



Certified Letter RRR and Certified Email

Attn.

APPLE INC.

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California - 95014
United States of America

APPLE DISTRIBUTION INTERNATIONAL

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Hollyhill, Cork
Republic of Ireland

APPLE EUROPE LIMITED

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APPLE ITALIA SRL

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APPLE BENELUX BV

Belgian branch
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APPLE RETAIL SPAIN, S.L.U.

Calle Príncipe de Vergara 112, 4a planta
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RE: CEASE AND DESIST DEMAND

EUROCONSUMERS, an international not-for-profit organization, formed under and governed by the laws of Belgium, with registered offices in Belgium, 1060 Brussels, Hollandstraat 13, registered at the Crossroads Bank of Enterprises (CBE) under no. 0465.936.134, as represented by its *pro tempore* legal representative, Ivo Mechels.

EUROCONSUMERS acts on behalf and in the interest of its national member organizations, namely:

- CONSUMENTEORGANISATIE VERBRUIKERSUNIE TEST AANKOOP VZW (in short, **TEST AANKOOP**), a not-for-profit organization, formed under and governed by the laws of Belgium, with registered offices in Belgium, 1060 Brussels, Hollandstraat 13, registered at the Crossroads Bank for Enterprises under no. 0407.703.668
- ORGANIZACIÓN DE CONSUMIDORES Y USUARIOS (in short, **OCU**), a not-for-profit organization, formed under and governed by the laws of Spain, with registered offices in Spain, Madrid, Calle Albarracín, 21, 28037, registered with the *Registro Estatal de Organizaciones de Consumidores y Usuarios*
- ASSOCIAÇÃO PORTUGUESA PARA A DEFESA DO CONSUMIDOR (**DECO**), a not-for-profit Portuguese organization, formed under and governed by the laws of Portugal, with registered offices in Portugal, Lisbon, Rua de Artilharia Um, n° 79-4°- 1269, registered at the Commercial Registry Office under no. 500 927 693
- ALTROCONSUMO, an independent consumer association, member of the *Consiglio Nazionale dei Consumatori ed utenti*, with registered offices in Italy, Milan, Via Valassina, 22, as represented by its Chairwoman and *pro tempore* legal representative, Luisa Crisigiovanni

CONSIDERING THAT

- Apple Inc. is a U.S. company based in Cupertino (California), parent of the holding bearing the same name, which develops, manufactures and globally distributes hardware and software products - in particular, operating systems, computers, smartphones and other electronic devices, such as IT, multimedia and audiovisual. The company is known to global consumer markets for having introduced a range of relevant innovations in the areas of hi-tech and design.
- Specifically, in its position as parent company, Apple Inc. manages and controls the multinational corporation named Apple, which includes Apple Distribution International, an Irish company that distributes Apple products to both wholesalers and consumers - the latter via the Apple Online Store - in the so-called EMEIA (*Europe, Middle East, India & Africa*); Apple Italia srl, mandated to provide user support and marketing services in the Italian territory; Apple Retail Italia srl, which markets Apple products in Italy, including iPhones, in local spaces called *Apple Store*, as well as providing technical support on the premises through Apple staff; Apple Benelux BV, which provides users support and marketing services in the Belgian-Dutch-Luxembourg territory; Apple Retail Belgium which has been appointed to market Apple products in Belgium.

- The Apple group is one of the largest technology conglomerates in the world by capitalization (with USD 700 billion market capitalization in 2012), sales (with estimated revenues at USD 265 billion in 2018), and size, as it employs approx. 140,000 people in total and operates 500 retail stores in 25 countries.
- Through Order no. 27365 dtd 25 September 2018, the Italian Antitrust Authority (Autorità Garante della Concorrenza e del Mercato, hereinafter also AGCM) ascertained the joint liability of the aforesaid companies for adopting two unfair commercial practices pursuant to Arts. 20, 21, 22 and 24 of the Italian Consumer Code, with respect to the release of the iOS 10 operating system (and updates thereof up to version 10.2.1) for iPhone 6, 6plus, 6s and 6s Plus, and enforced a sanction of EUR 10 million, while also prohibiting the continuation of such practices.¹
- In particular, with respect to the first sanctioned conduct (under A), the AGCM found that Apple had misled consumers into opting to install the updates referred to above, deceptively omitting to inform them that such OS upgrades would alter their device’s functional features and, thus, significantly impair their performance and artificially shorten battery life.
- In terms of the aggressiveness of the practice (under A), the AGCM stated that Apple unduly influenced consumers, encouraging them insistently to install the updates in question on their iPhones, without offering them clear and straightforward information about the following: (a) how to restore the original operation of the device, in the event of worsened performance; (b) any possible inconveniences in operation (such as the sudden shutdown) resulting, especially, from battery wear; and, finally, (c) any slowdowns caused by version 10.2.1, introduced to prevent the devices’ unexpected shutdowns.
- Then, therefore, in the Authority’s opinion, Apple consciously accelerated the process of product replacement through the purchase of new iPhone models or new batteries (Trade-in), and, ultimately, significantly affected consumer behaviors in order to make an unfair profit.
- With respect to the second behavior (under B), the Antitrust Authority considered Apple’s behavior an infringement of Art. 22 of the Italian Consumer Code for having neglected (up until 28 December 2017) to inform consumers about the batteries of the models involved in the aforesaid updates, in particular about their features, the procedures necessary to maintain an adequate level of performance, their rate of deterioration and the correlation between the battery and the worsened performance of the iPhone.²
- Through a ruling dated 29 May 2020, in the proceedings brought by Apple against the order described above, the Administrative Court of Latium-Rome confirmed the legitimacy of the AGCM’s assessment of Apple’s practices in violation of Arts. 20, 21, 22 and 24 of the Italian Consumer Code.³
- In full agreement with the Authority’s assumption, the Administrative Court found a correlation between the aforementioned OS updates and the soaring number of service calls by consumers, who reported malfunctions following the updates’ installation, especially sudden shutdowns and a worsening of smartphone performance.

¹ The aforementioned articles of the Italian Consumer Code are the result of the implementation of Directive 2011/83/EU into the Italian national legal framework. Similar provisions can be found in Belgian, Spanish and Portuguese national law.

² The aforementioned article of the Italian Consumer Code is the result of the implementation of Directive 2011/83/EU into the Italian national legal framework. Similar provisions can be found in Belgian, Spanish and Portuguese national law.

³ The aforementioned articles of the Italian Consumer Code are the result of the implementation of Directive 2011/83/EU into the Italian national legal framework. Similar provisions can be found in Belgian, Spanish and Portuguese national law.

- In particular, the Court highlighted the existence of a *“sophisticated technological and marketing system, which, through omissive information and aggressive practices ... strongly influences consumer choices in multiple ways:*
 - [1] *By somehow forcing consumers to remain loyal, as all (and only) Apple devices run on an iOS operating system which is proprietary to Apple, ... which does not allow such devices to interface with those of other brands. As a consequence, owners of Apple devices are led into buying more devices ... of the same brand;*
 - [2] *By periodically, frequently and insistently proposing software updates. ... Once downloaded, they slow down and limit the operation of the less recent iPhone models, without the owner being informed or fully aware of this; hence, in most cases, consumers are led into getting rid of their old model and buying a latest generation iPhone;*
 - [3] *By making component replacement - including battery replacement ... impossible for owners to carry out on their own in one simple operation ... but something that can only be carried out at an authorized Apple center ... with serious problems in obtaining warranty coverage for the replacement. ... These circumstances often induce consumers to purchase a new iPhone to overcome the problem.”*
- In consideration of the findings above, it is clearly evident that, while aware of the problems that the OS updates would cause in terms of product use and durability, Apple knowingly and deliberately failed to provide its users with adequate, clear and timely information about the negative impacts and the fact that the choice would be irreversible.
- Additionally, by proposing the updates insistently and deceitfully, and relying on its customers’ loyalty, Apple pressed its customers to accept the update, relying on a false sense of certainty that the same would not compromise the product’s characteristics. This all resulted in impairing their freedom of financial choice as to component replacement for a consideration (i.e. battery replacement), or the purchase of a newer and more expensive Apple device - a phenomenon known as planned obsolescence.
- It is known to the undersigned association that the conduct sanctioned by the AGCM was targeted by a class action in the United States, and that such litigation was settled by the parties with Apple refunding damages for USD 25 per each iPhone, and a minimum guaranteed allocation of USD 310 million.
- Like Italian consumers, iPhone owners in the U.S. argued that their devices’ operation had worsened after installing the iOS 10 update and its subsequent releases, and that they had been encouraged to replace the battery or even their smartphone in the erroneous belief that the product had reached the end of its normal lifecycle.
- A very high number of consumers who own(ed) iPhone 6, 6s, 6plus, 6s plus devices turned to their national member associations of Euroconsumers, claiming that they had been confronted with the practice described above, and that, accordingly, after updating the iOS10 OS, they had experienced malfunctions, loss of performance and sudden shutdowns of their smartphones, and that, to overcome them, they had had to replace the battery or purchase a later generation iPhone.
- As a consequence, these consumers have suffered a direct and immediate economic loss as a result of Apple’s wrongdoing.
- In this respect, it is also a well-known fact that, following the release of iOS 10 and the evidence of malfunctions for the first time since the first iPhone model was marketed, Apple has implemented a marketing strategy aiming at (a) selling replacement batteries to consumers at a discounted price of EUR 29 (instead of EUR 89), or (b) offering a credit of EUR 60 to customers who replaced batteries out of warranty, at full price, before the launch of the Battery Replacement Program.

- In so doing, on one hand, Apple acknowledged the consumers' objective need to upgrade their hardware to the new OS version, in order to restore the device's normal operating performance, and, on the other hand, it provided a measurement of the damage correlated with the unfair practice it had enacted.
- Henceforth, the financial damage suffered by consumers owning the aforementioned iPhone model includes the market price that Apple itself imposed for replacing the relevant component, since it is aimed at covering device maintenance and restoring the original performance levels.
- On 10 June 2020, by virtue of the Regional Administrative Court's ruling, Euroconsumers formally requested that Apple Inc. indemnify the aforesaid consumers for the damage suffered, and has received no response.

In consideration of all of the above, Euroconsumers, on its own behalf and on behalf of the associations listed in the preamble - TEST AANKOOP, OCU, DECU, Altroconsumo - and national member organizations,

HEREBY REQUESTS

- A. That each iPhone 6, 6s, 6Pplus and 6s plus owner affected by the unfair commercial practices reported above be indemnified with an amount of up to EUR 60, also in view of the repetition of such behavior by the company.

In compliance with the provisions contained in the regulations referred to above, we specify that, after 15 (fifteen) days of receipt of this notification, in the event the request is not fulfilled, action will be taken to enforce consumer rights with the competent domestic courts of the member associations.

All rights are being reserved.

Sincerely,



Ivo Mechels, Executive Director Euroconsumers

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Gathering five national consumer organisations and giving voice to a total of more than 1.5 million people, Euroconsumers is the world's leading consumer cluster in terms of innovative information, personalised services and defence of consumer's rights. Our organisations work closely with BEUC, the European consumer organisation, and Consumers International to ensure safe, fair and honest relations between consumers, businesses and public authorities.

