

The Italian Competition Authority opens several investigations on e-commerce practices related to the marketing of Covid19-related products

Following the outbreak of Covid-19 epidemics and the emergency state declared in the Italian territory, the Italian Competition Authority (“ICA”) is intervening against commercial practices allegedly in breach of the Italian Consumer Code, notably in the sale of drugs and products against Coronavirus.

For instance, on 12 March 2020 the ICA opened proceedings against the companies managing the Amazon and Ebay e-commerce platforms, with regard to the marketing of hand sanitizers and disposable respiratory protection masks. Specifically, these proceedings aim at verifying whether the claims of alleged effectiveness of these products against Coronavirus and their remarkable price increase recently recorded on the e-commerce platforms may be in breach of the prohibition of unfair commercial practices under the Italian Consumer Code (Legislative Decree no. 206 of 2005).

The opening of these investigations follows the requests of information sent to these online platforms operators on 27 February 2020 as a result of several complaints lodged by individuals and consumer protection associations. The e-commerce operators had to reply within three days from the receipt of these requests of information, informing the ICA about the measures adopted to eliminate potentially misleading advertising claims as well as to prevent unjustified and disproportionate price increases of the aforesaid products marketed through their platforms. The measures communicated apparently did not meet the ICA’s expectations, which consequently opened the investigations: the ICA could eventually forbid the conducts at stake and sanction the e-commerce operators with a fine of up to 5 million Euros¹.

With its decision of 17 March 2020 the ICA has resolved, by way of *interim* measures, to suspend the online marketing and sale of the generic drug Kaletra and to temporarily block the access to the related website <https://farmacocoronavirus.it>, managed by an individual. The drug, containing the active principles of an anti-viral drug used for healing HIV, was sold at the price of 634.44 Euros and was marketed as the “*sole drug against Coronavirus (Covid-19)*” and “*the sole remedy to fight Coronavirus (Covid-19)*”².

ICA deemed, on a *prima facie* assessment, that these claims were deceptive for consumers insofar as they did not specify that the purchase of these drugs be subject to medical prescription and

1 According to Article 27 para 9 of the Italian Consumer Code the fine shall range from 50,000 Euros to 5 million Euros, but cannot be lower than 50,000 Euros in case of conducts potentially dangerous for the health and safety of consumers (as the conducts at stake may be found to be).

2 Author’s translation from Italian.



considered that the scientific community has found no drug conclusively effective against Coronavirus at this stage³.

In addition, the marketing of this drug has been deemed *prima facie* aggressive because it would be able to affect the commercial conducts of the consumers in the context of the alarm raised by the rising spread of the epidemic in the national territory.

On 30 March 2020 the ICA issued two additional interim decisions (with annexed opening of proceedings) against the online marketing of the drug Kaletra, suspending the access to the websites <https://farmaciamaschile.it> and <http://farmacia-generica.it>

In the meantime, additional interim decisions and start of proceedings have been adopted with regard to:

- the claims on the preventive effectiveness against Covid-19 of detergents, cosmetics and supplements advertised and marketed both on the website <https://carlitashop.com> and on the associated Instagram page (22 March 2020);
- the advertising and marketing of a so-called “Rapid Test COVID-19” at the price of 24.86 Euros on the website <http://testcoronavirus.shop/it>, which, as a result, has been temporarily shut down (22 March 2020);
- the claims on the preventive and therapeutic effectiveness against Covid-19 of the products advertised and marketed on the website www.oxystore.it, specifically consisting of a kit for oxygen therapy (30 March 2020).

Finally, it is worth noting that on 22 March 2020 the ICA has also ordered interim measures against the website www.gofundme.com, which operates a crowdfunding platform for the collection of funds for charitable purposes. This decision appears connected to the current Covid-19 emergency insofar as the platform has become popular and widely used by consumers for donations to hospitals and hospital wards located in the areas most affected by the current health crisis.

In this latter case, however, the ICA suspended the conduct on different grounds compared to those underlying the abovementioned decisions. More in detail, in the ICA’s view, the platform would have promoted its services as provided on a free basis while actually:

- charging a fee for any transaction by credit or debit card; and
- pre-selecting a percentage fee to be charged for each transaction (usually amounting to 10% of the donated sum), that the consumer may reduce or exclude only by opting-out.

As a result, the ICA ordered the platform to change the pre-selected percentage fee to zero, while providing the possibility for the consumers to change this specification and thus subjecting the possibility to leave a fee to an opt-in mechanism.

³ The decision also ascertained that the professional managing the website was not included in the list of businesses authorized to sell drugs online, that the pre-contractual documents did not adequately inform the customers on the identity and geographical address of the professional and that the contract conditions did not comply with the statutory terms for withdrawing from online contracts.



The decisions summarized above confirm the declared intent of the ICA to focus its supervision on exploitative practices of the current emergence in the e-commerce sector; a sector of particular importance in the current moment, also due to the reduced activity of other kinds of businesses, such as the traditional “brick and mortar” shops, which are now mostly closed as a measure to counteract the spread of the virus.

The press releases (in English) of the ICA’s decisions commented above are available under <https://en.agcm.it/en/media/press-releases/>⁴

Caiazzo Donnini Pappalardo & Associati – CDP Studio Legale. Enrico Di Tomaso

⁴ With the exception of the following press releases, available in Italian language only:
<https://www.agcm.it/media/comunicati-stampa/2020/3/PS11733-PS11735> ;
<https://www.agcm.it/media/comunicati-stampa/2020/3/PS11732>