[IT] AGCOM’s guidelines on the quantification of fines

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On 16 July 2015, the Italian Communications Authority (Autorità per le garanzie nelle comunicazioni - AGCOM) issued new Guidelines on quantification of AGCOM’s administrative pecuniary sanctions.

AGCOM’s Resolution no. 410/14/CONS set forth procedural rules on fines and commitments, as a consequence of the ascertained infringements. In the preamble of the same Resolution, AGCOM pointed out that there is a consolidated practice related to the infliction of sanctions, and the adoption of an official set of Guidelines to regulate the matter is to be considered a best practice. This is because in this way (i) AGCOM will be coherent and balanced when it will issue the fines; and (ii) the parties involved shall be able to verify the adequacy of the sanction, whose main purpose is to stop the unlawful conduct and to prevent its repetition.

The Guidelines set forth the criteria which AGCOM will follow in the application of Section 11 of Law no. 689 of 24 November 1981, according to which the Authority shall determine the amount of the fine between a minimum and maximum, taking into account the following circumstances: (a) the gravity of the infringement (duration, seriousness of the damages triggered, if the infringers gained an unlawful profit, etc.); (b) the infringer’s actions to eliminate or diminish the consequences of infringement (if the infringer cooperated with AGCOM, or adopted measures aimed at reducing the effects of the infringement, etc.); (c) infringer’s personality (if the infringer is a first-time offender, if the infringement is the result of a strategy, if the company tried to hide the infringement, etc.); and (d), the infringer’s economic conditions (the turnover showed in the last financial statement approved before the start of the proceeding).

Based on such criteria, the minimum sanction could be applied solely in cases in which the infringement is not serious and the party tries to eliminate negative consequences and cooperates during the phase of collection of evidence.

In addition, according to the Guidelines, a unique sanction may be inflicted when multiple infringements are triggered by a single act of unlawful conduct, with a single aim, which takes place within a specific period in which it has completed its effects (so called juridical cumulus).

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Delibera n. 265/15/CONS, Linee Guida sulla quantificazione delle sanzioni amministrative pecuniarie irrorate dall'Autorità per le Garanzie nelle Comunicazioni

http://www.agcom.it/documents/10179/1686063/Delibera+265-15-CONS/4071cc6f-7a58-4ceb-9fc0-7061f44c15a6?version=1.0

Resolution No. 265/15/CONS, Guidelines on quantification of administrative pecuniary sanctions imposed by the Italian Communications Authority

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