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Italy: New rules on online platforms in the European Union

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COVID-19 update

Italy (population 60.317.000)

Situation of September 15, 2020:

- Patients recovered in intensive care: 201
- Patients recovered in hospital with symptoms: 2.222

Online platforms

Online marketplaces, social media, app stores, price comparison websites, platforms for the collaborative economy, food-delivery platforms, etc.

From the manufacturer/franchisor's perspective:

- A tool for increasing sales
- A competitive tool for:
 - distributors/franchisee
 - free riders

The New P2B Regulation

Regulation 2019/1150 of 20 June 2019, on promoting fairness and transparency for business users of online intermediation services

- Entered into force on 12 July 2020
- Guidelines not yet available

The New P2B Regulation

- T&C must be drafted in a simple and understandable language and easily available to business users at all stages of their commercial relationship;
- they must include specific provisions provided therein, under penalty of nullity;
- possible restriction, suspension and termination of the provision of services are subject to strict procedural rules;
- also ranking on research engines, differentiated treatments, access to data, etc. shall be specifically regulated in the T&C, are expressly regulated
- free of charge internal complaint handling system; access to mediation etc.

The New P2B Regulation: scope of application

Regulation 2019/1150 applies where:

- (i) the services are provided or offered to business users and corporate website holders who have their place of establishment or residence in the European Union and
- (ii) who, through these services, offer goods and/or services to EU consumers.

It applies also if the actual transaction is ultimately not performed online.

Competition law: revision of the VBER

Regulation 330/2010 (Vertical Block Exemption)

Expiring on May 31, 2022 - currently under revision

- E-commerce enquiry 2017
- Evaluation of the VBER started on October 3, 2018
- Public consultation and contacts with stakeholders
- Commission Staff Working Document Evaluation, September 8, 2020

Commission Staff Working Document

Evaluation of September 8, 2020

- Consumers expecting an omnichannel experience
- Increasing dual role of online platforms (acting both as intermediary service provider and retailer)
- Increase of online sales and free riding
- Increased use of selecting distribution systems by brand owners in order to better control internet sales and free riding

Selective Distribution Agreements

Business model regulated only by competition rules (VBER)

Commonly used in multi-brand distribution (luxury, cosmetics), but also applicable to franchising

Definition in the VBER

- Selecting criteria
- Resale restrictions

Restricting online sales (selective distribution)

- Restricting the retailers' right to sell online and through online platforms to end users / consumers
- Avoiding free riding:
 - Preventing the distributors/franchisees to sell to business traders outside the network
 - Possible actions against free riders (outside the scope of competition law)

Selective distribution and franchising

Under the current VBER, insofar as franchise agreements comply with the rules on selective distribution, they can be regarded as “selective networks”

- Not clear to most franchisors
- Request for clarifications by the stakeholders
- Request for different/specific rules for franchising in the future text

Conclusions of the evaluation

- Continued need for VBER
- Assessment of VBER must include the Vertical Guidelines
- Need for more clarity (helping in the self-assessment process)
- Filling the gaps (e.g. online platforms)
- Addressing new developments: selective distribution, restriction on online sales and online advertising; free riding
- Overcoming divergences among NCAs and national courts
- Summary of the positions taken by all the stakeholders on each specific aspect (Annex 4)

Thanks for your kind attention

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