

«E-Commerce and on line services Creating fairness and trust»

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Effective enforcement of consumer protection laws is crucial to foster fairness and consumer trust

- **Existing legal provisions at the EU level are already fit for the purpose. Any novel regulatory intervention should be subject to a very careful cost-benefit analysis.**
- **Enforcement of consumer protection law by the Italian Competition Authority (AGCM):**
 - **Unfair Commercial Practices Directive (UCPD);**
 - **Consumer Rights Directive (CRD);**
 - **Unfair Contract Terms Directive (UCTD).**
- **Powers: cease-and-desist orders + fines (5,000 – 5 mln. €). No redress.**

Most relevant enforcement cases

- **Websites selling counterfeited brand products: misleading practices, interim measures (websites blocked);**
- **E-commerce websites selling but not delivering the goods: fake shops, insufficient inventories, drop shipping, refusal to reimburse consumers;**
- **Dating websites: obstacles to the exercise of the right of withdrawal; automatic subscription renewal.**

Enforcement cases (continued)

- **Drip pricing:** add-ons during the online purchasing process (e-commerce, flight tickets, travel and tourism);
- **Ban on credit card surcharge:** no discrimination among means of payments;
- Amazon - **double role** as a **seller** and as a **marketplace**
→ lack of information about Amazon's role in the transaction – refusal to provide legal guarantee.

Social media: WhatsApp (ongoing)

1) unfair contract terms:

- a) jurisdiction and applicable law;**
- b) the power to change unilaterally terms and conditions and introduce new costs without justifications;**
- c) waiver by the trader of any liability;**
- d) power to unilaterally terminate the contract;**
- e) power to unilaterally modify, suspend or block unilaterally user's access;**
- f) power to decline orders with no guarantee for reimbursement.**

2) unfair (aggressive) commercial practice:

forcing users to accept new T&C's, including the automatic transfer of consumer's personal data to Facebook - consumers not able to use WhatsApp any longer without accepting the new T&C's, need to de-select a pre-ticked option, no information on the complex opt-out procedure.

Final remarks – challenges ahead

- **Conducts can have an increasing **cross-border nature**;**
- **Cooperation** among enforcement authorities
- **Coordination**, not centralization
- **Need to **improve national powers**: interim measures, fines, action on ceased infringements. Asymmetry among enforcers' powers hampers cooperation**
- **E.g. powers to block websites, ensuring safeguards to avoid abuse of powers**
- **No preferential role for negotiations: enforcement measures by national authorities have a crucial **deterrent effect**.**