

PS11131 - IQOS HIDDEN SELF-ADVERTISING MAGAZINE

Provision No. 27493

COMPETITION AUTHORITY

AT THE MEETING of December 19, 2018; AFTER

HEARING speaker Gabriella Muscolo;

CONSIDERING Part II, Section III, of Legislative Decree No. 206 of September 6, 2005, of the "Consumer Code" et seq. (hereinafter, Consumer Code);

CONSIDERING the "Regulation on preliminary investigation procedures for misleading and comparative advertising, unfair commercial practices, violation of consumer rights in contracts, violation of the prohibition to discriminate and unfair clauses" (hereinafter, Regulation), adopted by the Authority by the resolution of April 1, 2015;

CONSIDERING its provision of June 20, 2018, establishing inspections, pursuant to article 27, subsections 2 and 3 of the Consumer Code, with the company Philip Morris Italia S.r.l. and Conti Editore S.r.l.;

CONSIDERING its provision of September 5, 2018, pursuant to article 7, subsection 3 of the Regulation, extending the term for the conclusion of the proceedings, for special preliminary investigation requirements;

CONSIDERING the documents of the proceedings;

I. THE PARTIES

1. Philip Morris Italia S.r.l., as professional, pursuant to article 18, subsection 1, letter *b*), of the Consumer Code. The company markets Philip Morris International brands in Italy which are both traditional tobacco products and new-generation products such as the *IQOS* device, which heats the tobacco without burning it.

The 2017 financial statements of the professional show revenues of about 1.351 million euros and profits of about 38 million euros.

2. Conti Editore S.r.l., as professional, pursuant to article 18, subsection 1, letter *b*), of the Consumer Code. The company performs editorial activity, publishing various magazines¹ among which "Auto," "AM Motori e Stili di Vita," and "Cotto e Mangiato."

The 2017 financial statements of the professional show revenues of about 12 million euros and profits of about 49 thousand euros.

3. National Consumers Union [Unione Nazionale Consumatori], as informant.

II. COMMERCIAL PRACTICE

4. The proceedings regard the behaviors put into place by the company Philip Morris Italia S.r.l. and Conti Editore S.r.l. consistent with having established a form a hidden advertising of the Philip Morris *IQOS* device for smokers through the following articles which appeared in the Conti Editore magazines: "A ruote fumanti (ma non troppo)" [Smoking Wheels, (but not too much)] published in edition No. 3 - February 15, 2018, of "Auto," "Cotto e mangiato magazine si rinnova" [Cooked and Eaten Magazine Renews] published in the November 2017 edition of "AM Motori e Stili di Vita" [AM Motors and Lifestyles] and "Tutto alla giusta temperatura" [Everything at the Right Temperature] published in the 2017 edition of "Cotto e Mangiato."

5. The article "A ruote fumanti (ma non troppo)" published on p. 137 of the magazine *Auto* edition No. 3 - February 15, 2018, falls under a broader journalistic spread called "Come farsi la macchina (quasi) nuova" [How to Make Your Car (Almost) New], published on pp. 134 - 136 of the same magazine, about the topic of used car sales channels and the right criteria for determining their value (car age, miles, engine, optional extras, maintenance, body condition, internal condition); part of pg. 134 and all pg. 135 features a picture of a person inside a car showroom examining a car close up, without the make or model being identifiable, while pg. 136 features another picture, at the bottom, showing dozens of cars parked in a square.

The contested article "A ruote fumanti (ma non troppo)" continues on p. 137, reprints the results of studies done by an English automotive magazine, *Carbuyer*, according to which smoking in the car, other than harming the health of the driver and passengers, also causes a significant decrease in the value of the car amounting to about 2,250 euros. Further ahead in the article, it goes into further detail on alternatives to conventional smoking, among which "the now well-known electronic cigarettes that vaporize liquid and non-combusted tobacco products." Among the latter - it specifies thereafter - "IQOS stands out, the innovative Philip Morris International device that heats without burning

¹ [Conti Editore publishes magazines in the most important sports fields: from soccer with *Guerin Sportivo*, to cars with *Autosprint*, *Auto* and *AM-Motori e Stili di Vita*. For the motorcycle field, it publishes the magazine *Motosprint* and *In Moto*. Since 2014, the professional has broadened its spheres of interest to new sectors with a magazine about cuisine, *Cotto e Mangiato* and *Sport & Style*, the monthly "back section" for fashion and lifestyle of the newspapers *Corriere dello Sport* and *Tuttosport*.]

dedicated tobacco sticks, thus eliminating most of the harmful substances of cigarettes - ash and smoke - the thing that harms Italians' cars most." After the description of the product characteristics, it mentions the "double advantage" of its use, "for the pocketbook on the one hand, and for the reduced harm to the health of those getting in the car, on the other hand." The article concludes with the statement: "After all, why lose out when there are valid alternatives?"

A very sizable part of the page containing the article described above is taken up by images of the subject device, shown from the front and side, where the brand name of the product IQOS is clearly visible.

6. The articles "Cotto e mangiato magazine si rinnova" and "Tutto alla giusta temperatura," on the other hand, had to do with the presentation event for the new graphics of the magazine *Cotto e Mangiato* hosted in the IQOS Embassy space in Milan.

7. In particular, in the article called "Cotto e mangiato magazine si rinnova," published on p. 18 of the November 2017 edition of *AM Motori e Stili di Vita*, it is underscored that the new version of the magazine will dedicate more space to images, more recipes, and more captivating graphics; inside [sic] the page are two pictures showing a few of the presentation's attendees and another two images that reproduce pages of the same magazine *Cotto e mangiato* containing recipes.

Further ahead, the article provides details on the *theme menu* prepared for the attendees of the event called "Tutto alla giusta temperatura," gleaming "inspiration from the IQOS HeatControl technology based on a constant temperature control system that can heat tobacco up to 300 degrees (C°) without burning, for a smoke-free future." On the same page, is the sizable "IQOS SMOKE-FREE" box featuring the characteristics of the device already cited in the article as follows: "IQOS is the latest Philip Morris International technology that heats but doesn't burn dedicated tobacco sticks, doing away with the burning process characteristic of cigarettes. No more ash, smoke, or persistent odor. The fruit of over 15 years of research and development, IQOS is the first smoke-free product of the tobacco giant, designed for those who do not want to or cannot quit, which stands as an alternative to smoking cigarettes and, because it doesn't burn, can potentially reduce the risk of smoking-related diseases. A project that's a global revolution for smokers that already boasts three million users worldwide."

The bottom of the box features an image of the subject device with the relative IQOS brand clearly visible.

8. Graphics and expressions analogous to those above characterize the article "Tutto alla giusta temperatura" published on pp. 10 to 13 of the November 2017 edition of *Cotto e Mangiato*, which also includes various pictures of the event and the attendees; this references both the description of the event theme and the statement "inspired by the IQOS HeatControl technology based on a constant temperature control system that can heat tobacco up to 300 degrees (C°) without burning, for a smoke-free future," and the illustration of the characteristics of the device inside the vertical box that takes up to half of p. 12; in such box, now called "Tra design e tendenze," the IQOS device is described in the following terms: "The Cotto e mangiato magazine presentation event took place at the IQOS Embassy di Foro Bonaparte in Milan. IQOS is the latest Philip Morris International technology that heats but doesn't burn dedicated tobacco sticks, doing away with the burning process characteristic of cigarettes. No more ash, smoke, or persistent odor. The fruit of over 15 years of research and development, IQOS is the first smoke-free product of the tobacco giant, designed for those who do not want to or cannot quit, which stands as an alternative to smoking cigarettes and, because it doesn't burn, can potentially reduce the risk of smoking-related diseases. A project that's a global revolution for smokers that already boasts three million users worldwide"...[...]."

The lower box has an image of the IQOS device that takes up half of the page of the magazine in which it was published.

9. The non-transparent advertising of the IQOS device through the first of the three previously described articles titled "A ruote fumanti (ma non troppo)," was reported in April 2018 by the National Consumers Association which asked the Authority to conduct the relative inspections to potentially adopt provisions resulting from the violation of the Consumer Code.

III. FINDINGS OF THE PROCEEDINGS

1) Procedure of the proceedings

10. Through the document dated June 20, 2018, the companies Philip Morris Italia S.r.l. and Conti Editore S.r.l. were notified of the start of the preliminary investigative proceedings PS/11131 to verify the subsistence of presumed unfair business practices implemented through the article titled "A ruote fumanti (ma non troppo)," published in the magazine *Auto* edition No. 3 - February 15, 2018, in violation of the articles 20, subsection 2, 22, subsection 2, and 23, subsection 1, letter m), of the Consumer Code.

11. Later, on June 28, [2018], inspections were conducted at the headquarters of the companies Philip Morris Italia S.r.l. and Conti Editore S.r.l.

12. On July 18, 2018, both professionals issued defense statements.

13. On July 30, 2018, Philip Morris Italia S.r.l. accessed the documents of the proceeding.

14. On August 9 and 21, 2018, requests for information were sent to Conti Editore S.r.l.; the replies from the professional arrived on August 20, 22, 23 and 31, 2018.
15. On September 7, 2018, the Parties were notified that the term for the conclusion of the proceedings had been extended.
16. On October 2, 2018, the subject of the proceeding was broadened to other behaviors by the same companies Philip Morris Italia S.r.l. and Conti Editore S.r.l. through the articles *"Cotto e mangiato magazine si rinnova"* and *"Tutto alla giusta temperatura"* published, respectively, in the newspapers of Conti Editore *"AM Motori e Stili di Vita"* in the November 2017 edition and *"Cotto e Mangiato"* in the November 2017 edition. Also in relation to said behaviors, it was hypothesized that articles 20, subsection 2, 22, subsection 2, and 23, subsection 1, letter m) of the Consumer Code had been violated.
17. Philip Morris Italia S.r.l. and Conti Editore S.r.l. responded to the request for information with objective integration of the proceedings, on October 11 and 12, 2018, respectively.
18. Then on October 17, 2018, the Parties were notified of the conclusion of the preliminary investigation phase pursuant to article 16, subsection 1, of the Regulation.
19. On October 29, 2018, Philip Morris Italia S.r.l. accessed the documents of the proceedings another time.
20. Both professionals issued concluding pleadings on November 6, 2018.
21. On November 9, 2018, the opinion of the Italian Communications Authority was sought.

2) Evidence was gathered

a) Elements obtained and outcome of the inspections

22. During the inspection completed at Conti Editore S.r.l., a statement was obtained from the Editorial Director of the same company according to which the article *"A ruote fumanti (ma non troppo)"*, published in the magazine *Auto* edition No.3 - February 15, 2018, and the subject of the notification of the start of the proceedings, was based in part and inspired by an article on the harm of smoking in the car that appeared in the English magazine *Carbuyer* which he had purchased in London in November 2017, the content of which would later be referenced by various English and Italian websites.

Conti Editore S.r.l. submitted a copy of the said articles; the content of the said articles published by the English magazine *Carbuyer* and the web pages relative to the 11 English and Italian websites that repeated its contents, made no mention of the device for IQOS smokers, while electronic cigarettes are only cited in the website *blog.greenflag.com* where it is specified that the prohibition of smoking in the car in the presence of minors does not apply to *e-cigarettes*².

23. Furthermore, in an *e-mail* obtained from Conti Editore S.r.l. regarding inclusion of editorial pages inside magazines, reference is made that *"At the February [2018] meeting, Editore clearly asked us to do whatever we could to help the agent increase its advertising revenue or in any case its sales. Advertorials are part of this project and the editorial team must make them..."*³.

24. In the preliminary investigations completed at the Philip Morris Italia S.r.l., the articles *"Cotto e mangiato magazine si rinnova"* and *"Tutto alla giusta temperatura"* published respectively, on the Conti Editore magazines *"AM Motori e Stili di Vita"* in the November 2017 edition, and *"Cotto e Mangiato,"* in the November 2017 edition were obtained, based on which it was later decided to proceed with the subjective integration of the proceedings.

b) Elements obtained and outcome of the requests for information

25. With regard to the newspapers that published the articles that are the subject of the dispute, Conti Editore provided the following sales data: *Auto* No. [omission]⁴ copies; *AM* No. [omission] copies; *Cotto e Mangiato* No. [omission] copies⁵.

3) The defense arguments of the professionals

26. With the briefs dated July 18, October 11, and November 6, 2018, Philip Morris Italia S.r.l. offered the following defense considerations:

- there are no client agreements between any company of Gruppo Philip Morris and Conti Editore in relation to the promotion of IQOS within the context of the articles that are the subject of the proceeding;
- the mentioning of the IQOS device is not unrelated to the subject articles. Meaning, with regard to the article *"A ruote fumanti (ma non troppo)"* the journalist, based on the report published by the English magazine *Carbuyer* in which the typical consequences of smoking in the car are correlated with a reduction in the commercial value of used cars, it links "smoke-free" tobacco alternatives to the traditional cigarette, and in particular the IQOS device, which at the time of the facts, was the only device of its kind available in the Italian market with the consequence that the mentioning of it and its main characteristics could not be considered proof of promotional intent. With reference to the articles *"Cotto e mangiato magazine si rinnova"* and *"Tutto alla giusta temperatura,"* the mentioning of the characteristics of IQOS would only be consistent with the

² [Articles in attachment No. 3 to the Conti Editore S.r.l. document Ref. 54423 of July 18, 2018.]

³ [E-mail attachment No. 4 to the official records of the inspections done at Conti Editore S.r.l.]

⁴ [In this version some of the data have been omitted, in that they are deemed private or secret informational elements.]

⁵ [Notification of Conti Editore S.r.l. Ref. 69501 of October 12, 2018.]

Topic addressed, even a necessity. It would not have been otherwise possible to communicate effectively to the reader about neither the place of the event (which took place - as mentioned in the articles - at the *IQOS Embassy* space in Milan) nor the relative *concept* (i.e., "*Tutto alla giusta temperatura*") focused on the importance of temperature control in the world of cooking and in the world of tobacco;

- with reference to the duration, lastly, to the disputed behavior did not occur from the month of November 2017 to the month of March 2018, as indicated in the preliminary investigation documents, but rather, they had to do with individual episodes concurrent with the release of the three articles, two of which were published in November 2017 and one in February 2018.

27. Via the documents dated July 18, October 12, and November 6, 2018, Conti Editore S.r.l. laid out the following considerations regarding the disputed commercial practice:

- no commercial relationships exist with Philip Morris for the promotion of the products of that company;
- from a perusal of the articles subject to the preliminary investigation, it is understood that the information provided is not at all unrelated to the topic addressed; it is connected to it by logic and theme;
- the articles in question are rather the result of the work of a journalist and therefore the manifestation of his freedom of thought. It was even the same Lazio TAR [Regional Administrative Tribunal] (sentence No. 1545/07) that ruled out the subsistence of so-called editorial advertising where, as with the subject case, the article was the mere result of an autonomous work of the editorial team, as such a manifestation of freedom of thought and the potential indirect advertising reference was a natural effect, which could not be withheld from the exercise of a free press;
- the advertising nature of the articles was also excluded in that the text does not present any unjustifiably laudatory expression and it is to present the innovative, and - at that time - unique in its kind, characteristics of the IQOS device.

IV. OPINION OF THE COMMUNICATIONS AUTHORITY

28. Since the commercial practice that is the subject of this provision occurred through the press, on November 9, 2018, the opinion of the Communications Authority was sought, pursuant to article 27, subsection 6, of the Consumer Code.

29. Through the opinion received on December 5, 2018, the aforesaid Authority, after considering that the presence of hidden advertising of the *IQOS* device on a monthly magazine dedicated entirely to the car market - in particular in an article that under the guise of an ordinary editorial [article] puts special emphasis on the characteristics and on the brand of the same product - may have induced consumers to make economic decisions that they might not otherwise have made, deemed that the use of the national press may have facilitated and amplified significantly the implementation of the described commercial practice.

V. CONCLUSIVE ASSESSMENTS

30. Preliminarily, it was observed that hidden advertising constitutes an unfair practice because it deprives the reader of his natural defenses that are up when it is clear that the product or service being lauded is an advertisement. This behavior is especially insidious because it can wrongly condition the reader because it can circumvent or cancel out many of the reader's defenses against frank advertising.

With regard to the commercial intent pursued and not expressed, the principle of transparency [is relevant], in particular in the case of misleading omissions, pursuant to article 22, subsection 2, Consumer Code. The *criterion* lies in the necessity that the commercial practices, and in particular advertising communications, must be recognizable as such and distinct from any other type of communication, such that the user can realize that there is a promotional purpose of the communication transmitted and accordingly calibrate his level of attention and trust.

31. Additionally, beyond the specifications of article 23, subsection 1, letter m) - which defines a specific hypothesis - pursuant to article 22, subsection 2 which warrants that, generally speaking, an omission is considered relevant when the professional does not make clear his commercial intent in a certain practice, should this not already be evident from its context.

32. In the subject case, it is deemed that the professionals, through the above described articles "*A ruote fumanti (ma non troppo)*," "*Cotto e mangiato magazine si rinnova*," and "*Tutto alla giusta temperatura*," constituted a form of hidden advertising to the benefit of the Philip Morris *IQOS* device, in violation of articles 20 and 22, subsection 2, of the Consumer Code.

33. To that end, on the one hand it reveals the advertising nature of the communication, and on the other its unrecognizable nature, as such, by its readers.

34. With regard to the "commercial" nature of the assessment of the case in point, verification of the promotional purpose normally implies that a commercial relationship exists between the professionals and the means by which the disputed communication was disseminated. Should that relationship not be verifiable based on an

agreement or other full and historic proof, it becomes evidence of the subsistence of serious, precise, and consistent elements based on which the advertising nature of the message can be deduced⁶.

35. With reference to the case in point, although the preliminary evidence is not the result of an explicit agreement between the companies and the publishing house, the circumstantial elements gathered throughout the proceedings support the subsistence of a clear promotional intent and therefore the dispute of non-transparent advertising.

36. To this effect, preliminarily, it is shown that through an *e-mail* obtained during the inspection⁷, the need was warranted to help the company Sport Network S.r.l. - advertising agent of Conti Editore S.r.l. to increase its advertising revenues also through publication of advertorials according to the editorial line established during the meeting of February 2018, the same time period as publication of the article *"A ruote fumanti (ma non troppo)."*

37. Returning to the disputed articles, it is highlighted, to begin with, that in the same articles, the reference to the IQOS device is extraneous to the content of the article and emphasized.

38. If, in fact, the point of the article *"A ruote fumanti (ma non troppo)"* was to inform the readership about the criteria adopted to determine the value of used cars and the consequences on that assessment of smoking in the car - and this can be inferred from the inclusion of the same in a broader journalistic reportage on the theme - it is unclear why it was necessary to specify to the public that the smoke-free tobacco products were of a specific brand and to boast about the specific technical characteristics. In fact, the article, after mentioning electronic cigarettes among the valid alternatives to traditional smoking, in particular smoke-free tobacco products, it specifies that among these *"IQOS stands out, the innovative Phillip Morris International device that heats without burning dedicated tobacco sticks, eliminating the most harmful substances of cigarettes - ash and smoke - the thing that harms Italians' cars most."* After the description of the product characteristics, it mentions the *"double advantage"* of its use, *"for the pocketbook, on one hand, and for the reduced harm to the health of those getting in the car, on the other hand."* The article closes later with the statement to entice purchase of the product: *"After all, why miss out when there are valid alternatives?"*

39. With reference to the same article, it is also evident from reading the article published by the English magazine Carbuyer which ostensibly inspired the author of *"A ruote fumanti (ma non troppo)"* and the webpages relative to the 11 English and Italian websites that repeated its contents, that no mention is made of the device for IQOS smokers, while electronic cigarettes are only cited in the website *blog.greenflag.com* where it is specified that the prohibition of smoking in the car in the presence of minors does not apply to *e-cigarettes*⁸.

40. Likewise, if it is true that the articles *"Cotto e mangiato magazine si rinnova"* and *"Tutto alla giusta temperatura"* regarded the presentation event of the new graphics of the magazine *Cotto e Mangiato* hosted at the *IQOS Embassy* space of Milan, what clashes with that context is the description of the *IQOS* device done in the boxes that complete them, focusing on the brand and characteristics of the product.

In those boxes, which are also inconsistent with the narrative and photographic context of the articles, featuring the characteristics of the device already cited in the articles as follows: *"IQOS is the latest Phillip Morris International technology that heats but doesn't burn dedicated tobacco sticks, doing away with the burning process characteristic of cigarettes. No more ash, smoke, or persistent odor. The fruit of over 15 years of research and development, IQOS is the first smoke-free product of the tobacco giant, designed for those who do not want to or cannot quit, which stands as an alternative to smoking cigarettes and, thanks to the absence of burning, can potentially reduce the risk of smoking-related diseases. A project that is a global revolution for smokers that already boasts three million users worldwide."*

41. Therefore, it appears evident that the explicit indication of the brand, the description with emphatic tones of *IQOS* device's characteristics, the obtainment of advantages derived from its use as well as the mention of the particular favor that the product has also achieved with consumers, correspond, on the other hand, to typical promotional-commercial methods, entirely clashing with the context of the articles. It can therefore be implicitly deduced also from the defense considerations made by Conti Editore, where the professional states that his conduct "gave the consumer greater information than those available on the market, making it possible for them to make their own decisions even more freely and consciously"⁹.

⁶ [In absence of an agreement, the criteria followed by the Authority from the first pronouncements with the backing of administrative case-law has been that of the burden of proof, according to which the commercial relationship and, therefore the promotional nature of a message, was presumed from the indicative elements, which indeed were serious, precise, and consistent. It is evident, in fact, that in most cases of concealment of the actual advertising intent cannot lend itself to formalization of a commercial relationship which would make the hidden advertising purposes blatant and transparent and would thus undermine the purposes of the advertising operation aiming to circumvent and elude the prohibition of misleading advertising].

⁷ [E-mail attachment No. 4 to the official records of the investigations done at Conti Editore S.r.l.]

⁸ [Articles in attachment No. 3 to the Conti Editore S.r.l. document Ref. 54423 of July 18, 2018].

⁹ [Document of Conti Editore S.r.l. Ref. 74411 of November 6, 2018].

42. Further evidence as to the promotional aims of the subject case in point is provided by the presence, in the cited articles, of images of the *IQOS* device, enlarged at times even disproportionately compared to the descriptive part of the article and isolated from the context.

The inclusion of pictures of the product constitutes a proper element of the use in commercial communications with the purpose of enticing the consumer to purchase.

43. Having thus clarified the commercial intent of the three articles described above based on the many aforementioned clues, it is necessary to assess their recognizability as advertising.

To this effect, it appears sufficient that no measures or indications whatsoever make the promotional nature evident, in the subject articles, to the consumer. In fact, there is no indication whatsoever of "advertising information," nor is any graphic format used that would make the different nature of the subject message recognizable.

Conclusions

44. The case assessed presents hallmarks of non-transparent advertising, substantiated by the series of the above-described serious, precise, and consistent circumstantial evidence, which were confirmed by the preliminary investigation findings.

45. In particular, the promotional purpose is the only plausible explanation based on the described evidence, since the illustrative and descriptive methods of the product cannot reasonably lead to the framework of news, of the article being considered a manifestation of free thought, given the explicit indication of the manufacturer's name and that of the product, the description with emphatic tones of the *IQOS* device's characteristics, the obtainment of advantages derived from its use, the statements made to incentivize its purchase, as well as the mention of the special favor the product has ostensibly already gained with consumers. To this effect, thus, the reference made by Conti Editore in the Lazio TAR sentence No. 1545/07 regarding the provision of Authority No. 5294 of September 4, 1997 (case P11454 - Topolino Ferrari-Marlboro), in which the qualification as journalistic information of the article subject to the investigation, with specific reference to the reproduction of the "Marlboro" brand of the cigarettes, depends on the preexisting sponsorship relationship making it normal for brands on both cars and clothing to be featured in the magazine being considered.

46. In the case in point, for those reasons, the promotional effect is not an indirect consequence, mediated or secondary compared to the informational content of the articles, but appear to be the substantial aim of the articles in question and are therefore suitable for influencing the economic behavior of consumers.

47. Finally, opposition to the professional diligence can be seen in the case in point in the method chosen by the professionals to promote the *IQOS* device by taking advantage of the consumer's trust in the informational purposes of the magazines and the narrative and photographic context in which the promotion was done. With specific regard to Conti Editore, it is specified that based on the investigation activity done and the elements provided in the proceeding, there is no evidence that the professional took actions or organizational measures suitable to avoiding a possible breakdown insofar as the development of non-transparent advertising.

VI. QUANTIFICATION OF THE PENALTY

48. Pursuant to article 27, subsection 9 of the Consumer Code, by way of the provision prohibiting unfair commercial practice, the Authority establishes the application of an administrative financial penalty of 5,000 to 5,000,000 euros, depending on the severity and duration of the violation.

49. For the quantification of the penalty, the criteria pursuant to article 11 of law No. 689/81 should be considered because it is applicable by virtue of the reference laid down by article 27, subsection 13 of the Consumer Code: especially, the severity of the violation, the action done by the company to eliminate or downplay the violation, the personality of the agent, and the financial conditions of the company.

50. With regard to the severity of the violation, in the case being reviewed the importance and economize size of the professionals is taken into consideration. In particular, Philip Morris Italia is the market leader of tobacco processed in Italy and it belongs to the international group Philip Morris International. Conti Editore is present on the market with various and well-known magazines and is part of the Corriere dello Sport-Stadio group.

Also of importance is the extent of dissemination of the magazines *Auto*, *AM* and *Cotto e Mangiato*.

51. For the duration of the violation, this coincides with the two months of publication of the articles (November 2017 and February 2018).

52. Based on these elements, it is deemed that the administrative financial penalty for Philip Morris Italia S.r.l. should be 500,000 € (Five-hundred-thousand euros) and for Conti Editore S.r.l. it should be 50,000 € (Fifty-thousand euros).

HAVING CONSIDERED, therefore, given the opinion of the Competition Authority, based on the above illustrated considerations, that the commercial practice in question was found to be unfair pursuant to articles 20, subsection 2, and 22, subsection 2, of the Consumer Code;

HEREBY RESOLVES

- a) that the commercial practice described in point II of this provision, put into place by the company Philip Morris Italia S.r.l. and Conti Editore S.r.l., constitutes, for the reasons and within the limits set out in the grounds, an unfair commercial practice pursuant to articles 20, subsection 2, and 22, subsection 2, of the Consumer Code, and prohibits the dissemination or continuation;
- b) to impose the company Philip Morris Italia S.r.l. an administrative financial penalty of 500,000 € (Five-hundred-thousand euros);
- c) to impose the company Conti Editore S.r.l. an administrative financial penalty of 50,000 € (Fifty-thousand euros).

The administrative penalties imposed must be paid within thirty days of the notification of this provision using the penalty codes indicated in attached form F24 with the identification elements pursuant to Legislative Decree No. 241/1997. The payment must be made electronically via bank or postal account debit through home-banking and CBI services available through banks or Poste Italiane S.p.A., i.e. using the electronic services of the Agenzia delle Entrate [Italian Revenue Service], available via www.agenziaentrate.gov.it.

After said term, for a delay of less than six months, late payment interest must be paid at the legal rate starting from the day after the payment due date and until the date of payment. If further delay in fulfillment, pursuant to article 27, subsection 6, of the law No. 689/81, the amount due for the penalty imposed is increased by one tenth for every six months starting from the day after the payment due date and until the role [sic] is transmitted to the agent for the collection; in this event the increase absorbs the late payment interest incurred during that time. Once payment is made it must be notified immediately to the Authority via submission of the documentation proving that the payment was made.

This provision will be notified to the interested subjects and published on the Competition Authority's Bulletin.

Pursuant to article 27, subsection 12, of the Consumer Code, in the event of non-fulfillment of the provision, the Authority will apply an administrative financial penalty from 10,000 to 5,000,000 euros. Should the non-fulfillment be repeated, the Authority may arrange for suspension of the company activity for a period not exceeding thirty days.

This provision may be disputed by submitting an appeal to the Lazio TAR, pursuant to article 135, subsection 1, letter *b*), of the Code of Administrative Procedure (Legislative Decree No. 104 of July 2, 2010), within sixty days of the provision notification date, notwithstanding the major terms pursuant to article 41, subsection 5, of the Code of Administrative Procedure, i.e. an extraordinary appeal can be proposed to the President of the Republic pursuant to article 8 of the Decree of the President of the Republic No. 1199 of November 24, 1971, within the term of one-hundred-twenty days of the provision notification date.

SECRETARY GENERAL
Filippo Arena

ACTING CHAIR
Gabriella Muscolo