

Administrative Decision issued this 16th day of July, 2015 by the Director General (Consumer Affairs) in terms of Articles 14A (2) and 106A of the Consumer Affairs Act (Chapter 378 of the Laws of Malta) with regard to Stoppa Telefonfosaljning Limited C 64389, including the Notice of the nature of the infringements that have been found and of the amounts of the administrative fines imposed (Article 106A (7) of the Consumer Affairs Act)

PRELIMINARY

The Director General (Consumer Affairs) hereinafter referred to as the Director General:

has taken cognisance of the Administrative Proceedings instituted on the 23rd December, 2014 with regard to Stoppa Telefonfosaljning Limited C 64389 (hereinafter referred to as the Company) by means of the Notices of Administrative Proceedings and Administrative Fines (hereinafter referred to as the Notices) issued according to the Articles 14A and 106A (2), (3) u (5) of the Consumer Affairs Act (Chapter 378 of the Laws of Malta) (hereinafter referred to as the Act), and notified to the Company on the 5th February, 2015 at the Company's registered office Sterling Building, Testaferrata Street, Gzira GZR 1451, Malta, by means of which the Director General gave notice to the Company that:

the investigations were initiated according to article 12A of the Act with regard to commercial practices exercised by the Company since May 2014 addressed to consumers in Sweden who were contacted by telephone by the Company and were offered by the Company to block their telephone numbers from telesales calls, without informing consumers that there was a charge of 299 or 399 SEK for such a service that in actual fact the Company could not deliver/supply, the Company issued invoices even where the offer had not been accepted and the Company failed to indicate to the consumers that they had a right to withdraw, as confirmed by the Swedish Consumer Agency in Doc. A attached to the Notices;

these commercial practices constitute:

- misleading actions, misleading omissions and aggressive commercial practices in terms of articles 51C, 51D and 51E of the Act and according to articles 6, 7, 8 and 9 the relative provisions of

Directive 2005/29 EC of the European Parliament and of the Council of the 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council hereinafter referred to as the Unfair Commercial Practices Directive;

- commercial practices *ipso jure* and in all circumstances unfair being misleading in terms of article 51B (4) of the Act and paragraph 5 of the First Schedule to the Act and also according to article 5 paragraph 5 thereof, and paragraph 5 of Annex I to the Unfair Commercial Practices Directive;
- inertia selling that is *ipso jure* and in all circumstances unfair in terms of article 51B (4) of the Act and paragraph 29 of the First Schedule to the Act and according to article 5 paragraph 5 thereof, and paragraph 29 of Annex I to the Unfair Commercial Practices Directive;
- a breach of regulation 5 of the Consumer Rights Regulations (Subsidiary Legislation 378.17 hereinafter referred to as S.L. 378.17) and of article 6 of the Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, hereinafter referred to as the Consumer Rights Directive;

on the basis of the above and for the reasons mentioned therein, according to article 106A (2) and (3) of the Act, the Director General may impose an administrative fine on the Company of not less than €2,350 and not more than €47,000 for **each** of the first three above-mentioned infringements and of not less than €500 and not more than €47,000 for the fourth above-mentioned infringement, provided that in the case of non-compliance with a compliance order, the Director General may also impose a **daily** administrative fine of not less than €120 and not more than €230 for each day of non-compliance and, with regard to a breach of a compliance order, an administrative fine of not less than €4,650 and not more than €23,300;

the above, is without prejudice to the powers of the Director General established in the Act, particularly but not exclusively the powers established in articles 8, 12, 94, 95, 100 and 101 of the Act;

in terms of articles 14A (1) and 106A (5) of the Act, the Company was granted 15 days from the notification of the Notices to present its submissions in writing.

CONSIDERATIONS

The Director General has considered that:

the Notices have been duly delivered to the Company on the 5th February, 2015;

the period of 15 days from the said delivery has lapsed and the Company has not made any submissions in line with Article 14A (1) of the Act and has not given any valid proof or reasons to demonstrate that the administrative fines referred to Article 106A (5) of the Act should not be imposed;

this investigation has been concluded;

according to the evidence provided by the Swedish Consumer Agency in Doc. A attached to the Notices dated 16th December, 2014, it results that:

the commercial practices exercised by the Company since May 2014 addressed to consumers in Sweden who were contacted by telephone by the Company and were offered by the Company to block their telephone numbers from telesales calls, without informing consumers that there was a charge of 299 or 399 SEK for such a service that in actual fact the Company cannot deliver/supply, the Company issues invoices even where the offer had not been accepted and the Company failed to indicate to consumers that they had a right to withdraw, constitute:

- misleading actions, misleading omissions and aggressive commercial practices in terms of articles 51C, 51D and 51E of the Act;
- commercial practices *ipso jure* and in all circumstances unfair being misleading in terms of article 51B (4) of the Act and paragraph 5 of the First Schedule to the Act;
- inertia selling that is *ipso jure* and in all circumstances unfair in terms of article 51B (4) of the Act and paragraph 29 of the First Schedule to the Act;
- a breach of regulation 5 of the S.L. 378.17 since the Company has failed to observe the legal obligation relative to the information requirements for distance contracts;

DECISION AND NOTICE OF THE NATURE INFRINGEMENTS THAT HAVE BEEN FOUND AND OF ADMINISTRATIVE FINES IMPOSED

For these reasons and on the basis of the above-mentioned evidence and considerations, the Director General hereby concludes and decides, and for the purposes of Article 106A (7) of the Act hereby gives notice to the Company that:

it results that since May 2014, the Company has engaged in unfair commercial practices in terms of Articles 51B (4), 51C, 51D and 51E of the Act and in terms of paragraphs 5 and 29 of the First Schedule to the Act; and has failed to comply with the information requirements for distance contracts established in regulation 5 of S.L. 378.17;

consequently according to Article 51F of the Act, the company has infringed the Act by means of the following three infringements:

1. misleading actions, misleading omissions and aggressive commercial practices in terms of articles 51C, 51D and 51E of the Act;
2. commercial practices *ipso jure* and in all circumstances unfair being misleading in terms of article 51B (4) of the Act and paragraph 5 of the First Schedule to the Act;
3. inertia selling that is *ipso jure* and in all circumstances unfair in terms of article 51B (4) of the Act and paragraph 29 of the First Schedule to the Act;

and according to regulation 27 of S.L. 378.17, the company has failed to comply with S.L. 378.17 by means of:

an infringement of regulation 5 of the S.L. 378.17 since the Company has failed to observe the legal obligation relative to the information requirements for distance contracts;

the following administrative fines are hereby imposed on the Company according to Articles 106A (1), (2), (3), (6) and (7) of the Act, of the Second Schedule to the Act and of regulation 27 of S.L. 378.17:

the sum of four thousand seven hundred euro (€4,700) with regard to the first above-mentioned infringement of the Act by means of misleading actions, misleading omissions and aggressive commercial practices in terms of articles 51C, 51D and 51E of the Act; and

the sum of four thousand and one hundred euro (€4,100) with regard to the second above-mentioned infringement of the Act by means of commercial

practices *ipso jure* and in all circumstances unfair being misleading in terms of article 51B (4) of the Act and paragraph 5 of the First Schedule to the Act; and

the sum of four thousand one hundred euro (€4.100) with regard to the third above-mentioned infringement of the Act by means of inertia selling that is *ipso jure* and in all circumstances unfair in terms of article 51B (4) of the Act and paragraph 29 of the First Schedule to the Act; and

the sum of twenty thousand euro (€20,000) with regard to the infringement of regulation 5 of the S.L. 378.17 since the Company has failed to observe the legal obligation relative to the information requirements for distance contracts.

This Administrative Decision hereby delivered in terms of Article 14A (2) of the Act and this Notice of the nature of the infringements that have been found and of the administrative fines that have been imposed, hereby issued in this Administrative Decision in terms of Article 106A (7) of the Act are without prejudice to the Company's right at law, should the Company be aggrieved by this Administrative Decision and Notice of the nature of the infringements that have been found and of the administrative fines that have been imposed, to appeal to the Competition and Consumer Appeals Tribunal respectively according to Articles 110B and 110C of the Act, respectively within 15 days from the notification of the administrative decision to the Company and within 15 days from the notification to the Company of the judicial act referred to in Article 106A (8) of the Act with regard to the Notice of the nature of the infringements that have been found and of the administrative fines that have been imposed.


Josephine Borg

Director General (Consumer Affairs)

Notification: Stoppa Telefonforsaljing Limited C 64389
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