

Volkswagen fined 5 million € by the Italian Competition Authority for unfair commercial practice on diesel emissions

On 4 August 2016, **the Italian Competition Authority (AGCM)** closed an investigation on two companies of the Volkswagen group, Volkswagen AG and Volkswagen Group Italia S.p.A. **on the manipulation of emissions of diesel engine cars.**

On 2 October 2015 the AGCM, following several complaints filed by consumer associations, had launched an ex officio investigation into Volkswagen AG and its distribution network in Italy, for alleged unfair commercial practices consisting in marketing cars whose quality and emission standards could have proved lower than declared by the manufacturer (See the press release on the Authority's website: <http://www.agcm.it/en/newsroom/press-releases/2244-italian-competition-agency-launched-an-ex-officio-investigation-into-volkswagen-ag-and-its-distribution-network-in-italy.html>). The investigation focused on several car models marketed by the Volkswagen group under the brands Volkswagen, Audi, Seat and Skoda and on how consumer choice might have been distorted by the Volkswagen group's claims concerning the class of emission standards in both its advertising campaigns and the brochures distributed by dealers. In the procedure, AGCM collected evidence and received the party's defense. Undertakings proposed by VW were rejected by the AGCM, as the alleged infringement could qualify as very serious, thus ruling out the applicability of the provision concerning parties' commitments; at the same time, the Authority stated the interest to get to the full legal assessment of the case.

In its final decision, the Authority assessed that Volkswagen Group Italia S.p.A. and Volkswagen AG were jointly and severally liable for having infringed articles 20, 21 and 23 of the Italian Consumer Code (corresponding to articles 5, 6 and nr. 4 of Annex I of the EU Unfair Commercial Practices Directive - UCPD).

As evidence showed, VW deliberately installed the "defeat device" called EGR on its diesel engines EA 189 Euro 5, to reduce NO_x emissions during tests, thus tampering with the outcome of type approval tests. The KBA – the German Federal Authority for Transport – had assessed those defeat devices as infringing article 3, paragraph 10, and article 5, paragraph 2, of Regulation nr. 715/2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6). Thus, the AGCM assessed that deliberately breaching this sectorial regulation, in order to get emissions lower than the real ones during approval tests, qualified as an infringement of the general requirement of professional diligence stated in article 20 of the Italian Consumer Code (article 5 of the above mentioned EU Directive).

At the same time, VW group was found having claimed, on certificates of conformity and in adverts, that its diesel cars – as far as emissions were concerned – fulfilled the

legal requirements and had been authorized by a public authority (German and other EU transport regulatory agencies), while in fact not complying with the terms of the approval; the conduct was therefore assessed as a *per se* misleading practice under art. 23, paragraph 1, letter d) of the Italian Consumer Code (Annex I nr. 4 f the UCPD).

VW was also found as having repeatedly used advertising claims stressing the environmental-friendly features of its cars branded Volkswagen, Seat, Audi and Skoda cars (*"Environmental responsibility is a cornerstone of Audi's strategy" - "The motorist who chooses this car thinks in a responsible and environmentally friendly way" - "A car whose driver takes environmental protection and sustainable driving to heart" - "The green SKODA logo expresses the automobile manufacturer's awareness of sustainable development, acting responsibly towards the environment and doing everything possible to move in this direction, with a deep respect for life and for nature" - "Ibiza is not only a fun car, it's also a responsible car" - so you can love the road and love the planet at the same time"*). Consumers are increasingly sensitive to environmental issues, so that traders must be truthful, accurate and precise when using environmental claims. However, VW's advertising claims were blatantly contradicted by its deliberate manipulations on emission tests; thus, VW's conduct qualified as misleading under article 21 of the Italian Consumer Code (article 6 of the UCPD).

No evidence of Consumer Code infringements was found for the conduct concerning CO₂ emissions.

In setting the amount of the fine, the AGCM took into account the trader's turnover, the likely impact of the unfair commercial practice (more than 700,000 cars with EA189 Euro 5 engines sold in the Italian market, each one at a price ranging from 10,000 to 30,000 €) and the time span of the infringement (from 2009 to September 2015). For all those reasons, the fine was imposed **at the maximum amount set by the Italian law - 5,000,000 €.**

In an interview to the Italian newspaper "La Repubblica" http://www.repubblica.it/economia/2016/08/09/news/garante_giovanni_pitruzzella-145656940/, the Chairman of the Italian Competition Authority, Professor Giovanni Pitruzzella, said that the AGCM did everything it could within its powers and hoped that its decision could pave the way to successful consumer redress claims, which under the Italian law can be decided by Civil Courts only.

The press release in English, with the link to the full text in English of the decision, can be found on the Authority's website at <http://www.agcm.it/en/newsroom/press-releases/2294-ps10211-the-italian-competition-authority-fines-the-volkswagen-group-for-tampering-with-their-vehicles'-emissions-control-systems.html>.