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The Future of Global Franchising: Innovations, Technologies, and New Markets

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NEWS FROM AROUND THE WORLD: ITALY

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HOT TOPICS IN FRANCHISING IN ITALY

1. Introduction

This contribution provides an overview of the most recent case law affecting franchising in Italy.

First, it examines the notion of abuse of economic dependence, with regard to the requirement - recently confirmed by the Italian Supreme Court - that such dependence must pre-exist the contract.

It then analyses four parallel decisions of the Court of Appeal of Turin, which in considering whether the joint liability mechanisms traditionally associated with outsourcing chains may be extended to franchising, examine the substantive features of franchising relationships, albeit with not entirely convincing outcomes.

The contribution also considers developments in trademark law and public policy, briefly discussing a case decided by the Oficina Española de Patentes y Marcas ("OEPM"), which is of particular interest as the action was brought by the Italian Republic.

Finally, it addresses recent trends at Italian and European level in competition law, regarding resale price maintenance practices and on-line sale restrictions, which also have a direct impact on franchising systems.

2. Italian Recent Case Law in Franchising

2.1 No Abuse without Prior Dependence: the Italian Corte di Cassazione ("Supreme Court") on Economic Dependence in Franchise Relationships

Legal framework

The notion of economic dependence plays a particularly significant role in franchise relationships, where structural asymmetries between franchisor and franchisee are not only frequent but, to some extent, inherent in the model itself, and where such relationships are typically characterized by a high degree of control exercised by the franchisor over the network.

In the Italian legal system, the concept was introduced by Article 9 of Law No. 192 of 18 June 1998 on subcontracting, prohibiting the abuse of situations of economic dependence. The provision defines economic dependence as a situation in which one undertaking is able to determine "*an excessive imbalance of rights and obligations in its business dealings with another undertaking*". It then clarifies that such dependence must be assessed taking into account the real possibility for the allegedly dependent party to find viable alternatives on the market. It further specified that the abuse may take various forms, including "*refusal to sell or to purchase, the imposition of unjustifiably burdensome or* *discriminatory contractual conditions, or the arbitrary termination of ongoing business relationships*".

Originally conceived for subcontracting relationships, it is well established in case law that the provision also applies to franchise agreements. However, this extension has continued to generate ongoing debate, particularly due to the need to balance the peculiarity of the franchise model with the protection of economically weaker parties.

The Supreme Court decision

The case under review[1] concerned a franchise agreement for a coffee shop, which included a clause whereby the exercise of the right of withdrawal was made conditional upon compliance with a minimum purchase obligation (of coffee) and upon the termination of the lease agreement relating to the premises in which the business activity was carried out.

The Court of Appeal of Venice, upholding the decision of the first-instance court, declared the clause null and void, on the ground that it constituted a violation of the prohibition of abuse of economic dependence. Against the judgement, the franchisor appealed before the Supreme Court.

The Supreme Court first recalled the principles laid down in its previous case law[2], according to which the abuse of economic dependence under Article 9 of Law No. 192 of 1998 must be assessed by investigating:

(i) as regards the existence of a situation of "economic dependence", whether the imbalance of rights and obligations between the parties is "excessive," in that the party suffering it lacks real economic alternatives on the market;

(ii) as regards the "abuse", whether the conduct is arbitrary and contrary to good faith, or whether it consists of intentionally imposing unfair or oppressive conditions for purposes that go beyond a legitimate commercial interest of the dominant undertaking.

Against this background, the Supreme Court held that the Court of Appeal failed to verify the existence of what constitutes the primary prerequisite for the application of Article 9, namely the existence of a "dominant position" of one of the contracting parties. Such a position must be understood as the pre-existing ability of one party to determine, in its commercial relations with another undertaking, a significant imbalance of rights and obligations.

On this point, the Court of Appeal merely reiterated the findings of the lower court referred to the "dominance" of one undertaking in a commercial relationship, without providing any further explanation. By contrast, in light of the principle set out by the Supreme Court the existence of a dominant position must be assessed independently of the mere content of the contractual provisions.

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[1] Court of Cassation, Ord. 4 June 2025, n. 15023.

[2] See in particular Court of Cassation, 21 January 2020, n. 1184 and Court of Cassation, 22 July 2024, n. 20270.

The judgment was accordingly set aside and the case remitted to the Court of Appeal with instruction to explain why, on the basis of the evidence on record *"... at the time the contract was concluded, the present appellant held a dominant position such as to determine, in light of the objective content of the contract, an excessive imbalance in the parties' rights and obligations, the respondent having found itself without real economic alternatives on the market and thus in a position of having to endure that imbalance"*.

Conclusion

The decision confirms a strict, context-sensitive approach to the notion of economic dependence, limiting its application to situations of genuine coercion or abuse, to be assessed on a case-by-case analysis and in which a key factor is represented by whether real alternatives on the market exist or not for the allegedly dependent party.

2.2 Functional Integration Vs. Independence. The Court of Appeal of Turin on Joint Liability

Four recent judgments of the Court of Appeal of Turin have affirmed the applicability of the principle of joint and several liability, as provided for in relation to works/services contracts, also to franchise agreements, thereby extending to the franchisor the liability imposed on the principal under Article 29(2) of Legislative Decree No. 276/2003, reforming employment and labor market in Italy.

Legal framework

Article 29(2) of Legislative Decree No. 276/2003 establishes that, in the case of works/services contracts, the principal is jointly and severally liable with the contractor (as well as with any of the other subcontractors) for the payment of the contractor employees' wages and social security contributions in relation to the period of performance of the contract.

With regard to the scope of application of this provision—aimed at strengthening the protection of workers—and to the question of whether it may be extended beyond the strict boundaries of works/services contracts, the Italian Constitutional Court intervened with Judgment No. 254 of 2017[3], principles which were relied upon by the Turin Court of Appeal. In particular, the Constitutional Court held that the scope of joint and several liability must be interpreted in light of its protective purpose - namely, to prevent mechanisms of decentralization and dissociation between the formal employer and the beneficiary of the work performance adversely affecting workers, thus extending the protection granted by Article 29 to all workers involved in an outsourcing chain.

[3] Italian Constitutional Court, Judgment No. 254/2017.

The decisions of the Court of Appeal

The factual background is substantially identical across all four decisions. In the context of a franchise network - whose activities consisted of transport, express delivery, and logistics services - some employees of a company acting as a contractor of a franchisee obtained separate payment orders (*decreti ingiuntivi*) for unpaid wages against their formal employer (the contractor), the franchisee (the principal), and the franchisor. Their claims were grounded on joint and several liability pursuant to Article 29(2) of Legislative Decree No. 276/2003.

The franchisor opposed the payment orders before the Tribunal, which affirmed the applicability, to the franchisor, of the joint and several liability regimes. In particular, the Tribunal, following a review of the contractual clauses, identified, in the agreement, the economic purpose of a services contract, although combined with that of franchise.

The franchisor appealed, arguing that the franchise agreement does not include any element of a services contract and that, therefore, the regime of joint and several liability was inapplicable.

The Court of Appeal of Turin confirmed the extension of joint liability to the franchisor notwithstanding its express acknowledgments, first, that franchise is inherently distinct from a works or services contract and, second, that the contractual clauses are typical of a "pure" franchise agreement rather than a "mixed" contract.

The Court of Appeal's reasoning is based on the assumption that franchise relationships are characterized by a structural lack of autonomy on the part of the franchisee, reflecting a significant degree of dependence and, on that basis, it concluded that there exists a situation of productive decentralization and of separation between the formal employer and the beneficiary of the work performed. The Court explicitly grounded its reasoning in the functional rationale underpinning Article 29(2), as clarified by the Constitutional Court in the case referred in the previous paragraph.

The reasoning of the Court of Appeal appears both questionable and analytically incomplete.

First, it must be noted that the Constitutional Court justified the extension of liability in order to protect workers located at the lower end of the outsourcing chain, while the decisions under review extended liability in the opposite direction (i.e. to the upstream party).

Second, in asserting the lack of autonomy of the franchisee, the Court of Appeal failed to consider (or only superficially considered) whether such limitation is consistent with the franchising scheme or whether, in the specific case, the limitation goes beyond its proper boundaries, relegating the franchisee to a mere executor of the franchisor's directives. Such an approach risks establishing a general presumption that franchise relationships, as such, entail a compression of the franchisee's autonomy, able to determine a situation of effective economic dependence. This conclusion, however, conflicts both with the statutory definition of franchise—which presupposes the legal and financial independence of the parties to a franchise agreement[4]—and with established case law, which requires

[4] As provided by Art. 1 of Law 129/2004, according to which: "*A franchise agreement, whatever its form or description, is an agreement between two legally and financially independent parties, whereby one party*

a concrete assessment as to the existence of an actual situation of dependence.

Third, the Court, on one hand, acknowledged that franchising is structurally distinct from works/services arrangements and that the clauses of the contract in force between the parties are typical of franchise agreement; while, on the other hand, it relied precisely on such clauses to infer consequences characteristic of a model of decentralization akin to subcontracting.

Conclusion

In this context, the extension of joint and several liability to the franchisor represents a significant and arguably expansion of the scope of Article 29(2), raising concerns as to legal certainty and the proper delimitation of liability in complex contractual networks.

3. Recent Developments in Trademark Law and Public Policy

3.1 Sitting at the Wrong Table. "La Mafia" Trademark Before the Spanish Patent and Trademark Office (OEPM)

The Spanish Patent and Trademark Office (OEPM) —at the request of the Italian Republic— ordered the cancellation of the trademark "*La Mafia se sienta a la mesa*" ("*The Mafia sits at the table*")[5], used by a well-known Spanish restaurant chain.

The reasoning adopted by the OEPM, consistent with the decision rendered in 2018 by the General Court of the European Union (GCEU)[6], which had already declared the trademark invalid at EU level, is that such a designation is contrary both to public policy and to accepted principles of morality on the ground that: "…*La denominación principal reproduce de manera directa el nombre de una organización criminal real, cuya actividad no constituye un fenómeno remoto o meramente literario, sino una realidad persistente*"[7].

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grants the other party, in exchange for consideration, the right to use a set of industrial or intellectual property rights, related to trademarks, trade names, shop signs, utility models, industrial designs, copyright, know how, patents, technical and commercial support and assistance, in the view of having the Franchisee joining a system characterized by a group of franchisees operating in the territory for the purpose of distributing specific goods and services".

[5] Spanish Patent and Trademark Office (OEPM), Decision of 26 February 2026, declaring the registration annulled, Procedure No NUL/0025/2025.

[6] General Court (Ninth Chamber), judgment of 15 March 2018, Case T-1/17, La Mafia Franchises SL v EUIPO.

[7] Translation: The main denomination directly reproduces the name of a real criminal organization, whose activity is not a remote or merely literary phenomenon, but a continuing reality.

4. Recent Developments in Italian and EU Competition Law

4.1 The Italian Antitrust Authority on Retail Price Maintenance (RPM) and on the Prohibition to Sell Through Third Parties' Internet Platforms. The Morellato Case.

In March 2026 the Italian Competition Authority ("AGCM") fined Morellato, an Italian manufacturer active in the production, marketing, and sale of mid-range, accessible (non-luxury) jewelry and watches for engaging in an anti-competitive agreement[8].

Legal framework

Article 101(1) of the Treaty on the Functioning of the European Union ("TFEU") prohibits "all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market".

However, the same Article 101 introduces an exception mechanism, allowing certain restrictive agreements or practices to be exempted, where they contribute "*to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit*".

In the context of vertical agreements, the exemption regime is implemented by the Commission Regulation (EU) No. 720 of 10 May 2022 (the "Regulation")[9] and by the accompanying Commission Guidelines (the "Guidelines")[10], which specify the conditions under which certain categories of vertical agreements may benefit from a block exemption and identify certain "hardcore restrictions" that result in the automatic loss of the benefit of the exemption.

Among such restrictions, Article 4(a) of the Regulation includes: "*the restriction of the buyer's ability to determine its sale price, without prejudice to the possibility for the supplier to impose a maximum sale price or to recommend a sale price, provided that these do not amount to a fixed or minimum sale price as a result of pressure exerted or incentives offered by any of the parties*". Such a restriction may be implemented either directly or "through indirect means". The Guidelines clarify that indirect means include, inter alia:

- "*fixing the maximum level of discounts that the distributor may grant from a prescribed*

[8] AGCM, Case I/876 – Morellato

[9] Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (OJ L 134, 11.5.2022.

[10] Communication from the Commission on Guidelines on vertical restraints 2022/C 248/01.

price level";

- "*the imposition of minimum advertised prices that prohibit the distributor from advertising prices below a level set by the supplier*"; and
- "*threats, intimidation, warnings, penalties, delays or suspensions of deliveries, or contract terminations in relation to compliance with a given price level*"[11].

Similarly, Article 4(e) of the Regulation qualified as a hardcore restriction: "*the prevention of the effective use of the internet by the buyer or its customers to sell the contract goods or services, as it restricts the territory into which or the customers to whom the contract goods or services may be sold […], without prejudice to the possibility of imposing on the buyer: (i)other restrictions of online sales; or (ii) restrictions of online advertising that do not have the object of preventing the use of an entire online advertising channel*".

More specifically, while suppliers may legitimately impose certain requirements relating to the manner in which the contract's goods or services are to be sold online, including "*restrictions relating to the use of particular online sales channels, such as online marketplaces*", such restrictions shall not, in practice, have the effect of "*preventing the effective use of the internet by the buyer to sell the contract goods or services to particular territories or customers*"[12].

Moreover, as further clarified by the Court of Justice in the well-known Coty Germany case[13], any restrictions on the use of the internet must comply with the principles of non-discrimination, appropriateness and proportionality, to be assessed in light of the objective of preserving the image of the products.

The AGCM decision

Following its investigation and based on the review of the distribution contracts, extensive correspondence, and internal documents obtained during dawn raids, the AGCM identified several anticompetitive practices. In particular, the Authority found that:

- Morellato influenced resale prices by controlling the maximum discounts authorized that the distributors could offer, by issuing so-called "internet policy" recommendations;
- Morellato's distribution agreements contained a clause prohibiting the use of third-party marketplaces (such as Amazon, eBay, etc.) by its distributors, despite itself using platforms such as Amazon, Yoox and Zalando to sell its products, where it generates a significant proportion of its online sales;
- In addition to the above, Morellato also implemented a continuously monitoring

[11] Guidelines, para. 187.

[12] Guidelines, para. 208.

[13] Case C-230/16, Coty Germany GmbH v Parfümerie Akzente GmbH, EU:C:2017:941.

mechanism of the activity of its distributors both on marketplaces and on their own websites, thought a software specifically designed, ("Competitoor") and applied a series of retaliatory measures against distributors that do not comply with its instructions, including warnings, requests to withdraw discounts, automatic blocking of orders and threats of termination of the contractual relationship.

The AGCM, after recalling that resale price maintenance constitutes a hardcore restriction of competition and that, with regard to restrictions on the use of online marketplaces, the relevant Guidelines indicate that, where such restrictions are applied in a discriminatory manner, they are unlikely to meet the conditions for exemption[14], concluded that Morellato's conduct infringed Article 101(1) TFEU. Consequently, it imposed a fine on Morellato for engaging in an anti-competitive agreement**.**

4.2 The European Commission on Resale Price Maintenance. The Gucci, Chloé and Loewe Cases

In October 2025 the European Commission fined three fashion companies (Gucci, Chloé and Loewe) for engaging in RPM practices in breach of EU competition rules[15].

Legal framework

The Gucci, Chloé and Loewe cases also concerned practices amounting to RPM and were assessed within the framework of Article 101(1) TFEU, as well as under the exemption regime provided by Article 101(3), as implemented by the Regulation and the accompanying Guidelines.

The Court of Justice of the European Union (ECJ) has consistently held that RPM constitutes a restriction of competition "by object" within the meaning of Article 101(1) TFEU, a position reaffirmed most recently in the Super Bock case**.**[16] Also the European Commission has systematically classified RPM practices as restrictions by object in its decisional practice, due to their capacity harm to competition.

In this regard, the Guidelines identify several forms of harm associated with RPM. In particular, they emphasize that "*the direct effect of RPM is the elimination of intra-brand price competition, by preventing some or all distributors from lowering their sale price for the brand concerned, thus*

[14] See Guidelines, para. 338, according to which: "… *in cases where a supplier appoints the operator of an online marketplace as a member of its selective distribution system, or where it restricts the use of online marketplaces by some authorized distributors but not others, or where it restricts the use of an online marketplace, but uses that online marketplace itself to sell the contract goods or services, restrictions on the use of those online marketplaces are unlikely to fulfil the conditions of appropriateness and proportionality*".

[15] European Commission Decisions AT.40840, AT.40880 and AT.40888.

[16] Judgment of 29 June 2023, Super Bock, Case C-211/22, EU:C:2023:529, paragraphs 35-41.

resulting in a price increase for that brand" as well as "*in some cases, RPM may also soften competition between manufacturers and/or between retailers, in particular when manufacturers use the same distributors to distribute their products and RPM is applied by all or many of them*"[17]. This classification significantly eases the Commission's enforcement burden, as it obviates the need to demonstrate concrete anticompetitive effects on the market.

The Commission decision

The conducts at issue are common to all three decisions.

The Commission's investigation revealed that Gucci, Chloé and Loewe interfered with their retailers' commercial strategies by limiting their ability to freely determine the resale prices for products designed and sold by them under their respective brand names.

In particular, the evidence shows that the three fashion companies restricted their independent distributors' pricing autonomy by:

(i) imposing recommended retail prices;

(ii) setting maximum discounts rates during the sale periods; and

(iii) determining specific periods on which retailers can go on sale.

In certain cases, they also prohibited retailers from offering any discounts, for example during specific promotional events.

In addition, Gucci also imposed online sales restrictions concerning certain specific products, instructing retailers to refrain from selling those items via online channels.

To ensure compliance with their pricing policies, the three fashion companies monitored the retailers' prices and intervened in case of deviation. The retailers in general adhered to the suppliers' pricing policies, either from the start or after being requested to do so.

On the above context, the Commission held that the practices at issue prevented the regular functioning of the market, by depriving the independent retailers of their pricing independence, and restricting competition both (i) among distributors and (ii) among distributors and the supplier's direct sales channels. Accordingly, such conducts were found to constitute one or more agreements and/or concerted practices within the meaning of Article 101(1) of the TFEU.

4.3 Conclusion

The above decisions confirm the strict approach adopted by EU and national competition authorities towards resale price maintenance and online sales restrictions, as these practices are regarded, by their nature, as harmful to the proper functioning of normal competition.

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[17] Guidelines, para 196.

BIOGRAPHY

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Alessandra Sonnati is a partner at FVA LAW (formerly Frignani Virano e Associati), a boutique law firm.

Her practice focuses on advising clients on franchising and alternative expansion strategies, as well as assisting national and international brands in the establishment and management of distribution networks in Italy and abroad. She has extensive experience in drafting and negotiating franchise and master franchise agreements, and in assisting franchisors in disputes before Courts and Arbitral Tribunals.

Alessandra also advises clients on intellectual property matters (including trademarks, know-how, and concept store protection) and on competition law issues, with particular reference to the application of the Vertical Block Exemption Regulation (VBER) and unfair commercial practices.

She serves as legal advisor to the Associazione Italiana del Franchising (AIF), the leading Italian franchise association, and is a member of the Legal Committee of the European Franchise Federation (EFF). She has also been part of the EFF working group contributing to the public consultation on the new VBER and related guidelines, which entered into force in 2022.

Alessandra is exclusive contributor to The Legal 500: Franchise & Licensing Country Comparative Guide and is recognized by the Legoloxy Index (formerly Who's Who Legal) as a leading practitioner in franchising, in the following categories: Client Choice; Thought Leaders; Franchising and Italy.