

Giurisprudenza

Dettagli del caso

ID nazionale: Case PS10000 - Decision No. 25701

Stato membro: Italia

Nome comune:Eni- Attivazione non richiesta

Tipo di decisione: Altro

Data della decisione: 04/11/2015

Organo giurisdizionale: Autorità Garante della Concorrenza e del Mercato (Rome)

Oggetto:

Attore: Adiconsum sede di Trapani, Codacons sedi di Crotone e Pescara, Movimento Difesa del Cittadino, Federconsumatori, Movimento Consumatori, Ms Tiziana Alunno Camelia

Convenuto: Eni S.p.A.

Parole chiave: aggressive commercial practices, distance contracting, information requirements, informed decision, misleading omissions, off-premises contract, right of withdrawal, undue influence, unsolicited goods

Articoli della direttiva

Consumer Rights Directive, [Chapter 3, Article 8, 6](#). Consumer Rights Directive, [Chapter 3, Article 8, 7](#). Consumer Rights Directive, [Chapter 3, Article 9](#)

Nota introduttiva

The conclusion of supply contracts without the explicit consumer's consent, the automatic activation of non-requested supplies, the lack of information provided in offering and concluding such contractual offer, as well as the opposition of obstacles to the exercise of the withdrawal right constitute an aggressive and unfair commercial practice since it is an infringement of Articles 8, Paragraphs 6-7 and 9 of Directive 2011/83/EU on consumer rights, as well as of the provisions which set out the prohibition to carry out unfair commercial practices since such conduct had to be considered as deceptive, aggressive and characterized by misleading omissions and undue influence put in place by the defendant.

Fatti

Following many complaints reported by individual consumers, consumers associations and small companies, an investigative proceeding was opened against the defendant in relation to different trader's conduct consisting in (i) the conclusion of contracts and the activation of electricity and natural gas supply without the explicit consumer's consent; (ii) the provision by the agents and call center operators of misleading or omissive information regarding trader's identity, nature of the obligations; characteristics and price of the contractual offer in such a way as to limit the consumer's ability to make an informed decision; (iii) the opposition of obstacles to such customers challenging the valid existence of the contract and to the exercise of the right of withdrawal and; (iv) the failure to comply with specific requirements provided for distance contracts and off-premises contracts.

Such activities were carried out by the defendant both through the mechanism of door-to-door sales carried out by instructed agents and through telephone contacts (teleselling outbound), without giving any consideration to the need to provide consumers with full and clear set of information about the contractual offer. In addition, some consumers claimed that, despite they never had contacts with such agents and they never visited any ENI store and/or agency in order to sign a contract for the activation of any electricity and natural gas services, they found out that such services had been activated by the defendant.

Questione giuridica

Does the conclusion of supply contracts without the explicit consumer's consent, the automatic activation of non-requested supplies, the lack of information provided in offering and concluding such contractual offer, as well as the opposition of obstacles to the exercise of the withdrawal right constitute an aggressive and unfair commercial practice and, therefore, such type of conduct has to be terminated and sanctioned?

Decisione

The ICA, taking into account that the defendant's conduct was carried out in the field of the conclusion of electricity and natural gas supply contracts in the free market, held that the consumers have to be considered as operating in a condition of "limited rationality" in such context, this because of the situation of information asymmetry and inherent complexity of commercial offers, from which the defendant has took advantage.

Indeed the modality and the procedure adopted by the defendant to contact the consumers were capable to take advantage from this condition of vulnerability by means of several factors like: the element of surprise which makes the consumer unprepared to "face" the trader; the difficulty to immediately understand the content of the contractual offer; the impossibility to compare such proposal with a similar one and the psychological pressure to conclude the contract.

It emerged that the defendant did not adopt an adequate procedure to verify the consumer's will to undersign the contract and, moreover, it resulted that the agents and call center operators put in place a series of inducement mechanisms in order to gain the consumer's favor and to convince him/her about the convenience of such offer. Such consent has to be considered as viciuous and this reflects the unsolicited nature of the electricity and natural gas supply contracts.

The ICA held it is necessary that the trader provides the consumer with a proper and full set of information, complying with the provisions which set out the information requirements in order to make consumers aware of the contractual obligations and offering an adequate system to register the confirmation by the counterparty

Furthermore the Court, in relation to the defendant's request for payment in connection with unsolicited supplies, stated that benefitting of such services did not authorize the trader to expect the consumers to pay the related costs.

URL: <http://www.agcm.it/consumatore--delibere/consumatore-provvedimenti/open/C12560D000291394/6EC745A92A33F258C1257F160040D63C.html>

Testo integrale: [Testo integrale](#)

Casi correlati

Nessun risultato disponibile

Dottrina

Nessun risultato disponibile

Risultato

On the basis of the gravity and duration of the practice, the ICA held that the defendant's conduct consisting in:

a) having activated unsolicited electricity supply contracts and in having provided a set of misleading and omissive information constitute an infringement of the provisions which set out the prohibition to carry out unfair commercial practices in connection with the deceptive and aggressive nature of the conduct itself;

b) having activated unsolicited natural gas supply contracts and in having provided a set of misleading and omissive information constitute an infringement of the provisions which set out the prohibition to carry out unfair commercial practices in connection with the deceptive and aggressive nature of the conduct itself;

c) having not acquired the explicit and informed consumer's consent to record his/her will on a durable medium, having not provided the consumers with the telephone call recording allowing them to store it, having not acquired the subscription of the contract or the consumer's consent before to consider him/her as bound by the obligations and in having not properly informed the consumer about the day from which he/she can exercise the right of withdrawal constitute an infringement of Articles 8, Paragraphs 6-7 and 9 of of Directive 2011/83/EU.

The ICA ordered the defendant to cease the above mentioned commercial practices and sanctioned ENI S.p.A. (i) with a fine of € 1,300,000.00, for the commercial practice under a); (ii) with a fine of € 700,000.00, for the commercial practice under b) and (iii) with a fine of € 100,000.00 for the commercial practice under c). The overall amount of the fine was equal to € 2,100,000.00.