of the criteria listed by the Decree, and (c) which have already received investment capital and been brought to the attention of the SGR by certain qualified investors and/or in which such qualified investors will co-invest together with the Relaunch Fund. Moreover, the Decree provides that the Relaunch Fund's initial investment in a target company shall be made in the form of a converting facility, while any further investment shall be made through equity, and that the overall amount of each investment in each target company may not exceed four times the value of the investment made by the abovementioned qualified investors, and, in any case, €1 million. The website on which applications to the Venture Capital Support Fund may be submitted was launched on 7 January 2021.

DATA PROTECTION

The Italian DPA fines a company for unlawful processing in relation to its internal policies for employees

On 26 November 2020, the Italian Data Protection Authority fined a company active in the call centre market for provisions of its internal policies which prevented employees from having certain objects, clothing and/or accessories (such as bags) and required them to keep boxes of medicines and tampons in view on their desks. Employees were required to display personal items such as medicines, medical aids and sanitary towels on their desks without being able to place such objects inside bags or other small containers to hide them from the view of colleagues and superiors, who could therefore indirectly gain knowledge of employees' personal status or information relating to their health, unrelated to the content of their work and detrimental to their dignity and confidentiality. The Italian DPA clarified, among other things, that the processing of special categories of personal data was unlawful, also considering that the consent given by certain employees could not have constituted a lawful basis for the processing since it was given in the context of an employment relationship and, therefore, did not meet the condition of being "freely given". For more information, click [here](#).

PATENTS

EPO study reveals innovation accelerating fast

On 10 December 2020, the European Patent Office (EPO) released the [Patents and the Fourth Industrial Revolution](#) study which shows that innovation in fourth industrial revolution (4IR) technologies (including smart connected objects, Internet of Things, big data, 5G, and artificial intelligence) has accelerated significantly worldwide. Between 2010 and 2018, global patent filings for these technologies grew at an average annual rate of almost 20%, nearly five times faster than the average of all technology fields. The study confirms that the US remains the world leader, accounting for around a third of all inventions, compared with Europe with about one fifth.

INDUSTRIES

MEDIA

The Italian DPA fines the TV show "Le Iene" for unlawful processing of personal data in the performance of journalistic activities

On 26 November 2020, the Italian Data Protection Authority fined the production company of the TV show "Le Iene" for unlawful processing of the personal data of a doctor filmed and interviewed by journalists in breach of the GDPR and of the exemptions set forth in the Italian Privacy Code for journalistic activities. The exemptions must act with fairness and transparency, avoiding the use of trickery and pressure to gather information which may be acquired by journalistic investigation. In the specific case at hand, a doctor had been filmed and interviewed without his knowledge by reporters of the TV show who, without identifying themselves, had entered his office pretending to be ill. The doctor's face was only partially obscured, his voice was undisguised and details of his workplace were clearly shown. The Italian DPA held that, in this specific case, journalists should have disclosed their occupation, avoided misleading behaviour and undue pressure. In addition, the information that the journalists intended to collect could have been obtained in any event by using other sources, including by way of a "declared" and open interview with the doctor or by consulting other doctors. In addition, the broadcast should have ensured the anonymity of the doctor, could have been more effectively ensured, by disguising his voice and using shots not focused on his person and his working environment. For more information, click [here](#).

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