CONSUMERS' FORUM

PRESENTA

Le Associazioni dei Consumatori (particolare)
Opera del pittore Andrea Claro per Consumers' Forum

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IN COLLABORAZIONE CON

ROMA TRE
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INTRODUCTION
(L.Rossi Carleo)

1. The introduction will only give an idea about the choices, most of them obliged, that underlie the content of the report this year.
It's not to the content that we intend to refer in this brief premise, but rather to the reasons of an observatory that, although intended to a dialogue with the authorities, it intended to devote a first section to a sort of ideal dialogue with the "missed Autorities".
The big issues are urgently emerging, they are distinguishing areas of general economic interest that are lacking of authority, and just sometimes they have Agencies whose legal nature is resulting quite hybrid.
Towards these issues a first section is designed, it is pretty concise considering the breadth and the difficulties that still accompany a regulatory framework incomplete and non- systematic.
The interventions, in fact, are characterized by an apparent incoherence and they still leave open issues and criticality.
In order to highlight the unceasing difficulties, we took in consideration the more recent interventions related to three sectors: water, trasport, postal services.
The system for the supervision and regulation of water it appears as the emblematic example of an uncertain and fluctuating journey, that it seems without a goal and not even knowing it.
The water sector is and it's been going through a permanent evolution of its set of rules that it's still undergoing nowadays: just think about the outcome of the recent referendum and the absence of regulations to implement the new Authority institutive law.
In this context we have to place the creation of this Authority, called "National Agency for the regulation and supervision of water".
On one hand, this agency is a noticeable result of the legislator to the extent that it attempts to solve different problems coming from this sector, such as the lack of effective control by an authority which has real powers also in reference to the provision of water service.
On the other hand however, we cannot ignore the uncertainties that characterize both the profile of the new figure, whose classification as an independent administrative agency or authority "tout court" it is subject of a lively debate, both as mentioned, its regulatory implementation process.
However, once fully operational, it's still need to verify the actual capacity of the Agency to resolve the significant critical aspects that trouble the industry since many years before, and then to ensure an effective protection of the users's rights.
The transport sector does not seem to find in the mobility law a unifying fact constitutionally guarateed. This sector remains in fact very fragmented and in some aspects, such as the highways sub-area, it is entirely deprived of a set of rules that cares about the user's rights. In the other significant segmentations (air freight, rail freight, sea trasportation), the discipline that concerns buisiness organization it seems to take very little consideration of the consumers's rights, which are divided in subtypes each of them with different protection.

In a limited way we expect an improved protection, by its nature limited to the phase that follows the use of service and that it binds to the type of service.
The considered example take as a point of reference the analysis of the criticality of the rail freight and in the respect of what we have just mentioned, further subdivisions emerge, regarding the protection that require to ascertain the presence of different types of rail traveller, protected in a different way.
Particular attention should be given to the european outlook about the possibility of assistance for delays of more than 60 minutes, which is reserved exclusively for passengers of long-distance trains. It fits into a framework that appears to follow up what should be a common approach, characterized by the legislator pragmatic approach that unites different solutions, such as assistance and compensation, introducing a kind of private punishment that for the italian jurist represents a difficult figure to link with the tradition of the code. The critical points are found in the limited application of a mechanism that does not apply to all cases of transport network.
Some more: the postal service highlights the resistances that still exist and that allow to explain the difficulties on the full liberalization front, combined with the necessity to continue to maintain adequate quality and efficiency standards for the universal service throughout the country. The sector towards which the european legislator continues to pay attention to, it would seem however to deserve attention mainly with regard to the opportunity to reconsider it in a broader context, taking in consideration changes and tecnological innovations that modify its nature.

2. With regard to the dialogue with the Authority, which is the crucial point of our meeting and therefore of our report, rather than go through the annotations and prominences highlighted by the individual contributions, to which we rely on and refer to for specific observations, avoiding to repeat in the introduction what is been pointed out in the text, it is important for us to just emphasize the “fil rouge” that underlies the different contributions and, at the same time, that lead them all to the consumer’s protection point of view.
The report starts from previous experiences and to these it links, focusing on facing up to specific profiles and news.
The framework that characterizes the most recent intervetions it clearly drops the hint to the fact that market rules and consumer’s protection cannot clash with each other, they must be complementary instead.
In this regard, although it’s missing in the relative Report documentations, the presence of the Authority for the supervision on public contratcs jobs it’s very important and it has a significant meaning, services and supplies of public jobs (AVCP) in an environment dedicated to the “open site” such as consumerism and then at first sight seemingly far away from the province of this Authority.
In the last annual report prsented by the AVCP (http://www.avcp.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/Pdf/Relazione2010/ PresRelAVCP2010.pdf) it reads: “the Authority is fully aware of the context delicacy and fragility in which it works.

The social and economic events that are affecting this section since 2007 up to these recent months, on public and private institutions and on people especially, they are producing profound ad irrevesible transformations.
We are all called to understand and to provide, according to area of responsibility and expertise, innovative solutions to ensure the strenght of the economic and social system which with great effort we have until now assured.

This Authority, for the delicacy of the task that it is required to do, namely the supervision on the public contract market that intersect, with its demand side, the life of thousands of buisinesses and part of the actual economic growth and with its offer side, the taxpayer's money and the management of public finance difficulties, it wants to get to the bottom of its role believing that in this moment in time it can gives a significant contribution even more than in the past.
Therefore this presence emphasizes how consumerism has to be transversely understood and how in every sector repercussions of each intervention on the consumer, final receiver of different decisions, cannot be ignored.
However, a closer analysis of the existing one left the open doubt that there can be confusion between superimposition and complementarity: from contributions it emerges the possibility that we can determine a tortuous forms of intervention and forms of protection intertwining.

Although the complexity of the current system makes utopian and antihistorical the aspiration to determine a renewal towards unity, in spite of this the caos has to have its own ratio and it has be intelligible.
To clearly reveal the enforcing profile of this matter, it is sufficient among many to recall just two examples: the direct or indirect acquisition induction, which we refer to beyond the advertising or the unfair buisinesses, and the remedies technique particularly about the proceedings fragmentation.
Regarding the first aspect, it urgently emerges the concrete meaning of the limitation on unfair buisinesses and on activities spreading informations and communications, carried out according to the marketing of the product.
The lawfulness of the product placement, by now introduced in the television field, It binds first to this limitation.
It is configured in a way that, if we look at the rules about advertising, the product placement advertising is struggling to distinguish itself from the concealed advertising because of the absence of any information that could make the consumer more alert and conscious.

It remains a possibility of protection in the self-discipline law, but it's not clear who should intervene if self-regulations rules are not obeyed.
In carrying out a specific connection between competing plans, it must be highlighted the necessity to reconsider which are the confluence points to avoid a run-up between the protection on freedom of the tender and protection on freedom of choice, showing the supremacy of one or the other without paying attention to the complementarity between the disciplines.
Therefore, if the approach focused on the impact of the market conduct it seems to find, in the consumer and in the centrality of its position, the point of balance between disciplines that indirectly protect the consumer and directly protect the competition and the disciplines that on the opposite are protecting primarly the consumer's freedom of choice and therefore the proper functioning of the

market. We must prevent the appearing of a different basic priority that could overturn the planning: the necessity to create an integrated market, sacrificing for it, the delicate balances between the different components.

Going back to our example, we cannot ignore that already by introducing the policy on unfair businesses practices the legislator, in recital 6, considered permitted practises such as product placement, stating that they are permitted only if they do not restrict the ability to make a conscious decision.
In this context, beyond what has already been noted, it is useful once again a fundamental consideration: it does not seems that our system is giving enough attention to the average customer, as a well informed person and reasonably careful and judicious.

We find often references to transparency, even more to the information, sometimes excessive and maybe overabundant, as in the new discipline of consumer credit; but rarely we find some mention about the need to address the educational asymmetries in order to allow the shift from protection to promotion. In this respect, it seems right to record a positive news: the MEF has launched a public consultation on the Legislative Decree draft that amended the Legislative Decree n. 141/2010 (the implementation of the Directive on consumer credit). In this regard, we expected and we are trying to enhance the role of financial education as an instrument of consumer protection.

The approach to the subject, characterized as well by the recourse on a new procedure designed on the model used by the EU, to collect contributions and comments from the subjects concerned, it was realised through the opening of the website to public consultation:
http://www.dt.tesoro.it/it/consultazioni_pubbliche/Schema_di_decreto.html ,
even if for a short period of time lasted until the 21st October 2011.
With regard to alternative dispute resolution mechanisms, the report can just confirm an observation now widely recognized: the consumer, sometimes strictly interpreted, in one version, then, at least potentially, enlarged, is disputed by various authorities. His need of protection, even with regards to obviously different assumptions, it is not an ontologically different need, it founds answers offered in very distint ways, whose ratio, hardly explainable, it seems to be even more difficult to understand in the mandatory mediation context which interferes and at the same time it is distinguished from other procedures that all together pose a difficult relationship.

The emblem of it is the disposition under art. 5, paragraph 1, d. lgs. N. 28/2010 that, in letting rise, in particular matters that imply an high litigiousness, the test of the previous mediation attempt on condition of prosecutability of the standard judicial proceeding, it clearly intended to enhance, in disputes regarding banking and financial contracts, the pre-existent ADR process established with the implementation of the art. 128-bis TUB. This process in fact, because of its character, mainly documental in its procedures, and purely decisive in its outcomes, although it is not binding, it seems at first glance to fit with difficulty in the consiliatory services that should be offered by the bodies listed in the art. 16 of the Decree.

Accordingly, it is up to the interpreter the difficult role of systematize, made even more complex by specific profiles, such as that of active legitimation that, always to pause on this specific mechanism, it is reserved exclusively to the client.
We shall not repeat here the well-known questions about the diversity of the conciliation procedure before the Authority for Electricity and Gas or about the contentious procedure management in conciliation in the communications field or the ABF or the Consob Chamber of Conciliation, but we want just to remind the importance of the negotiations on equal terms and the meaning diversity could regain if we look at some remedies not as much with the perspective of proceeding linked to the right of action, rather with a viewpoint to customer satisfaction.
Some remedies in this perspective could fall within a sort of extra guaratee linked to the service or the product circulation, such as, for the most part, it happens in the Spanish legal system, in which companies that adhere to the consumption arbitration exhibit a kind of stamp, to ensure that customers know they can enjoy this additional service.

3. One element that makes different the Report of 2011 compared to the previous years ones, it is registered in the development of an exploratory research, which involved a group of teachers and researchers of the Department of Business and Economics and Legal Studies at the University of Roma Tre and some of the Consumers Associations connected with Consumers' Forum through the focus groups.
It is a survey that aims to explore what is the point of view of Consumers Associations regarding the positive aspects and opportunities for improvement of the Italian regulatory system.
In a context in which the Authority has admit and played its role progressively more substantial and incisive, it appeared necessary to find new ways of cooperation between these and Consumers Associations, which, increasingly, should rise to the role of privileged stakeholders of the system itself.
Hence the need to undertake an exploratory research to produce a first test to highlight the current cooperation models and prospects, enhancing the major stakeholder contribution.
The focus group, widely used in social research, it aims to promote the interplay of the interviewees thanks to the proposed soliciations by the moderators.
This procedure allows to investigate in depth some phenomenon and it was considered appropriate, given the need to bring out relevant informations through the involvement and the power of group dynamic.
The initiative represents the first experience of qualitative research carried out in this field. For this reason the results, although important, should be considered as indicative and not exhaustive regarding the problem.
The final considerations, not entirely generalizable as influenced by the level of participation and by the innovative character of the initiative itself, they represent an interesting fact-finding platform for future more structured surveys.

The focus group propose itself to survey the following main areas:

1. Perception of the Authority role;

2. Relationship between Authority and Consumers Associations/ consumers and users;

3. Effectiveness of present and future collaborations between the Authority and Consumers Associations.

The main players, such as the Authority, Consumers Associations and, through them, consumers, are the prismatic expression of a complex and well-organised system which it is been take into account. Particularly, from the poll emerged, on one hand, the importance of the role of the Authority, on the other hand, the action taken by Consumers Associations, as well as the need to identify ways to make more coordinate and effective the action from both parties.
The experience of the focus group allowed to bring out some aspects that characterizes the regulation system of markets in Italy. In particular, attention has been placed on three key issues: the indipendence, the slowness of actions made and the incisiveness of the Authority that could be improved through a reorganization of the proxy and powers system.
The Associations, on the other hand, are aware that a limit to their actions is determined by their fragmentary nature on the market that, while on a side it represents an opportunity to respond in a widespread way to the needs of consumers, on the other side it may constitute a risk for the incisiveness of the taken actions. A greater coordination among the various Associations it would enable them to have a greater impact on Authorities and businesses.

4. Finally it appears worthy of interest to point out that the European Union itself, which for years has constituted the driving force of the regulation to protect consumers, it now seems more interested in the indirect protection, attentive to the activity, rather than in direct protection, attentive to the consumption act.
Indeed, although these days news is that, after a long process, painful and seesaw started in 2008 and which we reported about in the previous reports, the EU Council has formally adopted, on 10th October 2011, the text of the directive on consumer rights already adopted by the Parliament in the plenary of the 23rd June 2011 (P7_TA-PROV(2011) 06-23), and is also true that this text it's not innovative, and that actually it seems to want to score, progressively and drastically circumscribing the scope of the interventions, a goal much closer than the departure designated one.
What is unique is the continuous chase between what was first intended to be a European contract right and the consolidation and establishment of the main directives on consumer protection, chase that ended with a progressive reduction of both projects. However, a positive note is to be recorded: the protection of the weaker party, and, therefore, not only of the consumer, is now a common connotation.
This important new characterization is also evident from the "European Contract Law for consumers and businesses: Pubblication of the results of the feasibility study carried out by he Expert Group on European contract law for stakeholders and legal practitioners feedback" (available on the website: http://ec.europa.eu/justice/contract/files/feasibility-study_en.pdf) whose layout

is confirmed by the Proposal for Regulation of the European Parliament and of the Council on a common European Sales Law (COM (2011) 635 final).

In some ways, therefore, even if we do not have relevant news about the consumers contract, we can say that after the "marketing" season of private law, the season of its "consumerization" it is open. This helps to rejuvenate and thus reaffirm the principles that, starting from the right of consumptions, pay attention to realistic profiles that want to achieve a substancial equality between the parties. Certainly the journey is long and winding, but it is started anyway. A unique path seems the one of our domestic legislator. After a recodification phase, which has led to industry codes and, among them, to the Code of Consumption, which could at least boast a profitable and effective opportunity to inform the consumer about his rights, we are witnessing, at the moment, to his impoverishment with the subtraction of the discipline of consumer credit and, even more recently, the removal of one of its main contracts: the tourist packages sale.

Once again, wanting to be optimistic, we should say that this questionable subtraction leads however to eliminate any doubt about the discipline expansive force contained in the Consumer Code, which clearly admit a "general" character regarding sub-sections.

This year's report demonstrates, therefore, that the right of consumption is no longer only the right of the act of consumption, of its terms, of its transparency, but more: it is the law that concerns across the entire activity of the market.

AGENCIES OF NEW ESTABLISHMENT AND REGULATED SECTORS:
TASKS, ACTIVITIES AND INSTRUMENTS FOR USERS PROTECTION

1. THE NEW RULES AND REGULATIONS OF THE NATIONAL AGENCY FOR THE REGULATION AND THE SUPERVISION ON WATER, ESTABLISHED BY THE DECREE OF DEVELOPMENT IN MAY 2011. PRINCIPLES, PROBLEMS AND PROSPECT.

(Elio Leonetti)

ABSTRACT

The recent decree-law n. 70/2001 (called Development Decree) provides the establishment of the National Agency for the regulation and supervision of water (to replace the current National Committee for the supervision of water resources), endowing it –compared to the previous Commission- of more incisive and supervisory powers. The actual operativeness of the new Agency requires however the adoption of implementive orders, which has not yet been issued.

In this document, after a brief representation of the regulatory framework in the sector in which takes its place the Agency institution, it is analysed the legal regime of the above mentioned, with particular reference to the tasks assigned to it, its composition and organizational structure.

In addition, some observations are carried out about the question of the legal nature of the Agency (administrative agency or administrative indipendent authority), in relation to which an interesting debate is been already developed, as well as about the perspective of the role of the Agency in the complex legislation context that characterizes the water sector.

2. GENERAL CONSIDERATIONS ABOUT THE TRANSPORT SECTOR

(Francesco Macioce)

ABSTRACT

The author dwells on some general profiles of the transports politics in Europe. It is primarly highlighted the link between transport and fundamental freedom such as among consumer-traveller and citizen person; in other words, the direct impact of transport on the human being even before that on the consumer. The prospect is designed to enhance the “personalist” transport profile that contributes to direct and inspire the concrete political choices and to respect the individual rights and values. Exemplary in this point of view is the right to move freely within territory of the Member States, which is a primary right of freedom. Just such perspective suggests to undergo rigorous check the popular liberal opinion according to which the market is really the more suitable place to realize the transports efficiency and to ensure the traveller respect as a person.
The author goes on to review some important decisions on AGCOM about transports in relation to the commitments practice and to the enforcement measures.
To this regard the author, without obscuring the benefits that this procedure can provide for the management of the competitive market in the transport sector, set out to be reckon however the risk that such practices can easily justify a kind

of jurisdiction with a summariness character which could have on the market greater distorting effects than those that practical commitment designed to prevent.

Finally the author, that embraces the perspective of a multimodal transport discipline, hopes for the establishment of an autonomous independent regulatory Authority of the industry, because the “ratione materiae” activity restricted to competences of AGCOM it’s not enough. This Authority may carry out independent regulatory tasks in delicate sector areas such as those affecting, for example, the information and the education of the traveller, promoting a sustainable development of transport and the adoption by the citizen of enviromental and energetic compatible choices.

3. RIGHTS AND OBLIGATIONS OF RAILWAYS TRANSPORT. NEW REGULATORY FRAMEWORK AND PROSPECTS FOR IMPLEMENTATION.

(Paul Lazzara)

ABSTRACT

The new rules on the passengers rights and obligations, it marks a significant step towards the substancial liberalization of rail passengers, the implementation of EC Regulation 1371/2007 is achieved by defining the regulation and approval tasks in relation to the new informative tradespeople obbligations and aid. It follows, internally, a reorganization of the Ministry of Infrastructure and Transport and a reorganization of the estate railways company. The essay ends with a reflection on the initial state of the liberalization of the railways transport process.

4. POSTAL SERVICES

(Fabio Bassan)

ABSTRACT

The contribution focuses on phase one of the most recent lenghty and more complex liberalizations, the postal sector. The final regulatory action in particular examines the creation of a government agency, with independent powers, but missing that independence character that would be necessary, considering the public property of the historical operator. The essay provides a brief summary of the most critical aspects of recent regulatory actions.

SECTION II – INDEPENDENT AUTHORITIES SECTOR AND HORIZONTAL : LEGISLATIVE NEWS AND ACTIONS TO PROTECT THE CONSUMER

5. AGCOM AND ELECTRONIC COMMUNICATIONS
(Fabio Bassan)

ABSTRACT

Two are the EU recents reforms in the sector: one is in telecommunications, the other in the audiovisual. The first has not yet been implemented, although the terms have expired. The second has been implemented and even, in some ways, anticipated. The essay examines the main news of both sectors in particular: concerning the audiovisual, the digital terrestrial regulations, the tender for the frequencies allocation resulting from the digital dividend, the product placement rules that revolutionize effectively the TV advertising and make less visible the separation link with hidden advertising. Regarding the telecommunications sector, waiting for the EU amendment implementation, we explore the topics cosidered of greatest interest in terms of consumerism: the next generation networks, landline and mobile telephony; the proposal about the copyright protection in new media; transparency tariff in the mobile and personal telephony; international roaming price; the public register of oppositions.

6. THE AUTHORITY FOR ELECTRICITY AND GAS AND THE ENERGY MARKET
(Mary Moramarco)

ABSTRACT

The slow and gradual process of the energy liberalization carried out by the Italian legislature in the last two decades, it has significantly changed the role that was originally delegated to the Authority for Electricity and Gas from its institutive law. (l. November 14th 1995 n.481). From an original normative framework based on a “monistic” regulatory model, that is focused on the idea of an authority external from the ministerial apparatus and independent from it, we go, with the legislation development, to a “dualistic” regulation system, namely bipartisan, between the Ministry of Economic Development and AEEG.
Not even the implementation of EU directives in Italy, that constitute the so-called Third Energy Packet, has had the effect of re-establishing the main role originally assigned to the AEEG, which therefore today it competes with the Ministry in the allocation of powers and responsabilities of the energy market. Recent legislative actions on energy have, however, confirmed the exclusive jurisdiction of the Authority in terms of consumer protection, particularly with regard to the profiles on the rates determination, quality of customer service and users complaints management. The AEEG lines of intervention focused on this during the 2010/2011 biennium, AEEG that mostly targeted the improvement of final users information and the strengthening of the final protection, as well as the electricity and gas services improvement.

Thanks to a series of interventions about information matter, supervisory, control and sanctions, as well as through the exercise of its implementation

powers, at last, with the adoption of the Commercial conduct code for the sale of electricity and natural gas to the final users.

7. THE BANK OF ITALY AND THE CREDIT AND BANKING SERVICES MARKET

(Enrico Granata)

ABSTRACT

Under the rules of the Bank of Italy regarding the credit and banking services market, we analyze in detail the issues on transparency of contractual conditions and fair customers relations during the period 2010 – July 2011. The text reviews the main dispositions on transparency in payment services, transparency in customer credit, which represents the most significant regulatory intervention, and transparency of general validity. During the reported period, in fact, a series of primary rank measures of community industry origin (Directive 2007/64/EC and 2008/47/EC) and national (Title VI of TUB and DL May 13th 2011, the so – called Development Decree) it has affected the order of the Supervisory Authority secondary regulation of July 2009. From a regulatory perspecive, the general legislative action – that contains again in the Exclusive Bank Text field the customer credit discipine and a series of anticipations issued through decree relating to banking – represented the legal foundation for an integrated action by Bank of Italy on supervisory issue, as well as on transparency, also fairness between intermediaries and customers relations. Moreover, as part of a general analysis of the interventions in order to regulate the transparency of banking services, there is the Supervisory Authority commitment on the front of financial education and usury conflict for the protection of the information to give to the customers, as well as the knowledge of banking products and services. The attention of the Bank of Italy on these subjects is a signal and the evidence of the absolute centrality that transparency and fairness principals in the relationships between intermediaries and customers have in the general supervisory action, through the multiple and diverse modes of regulation, information and awarness incisively conducted over the considered period.

8. CONSOB AND THE INVESTOR PROTECTION IN TWO RECENTS REGULATIONS IN THE FINANCIAL MARKETS SYSTEM.

(Alfonso Ingenito and Salvatore Arena)

ABSTRACT

Following the recents events that have shaken the financial markets, the confidence of investors is been strained; this was a cosequence, on one hand, of moral hazard behaviors by the operators – in some cases real illegal behavior carried out by themselves – on the other hand, a code system that did not keep in due consideration the “small investors” position.

In this regard, both the legislator (national and European) and Consob thought to intervene with regulations that, while preparing a better protection for the investors, they prosecute also to re-establish their trust in the financial market. Especially, the subject of this discussion, given the particular importance of the small investor position, the transposition of the so-called "Shareholders Right Directive" and the establishment of the "Consob Chamber of Conciliation and Arbitration".
Both the above mentioned measures, although with different intensity and modality, aim to strenghten confidence in the financial market of non-professional investors; one stimulates the information and participation in the major listed companies life, the other the use of other alternative dispute resolution proceedings arising between investors and intermediaries.

9. NEWS IN THE INSURANCE SECTOR AND REFLECTIONS ON THE SURVEILLANCE AUTHORITY.

(Andrea Luberti)

ABSTRACT

The most recent legislative changes that have affected the market (the Insurance Code and the so-called Bersani's packets) they do not seem to have had important effects in order to generally balance premiums and benefits. For this reason, the current year can be described, from a legal standpoint, as a phase of reflection, dedicated to the complete implementation of the reforms introduced by the insurance code (through the completion of the insurance regulatory framework) and to the development of new proposals aimed to a greater market opening. The financial crisis, which continued in the meantime, has also added additional issues, related to the businesses establishment as well as the intensification of premium inflation, even in relation to the difficult economic situation. The legislation analysis and, more in general, the regulations in addition, it seems to highlight (as the court case related to the policies linked to the mortgages shows) the regulatory choices that have pursued the most important objectives in relation more to the quantitative profile than to the qualitative one.

10. GUARANTOR OF PRIVACY AND CONSUMER PROTECTION: CONTROL TECHNIQUES, AND MORE RECENT AREAS OF IMPACT.

(Francis Longobucco)

ABSTRACT

The essay is mainly aimed to reconstruct the activities of intervention of the Authority fot the protection of personal data, both in terms of consolidation of what has already been done in past years both in the innovation areas that more closely relate to the consumer protection.

The combination privacy – consumer is analysed throught the thread running through the different protection techniques: proceduralisation, informed consent, control and balance of subjective positions, preventive consumers education, carry-over effect of the Guarator decisions on honorary and merit law. In the backgrounds stands out, also, the analysis of the most recent Community legislation on e-privacy. A quick reference is dedicated to the crucial issue of internationalization and communitarisation of the "right to privacy"; differences with the U.S. system (in search of a possible alliance in Europe beteen private and public enforcement of the involved situations), the consumers protection in the framework of a balance between informative self-determination and informative self-responsibility, in any case, of the sincere cooperation between Powers.

11. THE ANTI-TRUST FUNCTION FROM MARKET PROTECTION TO CONSUMERS GUARANTEES: INTERPRETATION ISSUES AND MOST RECENT APPLICATIVE PERSPECTIVES ON "COMMITMENTS".

A) THE DIFFICULT BALANCE BETWEEN THE PRINCIPLE OF SELF-CORRECTION AND DETERRENT FUNCTION IN THE "PROCEDURE WITH COMMITMENTS" ON ANTI-TRUST.

(Marianna Scali)

ABSTRACT

The work deals with the main and most current interpretation issues in terms of procedures with "commitments" in anti-trust matters (art. 14-ter of Law 287/1990). In particular, we focus on the characters and limitations faced by the Authority during its discretionary power exercise with reference to the admissibility evaluation of the appeal procedure and, subsequently, on the suitability of the offered commitments. The analysis is conducted through a review of the law that, following the EU principles, as well as coining new rules, redraws the boundaries of the Authority's powers, giving rise to reflections on potential and limit of the anti-trust function.

B) THE AUTHORITY NEW POWER TO OBTAIN COMMITMENTS FROM PROFESSIONALS IN THE UNFAIR COMMERCIAL PRACTISES FIELD AND MISLEADING AND UNLAWFUL COMPARATIVE ADVERTISING: BOUNDARIES AND HORIZONS.

(Lucia Minervini)

ABSTRACT

The work outlines the specific and main issues raised by the "new" procedure of the commitments, introduced in the field of unfair commercial practises and misleading and unlawful comparative advertising, through the AGCOM regulations and administrative law updated review. It concerns the Authority evaluation extent and limits, with respect to the ability to accept or make commitments to the establishment of the violation; in this respect the legislative

inadmissibility prediction of the procedure for manifest unfairness and severity of the practice and/or advertising, that precludes the use of this upstream enforcement modality, it plays a significant importance. It follows the analysis of the issues related to the qualifying screening of the professionist proposed commitment; from the procedural point of view it is stressed the lack of public inquiry in the commitment defyning phase, that puts at risk the transparency necessary to enable the interested parties to submit observations and the contradictory guaratee. The increasing use of commitments decision to protect the consumer recorded in 2010 – 2011, certainly it puts emphasis on the tangible benefits that flow from it, and it outlines the risk of damage to the deterrent and educational functions of the sanction, compounded by the difficulty of monitoring the commitments compliance, binding fo the professional.

SECTION III – CONTENTIOUS PROCEDURE AND PARAJURISDICTIONAL ACTIVITY PROFILES.

12. INDEPENDENT AUTHORITIES: GUARANTORS OF THE ALTERNATIVE RESOLUTION OF CONSUMPTION RELATED DISPUTES?

(Pierfrancesco Bartolomucci)

ABSTRACT

The Italian legislature, even under the pressure of the European Community regulations, intended to entrust the authorities for the control of the public utility services markets, important competences for the resolution of consumption disputes.

After the entry in force of Law n.481/1995, that first assigned to the Authority this important task, the different institutive laws of each individual Authorities that succeded in time they have better outlined the scope of subjective and objective implementation of the above competences, as well as the rules that regulate them.

From an initial examination of the legislation is clear the lack of a regulative plan, which it coulded be seen in the ratio tinged in the 1995 rule; so either from the legislative point of view, as from the operational standpoint, each Authority has managed such competences in different ways.

On one hand there are Authorities who have immediately seized this opportunity and they are today an example of great importance in the ADR view of consumption in Italy (just think about the conciliation procedures operated in the telecommunications field, or Co.re.com or about other bodies); on the other hand there are Authorities that, although they've been awarded those competences by an emergency legislation, they have developed skills that are extremely important in the alternative procedures discipline (just think about the bank and financial arbitrator that is the Consob Chamber of conciliation and arbitration); finally, there are Authorities that have undergone profound alterations, imposed also by the Community legislator, in which there are specific competences about ADR in need to be developed (just think to the Authority for Electricity and Gas).

These different areas have to take into account an additional element, because of the entry in force of the mediation of civil and commercial disputes discipline referred to the Law n.28/2010, which include also those between consumers/ users and operators of public utility services: such a coincidence, in fact, requires an examination to the connections and /or exclusions operating between the general and the special discipline.

13. AUTHORITIES: POINT OF VIEW OF THE CONSUMERS ASSOCIATIONS AS PRIVILEGED SYSTEM STAKEHOLDERS.

(Maria Francesca Renzi, Giovanni Mattia, Roberta Guglielmetti)

For this section see the complete report **"Consumerism 2011. Forth annual report".**

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