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# Samsung and Apple Were Fined for "Planned Obsolescence"

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Italian Competition Authority, Autorità Garante Della Concorrenza E Del Mercato ("AGCM"), has fined Apple and Samsung<sup>1</sup> on 24 October 2018 due to "*planned obsolescence*" of their smartphones as they have been slowing down their old phones over the time by implementing inappropriate software and thus, promoting sales of new products.

AGCM initiated an investigation concerning particular smartphone software updates that have a negative influence on smartphones in January.<sup>2</sup> Apple and Samsung were accused of releasing software updates which slow down their old smartphones and consequently stimulating the purchase of brand new smartphones.<sup>3</sup> The Italian executives stated that Apple and Samsung have induced unfair commercial practices and such practices expedited replacement of phones. It was indicated that neither Samsung nor Apple have provided information regarding the novelty of the implemented new software or any means of restoring the original functionality of the products.<sup>4</sup> In this regard, the competition agency discussed that while the companies were offering to download new operating systems, they have never warned their customers in relation to the decrease of performance of phones and did not leave an option for their customers to set their phones back to its previous status.<sup>5</sup>

AGCM determined that Samsung insistently suggested its Galaxy Note 4 owners to install a new version of Google's Android operating system designed for Galaxy Note 7 and Apple insistently suggested its Iphone 6 users to install an operating system tailored for Iphone 7 without informing them about the malfunctions that might arise as a consequence of installing such operating systems. As new operating systems were not compatible with the old phones' systems, they decelerated them and caused problems.<sup>6</sup>

As a consequence of the investigation of AGCM, each of the companies was fined for €5m due to slowing their phones and AGCM ruled that both of the companies are obliged to publish a notice regarding the Authority's decision in order to give information to their customers on their Italian websites.<sup>7</sup> The fines are the maximum amount of fines allowed by the law.<sup>8</sup>

Apple also was fined for an additional €5m as it did not provide sufficient information to its customers in relation to "essential characteristics of lithium batteries".<sup>9</sup> In December 2017, Apple confirmed that it has been slowing down old Iphones intentionally in order to prevent problems arising from ageing batteries such as sudden shutdowns but it did not admit that such actions were aimed to shorten the usage period of its products. After accusations in 2017, Apple apologised for its practices, decreased the cost of battery replacements, added information to iOS regarding battery health and let users deactivate the slowing down of Iphone's processor.<sup>10</sup>

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The investigation regarding similar complaints in Italy has opened approximately at the same time with the investigation in France. However, the complaint has been investigated by the consumer protection agency of the Ministry of Economy in France. In this manner, consumer law perspective is preferred rather than competition law by French Authorities to deal with this issue. It is considered as a crime to shorten the life of a product on the purpose of encouraging its sales in accordance with French law. The French consumer protection agency has the authority to order 5% of the annual turnover of an undertaking or jail sentence. Also, different from other investigations against Apple, the French Authorities approached this allegation as a crime.<sup>11</sup>

In addition, in January 2018, Apple was questioned by the US Senate due to slowing down its smartphones by implementing software. More than 60 separate lawsuits in the US are merged into a single lawsuit in the Northern District of California and the lawsuit has not been finalized yet.<sup>12</sup>

In contrast to Apple, software updates of Samsung have never been questioned before.<sup>13</sup> Samsung's spokesperson criticised the decision and argued that Samsung has never intended to lower the performance of Galaxy Note 4 by software updates, instead, the company always aims its customers to have the best experience from their products by software updates and they will appeal the decision as they found it unfair.<sup>14</sup> However, Apple remains silent against the decision of the AGCM.<sup>15</sup>

## Footnotes

1. <http://www.agcm.it/media/dettaglio?id=fa6d94c6-b6a6-4353-9231-092f0f2f649e&parent=Comunicati%20stampa&parentUrl=/media/comunicati-stampa>
2. <https://www.competitionpolicyinternational.com/italy-apple-samsung-fined-over-software-updates/>
3. <https://www.telegraph.co.uk/technology/2018/10/24/apple-samsung-find-deliberately-slowing-phones-prompt-upgrades/>
4. <https://www.competitionpolicyinternational.com/italy-apple-samsung-fined-over-software-updates/>
5. <https://www.forbes.com/sites/janetwburns/2018/10/24/italy-fines-apple-samsung-a-few-million-for-planned-obsolescence-in-phones/#16a21ab05afb>
6. <https://www.theguardian.com/technology/2018/oct/24/apple-samsung-fined-for-slowing-down-phones>
7. [https://www.washingtonpost.com/technology/2018/10/24/italy-fines-apple-samsung-pressuring-customers-buy-new-phones-through-software-updates/?noredirect=on&utm\\_term=.6748c6c7c366](https://www.washingtonpost.com/technology/2018/10/24/italy-fines-apple-samsung-pressuring-customers-buy-new-phones-through-software-updates/?noredirect=on&utm_term=.6748c6c7c366)

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8. <https://www.forbes.com/sites/janetwburns/2018/10/24/italy-fines-apple-samsung-a-few-million-for-planned-obsolescence-in-phones/#16a21ab05afb>
  9. [https://www.washingtonpost.com/technology/2018/10/24/italy-fines-apple-samsung-pressuring-customers-buy-new-phones-through-software-updates/?noredirect=on&utm\\_term=.6748c6c7c366](https://www.washingtonpost.com/technology/2018/10/24/italy-fines-apple-samsung-pressuring-customers-buy-new-phones-through-software-updates/?noredirect=on&utm_term=.6748c6c7c366)
  10. <https://www.theguardian.com/technology/2017/dec/21/apple-admits-slowing-older-iphones-because-of-flagging-batteries>
  11. <https://www.bbc.com/news/world-europe-42615378>
  12. <https://www.theguardian.com/technology/2018/jan/10/apple-questioned-us-senate-slowing-down-iphones-french-investigation>
  13. <https://www.theguardian.com/technology/2018/oct/24/apple-samsung-fined-for-slowing-down-phones>
  14. <https://www.cnet.com/news/apple-and-samsung-fined-for-slowing-down-phones-with-updates/>
  15. <https://www.cnet.com/news/apple-and-samsung-fined-for-slowing-down-phones-with-updates/>