

The 28-day invoicing saga

The investigations launched by the Italian authorities and an evolving legislative framework

AGCom requires transparency for services of electronic communications

Transparency of Electronic Communications - Resolution 252/2016

In 2016 the **Italian Communications Authority** («AGCom») adopted Resolution 252/2016 establishing measures to **increase the transparency of electronic communications services** with a view to provide users with complete information to exercise their right to terminate contracts.

Among others, the relevant Resolution rules on the:

- i. **modalities by which information should be provided** to users;
- ii. **transparency of tariffs**, economic conditions, offers and **contractual conditions**.

Amended invoicing practices of TLC operators

Amended Invoicing Period

Between 2016 and 2017, it resulted that TIM, Wind Tre, Vodafone and Fastweb amended their invoicing period (from monthly to every 4 weeks) and, in AGCM's view, without any proper warning/information to their customers.

This – according to AGCom – had negative consequences for consumers, *i.e.*:

- Increase in the number of annual payments (13 vs. 12); and
- 8,6% increase in overall annual costs.

March 2017 - Investigation and a New Resolution

In March 2017, AGCom launched an investigation into TIM, Wind Tre, Vodafone and Fastweb.

AGCom then issued a Press Release and a Resolution (121/17/CONS amending Resolution 252/16) where it established that:

- The billing period for **landline telecommunication services** shall be **no less than 1 month**;
- The billing period for **mobile telecommunication services** shall be **no less than 28 days**.

AGCom's Considerations

AGCom considered the **relevant markets and the characteristics** thereof, *e.g.*:

- The **degree of transparency** needed for users;
- Considerations re: **users' control of expenses**;
- The fact that mobile telecommunications are usually pre-paid, while **landline communications generally consist of post-paid subscription contracts.**

The Decisions

The Authority gave telecommunication operators **90 days to comply with the new provisions.**

The Authority also provided for **mobile telecommunication operators which opt for an invoicing system other than the monthly period, to promptly inform their users,** by means of SMS, of the renewal of the offer/subscription.

Recourse before the Administrative Courts

The Reasons

- i. The telecommunication operators subject to AGCom's Resolution **appealed it before Regional Administrative Court of Lazio**; the judgment is expected for February 2018.
- ii. It has been held that preventing operators from implementing an invoicing term shorter than 1 month does not comply with the Italian constitutional charter.
- iii. The **operators did not comply with** the precepts established in **AGCom's Resolution**.

For these reasons, **AGCom is currently planning to sanction** these operators (which in the meanwhile have been fined by the Authority).

Assessment by the Italian Competition Authority

Unfair practice for all TLC operators

The same invoicing practices by TLC operators were subject to the assessment of **AGCM**, the **Italian Competition Authority**.

Between December 2016 and August 2017 AGCM issued decisions sanctioning TLC operators for **aggressive unfair commercial practices** which are **contrary to the Italian Consumer Code** and are **likely to affect consumers' freedom of choice**.

Sky's Invoicing Practices

Sky - The Italian Case

In the third quarter of 2017, **Sky Italia allegedly decided to unilaterally switch from a monthly invoicing to a 28-day invoicing system as of October 2017.**

To this aim, Sky Italia **sent a communication to its subscribers informing** them of their right to terminate the contract by 30 September.

AGCom's View

AGCom claimed that such invoicing practices, as they were carried out, were **contrary to Article 70 of the Italian Code for Electronic Communications** (Legislative Decree 259/2003).

In particular, AGCom concluded that Sky had **poorly informed users** about the modalities and timing for exercising the **right to terminate the contract following contractual amendments**.

Sky's response

Sky Italia implemented measures aimed at improving the information provided to users. In particular, Sky Italia:

- (i) Improved the website's clarity on the concerned contract modifications;
- (ii) Clarified the users' rights to terminate the contract (including an extension of the deadline originally set for 30 September).

The Resolution

By means of Resolution 376/2017, AGCom sent a warning to **Sky Italia clarifying that the new implemented rules were also unable to fully restore legality**. As a result, compliance with Resolution 376/2017 will have to be monitored.

In all events, in this context **Sky has not yet been fined**, but AGCom may still consider possible fines.

Amendment to law decree and possible consequences

The Law Proposal

On the wave of AGCom's investigations, a **law proposal** was put before the Parliament **to stop the 28-day invoicing period...** and on 14 November 2017, the "Budget" Commission of the Italian Senate **approved an amendment to Law Decree 148/2017 establishing invoicing periods of a month** (or multiples of a month) for:

- Telecommunication operators;
- Television network operators; and
- Providers of services of electronic communications.

N.B. Electricity and gas utilities are excluded from such law proposal.

All companies concerned by the new law will have **120 days** from its entrance into force **to comply with the new provisions.**

AGCom is now endowed with **heavier powers to fine** (up to 5 million euros) **than the previous regime in cases of non-compliance** with such rules.

Potential issues arising from the new regime

- Conflict **between the provisions applicable to old conduct and the new provisions** which are not retrospectively applicable;
- The **final outcome of the judgments** in the cases currently before Latium's Administrative Tribunal **may contradict the new law.**

The AGCM's investigation into alleged anti-competitive practices

Ongoing antitrust investigation

On 7 February 2018, following the implementation of the new legislative provisions, **the Italian Competition Authority started 101 TFEU proceedings** towards TIM, Vodafone, Wind Tre, Fastweb as well as their trade association, Assotelecomunicazioni – Asstel, for alleged coordination of their invoicing strategies.

In particular, such coordination consisted of:

- The adoption of **identical modalities of renewal/invoicing of the offers**, i.e. on a monthly basis, instead of a 4-week basis; and
- Simultaneous sending to their clients of the mandatory communications related to the new price increases following adoption of monthly invoicing with a view to preserving the increases and **avoiding competition on prices**.

The investigation will terminate by 31 March 2019.

Ongoing antitrust investigation

- On 21 March 2018 the ICA exceptionally made use of its power to adopt **interim measures** to immediately **suspend the negative effects** of the alleged concerted practice and reduce the negative consequences of it.
- With the resolution setting out interim measures, the ICA requested **telecommunications operators to determine the content of their offers in an independent way.**



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