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Online platforms and dual distribution: new rules and potential issues addressed at the 2021 Italian Antitrust Association Conference in Rome

The Italian Antitrust Association (IAA) held its biennial conference in Rome in October. The conference usually addresses the hottest topics in the domestic, EU and international antitrust panorama, providing up-to-date and meaningful content through several speeches of antitrust lawyers, economists and representatives of institutions and associations relevant to the antitrust world.

The Conference

This year, the conference hosted, among others, Commissioner for Competition, Margrethe Verstager, who provided a genuine and direct view on the competition policies of the Commission, for the past, the present and the future as well as the Chairman of the Italian Competition Authority, Roberto Rustichelli.

The antitrust team of Pavia e Ansaldo, member law firm of the DLC family, has taken part to the conference and Filippo Fioretti, Head of the team, was one of the panelist in the panel of discussion on distribution agreements, talking about dual distribution issues and challenges.

A hot topic that could not be skipped is vertical agreements and the upcoming entry into force of the new VBER and Vertical Guidelines, of course.

Panel Discussion on vertical agreements: focus on online platforms and dual distribution

Among the several and content-rich panels, one specifically addressed distribution models, focussing on the challenges and issues related to the pressing and overriding advance of online sales ("Distribution models and antitrust" chaired by Mario Todino (Jones Day)).

Panelist were Filippo Fioretti (Pavia e Ansaldo), Luciano Di Via (Clifford Chance), Matteo Padellaro (Gianni e Origoni), Enzo Marasà (Portolano Cavallo), Vito Meli (Head of the Post, Turism and Finance Directorate, Italian Competiton Authority), Gabriella Porcelli (General Counsel, Fendi).

Online platforms and dual distribution have been at the core of the discussion, analysing the pros and cons of the awaited rules of the revised VBER and Vertical Guidelines and their potential impact on the competitive environment of vertical relationships.

Speakers have highlighted the fact that, although new and clearer rules are welcome, the new regime seems to

entail risks in terms of effective prevention of collusion, economic disincentive for operators and improvement of price levels to the benefit of consumers.

The discussion focused on the issues related to the hybrid nature of the dual distribution model and, in particular, on the treatment of information exchange and the risks implied in treating such information flows the same way as those happening in horizontal contexts. The US and EU case law on the topic of dual distribution was specifically addressed by the speakers, highlighting the high degree of uncertainty on this critical topic, as evidenced by the recalled dissenting opinions in the relevant, although few, specific cases. The discussion also stressed, among others, the limits of setting market share thresholds for the purposes of the application of the safe harbour to dual distribution relationships, which seems likely to discourage trading initiatives, to the detriment of achieving the policy targets that should animate the exception regime.