

ONLINE SALES AND SELECTIVE DISTRIBUTION

On 22 July 2020, the Italian Competition Authority (“ICA”) opened a preliminary investigation against the famous American companies Apple Inc. Amazon.com Inc., together with their European and Italian subsidiaries, for alleged violation of Section 101 of the Treaty on the Functioning of the European Union (“TFEU”).

The case follows a complaint filed in February 2019 by an electronics retailer who was barred from marketing products bearing the *Apple* and *Beats* brands (both owned by Apple Inc., the “Products”) on Amazon’s online platform.

According to the complaint, Amazon -- applying an agreement with Apple of 2018 -- prevented retailers outside the official Apple resale programs from using (or continuing to use) its online platform for the Products.

Based on its investigations -- and considering Amazon’s majority share in the relevant market -- the ICA found that such agreement would effectively prevent unofficial retailers (*i.e.*, those not enrolled in Apple’s resale programs) from accessing services for sale in online marketplaces, even if the Products had been legitimately purchased by the wholesalers.

In particular, the ICA considered the agreement in breach of Section 101(1)(b) of the TFEU, being likely to create a significant barrier for unofficial retailers in the market for online sales of Products, thereby reducing supply.

In addition, the reduction in supply could limit incentives to compete on price level for such Products, as well as prevent the integration of European markets and limit “*parallel trade*”, according to the ICA.

ICA’s assessment also takes into account that, in the current market environment, the exponential increase in the use of online platforms for purchases makes it essential to maintain access to the services provided by Amazon, being the undisputed leader of such market.

In our opinion, the above mentioned investigation (which is still in its preliminary stage) is and will continue to be quite relevant for both retailers (small and medium-sized Italian companies) and distributors (usually large multinational companies), who will have to take it into account when defining the boundaries of protection for selective distribution systems in the Italian market.

Milan, 25 August 2020