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**Italian investigation into app-based games**

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This briefing provides an overview of the current Italian Competition Authority investigation into the features of “Littlest Pet Shop”, an app-based game for mobile devices, such as tablets and smartphones.

**(I) BACKGROUND**

On 16 May 2014 the Authority announced the launch of an investigation against Google, Apple, Amazon and Gameloft based on concerns that an app-based game, which was advertised as “free”, in fact required consumers, including children, to pay a fee as a condition of continuing the game. That conduct, being misleading, could be in breach of the Italian Consumer Code.

The game in question is “Littlest Pet shop”, a game for children developed by Gameloft for Apple’s iOS and Android devices, and available for purchase on Google’s Play, Amazon’s App Store, and iTunes.

The Authority seeks to ascertain the following:

- (i) whether consumers are deceived as to the fact that the game is not entirely free and its actual price;
- (ii) whether consumers are provided with sufficient information about the settings needed to stop or limit purchases within the App;
- (iii) whether children are exhorted to buy advertised products, or persuade their parents to do so, as well as induced to watch ads by the possibility of obtaining free credits.

The Authority also notes that players are not informed of their right of withdrawal when purchasing the “Blings” required to take advantage of the various features of the game, and that only the first credit card payment made on Google Payment and Amazon requires a password.

## **(II) POTENTIAL FINE**

The investigation should end at some point in early 2015.

The Authority may impose a fine of between EUR 5,000 and EUR 5,000,000 for each breach of the Italian Consumer Code.

Relevant factors for the setting of the fines are the gravity and the duration of the infringement, the efforts made to terminate the violation and/or mitigate its effects, the identity and the financial situation of the infringer.

The submission of effective commitments may result in a fine reduction or even the non-imposition of a fine.

## **(III) REMARKS**

This investigation follows an increased focus on app-based games and in-app purchases at international level.

Last February the European Commission hosted a meeting with national enforcement authorities (including the Italian one) and leading tech companies in order to discuss concerns similar to those raised by the Authority in the present investigation.

The main issues were found to be the following:

- Games advertised as “free” should not mislead consumers about the true costs involved;
- Games should not contain direct exhortations to children to buy items in a game or to persuade an adult to buy items for them;

- Consumers should be adequately informed about the payment arrangements and purchases should not be debited through default settings without consumers' explicit consent;
- Traders should provide an email address so that consumers can contact them in case of queries or complaints.

The European Commission observed that the principles on online games and in-app purchases which the UK Office of Fair Trading (now the Competition and Markets Authority) published on 30 January 2014 are consistent with the best practices at EU level.

It is also worth noting that, last January, Apple settled a complaint by the U.S. Federal Trade Commission concerning kids' in-app purchases made without parental consent, and agreed to refund charges incurred by children and to change its billing practices to ensure that it has obtained express, informed consent from consumers before charging them for items sold in mobile apps.