LUISS

LIFE

Research Center Law and Investment on Future and Earth

Luiss Guido Carli

IP & Competition Law Bulletin

edited by

OPICC

IP, Competition Law and Communications Observatory

IP & COMPETITION LAW BULLETIN – No. 5

April – June 2026

***

Intellectual Property Law

News 💡

AGCOM Launches Technical Working Group on AI, Copyright and Media Pluralism

The Italian Communications Authority (AGCOM) has adopted Resolution No. 127/26/CONS establishing a new Technical Working Group dedicated to safeguarding media pluralism and protecting copyright in relation to digital platforms that use artificial intelligence systems.

The initiative is part of AGCOM's broader effort to address the growing impact of AI on the digital information ecosystem. In the Resolution, the Authority expressly situates its intervention within the evolving European regulatory framework, referring to key legislative instruments such as the Digital Services Act (DSA), the AI Act, the European Media Freedom Act (EMFA) and the Copyright Directive. The Resolution also comes against the backdrop of the recent request for intervention submitted to the European Commission concerning Google's AI Overviews and AI Mode services, which has reignited debate over the use of journalistic content by AI-powered platforms.

Of particular interest is AGCOM's recognition of the profound transformation that generative AI is bringing to the online news sector. According to the Authority, AI systems are increasingly altering the economics of digital information by absorbing a growing share of the value generated by editorial content. This phenomenon, AGCOM notes, may have significant repercussions for the sustainability of professional journalism and the broader publishing industry.

The Authority further emphasizes the need for greater transparency regarding the functioning of AI systems, particularly with respect to the criteria used to select information sources and the processes through which AI-generated responses are produced. Such transparency is viewed as a necessary condition not only for ensuring effective copyright protection and fair remuneration for publishers, but also for preserving media pluralism and the reliability of information available online.

The newly established Working Group will serve as a forum for dialogue among digital platforms, search engines, social media services, publishers and industry associations. Its activities will focus on a number of issues that have become increasingly central to the regulatory debate surrounding generative AI, including the use of copyright-protected editorial content for AI-related purposes, the operation of opt-out mechanisms and copyright exceptions, the impact of news recommendation and ranking systems on information pluralism, and the development of tools and methodologies to detect and address AI-generated or AI-amplified disinformation.

The Working Group will be coordinated by AGCOM's Directorate for Digital Services and the Protection of Fundamental Rights and will be able to submit proposals, recommendations and opinions to the Authority's Board. It will also promote self-regulatory initiatives and codes of good practice aimed at fostering greater accountability and transparency among market participants.

By establishing this new forum, AGCOM confirms its intention to play an active role in shaping the governance of AI-driven information ecosystems. The initiative reflects growing concerns across Europe about the implications of generative AI for copyright, media sustainability and democratic discourse, and may contribute to defining future regulatory approaches at both national and European level.

Sources: https://www.agcom.it/provvedimenti/delibera-127-26-cons

CJEU Upholds Italy's Press Publishers' Remuneration Framework: A Landmark Ruling for Copyright and Media Pluralism in Europe

The Court of Justice of the European Union (CJEU) has delivered a landmark judgment in *Case C-797/23, Meta Platforms Ireland (Fair Remuneration)*, confirming that the Italian framework implementing Article 15 of the Copyright Directive is compatible with EU law. The decision represents a significant victory for press publishers and reinforces Italy's pioneering role in shaping mechanisms designed to ensure fair remuneration for the online use of journalistic content.

The case originated from a challenge brought by Meta against the Italian legislation transposing the neighbouring right for press publishers introduced by Article 15 of Directive (EU) 2019/790, as well as against AGCOM's Regulation on the determination of fair remuneration for the online use of journalistic publications (Resolution No. 3/23/CONS). At the heart of the dispute was whether the obligations imposed on online platforms in the context of negotiations with publishers were compatible with fundamental principles of EU law.

In its judgment, the Court confirmed that the Italian system complies with EU law, provided that the remuneration paid to publishers constitutes the economic consideration for authorising the online use of their press publications. The ruling is particularly significant because it validates a regulatory model that goes beyond merely recognising a right to remuneration. The Italian framework also requires platforms that use, or intend to use, journalistic content to engage in negotiations with publishers, prohibits them from reducing the visibility of publishers' content during those negotiations, and obliges them to provide publishers and the competent public authority with the information necessary to determine an appropriate level of remuneration.

According to the Court, these obligations are capable of ensuring the practical effectiveness of the right granted to publishers under Article 15 of the Copyright Directive. The judges considered that such measures strike a fair balance between the freedom to conduct a business and the protection of intellectual property rights, while also serving the broader objective of safeguarding media pluralism.

The judgment further confirms AGCOM's role within the Italian framework. The Authority may continue to establish the criteria used to determine fair remuneration and, where negotiations fail, to quantify the amount due. The Court also recognised AGCOM's supervisory powers regarding platforms' transparency obligations and its authority to impose sanctions in cases of non-compliance.

The decision arrives at a crucial moment for the publishing industry, as policymakers across Europe continue to grapple with the economic impact of digital platforms and AI-driven services on the production and dissemination of news. Against this backdrop, the ruling may have implications extending well beyond Italy, providing an important precedent for other Member States seeking to implement effective mechanisms to support the sustainability of journalism in the digital environment.

Commenting on the judgment, AGCOM President Giacomo Lasorella described the ruling as a major step forward for the protection of media pluralism, the publishing industry and the constitutional values underpinning democratic information systems. The Court's endorsement of the Italian model is therefore likely to strengthen ongoing European discussions on the relationship between digital platforms, copyright enforcement and the future sustainability of professional journalism.

Sources: https://www.agcom.it/comunicazione/comunicati-stampa/comunicato-stampa-84; *Case C-797/23, Meta Platforms Ireland (Fair Remuneration).*

Brazil's New Dance Law Challenges Traditional Buy-Out Models for Performers' Rights

Brazil's newly enacted Dance Professionals Act (Law No. 15,396/2026) is drawing attention beyond the cultural sector for its potential impact on copyright and performers' rights. While primarily a labour law statute, the legislation prohibits the assignment—or even the promise of assignment—of copyright and related rights arising from professional dance services and provides that remuneration is due for each exhibition of a work.

The provision closely replicates a rule contained in Brazil's 1978 legislation on artists and entertainment workers, a provision that has long generated uncertainty regarding the possibility of transferring performers' rights through contractual buy-outs. By reintroducing the same language almost three decades after the adoption of Brazil's Copyright Act, the legislature appears to reaffirm the principle that creative and artistic contributions should not be absorbed entirely through a one-time payment.

The reform is particularly significant because it applies not only to performers but also to choreographers, whose creations are protected as copyright works. As a result, the new law may strengthen arguments in favour of ongoing remuneration rights extending beyond neighbouring rights.

The measure also resonates with broader international debates on fair remuneration in the digital environment. At a time when streaming platforms increasingly rely on buy-out agreements, Brazil appears to be moving toward a model that preserves creators' and performers' participation in the economic value generated by the exploitation of their works.

Source: https://ipkitten.blogspot.com/2026/06/guest-post-can-performers-rights-be.html?m=1

EUIPO Grand Board Refuses Trade Mark Protection for Orwell's Animal Farm and 1984

The EUIPO Grand Board of Appeal has confirmed the refusal of EU trade mark applications for the signs *ANIMAL FARM*and *1984*, filed by the Orwell Estate for a range of goods and services including books, audiovisual content, games and entertainment services.

The decision is particularly noteworthy because it addresses the longstanding question of whether the titles of literary works can function as trade marks. According to the Grand Board, the two signs are so well known as the titles of George Orwell's novels that the relevant public will perceive them primarily as references to the content and themes of those works rather than as indicators of commercial origin.

The Board found that both titles immediately evoke widely recognised concepts associated with Orwell's novels—namely totalitarianism, political oppression and mass surveillance—and therefore describe the subject matter of content-related goods and services. For the same reason, the signs were also considered devoid of distinctive character. Consumers, the Board reasoned, are likely to view *Animal Farm* and *1984* as titles of famous literary works rather than as trade marks identifying the commercial source of the products.

The decision also clarifies that copyright protection does not automatically support trade mark registration. While copyright may influence market conditions and public perception, it cannot by itself confer distinctive character on a sign.

More broadly, the ruling highlights a paradox at the heart of trade mark law: a title may become too famous to function as a trade mark. In the Grand Board's view, the exceptional cultural success of Orwell's novels ultimately worked against registration, as the signs had become inseparably associated with the works themselves rather than with a particular commercial source.

The decision is likely to become a leading authority on the registrability of book titles in the European Union and may reignite discussions on whether literary titles deserve a dedicated form of protection beyond the traditional frameworks of copyright and trade mark law.

Source: EUIPO; https://ipkitten.blogspot.com/2026/06/famous-but-not-distinctive-animal-farm.html?m=1

Italy adopts implementing decrees under the AI Act

On 10 June 2026, the Italian Council of Ministers gave preliminary approval to two legislative decrees implementing Law No. 132/2025, making Italy the first EU Member State to operationalise a national regulatory framework on artificial intelligence fully aligned with the EU AI Act (Reg. (EU) 2024/1689).

Source: https://www.agendadigitale.eu/industry-4-0/decreti-ai-formazione-e-regole-ecco-la-via-italiana-allai-act/

Case Law 💡

The Rome District Court rejects interim injunction against album entitled "Miss Italia": artistic-use defence prevails over trademarks rights.

The owner of the registered trademarks "Miss Italia" and "Concorso Nazionale Miss Italia" sought an interim injunction before the Rome Court under art.700 c.p.c. and art. 131 Ind. Prop. Code, challenging the release of a music album by singer "Ditonellapiaga" bearing the same denomination and a cover image depicting her wearing the beauty pageant's winner crown and sash. The Court denied relief under all three libs of art. 20 Ind. Prop. Code: **(i)** no identity of signs, since the trademarks include distinctive figurative elements absent from album title, and relevant sectors not interchangeable; **(ii)** no likelihood of confusion, the Nice classification covering the marks not extending to the music o or recording sectors; **(iii)** although the trademarks renown was undisputed, the claimant failed to establish unfair advantage or detriment to repute. Basically, the Court recognised a legitimate Justification in the artistic-use defence: an album title serves a fundamentally different function from a trademark, denoting a particular human type through an irreplaceable linguistic synthesis rather than indicating commercial origin. Weighing trade mark protection against freedom of artistic expression, the Court dismissed the application and awarded costs to the respondents.

Source: Tribunale di Roma, interim order (ex Art. 700 c.p.c. / Art. 131 Ind. Prop. Code) -

Turin Court of Appeal: no punitive recovery in trade mark infringement — proof of actual harm remains indispensable (trade marks / damages)

Dismissing both appeals in a dispute between a football quiz app developer and Juventus F.C., the Turin Court of Appeal (no. 963/2025) confirmed infringement of the "J" trademark under Art. 20 Ind. Prop. Code, but denied damages: Art. 125 Ind. Prop. Code simplifies quantification but does not dispense with proof of actual harm, and where infringement remains confined to a commercial proposal addressed solely to the trademark's owner — with no reputational impact — the reasonable royalty criterion cannot substitute for that allegation without becoming an unlawful punitive sanction incompatible with Italian civil liability principles.

Source: Corte d'Appello di Torino, Sez. V, sent. 10 November 2025, n. 963

Papers and other publications

Von Lewinski S., *GEMA v. OpenAI: The Munich Regional Court Presents an Exemplary Judgment on a Well Conceived Test Case*. GRUR International, Volume 75, Issue 4, April 2026, Pages 340–345, https://doi.org/10.1093/grurint/ikag018**.**

Copyright Infringement in Form of a Reproduction of Preexisting Works in a Large Language Model, GRUR International, Volume 75, Issue 4, April 2026, Pages 371–392, https://doi.org/10.1093/grurint/ikag009

Mezei, P., Kretschmer, M., Margoni, T. et al. Comment of the European Copyright Society on the Request for Preliminary Ruling in Case C-250/25 (Like Company). IIC (2026). https://doi.org/10.1007/s40319-026-01717-6

Chiodi A., *WEXFO 2026: la libertà di dissentire nell'era della disinformazione e dell'intelligenza artificiale*, https://www.giornaledellalibreria.it/news/liberta-despressione/wexfo-2026-la-liberta-di-dissentire-nellera-della-disinformazione-e-dellintelligenza-artificiale-7310.html.

Events

ATRIP 44th Annual Congress - Intellectual Property and Politics: From Power Relations to Realpolitik, University of São Paulo Law School, Brazil, June 28 – July 1, 2026

ALAI CONGRESS 2026, *Copyright and Free Expression in the Age of Algorithms*, Wednesday 17 – Friday 19 June 2026, The Hague, The Netherlands, ALAI Congress 2026

ALAI Italia, Upcoming Webinar: "*The Digitisation of Works of Art Between Copyright and the Italian Cultural Heritage Code*" (22 June 2026), https://events.teams.microsoft.com/event/55f1c591-72d0-4492-9001-0665fa8fb3c0@870af389-3558-4dda-b7ec-8f3b8e21b091

***

Competition/Antitrust Law

News

I882 – The Italian Competition Authority opens investigation into the TIM/Fastweb network-sharing agreement

The Italian Competition Authority has opened proceedings to assess the compatibility with Article 101 TFEU of the agreement between TIM and Fastweb concerning the deployment and operation of a shared 5G radio access network in municipalities with fewer than 35,000 inhabitants. According to the Authority, the cooperation may have significant implications for competition in both wholesale and retail mobile communications markets, given the importance of network infrastructure and the parties' market positions. The investigation will also examine whether the agreement may generate efficiencies capable of benefiting consumers through improved coverage and lower deployment costs.

Source: AGCM, decision opening proceedings of 21 April 2026.

Benetton: the Italian Competition Authority opens non-compliance proceedings concerning commitments accepted in 2023

The Italian Competition Authority has opened proceedings to assess whether Benetton Group has complied with the commitments made binding in 2023 in the context of the investigation concerning possible abuse of economic dependence. According to the Authority, several measures intended to strengthen franchisees' autonomy and improve contractual transparency may not have been fully implemented. The proceedings concern the possible breach of previously accepted commitments and may result in financial penalties should non-compliance be established.

Source: AGCM, decision of 21 April 2026.

I883 – The Italian Competition Authority opens investigation into alleged cartel in the building chemicals sector

The Italian Competition Authority has opened an investigation into Mapei S.p.A., Kerakoll S.p.A. and Sika Italia S.p.A. for a suspected anti-competitive agreement in the market for chemical products used in the construction sector. According to the opening decision, the companies may have coordinated commercial policies and supply conditions applied to major distributors, including prices, discounts and promotional initiatives. The Authority carried out inspections with the assistance of the Special Antitrust Unit of the Guardia di Finanza.

Source: AGCM Bulletin No. 18/2026.

PS13069 – The Italian Competition Authority opens investigation into Vorwerk concerning connected devices

The Italian Competition Authority has launched an investigation into Vorwerk Management and Vorwerk Italia following complaints relating to the discontinuation of cloud services supporting the Neato robot vacuum cleaner. According to the Authority, the deactivation of software functionalities may have substantially altered the characteristics and value of products already purchased by consumers. The case raises broader questions concerning software-dependent products and the responsibilities of manufacturers operating in digital ecosystems.

Source: AGCM press release of 23 April 2026.

Glovo and Deliveroo: the Italian Competition Authority opens investigation concerning sustainability and labour-related claims

The Italian Competition Authority has opened investigations into companies belonging to the Glovo and Deliveroo groups over possible misleading representations concerning rider working conditions, sustainability policies and corporate social responsibility standards. The proceedings form part of the Authority's growing enforcement activity in relation to ESG claims and the transparency of information provided to consumers in digital platform markets.

Source: AGCM press release of 12 May 2026.

A580 – The Italian Competition Authority opens investigation into Biogen in the multiple sclerosis medicines sector

The Italian Competition Authority has opened an investigation into Biogen Italia and Biogen Inc. for a possible abuse of a dominant position in the market for natalizumab-based medicines for the treatment of multiple sclerosis. The Authority will assess whether the company implemented a strategy capable of hindering the entry and expansion of competing biosimilar products, including through conditions relating to access to diagnostic testing services.

Source: AGCM press release and opening decision A580.

IDMA1 – The Italian Competition Authority launches first investigation under the Digital Markets Act

The Italian Competition Authority has launched an investigation into Apple Inc., Apple Distribution International Ltd and Apple Italia S.r.l. concerning possible non-compliance with Article 6(7) of the Digital Markets Act. The investigation focuses on interoperability obligations applicable to iOS and iPadOS and, in particular, on whether competing cloud-storage providers are granted access to functionalities equivalent to those available to Apple's iCloud service. The case is the first investigation conducted by a national competition authority under Article 38(7) DMA.

Source: AGCM press release and opening decision IDMA1.

AGCOM publishes report on artificial intelligence and digital markets

AGCOM has published a report examining the impact of artificial intelligence on communications, media and digital markets. The document analyses the opportunities and risks associated with AI systems, including issues relating to competition, pluralism, transparency and consumer protection, while also discussing the interaction between the AI Act, the Digital Services Act and the Digital Markets Act.

Source: AGCOM, Report on Artificial Intelligence (2026).

Commission adopts revised Technology Transfer Block Exemption Regulation and Guidelines

The European Commission has adopted the revised Technology Transfer Block Exemption Regulation (TTBER) and accompanying Guidelines. The new framework updates the competition-law assessment of technology licensing agreements and introduces clarifications concerning data-licensing arrangements, technology pools, licensing negotiation groups and the treatment of emerging technologies that have not yet been commercialised.

Source: European Commission, TTBER package, 16 April 2026.

Commission proposes measures to Google under the Digital Markets Act

The European Commission has issued preliminary findings and proposed compliance measures concerning Google's obligations under the Digital Markets Act. In particular, the Commission proposes measures designed to facilitate access by rival search engines to Google Search data on fair, reasonable and non-discriminatory terms, with a view to increasing contestability in online search markets.

Source: European Commission, DMA proceedings concerning Alphabet.

Commission publishes first review of the Digital Markets Act

The European Commission has published the first review report required under Article 53 DMA. The report concludes that the Regulation remains fit for purpose and has already generated positive effects for users and business users, including greater choice, improved interoperability, increased data portability and enhanced contestability in digital markets. The Commission does not propose legislative amendments at this stage but identifies artificial intelligence and cloud services among the areas that will require particular attention going forward.

Source: European Commission, First DMA Review Report.

Commission clears Lisbon Metro procurement bid under the Foreign Subsidies Regulation subject to commitments

The European Commission has adopted one of its first conditional decisions under the Foreign Subsidies Regulation in the context of a public procurement procedure concerning the Lisbon Metro expansion project. The decision confirms the Commission's willingness to scrutinise foreign subsidies throughout the supply chain and highlights the growing importance of the FSR as a tool to address distortions caused by non-EU public support in procurement markets.

Source: European Commission, FSR procurement decision.

Commission adopts temporary State aid framework in response to the Middle East crisis

The European Commission has adopted a temporary State aid framework aimed at addressing the economic consequences of the disruption of global energy and commodity markets following the escalation of tensions in the Middle East. The framework allows

Member States to support undertakings operating in particularly affected sectors, including agriculture, fisheries, transport and energy-intensive industries.

Source: Commission Communication C(2026) 2947.

Commission opens investigation into Google's use of online content for AI purposes

The European Commission has opened a formal antitrust investigation to assess whether Google's use of publishers' and content creators' material for artificial intelligence services may infringe Article 102 TFEU. The investigation focuses on the use of web publishers' content for AI-generated search functionalities and the use of YouTube content to train generative AI models, including the conditions under which publishers and creators may refuse such uses.

Source: European Commission press release.

Commission opens investigation into possible anticompetitive conduct by Sanofi regarding the promotion of a flu vaccine for vulnerable patients

The European Commission has opened a formal antitrust investigation to assess whether Sanofi abused its dominant position in France and Germany by conducting a misleading communication campaign aimed at disparaging a competing influenza vaccine intended for vulnerable patients. According to the Commission's preliminary assessment, Sanofi may have promoted its own vaccine by making inaccurate or misleading claims regarding the scientific evidence supporting the rival vaccine Fluad and its inclusion in national vaccination recommendations. Alongside the opening of the proceedings, the Commission has also issued a Preliminary Assessment under Article 9 of Council Regulation (EC) No 1/2003, enabling Sanofi to propose commitments to address the Commission's competition concerns without an infringement decision.

Source: European Commission, Press release, 26 June 2026.

Case Law

I876 - Morellato fined €26 million for resale price maintenance and restrictions on online marketplace sales

The Italian Competition Authority found that Morellato S.p.A. had implemented a vertical agreement restricting competition within its selective distribution network, in breach of Article 101 TFEU. According to the Authority, authorised distributors were prevented from selling Morellato products through third-party online marketplaces, including Amazon and eBay, while the manufacturer itself continued to use those same channels. In addition, retailers were allegedly prevented from applying discounts beyond thresholds unilaterally established by Morellato and were systematically monitored through dedicated price-monitoring software. The Authority considered the restrictions on retailers' pricing policies to constitute resale price maintenance (RPM), amounting to a hardcore restriction under Article 4(a) of the Vertical Block Exemption Regulation. Likewise, the marketplace ban was found incompatible with the principles established by the Court of Justice in *Coty*, since the restrictions were applied asymmetrically and could not be justified by the objective of preserving the luxury image of the products or combating counterfeiting. The Authority therefore imposed a fine of approximately €26 million.

Sources: AGCM, decision of 17 March 2026.

PS12974 - AGCM fines Revolut €11.5 million for unfair commercial practices in banking and investment services

The Italian Competition Authority imposed a fine of €11.5 million on Revolut for engaging in several unfair commercial practices concerning the promotion of banking and investment services. The Authority found that consumers were not provided with sufficiently clear information regarding the purchase of fractional shares, while promotional claims referring to "zero commissions" were considered liable to mislead consumers as to the actual costs of the services offered. The decision also concerns the company's procedures for freezing and suspending customer accounts. According to the Authority, although anti-money laundering legislation requires financial institutions to carry out appropriate checks, such obligations do not exempt traders from complying with the transparency requirements laid down in the Consumer Code. Finally, the Authority found that Revolut had failed adequately to inform customers about the migration to Italian IBANs and the practical consequences thereof.

Sources: AGCM, decision PS12974, 23 March 2026.

I871 - AGCM fines Amica Chips, Pata and Preziosi Food for cartel in the salted snacks sector

The Italian Competition Authority imposed fines totalling more than €23 million on Amica Chips, Pata and Preziosi Food after finding that the three companies had participated in a single and continuous infringement of Article 101 TFEU in the market for private-label savoury snacks supplied to large-scale retailers. According to the Authority, the undertakings coordinated their commercial conduct through exchanges of commercially sensitive information and agreements designed to reduce competition in tenders and preserve profit margins, particularly following the increase in production costs recorded in 2022. The decision is particularly noteworthy because it represents the first application of the settlement procedure introduced by Article 14-quater of Law No. 287/1990. The Authority also granted reductions under both the leniency programme and the compliance programme, confirming the increasing importance of negotiated procedures within Italian cartel enforcement.

Sources: AGCM, decision I871, 28 April 2026.

PS12942, PS12968, PS12973 - AGCM accepts commitments offered by DeepSeek, Mistral AI and Nova AI concerning AI-generated content

The Italian Competition Authority closed three consumer protection proceedings concerning DeepSeek, Mistral AI and Nova AI after accepting commitments offered by the companies pursuant to Article 27(7) of the Consumer Code. The investigations focused on whether users had been adequately informed that generative artificial intelligence systems may produce inaccurate, misleading or entirely fabricated outputs. Without adopting an infringement decision, the Authority considered the commitments sufficient to remove the identified concerns. The companies undertook, inter alia, to introduce clear and permanent warnings informing users of the possibility of so-called "hallucinations", both during the registration process and within the chat interfaces themselves. The case represents one of the first examples of consumer protection enforcement concerning transparency obligations applicable to generative AI systems.

Sources: AGCM, decisions PS12942, PS12968 and PS12973, 30 April 2026.

PS12940 - AGCM fines Philip Morris €7 million for misleading advertising of smoke-free tobacco products

The Italian Competition Authority imposed a fine of €7 million on Philip Morris Italia for engaging in misleading commercial practices relating to the promotion of heated tobacco and other non-combustion tobacco products. According to the Authority, advertising claims referring to a "smoke-free future" and similar expressions were liable to induce consumers into believing that such products were harmless or significantly less harmful than conventional cigarettes. The Authority concluded that current scientific evidence does not support those representations and that the communication strategy was therefore capable of misleading consumers, including younger users, regarding the actual health risks associated with nicotine-based products. Besides imposing the financial penalty, the Authority ordered the company to discontinue the contested practices and adopt appropriate corrective measures.

Sources: AGCM, decision PS12940.

Council of State confirms annulment of AGCM fines against Eni Plenitude, Acea and Enel Energia

The Council of State dismissed the appeals brought by the Italian Competition Authority against the judgments annulling the fines imposed on Eni Plenitude, Acea Energia and Enel Energia concerning unilateral price increases adopted during the temporary prohibition introduced by the so-called *Aiuti-bis* Decree. The Court confirmed that Article 3 of Decree-Law No. 115/2022 prohibited only unilateral amendments to contractual conditions (*ius variandi* in the strict sense), and did not prevent suppliers from applying new economic conditions following the expiry of fixed-price contracts and their tacit renewal. The judgments therefore confirmed that the practices sanctioned by the Authority fell outside the scope of the temporary legislative prohibition. The rulings provide important clarification regarding the distinction between unilateral contractual modifications and the application of new contractual terms following the expiry of existing agreements.

Sources: Council of State, Judgments Nos. 2438/2026, 2456/2026 and 2487/2026.

The Business Court of Rome declares unfair three clauses contained in Netflix's standard terms and conditions

The Court of Rome partially upheld an action brought against Netflix concerning the fairness of certain contractual clauses contained in the company's standard terms and conditions. The Court found that the provisions governing unilateral price modifications in the 2017 version of the contract were unfair within the meaning of the Italian Consumer Code, since they allowed Netflix to amend subscription fees without specifying objective criteria justifying such changes. According to the Court, merely granting consumers a right of withdrawal was insufficient to remedy the imbalance created by an unlimited contractual power to modify prices. Conversely, the Court upheld the revised contractual provisions introduced in 2024 and 2025, considering that they sufficiently identified the circumstances under which subscription prices could be modified. The judgment also ordered the publication of the operative part of the decision.

Sources: Court of Rome, Judgment of 1 April 2026.

Constitutional Court upholds the constitutionality of the AGCM turnover-based contribution

In Judgment No. 46/2026, the Constitutional Court rejected the constitutional challenges raised against the contribution payable to the Italian Competition Authority by companies exceeding the statutory turnover threshold. According to the Court, turnover constitutes a reasonable indicator both of an undertaking's economic capacity and of its participation in the markets supervised by the Authority. Consequently, limiting the contribution to larger undertakings does not infringe the constitutional principles of equality or ability to pay. The Court also dismissed the objections based on EU law, including the ECN+ Directive and the Charter of Fundamental Rights, holding that the financing mechanism does not undermine the institutional independence of the Authority and remains proportionate in light of the statutory cap applicable to the contribution.

Sources: Constitutional Court, Judgment No. 46/2026.

TAR Lazio confirms the validity of competitive procedures for beach concessions in Fiumicino

The Regional Administrative Court of Lazio annulled the Municipality of Fiumicino's decision declaring non-existent a number of beach concessions awarded in 2020 through competitive tender procedures. According to the Court, those concessions did not constitute automatic extensions of pre-existing authorisations but originated from genuine competitive award procedures, characterised by public notice, transparency and the possibility for competing operators to participate. The judgments therefore distinguish between concessions resulting from competitive procedures and those benefiting from automatic legislative extensions, confirming that the former remain effective until their natural expiry under the transitional framework introduced by Law No. 118/2022.

Sources: TAR Lazio, Judgments of 14 April 2026.

Council of State annuls AGCM decision rejecting Ryanair's commitments

The Council of State annulled the Italian Competition Authority's decision rejecting the commitments offered by Ryanair during an antitrust investigation concerning the airline's commercial practices. The Court found that the Authority had failed adequately to explain why the commitments were considered unsuitable, particularly in light of its previous decisional practice concerning comparable cases involving other airlines. According to the judgment, the Authority also relied on grounds that had not been properly raised during the administrative procedure and failed to assess several measures proposed by Ryanair that could have produced tangible benefits for consumers. The ruling therefore requires the Authority to reopen the assessment of the commitments in accordance with the principles laid down by the Court.

Sources: Council of State, Judgment No. 3718/2026.

Court of Justice confirms that the E.ON/Innogy transactions did not constitute a single concentration

In its judgments in Joined Cases C-171/24 P to C-177/24 P and C-178/24 P to C-179/24 P, the Court of Justice dismissed the appeals brought against the Commission's merger decisions concerning the restructuring of the German electricity sector involving E.ON, RWE and Innogy. The Court confirmed that, although the various transactions formed part of a broader industrial reorganisation, they did not constitute a single concentration under the EU Merger Regulation. According to the Court, a single concentration exists only where the transactions are so interdependent that they cannot reasonably be carried out independently and ultimately confer control upon one undertaking. The Court also rejected the appellants' arguments concerning market definition and the allocation of the burden of proof, confirming the analytical framework adopted by the Commission for assessing complex multi-step transactions.

Sources: Court of Justice, Joined Cases C-171/24 P to C-179/24 P.

Court of Justice clarifies jurisdiction over "anchor defendants" in competition damages actions

In Joined Cases C-672/23 and C-673/23, the Court of Justice further clarified the interpretation of Article 8(1) of the Brussels I bis Regulation in follow-on damages actions arising from competition law infringements. The Court held that jurisdiction over an undertaking that was not an addressee of the infringement decision may be established only where the claimant demonstrates both that the undertaking forms part of the same economic unit as the infringing entity and that there is a concrete connection between its economic activity and the subject matter of the infringement. By contrast, considerations such as the likelihood of success of the action, the foreseeability of the proceedings or the location where the damage occurred are irrelevant. The judgment further develops the principles laid down in *Sumal* and provides important guidance for private enforcement litigation.

Sources: Court of Justice, Joined Cases C-672/23 and C-673/23.

Court of Justice confirms annulment of the Commission's approval of Lufthansa's COVID-19 recapitalisation

In Case C-457/23 P, the Court of Justice upheld the General Court's annulment of the Commission's decision authorising Germany's recapitalisation of Lufthansa during the COVID-19 pandemic. Although the Court disagreed with several aspects of the General Court's reasoning, it confirmed that the Commission had committed a material error concerning the mechanism governing the conversion of the State's silent participation. According to the Court, that mechanism was incompatible with the preventive system of State aid control established by Article 108(3) TFEU. The judgment provides further clarification on the intensity of judicial review applicable to Commission decisions adopted under the Temporary Framework.

Sources: Court of Justice, Case C-457/23 P.

General Court dismisses Ahlers' appeal against the fine imposed in the Pierre Cardin case

In Case T-87/25, the General Court dismissed the action brought by Westfälisches Textilwerk Adolf Ahlers against the Commission decision finding an infringement of Article 101 TFEU in the market for Pierre Cardin-licensed clothing and accessories. The underlying infringement concerned agreements and concerted practices restricting cross-border and online sales of Pierre Cardin-branded products within the EEA.

Ahlers did not contest the finding of infringement, but challenged the calculation of the €3.5 million fine, arguing that the Commission should not have included the turnover of Ahlers AG following insolvency-related corporate changes. The General Court rejected the plea, holding that the Commission was entitled to take into account the consolidated turnover, since the applicant and Ahlers AG formed a single economic unit during the relevant period. The judgment confirms the importance of the undertaking concept for fine calculation under Regulation No. 1/2003.

Sources: General Court, Case T-87/25, *Westfälisches Textilwerk Adolf Ahlers v Commission*, 6 May 2026.

General Court partially annuls Meta's designation as gatekeeper for Marketplace under the Digital Markets Act

In Case T-1078/23, *Meta Platforms v Commission*, the General Court partially annulled the Commission's decision designating Meta as a gatekeeper under the Digital Markets Act. While confirming the designation of Messenger as a core platform service, the Court found that the Commission had failed adequately to explain why Marketplace continued to satisfy the designation criteria despite significant changes introduced shortly before the adoption of the decision. The judgment constitutes one of the first substantive rulings interpreting the gatekeeper designation procedure under the DMA and provides important guidance on the Commission's duty to state reasons.

Sources: General Court, Case T-1078/23.

General Court confirms the Commission's power to inspect professional documents stored on personal devices

In the *Vivendi v Commission* (T-1097/23) and *Lagardère v Commission* (T-1119/23) judgments, the General Court confirmed that, under certain conditions, the Commission may require undertakings to disclose professional documents stored on personal communication devices used for work purposes during inspections carried out under Regulation No. 1/2003. According to the Court, the Commission's investigative powers would otherwise risk being undermined by technological developments. At the same time, access to personal devices remains subject to strict proportionality requirements and full judicial review to ensure compliance with the fundamental rights guaranteed by the Charter.

Sources: General Court, Cases T-1097/23 and T-1119/23.

Advocate General Medina proposes a broader interpretation of the Bronner doctrine in BEH Gas

In her Opinion in Case C-14/24 P, Advocate General Medina proposed that the Court of Justice partially uphold the Commission's appeal against the General Court's judgment annulling the Commission's abuse of dominance decision in BEH Gas. The Opinion advocates a functional interpretation of the *Bronner* criteria, emphasising effective control over infrastructure rather than formal ownership, and criticises the General Court's restrictive approach to potential competition. It also concludes that the Commission's decision should have been assessed as a single and continuous infringement.

Sources: Opinion of Advocate General Medina, Case C-14/24 P.

Papers and other publications

Borgogno O., Manganelli A., **The interaction of Article 102 TFUE and the DMA: insights from generative AI value chains**, Journal of European Competition Law & Practice-Oxford Academic, 2026, Source

Bostoen F., **The Digital Markets Act: Three Years Into the EU's Platform Regulation Experiment**, 2026, in SSRN, Source

Cervigni G., Polo M., **Ricomincia dal via: i mercati dell'energia in Europa dalle liberalizzazioni al Rapporto Draghi**, Mercato Concorrenza Regole, 2026, pp. 9-32, Source

Colangelo G., Ariel Ezrachi, **AI Ecosystem, Power Shifts, and EU Competition Law Enforcement**, 2026, Source

Colangelo G., **Mobile Wallets and Interoperability: When Competition Meets Financial Inclusion**, European Business Law Review, Vol. 37, 2026, pp. 675-694, Source

Colangelo G., **Licensing negotiation groups: the new antitrust kid on the SEPs block**, European Competition Journal, 2026, Source

Colangelo G., **Cultural Exception, Single Market Objectives and Regulatory Gaming in the EU Audiovisual Media Services Directive: The Adverse Effects of Financial Obligations**, European Journal of Risk Regulation- Cambridge University Press, 2026, Source

Ferraro V., **Il demanio costiero tra la tutela dell'ambiente e la concorrenza,** Federalismi.it-Rivista di Diritto Pubblico Italiano, Comparato Europeo, no. 11, 2026, Source

Massarotto G., **The Meaning of AI and Its Implications for Antitrust Law**, Seton Hall Law Review, 2026, Source

Ribera Martìnez A., **The regulation that cried wolf: generative AI training data and the challenge of lawful scale**, Journal of European Competition Law & Practice-Oxford Academic, 2026, Source

Tassone B., Cazzato C.E., **Prime riflessioni sul caso I864. "Prezzi del Carburante per autotrazione" nella duplice prospettiva del "public" e del "private enforcement antitrust"**, Mercato Concorrenza Regole, 2026, pp. 143-157, Source

Events

L'art. 101 TFUE in congiunture di crisi: una discussione (Associazione Antitrust Italiana - AAI) – Online, May 12, 2026
Agenda and recording

La giurisprudenza italiana sul cartello dei camion: a dieci anni dalla decisione della Commissione europea (Associazione Italiana per il Contenzioso della Concorrenza - AICC) – Online, June 8, 2026
Agenda and recording

XVII Treviso Antitrust Conference (Rucellai & Raffaelli) - Treviso, 11-12 June, 2026
Agenda

Secondo evento di Concorrenze nel 2026 - Interviste, approfondimenti, novità (Concorrenze) – Milan and Rome, June 24, 2026
Agenda

Bill Kovacic Antitrust Salon (Concurrences) – Washington, D.C., 14 September 2026
Agenda and Registration

Global Antitrust Hot Topics: EU, US & Global Perspectives (Concurrences) – Brussels, 24 September 2026
Agenda and Registrations

Antitrust Horizon: Meet the Enforcers (Concurrences) – Brussels, 14 October 2026
Agenda and Registration

OPICC