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THE AUTORITÀ GARANTE DELLA CONCORRENZA E DEL
MERCATO

IN ITS MEETING of 06th June 2012;

HAVING HEARD special Referee Professor Piero Barucci;

HAVING REGARD TO Part II, Title III, of Legislative Decree no. 206 of
06th September 2005 on the “*Consumer Code*,” as modified (hereafter
referred to as the Consumer Code);

HAVING REGARD TO, in particular, art. 27, sub-paragraph 12, of the
Consumer Code, which provides for the Authority to apply pecuniary
administrative sanctions ranging from 10,000 to 150,000 euro for cases of
non-compliance with urgent or prohibitory measures or removal of the
effects, and for the Authority to respond to repeated instances of non-
compliance by ordering the suspension of business activities for a period not
to exceed thirty days;

HAVING REGARD TO Law no. 689 of 24th November 1981;

HAVING REGARD TO its own resolution no. 23155 of 21st December
2011, as modified by resolution no. 23193 of 11th January 2012, with which
the Authority has ascertained the incorrectness of the two commercial
practices in which engaged Apple Sales International, Apple Italia S.r.l. and
Apple Retail Italia S.r.l., with the first practice consisting of the information
provided and of the conduct adopted relating to the service of the legal
guarantee of conformity, and the second practice concerning the presentation
and the commercial offer of additional services, called *AppleCare Protection
Plan* (hereafter also APP), which are sold either directly by Apple Sales
International or through Apple Retail Italia and all authorized dealers;

HAVING REGARD TO the documents of the proceeding;

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HAVING CONSIDERED the following:

I. PROHIBITION ON UNFAIR COMMERCIAL PRACTICES

1. With measure no. 23155 of 21st December 2011¹, have been assessed as unfair the practices in which engaged Apple Sales International (hereafter also ASI), Apple Italia S.r.l. (hereafter also AI) and Apple Retail Italia S.r.l. (hereafter also ARI) of the Apple group (hereafter also Apple, collectively) in relation to the information provided and to the application of the “*Legal guarantee of conformity and warranties for consumer goods*” as per arts. 123 - 135 of the Consumer Code.

2. In specific, the Authority resolved that:

a) the information provided and the conduct of these companies in relation to the performance of the legal guarantee of conformity configured an unfair practice because they were contrary to professional diligence and likely to mislead consumers with respect to the nature, content and effective performance of the legal guarantee of conformity, thereby constituting a violation of arts. 20, 21, 22 and 23, sub-paragraph 1, letter *l*), and they were also aggressive due to the imposition of non-contractual, onerous and disproportionate obstacles that hinder the exercise of consumer entitlements, thereby constituting a violation of arts. 24 and 25, letter *d*) of the Consumer Code. In specific, the companies were not adequately informing consumers, neither at the time of purchase nor when assistance was requested, of their legal entitlement to two years of free assistance nor did they recognize these rights, limiting their recognition instead to Apple's one-year manufacturer's warranty;

b) the presentation and the commercial offer of the additional services called *AppleCare Protection Plan* (hereafter also APP) configured an unfair practice because they were contrary to professional diligence and likely to mislead consumers concerning the nature, content and actual economic advantage of such services in violation of art. 20, 21, 22 and 23, sub-paragraph 1, letter *l*) of the Consumer Code. In specific, the information provided by the companies in regard to the nature, content and duration of the *AppleCare Protection Plan* services offered to the consumers at the time of purchase of a consumer good did not adequately clarify the consumer's entitlement to the two-year seller's guarantee of conformity, thereby inducing

¹ As modified by the subsequent measure no. 23193 of 11th January 2012.

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them to enter into a new, payment-based contractual relationship, the content of which partially overlapped with their existing rights under the legal guarantee free of any costs or restrictions.

3. In light of the above, the Authority ordered the cessation of the two commercial practices and granted the parties sixty days to communicate the initiatives being undertaken in order to cease them, imposed sanctions on Apple Sales International, Apple Italia S.r.l. and Apple Retail Italia S.r.l., provided for the publication of an excerpt from the resolution and granted ASI ninety days from the date of notification to apply the necessary modifications to the sales packaging for the *AppleCare Protection Plan* services.

4. The professionals in question were informed of the cited measures no. 23155 of 21st December 2011 and no. 23193 of 11th January 2012, respectively, on the dates of 28th December 2012 and 26th January 2012.

5. The professionals presented separate appeals to the TAR requesting a suspension of the measure. The TAR order of 22nd March 2012 suspended the part of the Authority's ruling that called for modifications to be made in the sales packaging.

6. Three TAR rulings of 16th May 2012 upheld the Authority's measures, including the order to modify the sales packaging for the *AppleCare Protection Plan* services and partially modifying the wording to be there incorporated².

II. APPLE COMMUNICATIONS REGARDING COMPLIANCE

7. After the cited TAR order of 22nd March 2012, on 26th March 2012 a note was received from Apple announcing the adoption of a set of measures designed to comply with the measure, with the exception, due to their suspension, of the parts related to the modification of the APP services packaging. The notes that were then received on April 02nd and 06th reported

² In specific, the order upholding the need to modify the APP packaging by incorporating the wording “nei primi 24 mesi dalla data di acquisto del prodotto il consumatore ha comunque il diritto alla garanzia del venditore che prevede tra l'altro la riparazione gratuita o la sostituzione del prodotto non conforme al contratto (Art. 130 del Codice del Consumo)” [“during the first 24 months after purchasing the product, consumers are entitled to the retailer's warranty, which provides, among other things, for the free repair or replacement of any product that fails to conform with the contract (Art. 130 of the Consumer Code),”] while it eliminated the part referring to the inclusion “delle indicazioni numeriche circa la durata del periodo di assistenza acquistato con riferimento alla scadenza della garanzia legale di conformità” [“of numerical indications of the duration of the purchased period of assistance with reference to the expiry of the legal guarantee of conformity”].

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on these measures and explained that they add to the voluntary implementation of the latest version of the commitments presented during the course of the proceedings (cfr. cited measure, sub-paragraph 108 and ss.).

II.1. Measures pertaining to the cessation of the first practice

8. Regarding the first practice, the companies used the same approach to modify a variety of communications directed at consumers - the addition of some lines of text containing a link to a document named “*additional_warranty_italy*” and located at the address “http://images.apple.com/it/legal/warranty/additional_warranty_italy.pdf”.

9. In specific:

i) in article 10 of the Apple Online Store's conditions of sale, named “*Garanzia Convenzionale Limitata di un (1) anno e Diritti per i Consumatori*” [*Limited one (1) year Warranty and Consumer Rights*]³,

³ The page “Termini e condizioni di vendita” [“Terms and conditions of sale”] is found at the “<http://store.apple.com/it/open/salespolicies>” address, and the text was modified as follows:

“10. Garanzia Convenzionale Limitata di un (1) anno e Diritti per i Consumatori

10.1 Per tutti i Prodotti Hardware Nuovi di Apple, noi forniamo una garanzia convenzionale da difetti relativi ai materiali impiegati ed alla costruzione per il periodo di un anno dalla data di acquisto. I termini e le condizioni di garanzia, i quali devono intendersi richiamati come parte integrante di questo Contratto, sono disponibili per la Vostra consultazione facendo clic sull’apposito link ipertestuale di seguito indicato. Tali termini e condizioni di garanzia sono anche contenuti nella confezione dell’Hardware Apple acquistato. E’ possibile prendere visione della garanzia convenzionale limitata dei prodotti Hardware Apple, comprese eventuali limitazioni ed esclusioni, prima di procedere all’acquisto, facendo clic sull’apposito collegamento di seguito indicato. Tale garanzia convenzionale limitata copre soltanto i prodotti Hardware Apple (come di seguito definiti); non copre il Software, i Servizi o altri Prodotti. Per le informazioni in merito alle garanzie applicabili al Software e’ necessario fare riferimento alle relative licenze Software.

Prima di inviare il Vostro prodotto Hardware Apple in garanzia presso il servizio di assistenza, dovrete aver cura di effettuare copia di *backup* del *software* di sistema, delle applicazioni *software* nonché di tutti i dati contenuti nell’hardware, e di procedere alla disabilitazione di qualsiasi *password*. Sarete responsabili della reinstallazione di tali *software*, dati e *password*. Non saremo in alcun modo responsabili per qualsivoglia perdita di dati causata dal servizio di assistenza. Qualora intendiate contattarci in relazione alla garanzia, potrete farlo dalle 09:00 alle 19:45 di qualsiasi Giorno Lavorativo, indicando il numero di serie del Vostro Hardware Apple. Il numero di telefono del servizio di garanzia è fornito unitamente al Vostro Hardware Apple. I costi della chiamata telefonica saranno a Vostro carico, secondo le Vostre tariffe nazionali.

10.2 Prodotti con marchio diverso da Apple / Prodotti di Soggetti Terzi

La Garanzia Limitata di un anno Apple non si applica a prodotti che non sono a marchio Apple, anche se confezionati o venduti insieme a prodotti Apple. I prodotti che non sono a marchio Apple potrebbero beneficiare di una garanzia convenzionale del produttore – consulta la confezione del prodotto e la documentazione di accompagnamento per dettagli. I diritti conferiti dalla garanzia convenzionale del produttore si aggiungono e non sostituiscono i tuoi diritti ai sensi della normativa a tutela dei consumatori.

10.3 I vantaggi della garanzia limitata Apple si aggiungono ai diritti previsti dalla normativa a tutela del consumatore applicabile nel tuo paese. Ai sensi degli articoli 128–135 del Decreto Legislativo n. 206 del 6 settembre 2005 (“Codice del Consumo”), i consumatori italiani hanno fino a 26 mesi per denunciare al venditore un difetto del prodotto esistente al momento della consegna dello stesso. Si presume che i difetti che si manifestano nei primi 6 mesi dalla consegna del prodotto esistessero già al momento della consegna. Un consumatore che intenda fare valere la garanzia ai sensi del Codice del Consumo nei confronti di Apple può rivolgersi ad un Centro di Assistenza Autorizzato Apple per accertare l’esistenza del difetto al momento della consegna.”

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mainly concerning the manufacturer's warranty, a few lines were added about the warranty for the products of brands other than Apple - to which the year-long Apple warranty does not apply - and the mention in closing of the *“diritti ai sensi della normativa a tutela dei consumatori”* [*rights pursuant to consumer protection laws*] with a link to the cited information document *“additional_warranty_italy”*⁴;

ii) on a different page of the Apple website, concerning the warranties presented in the Italian language⁵, the following wording was added: *“Per i consumatori che beneficiano delle norme o dei regolamenti a tutela del consumatore nella nazione di acquisto, ovvero, se differente, nella nazione di residenza, i benefici conferiti dalle garanzie Apple si considerano integrativi dei diritti e dei rimedi previsti da tali leggi e regolamenti a tutela dei*

[“10. Limited one (1) year Warranty and Consumer Rights

10.1 For all New Hardware Products made by Apple, we provide a manufacturer's warranty against any defects in materials or manufacturing for a period of one year after the time of purchase. The terms and conditions of the warranty, which is understood to form an integral part of this Contract, are available for your consultation by clicking on the dedicated hypertext link indicated below. These terms and conditions of warranty are also contained in the packaging for the Apple Hardware that was purchased. The limited warranty for Apple Hardware products, including any restrictions or exclusions, can be consulted before proceeding with your purchase by clicking on the special link indicated below. This limited warranty provides coverage for Apple Hardware products only (as defined below). It does not cover any of the Software, Services or other Products. For information on the software warranties, please refer to the related Software licenses.

Before delivering your Apple Hardware product to the assistance service under warranty, be sure to make a *backup* copy of the system *software*, *software* applications and any data stored in the hardware, and to disable any *passwords*. You will bear full responsibility for the subsequent re-installation of this *software*, data and *passwords*. We cannot be held liable for any loss of data resulting from the assistance service. To contact us regarding the warranty, we can be reached between 09:00 am and 07:45 pm on any Workday - please indicate the serial number of your Apple Hardware. The telephone number for the warranty service is included with your Apple Hardware. The cost of the telephone call will be at your expense in accordance with the rates in your country.

10.2 Products of brands other than Apple / Products of Third Parties

Apple's one-year Limited Warranty does not apply to products that are not of the Apple brand, even when packaged or sold together with Apple products. The non-Apple products may benefit from a manufacturer's warranty - see the product packaging and the accompanying documentation for details. The rights conferred by the manufacturer's warranty are additional and do not replace your rights pursuant to the laws on consumer protection.

10.3 The benefits of Apple's limited warranty are supplemental to the rights provided by the consumer protection laws that apply in your country. Pursuant to articles 128-135 of Legislative Decree no. 206 of 06th September 2005 (“Consumer Code”), Italian consumers have up to 26 months to inform the retailer of any defects in the product that existed at the time of delivery. Any defects that are discovered within the first 6 months after product delivery are presumed to have existed at the time of delivery. Consumers who intend to avail themselves of the Consumer Code guarantee with Apple may contact an Authorized Apple Assistance Center to establish the existence of the defect at the time of delivery.”]

⁴ The same article 10 also contains links to an English-language page about the warranties with access to pages with comparative tables (legal guarantee, Apple's one-year warranty and payment-based APP services) for each Country and analogous to the table described further below for Italy and contained in the cited information document *“additional_warranty_italy,”* which also links back to the Italian reference on the page in question.

⁵ The page called “Garanzie Hardware” [“Hardware Guarantee”] is found at the address *“<http://www.apple.com/it/legal/warranty>”*.

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consumatori, inclusi senza alcuna limitazione:” [“For consumers benefitting from the consumer protection laws and regulations of the country of purchase or (when different) the country of residence, the benefits conferred by Apple's warranties are considered to be supplemental to the rights and remedies provided by said consumer protection laws and regulations, including without any limitation:”] followed by the concise link “*Diritti legali per i consumatori*” [“Legal rights of consumers”] that links to the cited information document;

iii) in the homepage⁶ and on every page of the Apple Online Store, including the pages for presenting and selling its products, the link “*Garanzia legale del venditore*” [“Legal Guarantee of the seller”] which links to the cited information document, was added at the very bottom edge of the page in a small-sized font. On the sales pages that describe the products during the purchasing process, in particular, there is a section that uses high-visibility graphics and refers only to Apple's one-year manufacturer's warranty and the proposal for APP services⁷, that is only sometimes accompanied by an additional, explicit yet brief mention of the legal guarantee⁸;

iv) the general conditions of sale for Apple Stores is now premised by the warning: “*I termini contenuti nelle presenti condizioni generali non privano l'acquirente, qualora si tratti di un consumatore, dei diritti a questi attribuiti dalle norme imperative applicabili, ivi inclusi i diritti e le azioni di cui al Decreto Legislativo n. 206 del 6 settembre 2005 ("Codice del Consumo"). Ai sensi degli articoli 128-135 del Codice del Consumo i consumatori italiani hanno fino a 26 mesi per denunciare al venditore un difetto del prodotto esistente al momento della consegna dello stesso. Si presume che i difetti che si manifestano nei primi 6 mesi dalla consegna del prodotto esistessero già al momento della consegna. Un consumatore che intenda fare valere la garanzia ai sensi del Codice del Consumo può rivolgersi ad un Apple Store*

⁶ The page is found at the address “<http://store.apple.com/it>”.

⁷ On the page presenting the iPad product “http://store.apple.com/it/buy/home/shop_ipad/family/ipad/new_ipad,” for instance, a section entitled “Garanzia” [“Warranty”] contains two paragraphs - the first is entitled “Garanzia limitata” [“Limited warranty”] and refers only to Apple's one-year manufacturer's warranty, and the second is dedicated to the APP services. The same is true for the page “http://store.apple.com/it/browse/home/shop_mac/family/macbook_pro”, the page “http://store.apple.com/it/browse/home/shop_mac/family/imac”, the page “http://store.apple.com/it/browse/home/shop_mac/family/mac_mini”, the page “http://store.apple.com/it/browse/home/shop_mac/family/macbook_air”, and the page “http://store.apple.com/it/browse/home/shop_ipod/family/ipod_touch”.

⁸ On the page “http://store.apple.com/it/browse/home/shop_ipod/family/apple_tv,” for instance, and the page “<http://store.apple.com/it/configure/MD235IP/A?cpart=UNLOCKED%2FWW>”.

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per accertare l'esistenza del difetto al momento della consegna” [“The terms contained in these general conditions do not deprive purchasers, as long as they are consumers, of the entitlements provided by the binding regulations that apply, including the rights and actions as per Legislative Decree no. 206 of 06th September 2005 (“Consumer Code”). Pursuant to articles 128-135 of the Consumer Code, Italian consumers have up to 26 months to inform the retailer of defects in the product that existed at the time of its delivery. Any defects that are discovered within the first 6 months after product delivery are presumed to have existed at the time of delivery. Consumers who intend to avail themselves of the Consumer Code guarantee may contact an Apple Store to establish the existence of the defect at the time of delivery”], followed by a link to the cited information document “additional_warranty_italy”; the “Prodotti di terzi” [“Products of third parties”] section now includes “I prodotti di marca diversa da Apple non beneficiano della garanzia limitata Apple di 1 anno, fermo restando il diritto dei consumatori alla garanzia del venditore di 24 mesi ai sensi del Codice del Consumo” [“The products of brands other than Apple do not benefit from Apple's one-year limited warranty, notwithstanding the right of consumers to the 24-month seller's guarantee pursuant to the Consumer Code”];

10. The information document to which all of the aforementioned documents provide a dedicated link⁹ contains further details on the consumer rights provided by the legal guarantee, but this information is always coupled with and posed in comparison to Apple's one-year warranty and the payment-based APP services. The document includes, in order:

i) an introduction:

I vantaggi della garanzia limitata Apple si aggiungono ai diritti previsti dalla normativa a tutela del consumatore applicabile nel tuo paese. Ai sensi degli articoli 128–135 del Decreto Legislativo n. 206 del 6 settembre 2005 (“Codice del Consumo”), i consumatori italiani hanno fino a 26 mesi per denunciare al venditore un difetto del prodotto esistente al momento della consegna dello stesso. Si presume che i difetti che si manifestano nei primi 6 mesi dalla consegna del prodotto esistessero già al momento della consegna. Un consumatore che intenda fare valere la garanzia ai sensi del Codice del Consumo può rivolgersi ad un Centro di Assistenza Autorizzato Apple per accertare l'esistenza del difetto al momento della consegna.

[The benefits of Apple's limited warranty are supplemental to the rights

⁹ As anticipated above, the document in question (in PDF format) is called “additional_warranty_italy” and is available at http://images.apple.com/it/legal/warranty/additional_warranty_italy.pdf.

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provided by the consumer protection laws that apply in your country. Pursuant to articles 128-135 of Legislative Decree no. 206 of 06th September 2005 ("Consumer Code"), Italian consumers have up to 26 months to inform the retailer of any defects in the product that existed at the time of delivery. Any defects that are discovered within the first 6 months after product delivery are presumed to have existed at the time of delivery. Consumers who intend to avail themselves of the Consumer Code guarantee with Apple may contact an Authorized Apple Assistance Center to establish the existence of the defect at the time of delivery.]

ii) a comparative table (legal guarantee, Apple's one-year warranty and payment-based APP services):

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Tabella comparativa: garanzia legale del venditore, garanzia annuale limitata Apple e AppleCare Protection Plan

	Garanzia del venditore prevista dal Codice del Consumo D. lgs. n. 206 2005	Garanzia annuale limitata Apple	AppleCare Protection Plan
Riparazione o sostituzione del prodotto per	Difetti presenti al momento della consegna (1)	Difetti intervenuti dopo la consegna	Difetti intervenuti dopo la consegna
Periodo di copertura	2 anni dalla consegna (2)	1 anno dalla data di acquisto	3 anni dalla data di acquisto per Mac o Apple display 2 anni dalla data di acquisto per Apple TV, iPad, iPhone, o iPod
Costo di copertura	Fornita senza costi aggiuntivi	Inclusa senza costi aggiuntivi	Disponibile ad un costo aggiuntivo
Chi contattare per assistenza	Il venditore (3)	Il supporto tecnico telefonico Apple, un Apple Retail Store, o un centro assistenza autorizzato Apple	Il supporto tecnico telefonico Apple, un Apple Retail Store, o un centro assistenza autorizzato Apple
Opzioni di assistenza incluse	Contatta il venditore per dettagli	Assistenza carry-in o mail-in (4)	Assistenza carry-in o mail-in; sostituzione express per iPad e iPhone; o assistenza omite per i computer desktop (4)
Copertura all'estero	Contatta il venditore per dettagli	Sì (5)	Sì (5)
Supporto tecnico telefonico	No	90 giorni dalla data di acquisto	3 anni dalla data di acquisto per Mac o Apple display 2 anni dalla data di acquisto per Apple TV, iPad, iPhone, o iPod

(1) I difetti che si manifestano nei primi 6 mesi dalla consegna si presumono esistenti al momento della consegna.

(2) Nei primi 24 mesi dalla data di consegna del prodotto il consumatore ha diritto alla garanzia del venditore che prevede tra l'altro la riparazione o sostituzione gratuita del prodotto non conforme al contratto (Articolo 130 del Codice del Consumo).

(3) I consumatori possono richiedere l'applicazione della garanzia legale solo nei confronti del venditore dal quale hanno acquistato il prodotto. I consumatori che hanno acquistato il loro prodotto in un Apple Retail Store o sull'Apple Online Store possono richiedere l'applicazione della garanzia legale ad Apple. I contatti Apple sono disponibili su <http://www.apple.com/it/contact/>.

(4) La disponibilità di ciascuna opzione dipende dal paese in cui viene richiesta assistenza e dalla ubicazione del centro assistenza autorizzato Apple. Apple potrebbe anche richiedere che il cliente sostituisca componenti con parti di ricambio pronte per l'installazione.

(5) Apple potrebbe limitare l'assistenza per iPad e iPhone all'area dello Spazio Economico Europeo e della Svizzera.

[Comparison table: retailer's legal guarantee, annual Apple's Limited Warranty, AppleCare Protection Plan

	Retailer's legal guarantee pursuant the Consumer Code (D.lgs. n. 206 of 2005)	Apple One-Year Limited Warranty	AppleCare Protection Plan
Product repair or replacement	Defects present at the time of delivery (1)	Defects occurring after delivery	Defects occurring after delivery
Claim period	2 years from date of delivery (2)	1 year from date of purchase	3 years from date of purchase for Mac or Apple display

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			2 years from date of purchase for Apple TV, iPad, iPhone or iPod
Cost of coverage	Provided at no additional cost	Included at no additional cost	Available for additional cost
Who to contact for service	The seller (3)	Apple telephone technical support, Apple Retail Store or Apple-Authorised Service Provider	Apple telephone technical support, Apple Retail Store or Apple-Authorised Service Provider
Included service options	Contact the seller for details	Carry-in or mail-in service (4)	Carry-in or mail-in service; express replacement service for iPad and iPhone; onsite service for desktop computers ⁴
Overseas coverage	Contact the seller for details	Yes (5)	Yes (5)
Telephone technical support	No	90 days from date of purchase	3 years from date of purchase for Mac or Apple display 2 years from date of purchase for Apple TV, iPad, iPhone or iPod

1. Defects that are discovered within the first 6 months after product delivery are presumed to have existed at the time of delivery
2. In the first 24 months from the date of delivery of the product the consumer is entitled to the retailer's warranty, which includes among others the free repair or replacement of the product that does not conform to the contract (Article 130 of the Consumer Code).
3. Consumers may assert their legal rights only against the dealer from whom they acquired the product. Consumers who purchased the product at an Apple Store or on the Apple Online Store can claim against Apple. To know how to contact Apple, see www.apple.com/it/contact/
4. The availability of each option varies depending on the country where service is requested and location of Apple Authorized Service Provider. Apple may also request that the customer replace components with readily installable parts.
5. Apple may restrict service to iPhone and iPad to the European Economic Area and Switzerland]

iii) the text of articles 128 - 135 of the Consumer Code;

iv) an “*Explanatory note on the conditions for requesting/obtaining remedies pursuant to the legal guarantee*”:

NOTA ESPLICATIVA SULLE CONDIZIONI PER RICHIEDERE/OTTENERE I RIMEDI AI SENSI DELLA GARANZIA LEGALE

o Chi ha diritto di richiedere l'applicazione della garanzia legale ai sensi del Codice del Consumo?

Solo i consumatori, ovvero persone fisiche che hanno acquistato un prodotto per l'uso non inerente ad un'attività commerciale, imprenditoriale o professionale, possono beneficiare della garanzia legale. Pertanto fatture recanti la partita IVA di un'impresa o professionista non danno diritto alla garanzia legale.

o Come/quando è possibile richiedere l'applicazione dei rimedi della garanzia legale? Ai sensi del Codice del Consumo un consumatore può richiedere al venditore di un prodotto l'applicazione dei rimedi della garanzia legale per difetti di conformità esistenti al momento della consegna e che si manifestano entro 24 mesi dalla consegna del prodotto. Il consumatore deve denunciare il difetto entro 2 mesi dalla scoperta.

I consumatori possono richiedere l'applicazione dei rimedi della garanzia legale a condizione che abbiano una prova dell'acquisto (es. ricevuta fiscale/scontrino) del prodotto. E' perciò importante conservare sempre la ricevuta relativa all'acquisto del prodotto.

o Cos'è un difetto di conformità? Ai sensi dell'art. 129 del Codice del Consumo, un prodotto ha un difetto di conformità se non è idoneo all'uso al quale servono abitualmente prodotti dello stesso tipo, se non è conforme alla descrizione del venditore in termini di qualità o prestazioni, o se non presenta le qualità e le prestazioni abituali di un bene dello stesso tipo, che il consumatore può ragionevolmente aspettarsi tenuto conto della natura del prodotto.

o Cosa fare in pratica nel caso di difetto su un prodotto acquistato sull'Apple On -line Store?

Nel caso in cui un consumatore scopra che un prodotto comprato sull'Apple On-line Store ha un difetto di conformità, può contattare l'Apple Customer Care al seguente numero: 199 120 800. L'Apple Customer Care assisterà il consumatore a verificare che le condizioni previste dal Codice del Consumo siano soddisfatte. Se il problema non può essere risolto telefonicamente e/o se il prodotto richiede una diagnosi tecnica, il consumatore verrà indirizzato ad un Centro di Assistenza Autorizzato Apple ("AASP") o ad un Apple Store. Se viene accertato che le condizioni stabilite dal Codice del Consumo sono soddisfatte, il consumatore può richiedere ad Apple di ottenere senza spese la riparazione o la sostituzione del prodotto difettoso, salvo che il rimedio richiesto sia oggettivamente impossibile o eccessivamente oneroso rispetto all'altro, in considerazione del valore del prodotto, della natura del difetto di conformità e della possibilità di porre in essere un rimedio alternativo senza notevoli inconvenienti per il consumatore.

Qualora la riparazione o sostituzione del prodotto risulti impossibile, eccessivamente onerosa, richieda troppo tempo o possa causare notevoli inconvenienti al consumatore, quest'ultimo ha diritto ad rimborso totale o parziale del prezzo dietro restituzione del prodotto.

Nota: le indicazioni ed i rimedi che precedono si applicano solo nel caso di

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prodotti acquistati sull'Apple On-line Store o in un Apple Store da consumatori in Italia. I consumatori che abbiano acquistato prodotti Apple da Rivenditori Autorizzati Apple sul territorio italiano possono richiedere l'applicazione della garanzia legale solo al venditore diretto del prodotto in questione (se le condizioni del Codice del Consumo sono soddisfatte).

o Diagnosi, assistenza e relativi costi

Quando un prodotto acquistato sull'Apple On-line Store o in un Apple Store è affidato ad un AASP o ad un Apple Store per una diagnosi, il consumatore riceverà una ricevuta di assistenza che identificherà il consumatore/il prodotto e che potrà essere usata per contattare l'AASP o l'Apple Store e verificare lo stato dell'intervento. Nel caso in cui la diagnosi accerti che il prodotto ha un difetto di conformità (cioè che le condizioni previste dal Codice del Consumo sono soddisfatte), il consumatore sarà informato del tempo di riparazione stimato. Nel caso in cui la diagnosi accerti che le condizioni previste dal Codice del Consumo non sono soddisfatte, per esempio se il difetto di conformità è una conseguenza di un uso scorretto del prodotto, l'AASP/Apple Store contatterà il consumatore per informarlo sulla natura del problema e dei costi di riparazione stimati. Tali costi saranno interamente a carico del consumatore. In tali casi potrebbe altresì essere richiesto al consumatore il pagamento di un costo di diagnosi, che verrà gli comunicato in anticipo, quando il prodotto viene consegnato per la diagnosi.

[EXPLANATORY NOTE ON THE CONDITIONS FOR REQUESTING/OBTAINING REMEDIES PURSUANT TO THE LEGAL GUARANTEE]

o Who is entitled to request the application of the legal guarantee pursuant to the Consumer Code?

Consumers only, i.e., physical persons who purchase the product for uses other than business, entrepreneurialism or professional activities may benefit from the legal guarantee. The legal guarantee does not apply if the invoice includes the VAT identification code of a business or professional.

o How/when can the application of the legal guarantee's remedies be requested? Pursuant to the Consumer Code, consumers may ask the retailer of the product to apply the legal guarantee's remedies for defects of conformity that existed at the time of delivery and that are discovered within 24 months of the product's delivery. Consumers must report the defect within two months of its discovery.

Consumers may ask for the legal guarantee's remedies to be applied as long as they can present proof of purchase (e.g., fiscal receipt/receipt) for the

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product. It is always essential, in other words, to save the receipt for the purchased product.

o What is a defect of conformity? Pursuant to art. 129 of the Consumer Code, a product has a defect of conformity if it is unfit for the uses that products of this type typically serve, if it fails to correspond to the retailer's description in terms of quality or services, or if it fails to present the qualities and typical services of products of the same type that consumers might reasonably expect given the nature of the product.

o What can I do if a product I purchased through the Apple On-line Store has a defect?

If a consumer discovers a defect of conformity in a product that was purchased through the Apple On-line Store, he or she may contact Apple Customer Care at the following number: 199 120 800. Apple Customer Care will help the consumer verify the existence of the conditions defined in the Consumer Code. If the problem cannot be resolved by telephone and/or if the product requires a technical diagnosis, the consumer will be directed to an Authorized Apple Assistance Center ("AASP") or an Apple Store. If it is established that the conditions defined in the Consumer Code do indeed exist, the consumer may ask Apple to arrange for the repair or replacement of the product at no expense, unless circumstances exist that make the requested remedy objectively impossible or excessively onerous in relation to the value of the product, the nature of the defect of conformity and the possibility of proposing an alternative remedy without considerable inconveniences for the consumer.

Should the repair or replacement of the product be deemed impossible or excessively onerous, or deemed to require too much time or excessive inconvenience for the consumer, then the latter is entitled to a full or partial refund of the purchase price upon restitution of the product.

Note: the preceding instructions and remedies only apply to products purchased through the Apple On-line Store by consumers in Italy. Consumers who purchase Apple products from Authorized Apple Retailers on Italian territory may only request the application of the legal guarantee through from the direct retailer of the product in question (assuming the conditions of the Consumer Code have been met).

o Diagnosis, assistance and related costs

When a product purchased through the Apple On-line Store or at an Apple Store is turned over to an AASP or an Apple Store for diagnosis, the consumer shall receive an assistance receipt that identifies the

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consumer/product for use when contacting the AASP or Apple Store to check on the status of the intervention. For cases when the diagnosis establishes that the product has a defect of conformity (i.e., that the conditions prescribed by the Consumer Code have been met), the consumer shall be informed of the time estimate for executing the repairs. For cases when the diagnosis establishes that the conditions prescribed by the Consumer Code have not been met, for example, if the defect of conformity resulted from improper use of the product, the AASP/Apple Store shall contact the consumer to inform him/her of the nature of the problem and the estimated repair costs. All of these costs will be at the consumer's expense. In this case, the consumer will also be required to pay the cost for the diagnosis, as communicated in advance when the product is turned over for the diagnosis.]

11. The information document already described above constitutes, furthermore, the fulcrum of the legal guarantee's substantive explanation, which Apple claims to have brought to the attention of the personnell of the Apple Online Store and AppleCare assistance for Italy and to the retailers and authorized assistance centers by inviting them to read the new version of Apple's *internet* page on the warranties/guarantee¹⁰ with a link to the information document described above.

II.2. Measures pertaining to the cessation of the second practice

12. Regarding the second practice, which concerns the offer of additional APP assistance services, the professionals once again used links to the same information document "*additional_warranty_italy*" as the primary means for making the following modifications in the communications directed at consumers. In specific:

i) as anticipated above, during the process of purchasing a product, a description of the APP service appears at various times along with a description of Apple's one-year manufacturer's warranty, to which sometimes adds a further brief mention of the legal guarantee; during the purchase of an iPhone, for instance,¹¹ there is a pronouncement that "*Ogni iPhone è fornito con una garanzia limitata di un anno per la copertura dei*

¹⁰ The page described above is located at the address "<http://www.apple.com/it/legal/warranty>," and is named "Garanzie Hardware" ["Hardware Guarantees"].

¹¹ It links to the page "<http://store.apple.com/it/configure/MD235IP/A?cpart=UNLOCKED%2FWW>" cited above.

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costi di riparazione e fino a 90 giorni per il supporto tecnico. AppleCare Protection Plan per iPhone estende la copertura a due anni dalla data di acquisto dell'iPhone. L'AppleCare Protection Plan per iPhone ti offre: • Assistenza per la configurazione: configura il tuo iPhone sia che utilizzi un Mac o un PC • La copertura hardware Apple: iPhone, batteria e accessori inclusi • Supporto per il software: FaceTime, iOS, connessione a reti wireless e molto altro • Servizio sostituzioni express per minimizzare il periodo in cui resti senza telefono in caso di riparazioni. Acquistando AppleCare Protection Plan contemporaneamente all'iPhone, verrai automaticamente registrato nel programma di protezione” [“Every iPhone comes with a one-year limited warranty with coverage for the costs of repairs and up to 90 days of technical support. AppleCare Protection Plan for iPhone extends this coverage to two years from the date of purchase of the iPhone. The AppleCare Protection Plan for iPhone provides you with: • Assistance with the setup: configure your iPhone for a Mac or PC • Apple hardware coverage: iPhone, battery and accessories included • Software support: FaceTime, iOS, wireless network connections and much more • Express replacement service to minimize your time without a phone should repairs be necessary. By purchasing the AppleCare Protection Plan along with the iPhone, you will automatically be registered in the protection program”]; the legal guarantee is only mentioned in a note posted following the description, with the phrase “I benefici si aggiungono ai diritti dei consumatori ai sensi della garanzia legale del venditore. Clicca qui per i dettagli” [“The benefits are supplemental to consumer rights pursuant to the seller's legal guarantee. Click here for details”], which links to the usual information document “additional_warranty_italy”;

ii) in the “Supporto” [“Support”] section pages, each of which includes the description of a single payment-based APP service¹², a color graph with two horizontal bars (one for the technical assistance service and one for the telephone support service) presents a graphic comparison of the free Apple warranty assistance and the APP coverage, along with a simple note “I vantaggi della Garanzia annuale limitata di Apple e dell’AppleCare Protection Plan si aggiungono ai diritti dei consumatori ai sensi della garanzia legale del venditore. Fai clic qui per i dettagli” [“The advantages of Apple's limited one-year warranty and the AppleCare Protection Plan are

¹² In this regard, see the page <http://www.apple.com/it/support/products/mac.html> and the pages “<http://www.apple.com/it/support/products/ipod.html>”, “<http://www.apple.com/it/support/products/iphone.html>” and “<http://www.apple.com/it/support/products/ipad.html>”.

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supplemental to consumer rights pursuant to the seller's legal guarantee. Click here for details”] that links to the usual information document “additional_warranty_italy”;

Image of the page “<http://www.apple.com/it/support/products/ipod.html>”

AppleCare Protection Plan per iPod o Apple TV

Tutti gli iPod e Apple TV includono **garanzia limitata di un anno** e fino a 90 giorni di **assistenza tecnica telefonica gratuita** per un unico intervento nel caso degli iPod, e per interventi illimitati nel caso delle Apple TV. Con AppleCare Protection Plan puoi estendere la copertura fino a 2 anni dalla data d'acquisto del tuo prodotto. Avrai accesso telefonico diretto agli esperti Apple per consultarli su una varietà di argomenti, tra cui la sincronizzazione con iTunes e molto altro.



Estendi **fino a due anni la copertura delle riparazioni e l'assistenza tecnica telefonica**



I vantaggi della Garanzia annuale limitata di Apple e dell'AppleCare Protection Plan si aggiungono ai diritti dei consumatori ai sensi della garanzia legale del venditore. [Fai clic qui per i dettagli.](#)

[All iPod and Apple TV include one-year limited warranty and up to 90 days of free telephone technical support for a single incident in the case of iPods, and unlimited intervention in the case of Apple TV. With the AppleCare Protection Plan can extend your coverage to 2 years from date of purchase of your product. You'll have direct telephone access to Apple experts for consultation on a variety of topics, including synchronization with iTunes, and more.

Extend your coverage up to two years of repairs and technical support by telephone.

The advantages of the One year limited warranty from Apple and the AppleCare Protection Plan add to the rights of consumers under the retailer's legal guarantee. Click here for details.];

iii) an analogous modification was made to the graph found in the interactive files that the Apple Store use to present the payment-based APP services;

iv) also in other cases, such as the *internet* pages for purchasing each of the different APP services¹³, the same graph is displayed along with a note referring to the usual information document, and on the same page is presented a text¹⁴ of analogous content;

¹³ For example on the page “<http://store.apple.com/it/product/APPLECAREIPOD-102589>”.

¹⁴ “I vantaggi dell'AppleCare Protection Plan si aggiungono ai diritti previsti dalla normativa a tutela del consumatore applicabile nel tuo paese. Ai sensi degli articoli 128–135 del Decreto Legislativo n. 206 del 6 settembre 2005 (Codice del Consumo), i consumatori italiani hanno fino a 26 mesi per denunciare al venditore un difetto del prodotto esistente al momento della consegna dello stesso. Si presume che i difetti

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- v) in the general “Supporto” [“Support”] section for the APP services¹⁵, a note in a small-sized font was added: *“I vantaggi si aggiungono ai diritti dei consumatori ai sensi della garanzia legale del venditore. Fai clic qui per i dettagli.”* [“The advantages are supplemental to the consumer rights pursuant to the seller's legal guarantee. Click here for details.”] linking to the usual information document “additional_warranty_italy”;
- vi) in the FAQs of the “AppleCare support” section¹⁶ the following question was added: *“Che differenza c'è fra Garanzia legale del venditore, Garanzia annuale limitata di Apple e AppleCare Protection Plan?”* [“What is the difference between the seller's legal guarantee, Apple's limited one-year warranty and the AppleCare Protection Plan?”], which simply links to the cited information document “additional_warranty_italy”;
- vii) also on the page where the APP services are offered for sale, “<http://store.apple.com/it/browse/home/applecare>”, these are presented in the form of a comparison with Apple's one-year of assistance coverage, while the only mention of the legal guarantee is found in the *link* posted at the bottom edge of the page (as in the other pages of the Apple Online Store).

13. Apple also intends to continue sending emails to its clients to promote the purchase of APP services after the expiration of Apple's one-year warranty. The only change made to this practice was the addition of a note within the emails containing a link to the usual information document “additional_warranty_italy”: *“I vantaggi della garanzia limitata Apple e dell'AppleCare Protection Plan si aggiungono ai diritti previsti dalla normativa a tutela del consumatore applicabile nel tuo paese. Ai sensi degli articoli 128–135 del Decreto Legislativo n. 206 del 6 settembre 2005 (“Codice del Consumo”), i consumatori italiani hanno fino a 26 mesi per*

che si manifestano nei primi 6 mesi dalla consegna del prodotto esistessero già al momento della consegna. Un consumatore che intenda fare valere la garanzia ai sensi del Codice del Consumo nei confronti di Apple può rivolgersi ad un Centro di Assistenza Autorizzato Apple per accertare l'esistenza del difetto al momento della consegna.” [“The benefits of Apple's limited warranty are supplemental to the rights prescribed by the consumer protection laws that apply in your country. Pursuant to articles 128-135 of Legislative Decree no. 206 of 06th September 2005 (Consumer Code), Italian consumers have up to 26 months to inform the seller of any defect in the product that existed at the time of delivery. Any defects that are discovered within the first 6 months after product delivery are presumed to have existed at the time of delivery. Consumers who intend to avail themselves of the Consumer Code guarantee with Apple may contact an Authorized Apple Assistance Center to establish the existence of the defect at the time of delivery.”]

¹⁵ This page is found at the address “<http://www.apple.com/it/support/products/>”.

¹⁶ The link can be activated from within the question “Che differenza c'è fra Garanzia legale del venditore, Garanzia annuale limitata di Apple e AppleCare Protection Plan?” [“What is the difference between the seller's legal guarantee, Apple's limited one-year warranty and the AppleCare Protection Plan?”] in the page found at the address “<http://www.apple.com/it/support/products/faqs.html>”.

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denunciare al venditore un difetto del prodotto esistente al momento della consegna dello stesso. Si presume che i difetti che si manifestano nei primi 6 mesi dalla consegna del prodotto esistessero già al momento della consegna. Un consumatore che intenda fare valere la garanzia ai sensi del Codice del Consumo può rivolgersi ad un Centro di Assistenza Autorizzato Apple per accertare l'esistenza del difetto al momento della consegna" ["The benefits of Apple's limited warranty are supplemental to the rights prescribed by the consumer protection laws that apply in your country. Pursuant to articles 128-135 of Legislative Decree no. 206 of 06th September 2005 ("Consumer Code"), Italian consumers have up to 26 months to inform the retailer of any defects in the product that existed at the time of delivery. Any defects that are discovered within the first 6 months after product delivery are presumed to have existed at the time of delivery. Consumers who intend to avail themselves of the Consumer Code guarantee with Apple may contact an Authorized Apple Assistance Center to establish the existence of the defect at the time of delivery"]].

III. ASSESSMENT OF THE MEASURES ADOPTED BY APPLE

14. For purposes of the correct assessment of the measures adopted by Apple, it should first be clarified that the prohibition on the continuation of the first practice demanded:

- i) a substantial modification of Apple's communications directed at consumers in order to provide adequate and clear information concerning the recognition of their right to two years of free assistance;
- ii) a modification of the procedures and guidelines imparted to the personnell and the assistance network as well as to the retailers in order to ensure Apple's effective provision of the free two years of assistance for the products it sells (including those of other manufacturers).

15. The prohibition on the continuation of the second practice demanded:

- iii) the substantial modification of the communication presenting the additional APP assistance services so as to indicate which services and consumer rights are covered by the legal guarantee of conformity and thus provide an unambiguous clarification of the supplemental content of the payment-based APP assistance services (also in reference to *dies a quo*) being offered for purchase at the time of purchase of the main product and one year later.

16. Note that the present proceedings do not include the modification of the

packaging, taken into account the brief time elapsed since the cited TAR ruling¹⁷.

III.1. Disclosure to the consumers and performance of the legal guarantee

17. The measures adopted by Apple in order to reformulate the communications directed at consumers appear to be insufficient to provide them with clear and non-misleading information about the legal guarantee and ensure a correct understanding of their rights.

18. As better represented below, in fact, the Apple website and the communications at the Apple Stores continue to focus primarily on the manufacturer's guarantee and the offer of payment-based APP services, coupled with the cursory addition of brief notes with minimal graphic visibility at the end or in similarly peripheral positions relative to the remainder of the document, mentioning the existence of consumer rights and providing links to the information document described above, the structure of which is insufficient to clearly present the substance of the rights deriving from the conditions of the legal guarantee of conformity.

i) Positioning of the information on the legal guarantee

19. All of the information that the consumers are provided on the issue of guarantees/warranties employ presentation modes and content that are similar to those employed by the object of the investigatory proceedings, in the sense that they still focus primarily on Apple's one-year warranty in its capacity as manufacturer.

20. In this context, Apple has added a few, very brief indications, which are still secondary and subordinate, regarding the existence of consumer rights founded on the legal guarantee. In specific, the only way for consumers to

¹⁷ In specific, and also in light of the TAR ruling, the modifications to the APP packaging should in any case be implemented with effective evidence and graphic methods that fulfill “il previsto obbligo di indicazione della durata e del contenuto della garanzia legale del venditore (riparazione o sostituzione del prodotto non conforme) risulti rispondente alle finalità di chiarezza e completezza informativa del consumatore, al quale vengono in tal modo forniti elementi di valutazione in ordine alla convenienza del prodotto APP necessari al fine di assumere una decisione consapevole, e ciò in considerazione della evidenziata parziale sovrapposizione temporale e contenutistica dei servizi offerti a pagamento con l’APP rispetto alla garanzia legale” [“the prescribed obligation to indicate the duration and content of the seller's legal guarantee (repair or replacement of the non-conforming product) in correspondence with full disclosure and clarity vis-a-vis the consumer, who is thus equipped with all of the elements needed to make an evaluation concerning the advantages of the APP product and make an adequately-informed decision, taking into consideration the partial temporal and substantive overlap between the payment-based APP services and the legal guarantee”].

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find out more information is through the link to the document prepared by Apple, inappropriately entitled “*additional_warranty_italy*” and designed to depict consumer rights as something secondary relative to what Apple is offering in its capacity as the manufacturer.

ii) Improper and misleading presentation of the rights through comparisons with the limited warranty and APPs

21. The table of comparison between the legal guarantee, Apple's one-year warranty and the payment-based APP services that has been incorporated in the cited information document appears to be misleading and deceitful. In specific, the main document that provides consumers with information about the substance of the legal guarantee and the procedures for requesting its performance is in reality exploited anew to imply the existence of a variety of greater advantages of Apple's one-year warranty and the payment-based APP services by means of the improper comparison of these services and the effects derived from the legal guarantee, which is instead a consumer right *ex lege* that must be performed free of charge and without limitation for any defect.

22. More specifically, the table omits essential information concerning the practical application of the legal guarantee in its depiction of three of the seven elements of comparison (who to contact, assistance options included, coverage abroad). It should be noted that these omissions appear unwarranted in that it is precisely ASI and ARI themselves who fulfill the role of retailer via the *internet* site or through the Apple Stores, whereas the table fails to offer any clarifications or explanations in this regard (example - the link to “*contatta il rivenditore per dettagli*” [“*contact the retailer for details*”]). Another effect of these omissions is that they offer an unfair treatment, in the eyes of consumers, of the rights deriving from the legal guarantee as compared to two other services that are very different in nature¹⁸.

¹⁸ In this regard it should also be mentioned the letter dated 19th April 2012 that was sent to the Apple group from the “Unit Enforcement and European Consumer Centres - General Directorate for Health and the Consumer” of the European Commission to express its perplexity about the content of this particular table and the information provided by Apple on the legal guarantee and the additional payment-based services.

The Commission's communication states, among other things:

“The fact that, according to Art 5.3., “[...] any lack of conformity which becomes apparent within six months of delivery of the goods shall be presumed to have existed at the time of delivery [...]” does not mean that lacks of conformity appearing in the following 18 months should be excluded from the seller's liability. This only means that the seller may object to the presentations made by the buyer more easily after 6 months from the delivery.

iii) *Limitation on the content of the right*

23. The affirmations contained in the information document to which every *internet* page and all other communications refers as well as the affirmations contained in the other notes added by Apple to its own *internet* pages fail to unequivocally clarify Apple's intention to recognize the assistance on the basis of the legal guarantee for the first two post-purchase years instead of the first six months alone.

24. The table referred to above has been tailored to provoke the mistaken impression that the legal guarantee applies to a specific, limited type of defect ("**difetti presenti al momento della consegna**" ["**defects present at the time of delivery**"]), with the specification to the effect that "*I difetti che si manifestano nei primi 6 mesi dalla consegna si presumono esistenti al momento della consegna.*" ["Defects discovered within 6 months of delivery are presumed to exist at the time of delivery."]) less than the coverage provided by Apple's one-year warranty and payment-based APP services ("**difetti intervenuti dopo la consegna**" ["**defects occurring after delivery**"]). The table suggests a distinction, without even clarifying the purported difference between the two situations, that misleads consumers into the assumption that the legal guarantee is less effective during its period of

In this respect the 1st row of your comparative table may be deemed unclear to the extent that it seems to suggest a difference between the coverage of the "EU legal guarantee" and the Apple warranty, whereas this does not seem to be the case.

Furthermore, while a producer or distributor may voluntarily decide to grant additional rights to consumers such as the commercial warranties you refer to in your webpage, the latter has the obligation to state that buyers have legal rights under the applicable national legislation governing the sale of consumer goods and make it clear that those rights are not affected by such additional and optional "warranty".

Please note that repair and replacement under the coverage of Directive 1999/44/EC is free of charge for the consumer, and even the possible costs of postage have to be paid by the seller. Furthermore, whenever the applicable law is the law of a Member State, the EU legal guarantee covers also defects arising overseas.

In this respect, we would invite you to clarify what the reference to "the seller" means for products bought from the online "Apple store" itself.

Another aspect to be considered is the way in which such information is presented to the consumer. Failure to provide consumers with clear, truthful and complete information on the different guarantees may indeed, as argued by the Italian authorities, fall under the scope of Directive 2005/29/EC on unfair business to consumer commercial practices², which prevents traders from engaging in misleading and aggressive practices against consumers. Under its provisions, professionals must display, in a clear, intelligible and timely manner, material information that consumers need in order to make an informed choice. Furthermore traders should not mislead consumers, for instance on the main characteristics of the product including the after-sale consumer assistance, the extent of the trader's commitments and the consumer's rights, including the right to replacement or repair under Directive 1999/44/EC - see in particular its Article 6(1) g.

Against this background, it is crucial to ensure that the content and benefits of the additional rights offered for an additional cost by Apple are described in a clear and comprehensive manner on your pages."

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validity and that the assistance conventionally offered by Apple, as a result, might be needed to cover certain defects that are left uncovered by the two-year legal guarantee, which in reality covers precisely the same types of defects that are covered by Apple's one-year warranty and the pay-based APP services, i.e., any defects attributable to the product's design and or manufacture and any damage caused prior to delivery, as opposed to improper use¹⁹.

25. In addition, according to the uniform statements provided in the various documents prepared by Apple, consumers who intend to avail themselves of the Consumer Code guarantee may contact an Authorized Apple Assistance Center ***“per accertare l’esistenza del difetto al momento della consegna”*** [***“to establish the existence of the defect at the time of delivery”***], and not to establish that the defect that was discovered qualifies as a defect of conformity, thereby confirming Apple's incorrect and restrictive interpretation of the legal rules, which are instead designed to protect the consumers' enjoyment of the good for two years after its purchase, with the obvious sole exception of any damage caused by improper use of the good itself.

26. The documents' repeated mention of the presumption regarding defects discovered within six months of delivery is presented to suggest that fewer defects fall within the legal guarantee of conformity, instead of providing clarity about the rules' effective value in the best interest of the consumers.

¹⁹ In one of the exchanges of correspondence referred to in the prohibition measure, Apple's representatives themselves make it extremely clear that any damage that has not been caused by the consumer is a defect of conformity.

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iv) The instructions distributed to stores and assistance centers

27. The compliance report provides no clear indication of how the *call center*, sellers and assistance network as a whole have been provided with instructions, operational procedures and communications that are clear enough to ensure (without leaving any room for equivocation) that, from now on, free assistance is effectively guaranteed for all products sold by Apple for two entire years after purchase.

28. In particular, there is the failure to communicate the modification in Apple's "*Procedura Operativa Standard*" [*Standard Operating Procedure*"], the prescriptions of which (as ascertained in measure no. 23155) place the burden on the consumer to prove the existence of a defect of conformity when requiring the application of the legal guarantee of conformity after the first six months. Neither were any clear indications provided concerning the changes that were made to the organizational network for the performance of the legal guarantee.

III.2. Information for the consumers on the payment-based APP services

29. The measures adopted by Apple appear to be insufficient to provide adequate and non-misleading information with the capacity to prevent consumers from making mistaken assumptions about the supplemental content of the payment-based APP services that are proposed while purchasing the goods or upon the expiration of the first year of the conventional warranty.

30. The marginal integration of the information provided as part of the offer of payment-based APP services, via the reference to the existence of such rights or the link to the cited document "*additional_warranty_italy*," is insufficient to clarify the real supplemental content of the APP service as it relates to the rights deriving from the legal guarantee.

31. First of all, the APP information that is disclosed to the consumers in different contexts maintains the original configuration, which combines the payment-based service with the manufacturer's warranty and portrays them as a logical *continuum*, while failing to provide any clarification of the supplemental content of the services being sold as they relate to the rights deriving from the legal guarantee.

32. For instance, Apple did not make any significant changes to the graph displayed on the descriptive pages for the APP service, presenting two horizontal bars, one for the technical assistance service and the other for the

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telephone support service, and comparing only the free Apple assistance with the payment-based APP services. The entitlement to the legal guarantee is presented in an additional, indirect form through the insertion of a brief note at the edge of the graph with a link to the same cited document which, as indicated above, implies a difference between the defects covered by the legal guarantee and the defects covered by Apple.

33. At the moment of decision about whether or not to purchase the additional payment-based assistance service, therefore, the consumer is not presented with sufficiently clear information to engender an accurate understanding of the real meaning and actual supplemental nature of the payment-based APP services in relation to the performances that are ensured by the legal guarantee. The omission of significant information about the substance of the legal guarantee, therefore, may continue to mislead consumers, thereby allowing Apple to sell an assistance service whose content partially overlaps with the rights that Apple itself is required by law to recognize without any charges or limitations.

34. It should be recalled, in this regard, that the table included in the “*additional_warranty_italy*” document also presents a deceitful comparison of the legal guarantee and the APP services that leads consumers to presume that it could still be advisable to purchase the payment-based services in order to cover certain defects that the legal guarantee might not cover during its period of validity.

35. In light of the above, the documented evidence reveals that the incorrect practices have not in fact ceased following the notification of the measure.

36. In conclusion, the preconditions have been satisfied for initiating the sanction proceedings prescribed by art. 27, sub-paragraph 12 of the Consumer Code.

HAVING FOUND, therefore, that the facts that have been ascertained constitute a case of non-compliance with Authority resolution no. 23155 of 21st December 2011, as modified by resolution no. 23193 of 11th January 2012, pursuant to art. 27, sub-paragraph 12 of the Consumer Code;

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HEREBY RESOLVES

- a) to charge Apple Sales International, Apple Italia S.r.l and Apple Retail Italia S.r.l. with a violation of art. 27, sub-paragraph 12 of the Consumer Code, for having failed to comply with Authority resolution no. 23155 of 21st December 2011, as modified by resolution no. 23193 of 11th January 2012;
- b) to initiate proceedings for the possible imposition of pecuniary sanctions as per art. 27, sub-paragraph 12 of the Consumer Code;
- c) that the person in charge of the proceedings shall be Flavio Papadia;
- d) that the acts of the proceedings can be accessed at the the Authority's Department of Agrofoodstuffs and Transport of the General Directorate for the Protection of Consumers by the representatives of the professionals or people delegated by them;
- e) that the interested parties shall be allowed thirty days after this measure is served to provide the Authority with defense papers and documents and/or to request a hearing;
- f) that the proceedings shall be concluded within one hundred and twenty days of the date on which this measure is served.

This measure shall be served to the subjects in question and published in the Bulletin of the Autorità Garante della Concorrenza e del Mercato.

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Objections to the present measure may be presented to the TAR of Lazio pursuant to art. 135, sub-paragraph 1, letter *b*) of the Code of administrative process (Legislative Decree no. 104 of 02nd July 2010) within sixty days of the date of notification of the measure itself. The longer term of one hundred and twenty days from the date of notification of the measure is still provided as per art. 41, sub-paragraph 5 of the Code of administrative process, i.e., through extraordinary recourse to the President of the Republic pursuant to art. 8 of the Decree of the President of the Republic no. 1199 of 24th November 1971.

SECRETARY GENERAL
Roberto Chieppa

THE PRESIDENT
Giovanni Pitruzzella