

NEWS FROM THE FIRM

The firm with Antares in the acquisition of RFXCEL Corporation

A team led by [Pierfrancesco Giustiniani](#) and [Manfredi Leanza](#) (including [Elisa Cappellini](#), [Francesco Cesaroni](#), [Francesco Senesi](#) and [Alessandro Negri](#)) advised Antares Vision on the acquisition of RFXCEL Corporation, a leading U.S. software-as-a-service company active in the life science and food & beverage industries.

Recent publications

A DE PALMA and D VUOLO, [Il Garante su vaccini e diffusione dei dati sanitari dei dipendenti](#).

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COVID-19 SPECIAL

CORPORATE

Five-year postponement of capital reduction and dissolution of a company required by law in case of losses

Article 1.266, of [Law No. 178 of 30 December 2020](#) (the "Budget Law") – amending Article 6 of [Law Decree No. 23 of 8 April 2020](#) – provides that the reduction of capital and dissolution of a company required by law in case of losses do not apply to losses arising in the current financial year. In addition, the time limit for reducing the loss to less than one third is postponed to the fifth subsequent financial year (provided that the shareholders' meeting approving the relevant financial statements reduces the corporate capital in proportion to the relevant losses).

Consob provides instructions on how to reflect the Covid-19 pandemic effects in financial and non-financial information

On 16 February 2021, Consob issued [Warning Notice No. 1/21](#) explaining how to reflect the impact of the Covid-19 pandemic in the information to be provided by (a) supervised issuers, supervisory bodies and independent auditors, in relation to 2020 financial statements prepared in accordance with international accounting principles, (b) companies publishing 2020 non-financial statements, (c) issuers with listed shares and supervisory bodies at shareholders' meetings for resolutions on corporate capital, (d) those responsible for drafting the offer documents and prospectuses and (e) issuers subject to the provisions of [Regulation \(EU\) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse \(Market Abuse Regulation\)](#).

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](#)

ANTITRUST LAW

Italian limitation on subcontracting in public contracts is unlawful

On 19 January 2021, the Italian Competition Authority ("ICA") issued a [Resolution](#) fining Eventim-TicketOne group more than ten million euro for abuse of a dominant position. The holding company – which operates in the Italian market through its subsidiary TicketOne s.p.a. selling tickets for live music events – allegedly violated [Article 102 TFEU](#) by implementing complex anti-competitive practices aimed at excluding its ticketing competitors from selling, through various channels, considerably more tickets for live music events. The measures adopted by the ICA included an order to TicketOne to allow other ticketing competitors to sell through any channel – on fair, reasonable and non-discriminatory conditions – at least 20% of the total amount of tickets related to live music events produced or distributed by each promoter or by the ticketing operator linked exclusively to the CTS Eventim-TicketOne group. The ticketing firm – which was subject to a similar fine in 2017 (later annulled by the Regional Administrative Court of Lazio – indicated it was perplexed by the antitrust measure and announced its intention to challenge it.

DATA PROTECTION

Tik Tok will comply with the requests of the Italian DPA

On 3 February 2021, Tik Tok [announced](#) that it will comply with the requests of the Italian DPA aimed at prohibiting access to the social network for users under 13. Tik Tok's *change of position* on data protection followed the [limitation imposed by the Italian DPA on 22 January 2021](#) in relation to the processing of personal data of users whose age could not be established with certainty. Tik Tok clarified that it will ask all Italian users to re-enter their date of birth and that it will ban users aged less than 13. In addition, Tik Tok will run an information campaign, both in-app and on other channels, and will adjust its privacy policy for minors with the aim of explaining, in an understandable and engaging way, the kind of data Tik Tok collects and how they are processed.

The EDPB issues guidelines on examples regarding data breach notification

On 14 January 2021, the European Data Protection Board (EDPB) issued its [Guidelines 01/2021](#) on examples regarding the notification of data breaches (the "Guidelines"). The Guidelines complement those issued by the Article 29 Working Party in October 2017 and provide practice-oriented, case-based guidance for data controllers in deciding how to handle data breaches and what measures to put in place to prevent them. In particular, the Guidelines analyse the most common causes of data breaches and provide step-by-step advice from their identification to their resolution.

CORPORATE

The Italian Supreme Court on the creditors' receipt of the notice of the transformation of a company as a mandatory requirement

On 29 December 2020, the Italian Supreme Court issued its judgment in [Case No. 29745](#) in connection with the notice of transformation of a company. Under Italian law, such notice discharges the shareholders from their unlimited liability for corporate obligations incurred prior to the company's transformation, unless the company's creditors – who must be notified of the transformation – have expressly refused their consent in this regard. The Supreme Court clarified that the failure to provide notice of transformation cannot be remedied by the creditors' knowledge obtained otherwise (e.g. by receiving documents attesting to the occurrence of the transformation, through legal knowledge obtained by publication of the relevant resolution in the Company's Register, etc.).

Duties of directors and statutory auditors in the management of a corporate crisis

On 18 October 2019, the Court of Milan issued a ruling concerning the management of a corporate crisis to be managed by the corporate bodies. This ruling is one of the first judgments to apply the new [Article 2084 of the Italian Civil Code](#), as amended by the Italian Corporate Crisis and Insolvency Code, which provides, *inter alia*, for the duties of: (a) directors to ensure the adoption of adequate organisational structures in order to prevent a corporate crisis and (b) vigilance and communication by the statutory auditors to prevent directors' inertia in the management of the crisis. The Court stated that the correct fulfilment of the corporate officers' obligation must include a proper diagnosis of the crisis situation, as well as accurate planning of the intervention and actions to be taken in order to restore the economic-asset equilibrium.

FINANCE

Introduction of a new type of securitisation with granting of loans

[Law No. 178 of 30 December 2020](#) (the "Budget Law"), among other provisions, has amended [Law No. 130 of 30 April 1999](#) on securitisations, providing for a new type of securitisation. Specifically, Article 1, paragraph 214, of the Budget Law provides that the amounts paid by assigned debtors or otherwise received in satisfaction of the assigned receivables shall be used exclusively by the transferee company to satisfy the rights embodied in the securities issued or arising from loans granted to the transferee by entities authorised to grant loans, and to finance the purchase of such receivables, as well as to pay the costs of the transaction. This Article, therefore, introduces the possibility of the purchase of the assigned receivables to be financed not only through the issuance of securities, as traditionally provided, but also through a loan to be granted by an authorised entity under terms and conditions set forth therein. The lender shall be a financial intermediary, duly authorised by and enrolled with the Bank of Italy pursuant to Article 106 of [Legislative Decree No. 385 of 1 September 1993](#). The Budget Law also clarifies the principle of the exclusive destination of the amounts relating to the receivables, providing that all the amounts "received in satisfaction of the assigned receivables" shall be exclusively allocated to the satisfaction of the rights incorporated in the securities issued or deriving from the financing.

PATENTS

EPO proceedings allowing evidence gathering by videoconference

On 1 January 2021, the amendments applied by the European Patent Office (EPO) to [Rules 117 and 118](#) of the [EPC Implementing Regulations](#), allowing the European Patent Office (EPO) to hear the parties, witnesses, or experts and to carry out inspections also by videoconference, became effective. A party, witness or expert summoned to give oral evidence during oral proceedings on the premises of the EPO may request to be heard by videoconference within the period indicated in the summons. The granting of a request of this kind will be at the discretion of the division.

INDUSTRIES

TECHNOLOGY

ENISA issues a report on cloud security for healthcare services

On 18 January 2021, the European Union Agency for Cybersecurity (ENISA) issued its [report](#) on cloud security for healthcare services (the "Report") with the aim of providing a set of guidelines to ensure cybersecurity and the security of personal data processing when procuring cloud services in the healthcare sector. Considering that Covid-19 acted as a catalyst for the need to digitalise the healthcare sector, including patient-at-home care, and that the latter is experiencing a significant escalation in the adoption of new technologies to improve patient care, cloud solutions have provided elasticity and fast access for the deployment of new services including "virtual" health and telemedicine. The Report lays down security practices and identifies security aspects, including data protection, to be considered when procuring cloud services for the healthcare industry.

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