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1. INTRODUCTION

Article 2 of Law Decree no. 1 dated of 24th January 20121 - ratified by the Italian Parliament with Law no. 27 dated 24th March, 2012 – has replaced the existing specialized sections on industrial and intellectual property (IPP) rights currently operating in some Italian Courts of First Instance and Courts of Appeal with “new” specialized sections. The above mentioned Law has extended the competence of the mentioned IPP specialized sections to almost every litigation related to corporate law, renaming the “old” IPP sections as sections specialized in corporate law.

As a consequence, the “new” sections will still treat cases regarding intellectual property law and will also address more general corporate litigations, having exclusive jurisdiction over disputes among business corporations, cooperatives, groups; issues concerning contracts of EU relevance; class actions; antitrust damages actions.

As a result of the reform, all private enforcement antitrust cases will be brought before the new “Commercial Courts”, thus correcting the Italian system characterized by a separation of the jurisdiction over competition matters dealing with violations of EU competition rules on one hand, and with violations of Italian national competition rules on the other. The new rules and regulations have also introduced two levels of jurisdiction for all private antitrust litigations. Therefore, also parties acting for private damages deriving from the violation of national antitrust rules will have the chance of a second appeal.

2. THE PURPOSES OF THE REFORM

According to the explanatory memorandum, the Italian Parliament aimed at adding value to the experience of the IPP specialized sections established in 2003.

The “old” specialized sections will now deal with cases involving a number of matters, all characterized by high levels of technicality. For this reason the reform provides that judges must have a specific expertise2. In fact, as highlighted in the explanatory memorandum, the purpose of the reform is to provide a more

1 So called “Cresci-Italia” or Liberalizations Decree.

2 Art. 2, par. 1, Legislative Decree no. 168/2003, as modified by Law Decree no. 1/2012.
efficient and rapid resolution of all business disputes. The Decree expressly excludes that the new specialized sections will be provided with additional human resources. As to the filing fees, the reform provides that the costs are exactly double of the ordinary lawsuits. According to the explanatory memorandum, this provision should reduce litigation by promoting alternative dispute resolutions (conciliation or arbitration).

3. **Critical Remarks**

The establishment of courts specialized in the field of business law should ensure a faster processing of cases and a better quality of the decisions. Italy’s civil courts have traditionally faced a lack of resources and major delays in proceedings. However, it has been underlined that the increased number of courts (21 instead of the original 12) hinders the above objectives, as quality and speed can be obtained only by concentrating the litigation in a smaller number of courts.

In particular, some of the exiting specialized sections (like those of Milan, Rome and Turin) are already handling thousands of business lawsuits while others rarely receive any IPP cases. As a matter of fact, the public antitrust enforcement experience shows that the specialization of the administrative courts in antitrust matters is also due to the fact that only one judge (TAR Lazio as judge of first instance and Consiglio di Stato as appeal court) has exclusive jurisdiction over the Italian Antitrust Authority’s decisions.

The last remark concerns the filing fees, because, at least for consumers’ actions (class actions or antitrust damages actions suited by single consumers), the mentioned increase of such fees could be burdensome.

4. **The Impact on Italian Antitrust Damages Actions**

The whole reform could result in developing private antitrust enforcement in Italy. According to European case-law, everyone who suffers losses from a breach of competition law must have the right to claim for damages. At the same time, damages actions strengthen the effectiveness of competition rules and discourage agreements or practices which potentially restrict or distort competition. In other words, more effective remedies for consumers and undertakings to obtain damages would produce beneficial effects in terms of deterring future infringements and ensuring greater compliance with competition rules. Usually, the action follows the authority’s prior competition decision establishing a violation of antitrust rules (the so called, follow-on litigation); nevertheless, the plaintiff may decide to ask the civil court to ascertain both the infringement of the competition law and the resulting damages (the so called, stand-alone actions).

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3 Art. 1, par. 1 and 1 bis, Legislative Decree no. 168/2003, as modified by Law Decree no. 1/2012.
4 Art. 2, par. 2 Law Decree no. 1/2012.
Antitrust damages actions may be very complex both for judges and claimants. In particular, it can often be difficult to quantify the harm suffered as a result of an infringement of competition law.

Before the reform, the Court of Appeal used to rule, at first and last instance, on cases based on national competition law; civil courts were competent in hearing actions based on EU competition law; the specialized sections on IPP had jurisdiction over infringements of EU or national competition law “related to” a violation of an IPP right; the courts of the capital city of the Region where the defendant has its headquarter were competent to hear at first instance with respect to “class actions” based on competition law infringements.

Therefore, such a jurisdictional fragmentation has led to legal uncertainty and major delays for damages claimants, inter alia, due to the objections on competent judges often made by plaintiffs.

On the contrary, the new system is expected to reduce the costs and time of access to justice. Finally, the approval of the new Directive on Antitrust Damages Actions, whose main purpose is to guarantee an easier access to evidence in actions for damages, will give the new courts the power to order for the disclosure of evidence in the hands of other (or third) parties\(^6\).