

Italy – AGCM investigates WhatsApp for unfair service terms and for the sharing of data with Facebook

The Italian Competition Authority (AGCM) started two separate proceedings against WhatsApp Inc, the California-based company, belonging to the Facebook Group, running the messenger service on mobile devices.

The first enforcement procedure concerns some of the Terms & Conditions applied by WhatsApp, and specifically: a) the jurisdiction and the applicable law (law of the State of California); b) the power of the trader to change unilaterally terms and conditions and to introduce new costs to consumers without any justifications; c) exclusion and limitation, expressed in very generic terms, of WhatsApp's liability for any damage (waiver by the trader of any liability); d) power of the trader to terminate unilaterally at any time and for any reason the service or some of the functions; e) power of the trader to modify, suspend or block unilaterally the user's access at any time and for any reason; f) power of the trader to withdraw from orders with no guarantee of reimbursement and with no corresponding right for the consumer. Those contract terms could infringe articles 33 and 35 of the Italian Consumer Code (also corresponding to some provisions of the European Union Directive 93/13 - Unfair Contract Terms Directive or UCTD).

The other probe concerns WhatsApp's conduct consisting in forcing users to accept new Terms and Conditions, including among others the automatic transfer of consumer's personal data to Facebook. Specifically, since 25 August 2016, WhatsApp's users viewed a pop-up message informing them of changes in T&C's, with a pre-selected option for acceptance, and inviting them to click on "Accept" to keep using the messenger service. By clicking on a link users were informed about that fact their personal data were going to be shared for advertising products on Facebook. Only changes in the settings made possible for users who had – even unwillingly – accepted the new terms to cancel the sharing of their data with Facebook. According to the AGCM, WhatsApp's conduct could be an aggressive practice infringing articles 20, 24 and 25 of the Italian Consumer Code (as well as the EU Unfair Commercial Practices Directive - UCPD), as consumers were given the impression of not being able to use WhatsApp messenger any more without accepting in full the new T&C's; moreover, to refuse the new contract terms, consumers were forced to de-select the pre-ticked option on the screen. Finally, for those who had accepted the new T&C's and wanted to use the messenger service without sharing their data with Facebook any more, the opt-out procedure was quite complex and not explained at all.

The final assessment on both proceedings will be made by AGCM by the end of May 2017.

The text in English of the press release can be found on AGCM's website:
<http://www.agcm.it/en/newsroom/press-releases/2358-exchange-of-personal-data-with-facebook-and-oppressive-clauses,-double-antitrust-investigation-on-whatsapp.html>.