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Contribution by
Autorità garante della concorrenza e del mercato
Italy
*The role of the Italian Competition Authority
in supporting the growth of e-commerce*

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ITALY's CONTRIBUTION

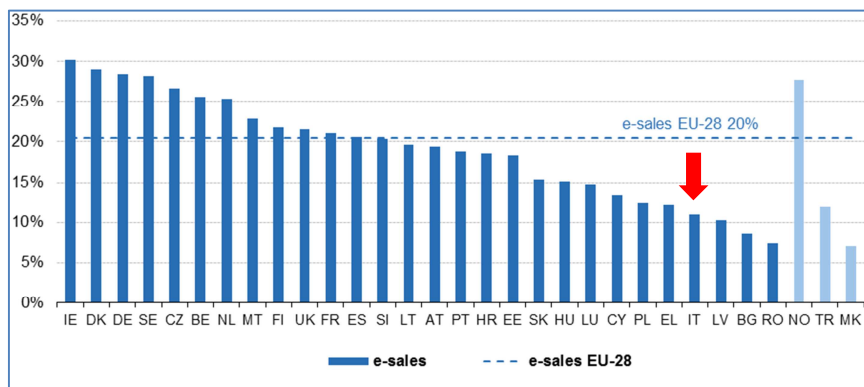
The role of the Italian Competition Authority in supporting the growth of e-commerce

E-commerce is one of the most important components of the digital economy. It allows businesses to reach new customers, widens the choices of consumers and makes the market more transparent. As a result, e-commerce concurs to lower prices and encourages companies to adopt innovative models of promotion and distribution. The economic research shows a positive correlation between e-commerce, innovation and growth. While offering new opportunities, e-commerce might also produces new pitfalls for consumers, in some cases because consumers are not familiar with new purchasing methods, in other cases because providers disseminate misleading information.

Italy has lower penetration rates of e-commerce than other major European countries. In 2016, half of the 15-plus year-old population had purchased on line¹. At the same time, the number of Italian companies making electronic sales was just above 10% in 2015, approximately half of the average percentage of enterprises in the EU-28 (see figure below).

¹ Share of 15-plus year-olds who purchased online in the three months preceding the interview. Source: ISTAT, *Cittadini, Imprese e ICT*, 2016.
<https://www.istat.it/it/files/2016/12/Cittadini-Imprese-e-nuove-tecnologie.pdf?title=Cittadini%2C+imprese+e+ICT+-+21%2Fdic%2F2016+-+Testo+integrale+e+nota+metodologica.pdf>

E-sales, 2015 (% enterprises)



Source: Eurostat – E-commerce statistics

One of the main factors suitable to hamper the full development of digital commerce is consumers' lack of confidence in digital transactions. Strengthening protection in this sphere is therefore a priority of the Italian Competition Authority (the ICA or the Authority), with a view to reinforcing consumer confidence in digital market transactions and, thus promoting the success of e-commerce.

Our experience shows that rigorous enforcement of consumer protection legislation can significantly contribute to improving fairness in business conducts and consumer trust in the digital world. Moreover, effective consumer protection indirectly promotes competition. Indeed, consumer protection disciplines the behaviour of businesses, preventing some from making use of unfair competitive advantages based not on merit but on the ability to exploit the weaknesses of the consumer, and facilitating mobility of demand. In the digital world, where everything happens quickly, using consumer protection tools might allow to intervene considerably faster than by employing the instruments to safeguard competition.

The activity of the Italian Competition Authority regarding e-commerce

Over the last few years, the ICA's action with respect to consumer protection in e-commerce moved along three main lines: a) stopping sales activities by online companies that fail to deliver purchased goods and do not refund payment; b) ensuring complete and accurate information by the electronic service provider; c) addressing drip-pricing practices and unfair practices regarding renewal or withdrawal of subscriptions.

a) *No delivery or no refund*

Regarding the first area, the Authority severely fined practices that led to goods purchased online not being delivered as well as the provision of misleading information on the status of misplaced orders and the delivery of goods². In some cases the online shops were fake and disappeared after the sale, in others the websites belonged to traders that did not have the products in their inventories (sometimes because of a “drop shipping” policy³) and refused to reimburse consumers.

b) Incomplete or inaccurate information

With respect to the second area of intervention, which also involved some important platforms, the ICA, also using moral suasion, obtained changes in their websites aimed to ensure completeness and accuracy of information prior to the conclusion of the online contract⁴.

In the case of Amazon, closed with the imposition of a penalty, the ICA found that when the platform operated as a marketplace, it did not provide clear and accessible information as to the identity of the seller, the role played by Amazon in the transaction, post-sales assistance by third parties, or the legal guarantee. Many consumers, after purchasing on the Amazon site, became aware of their actual contractual partner only when the product was defective or other irregularities occurred in the use of the goods purchased. Amazon changed some aspects of its site to comply with the Authority’s decision⁵. In this way the principle has been established that, even though the intermediary is not the provider of the service to the consumer, it must nevertheless ensure adequate information standards.

The ICA also investigated on the information provided by major mobile telephone companies with regard to premium services. The operators were fined because they did

² See, for instance, the following cases closed in 2015: PS9431 (Techmania); PS9812 (Kgegl - Mancata consegna), PS9813 (Shopping Mgm - Mancata consegna prodotto), PS9819 (Moonlooker-Mancata consegna), PS10002 (Zionsmartshop-E Commerce), PS10013 (Toys and Games - Mancata Consegna), PS9821 (Il Mercato dell’Affare - Mancata consegna).

³ Drop shipping is a supply chain management method in which the retailer does not keep goods in stock but instead transfers customer orders and shipment details to either the manufacturer, another retailer, or a wholesaler, who then ships the goods directly to the customer.

⁴ See, for instance, the following cases closed in 2015: PS10382 (Leroy Merlin-Sweep), PS10383 (Privatesportshop.it-Sweep), PS10384 (Yoox.it-Sweep), PS10384 (Zalando.it-Sweep).

⁵ Case n. PS9353 (Amazon-Market Place-Garanzia legale), July 2016. See the press release, available at: <http://www.agcm.it/en/newsroom/press-releases/2322-ps9353-online-sales-and-consumers%E2%80%99-rights-a-300,000-euro-fine-imposed-on-two-of-amazon%E2%80%99s-companies.html>. For more information on this case, see: Occhiuzzi, P., Online marketplaces and new measures for consumer protection: the Amazon case. Rivista Italiana di Antitrust / Italian Antitrust Review, 3(2), 2017. Available at: <http://iar.agcm.it/article/view/12430/11312>

not warn customers that they could set up a premium rate service through a simple click while surfing the Internet via smartphones⁶. Following the ICA's intervention, the companies in question improved their control systems and established procedures that require a "double click" by users.

Further interventions regarded car insurance comparison websites. In these cases, the ICA ascertained a lack of transparency of information included in comparison tool websites with respect to the following aspects: *i*) the business model of the comparison tool providers: it was not clear that the latter act as brokers for some insurance companies, thereby gaining fees and having incentives to encourage purchases of specific insurance policies in order to increase profits; *ii*) the scope of the comparison: consumers were not properly informed that they were not screening the whole market; *iii*) the criteria applied for ranking: results were ranked by total price, but products compared were not always homogeneous; *iv*) the main features and characteristics of products: detailed information was missing with specific reference to differences in insurance covers and limitations; *v*) the seller's identity: when purchasing, consumers were not informed as to whether they were actually buying from the comparison tool provider or the insurance company. The ICA accepted and made binding the commitments offered by the parties to address such concerns, including detailed information on the website about the business model of the comparison tool, the names of the insurance companies with whom the provider had commercial agreements, the companies included in the comparison and their total market share, the commercial relationship and the fees agreed upon with each insurance company. Moreover, the listed options were made homogeneous and any additional cover was added by the consumer only with an opt-in mechanism⁷.

c) Drip-pricing and renewal or withdrawal of subscriptions

Drip pricing – the practice consisting in advertising a cheap price and then charging additions in the course of the online purchasing process – has been tackled by the Authority

⁶ See, for instance, the following case closed in 2016: PS10186 (Vodafone-Servizio Exclusive), March 2016, see the press release available at: <http://www.agcm.it/en/newsroom/press-releases/2318-ps10186-a-one-million-euro-fine-imposed-by-the-ica-on-vodafone-for-additional-services.html>. Cases closed in 2015 include: PS9464 (Vodafone Servizi Premium), PS9465 (Wind Servizi Premium), PS9466 (TIM Servizi Premium), PS9467 (H3G Servizi Premium).

⁷ See the following cases n.: PS9518 (6Sicuro.it-Comparatore RC Auto) and PS9212 (Facile.it-Comparatore RC Auto), April 2015; a press release is available at: <http://www.agcm.it/en/newsroom/press-releases/2225-ps9212-ps9518-sites-comparison-of-rc-car-insurance-commitment-policies-binding-on-facileit-and-6sicuro.html>. For more information on these cases see: Pittatore, S., "Consumer Protection and Comparison Tools: The Italian Enforcement Experience in the Motor Vehicle Insurance Sector", Italian Antitrust Review, [S.I.], v. 2, n. 3, mar. 2016. ISSN 2284-3272. Available at: <http://iar.agcm.it/article/view/11759/10885>

since 2011, starting with flight tickets, then extending the action to other travel and tourism websites and more recently to e-commerce websites. The actions concerned insufficient information on surcharges, especially those related to the use of credit cards⁸.

Finally, some proceedings focused on websites that did not sufficiently inform consumers about the automatic renewal of the subscription or denied the right of withdrawal to subscribers, e.g., some dating websites⁹. Following the free registration to the site, or the two-week try-out subscription, consumers unknowingly found themselves bound to a six-month premium subscription. Moreover, the ICA's preliminary investigations identified obstacles in exercising contractual rights, since it was difficult to find on the website the information necessary for unsubscribing or rescinding the contract correctly and promptly.

Conclusion: strengthening consumers' confidence and international cooperation

Online buying is bringing about remarkable benefits for consumers, by exerting downward pressure on prices, while providing consumers with more choice for an ever-expanding range of products and services that can be purchased from vendors located around the world, from anywhere and at any time. Furthermore, e-commerce generates new income opportunities for small and larger online merchants, as consumers have become more cost-conscious and are increasingly going online to compare products and save money.

The rate of growth of e-commerce depends on the extent to which consumer confidence can be enhanced and obstacles, particularly those affecting cross-border transactions, can be removed.

In a country like Italy, where e-commerce has still great potential for development, the ICA's intervention may be key not only in addressing conducts that affect consumer welfare, but above all in sustaining consumers' confidence.

⁸ See the following cases closed in 2016: PS10076 (Blue Air –Credit Card Surcharge) and PS9235 (Norwegian Air Shuttle-Commissione su carta di credito); see press release of 14 October 2016 available at: <http://www.agcm.it/en/newsroom/press-releases/2340-ps9235-ps10076-greater-transparency-in-online-prices-the-ica-imposes-a-fine-for-charging-extra-fees-in-payments-carried-out-via-credit-card.html>

⁹ See, for instance, cases n. PS10187 (Meetic.it-Difficoltà di recesso), PS10258 (C-Date.it-Rinnovo automatico), PS8674 (Edates Iscrizione sito di contatti); press release of 22 July 2016 available at: <http://www.agcm.it/en/newsroom/press-releases/2345-ps10187-ps10258-ps8674-dating-sites-a-350,000-euro-fine-imposed-on-edates-and-commitments-for-another-two.html>

With regard to cross-border transactions, the interplay between different jurisdictions entails a need for national enforcement authorities to cooperate in tackling consumer protection infringements. To ensure an effective coordination, it is crucial to avoid asymmetry among national powers and strengthen and consolidate enforcement powers in all jurisdictions – particularly as regards the power to impose fines, to take interim measures and to act on ceased infringements. In this respect, UNCTAD and other international organizations provide precious opportunities for consumer protection enforcers to share experience and improve cooperation