Corrective and sanctioning measure against TIM SpA - January 15, 2020

Register of measures

no. 7 of 15 January 2020

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, in the presence of Dr. Antonello Soro, president, of Dr. Augusta Iannini, vice-president, of dott.ssa Giovanna Bianchi Clerici and of prof.ssa Licia Califano, members, and of dott. Giuseppe Busia, general secretary;

HAVING REGARD TO Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data, as well as the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation, hereinafter "Regulation");

CONSIDERING the Personal Data Protection Code (legislative decree no. 196 of 30 June 2003), as amended by legislative decree 10 August 2018, n. 101, containing provisions for the adaptation of the national legal system to the aforementioned Regulation (hereinafter "Code");

HAVING REGARD TO the numerous complaints and reports received by the Guarantor, with regard to various processing of personal data carried out by TIM SpA (hereinafter also referred to as: "TIM" or "the Company");

HAVING REGARD TO the observations made by the general secretary pursuant to art. 15 of the Guarantor's regulation n. 1/2000;

SPEAKER Prof. Licia Califano;

WHEREAS

1. THE INVESTIGATION ACTIVITY CARRIED OUT

From 1 January 2017 to the first months of 2019, the Authority received numerous reports and complaints (in the order of a few hundreds according to a dynamic constantly confirmed before and even after the aforementioned time interval), concerning data processing concerning the reception of calls unwanted promotions, in the interest of TIM SpA (hereinafter also "the Company"), carried out in the absence of consent of the interested parties; or despite the registration of telephone users in the Public Register of oppositions; or even after exercising the right to object to the Company; or again as part of procedures aimed at solving technical faults relating to the telephone services provided to others affected by other telephone companies.

Further complaints also highlighted the failure to respond to the requests made by the interested parties with regarding the rights enshrined in the legislation on the protection of personal data, and in particular those of access to your data and objection to processing for promotional purposes, as well as the request for a consent, to be issued compulsorily for treatment for marketing purposes, when activating the "TIM Party" program on the Company's website and the collection of a single and indistinct consent to processing of data for various purposes - even additional to the execution of the contract - in the context of the forms prepared for self-certification of possession of a prepaid line.

TIM then sent, in the period in question, various notifications relating to violations of personal data (so-called "data breach") which, in particular, have highlighted some misalignments between the systems that process personal data of customers such as to cause, for example, the incorrect attribution of telephone lines to the holders o the incorrect association between the holders and the contact details used by the Company.

Starting from these elements, this Office has carried out, pursuant to art. 10 of the Regulation of the Guarantor n. 1/2019 (at www.garanteprivacy.it, web doc. n. 9107633), a complex preliminary activity, formalized through requests for information addressed to the Company, inspections conducted at the same, starting from the month of November 2018 to February 2019.

Further inspections were also carried out, including through the Special Unit for the Protection of Privacy and Fraud Technologies of the Guardia di Finanza, between March and June 2019, at certain companies entrusted with the activity promotion of the Company itself (so-called "partners"), such as XX srl; XX srl; XX srl; XX srl; XX srl; XX srl.

Following these activities, on 25 July 2019, the Company was notified of the start of the proceeding, pursuant to art. 166, paragraph 5, of the Code, containing the invitation to submit any observations within 30 days from receipt of the same, granting the Company, at the request of the same, an extension to 10 October 2019 to provide feedback.

As part of the preliminary investigation, TIM's request to access, for defensive purposes, the preliminary documentation, including that relating to the checks carried out at the partners of the same (see management decision of 12 September 2019). TIM's defense brief was then examined dated 10 October 2019, of the minutes of the hearing of 5 November 2019, as well as the further defense documents supplementary documents of 12 November 2019, albeit belatedly produced (beyond the deadline of 10 October 2019).

All the documentation provided by TIM is understood to be fully referred to and considered - for a complete one representation of the cases, as well as for the benefit of the Company's right of defense - in the assessments contained in this provision.

2. RESULTS OF THE INVESTIGATION

At the end of the inspection activity and the examination of the documentation produced by the Company, the Authority ascertained numerous and varied violations of the regulations on the protection of personal data referred to below e detailed in the following paragraphs. In particular:

- commercial contacts made during promotional campaigns aimed at "prospect" subjects (i.e. a non-customer subjects), in the absence of the consent of the interested parties; numbers contacted up to 155 times in a month; lack of control by the Company over the work of its partners during the performance commercial campaigns (see par. 2.1.);

- incorrect management of exclusion lists from commercial campaigns (so-called "black list)"; missed updating of the black lists on the basis of the denials expressed by the interested parties during the contact commercial telephony, resulting in gaps in the accuracy and quality of data in the systems corporate information; inconsistencies, not sufficiently clarified, of the data present in the TIM black lists compared to those on its partners' blacklists; users included in the blacklist many days later the expression of the denial to marketing; users present in the partners' black lists but not included in them of the Company (see par. 2.1);

- promotional phone calls to numbers not present in the contact lists (so-called off-list), carried out by commercial partners in the absence of the consent of the interested parties or other suitable basis juridical; commercial calls to numbers "not on the list" for which the provision of the Authority of 22 June 2016 (in www.gpdp.it. web doc. n. 5255159) had forbidden TIM itself from processing for marketing purposes (cf. par. 2.2);

- promotional contacts made by the Company despite the exercise of the right to object concerned or carried out within the framework of service contacts or still without giving timely response to interested parties or incorporate the exercise of the right to object into their own systems (see par. 2.3);

- cases of retention, in the Company's CRM (Customer Relationship Management), of data relating to customers of other Operators, to which TIM provides mere network and infrastructure services (OLO-Other Licensed Operator), for a time exceeding the limits established by law (10 years) and with visibility by the customer care operators beyond the time limits established by company policies (5 years); use cases abusive use of these numbers for promotional purposes (see par. 2.4);

- acquisition of promotional consent within the "TIM Party" program in ways that are not they ensure its free manifestation (see par. 2.5);

- with respect to some Apps intended for customers, the issue of incorrect information to interested parties, nor transparent on data processing, as well as methods of acquiring consent that do not comply with the current discipline (cf. par. 2.6);

- use of paper forms for the collection of personal data with a request for a single consent for different purposes (see par. 2.7);

- unsuitable management of data breaches, both with regard to the promptness of the notification to the Authority, and with regard the measures put in place to reduce the risks to the rights and freedoms of the data subjects; inadequate management of the systems that process personal data, in particular in violation of the principles of accuracy of the data, as well as confidentiality and integrity of the systems (see par. 2.8).

2.1. Promotional campaigns aimed at so-called "prospects", management of blacklists and denials expressed by the interested parties during a commercial contact

With regard to telemarketing campaigns for landline and mobile telephony offers made by the Company in the period July 2018-February 2019, aimed at customers (registered in the TIM Customer Base) and not customers (so-called prospects), TIM declared that the list acquired by the Office during the inspection "contains the identifiers of the 650 campaigns carried out, with the validation date and the date associated with each of them quantity of numbers" for a total of 50 million numbers present in the TIM lists (see page 9, feedback 8/3/2019).

Of these 650 campaigns, carried out in the aforementioned limited period, 484 were aimed at customers involving 15 million numbers, while the remaining 166, according to TIM's plans, were addressed to 13 million of prospects reaching around 5.2 million numbers, since “Prospect campaigns” would have “a threshold of 'average reachability' in the order of around 40%" (memorandum 10/10/2019). With specific reference to commercial campaigns aimed at the aforementioned prospects, from a comparison between the lists of CDs contactability (ie the lists of numbers that can be contacted for promotional purposes prepared and provided to partners by TIM), e those associated with outgoing calls recorded on the automated call systems of some call centres subject of inspections (in particular: XX, with reference to telephone calls made on behalf of TIM in the months of November-December 2018 and January 2019 and XX in relation to the "IDList" provided during the activities inspections of 14 May 2019), the following anomalies were found:

- the calls made by the aforementioned call centers were associated with TIM contact lists, which are not appear among the lists provided by the Company to the Office; in this regard, TIM declared that "at present" it could “only assume that the disputed discrepancies [were] essentially due to: the use of coding criteria of different data streams by the Partners, which generate different nomenclatures; [to the] comparison made on partial lists available to Partners; (to) comparison with respect to codes

campaign different as the lists provided by TIM report the coding of the Marketing List ID, while those provided by the Sales List Partner IDs" (memorandum 10/10/2019, cit.).

In this regard, it is therefore noted that TIM - as client of the processing in question - proves not to have sufficient knowledge of the coding criteria of the flows used by the partners or of the methods of denomination of the contact lists, also for the purpose of better control;

- the same telephone number was contacted up to 155 times over the course of a month and was registered in various contact lists, in contrast with the same policies declared by TIM, according to which: "the callback rules given to the partners provide that each numbering in the list can be object of one useful contact per month, meaning by useful contact a phone call with an OK result (adherence to the contractual offer), KO (non-adherence), refusal (opposition to the treatment). For for this reason, a number reached by a useful contact is no longer recalled within the same campaign" (see minutes 02/05/2019, p. 4);

- are present in the "result" field of the promotional calls (made by partner XX) wordings not recognized by the Company, according to which they would fall exclusively within the autonomy business of the partner itself (e.g. "Rejection of CB TI NON-CONSENT Customers"; "Recovery Consent on ex-TIM and ex TI (OK)"; v. memory 10/10/2019).

With specific reference to XX, the Company, in addition to admitting phone calls outside the contact lists (cf. infra par. 2.1), also admitted the serious operational discrepancies in the frequency of the promotional contacts made by this partner with respect to what is abstractly established in its policies (the "conduct is openly in disregard of the production rules of TIM's contact lists for the execution of commercial campaigns"), denying its responsibility, due to its alleged extraneousness to the operating methods of XX (see memories 10/10/19 and 12/11/19 cited).

In this way, however, TIM - neglecting its fundamental role as client - has shown that it does not have the necessary awareness of such conduct, nor of having adequately supervised the work of the partner.

The Company represented that, in order to exclude numbers belonging to interested parties from the contact lists non-customers (so-called "prospects") who have expressed their wish not to receive promotional communications, uses two different blacklists:

1. a first ("marketing black list"), manually fed and uploaded to the campaign system management on the basis of the opposition to the treatment for promotional purposes sent by the interested parties to Corporate Customer Care; includes a total of 2,272,226 numbers, of which, however, a good 2,232,935 entered by the Company following the ban on data processing for promotional purposes issued by the Guarantor

with the provision of 22 June 2016 (web doc. n. 5255159) and only 39,291, therefore, attributable to interested parties whose opposition to the processing has been registered by the Company;

2. a second ("denial black list"), automatically fed into the campaign management system, constituted by the results of refusal (i.e. the "oppositions to processing for marketing purposes") expressed by so-called prospects during commercial calls made by partners; includes 6,215 numbers.

In total therefore, the interested parties who, on the whole, appear to have expressed the will not to receive promotional communications from TIM and which it proceeded to register are 45,506.

This quantitative figure – however relatively small especially considering the primary role of TIM in the market number of telephone operators - was not aligned with the much greater consistency of the overall numbers exclusion lists used by TIM's commercial partners (for example, the black list acquired by XX Srl is resulted composed of about 260,000 numbers).

The Company, as at 10 October 2019, with regard to the perplexities expressed by the Guarantor with the communication of the start of the proceeding of last July 25, while providing some elements of clarification, it declared itself “no fully able to clarify the reasons for the discrepancy found by the Authority between its own black lists and the similar black lists used by the Partners" This, since "the black lists held by the Partners" would not fall within say about TIM, "in the context of the denial management process defined by TIM" and "all denials received from Partners, when they operate on behalf of TIM, they must necessarily be included in Thin Clients, the only system company responsible for managing the denials expressed by the subjects contacted by the Partner."

Furthermore, from the comparison between the aforementioned Company blacklists and the results uploaded by the partners into the Company's systems and indicated as "denial" relating to campaigns carried out by the Company itself in the period identified above, as well as the black list of partners, despite necessarily considering the possible different composition of these lists – it emerged that (Annex 6 to the reply of 8/3/2019):

a) there are 3,442 commercial contacts with a "denial" result recorded by partners during the mention prospect campaigns;

b) of the aforementioned 3,442 contacts, only 1,026 are included in TIM's denial black list, while the remaining 2,415 are not present in this list, which should be "made up of the results of denials (i.e. the 'opposition to processing for marketing purposes') expressed by prospects during telephone calls commercial activities carried out by the partners” (see page 8, report 20.2.2019).

TIM, without providing suitable evidence, declared that these 2,415 denials were not reported in its black lists as they have been recorded in the Company's CRM systems (which registers the existence o

less than the customers' consent) precisely because they refer to customer numbers, with the exception of 5 numbers, which were discarded during loading.

In any case, while taking into account the many exceptions represented by the Company, it should be noted that some numbers, referring both to TIM landline or mobile customers and to prospects, have been entered in the contact lists many days after the expression of the denial (or more than 300 days after for some prospects; over 200 days later for some landline or mobile customers; v. acts 12/11/2019).

The Company (see notes of 8 March and 12 November 2019) represented that "as a result of ... anomaly in the update of the Prospect Consensus DWH archive and consequently of the Black List Denials used by marketing functions", 184 unique numberings were incorrectly included in the contact lists for promotional campaigns. The Company – to certify the taking of awareness of inadequate management of denials - also indicated the intention to introduce a new system, which would involve the recording of denials of active TIM fixed lines in the archive intended for the management of consent (in this case the "DWH Consent": see explanatory note 12/11/2019);

c) 862 numbers present in the denial black list appear to have a "denial outcome" subsequent to the date of their inclusion, in contrast with what is indicated by the Company regarding the automatic exclusion from commercial campaigns of the numbers on the black lists (see, for example, page 8 feedback 20/2/2019 and pp. 3 and 5, minutes 02/05/2019). In this regard, the Company (see explanatory note 12/11/2019) has represented this is attributable "to the erroneous operation of some of its partners, who have registered the "denial via THIN Client …. with even prolonged delays compared to the "outcomes 49" (ie the system of monitoring of the results) and have thus "disregarded the procedures defined by TIM" in this regard. According to TIM "Recognizing these shortcomings, Partners recovered the disclaimer uploads via THIN Client in massive mode on dates …. concentrated in the month of November 2018 for the refusals acquired by XX e in the following months of December and January for those acquired by XX". TIM appears, however, to have taken accountability of these delays in loading the denials only on the occasion of the investigations initiated by Guarantor in February 2019;

d) in the black list used by the partner XX Srl (acquired during the inspection of 28/3/2019), there were 1,645 objections to the treatment received during telephone calls commercial transactions carried out on behalf of TIM; however, none of the related numbering was found to be present on the Company's denial blacklist;

e) in the black list used by the partner XX Srl there were almost 200,000 numbers that do not have found correspondence in the Company's black list (see page 2, minutes 23/4/2019); however, this

it is difficult to understand if one considers that the aforementioned partner is sole agent of TIM, and therefore the two lists should mostly be corresponding or in any case contain similar quantities between They;

f) in the black list used by XX, referring to denials expressed during commercial telephone calls made on behalf of TIM, there were 2,401 numbers; however, of these only 3 were successful present in the TIM marketing black list and none was present in the TIM denial black list. That is it is difficult to understand as these numbers had to all be included in this list, precisely as denials expressed during the Company's promotional campaigns;

g) in the black list sent by TIM to XX (see attachment 11, report of 05/07/2019) there are 22,296 numbers; however, of these, only 19,488 are on the marketing blacklist and 6 are on the blacklist denials provided by TIM to the Authority.

In truth, the aforementioned differences can be considered attributable only in part to the different criteria of composition ed implementation of black lists or the different naming/classification of lists and contact results (see TIM brief 10/10/2019 and explanatory note 11/12/2019, cit.) that TIM does not appear to have agreed with its partners or to the existence of principals other than TIM, for some of these partners. Own the use of different criteria and denomination means that in this case - in addition to incorrect practices implemented by the partners with reference to the methods of managing the denials - the lack of adequate also emerges implementation by the Company itself of shared management procedures, which - while guaranteeing appropriate attention to any specific business needs of the companies involved - would allow for an adequate control by TIM as client and also supplier of contact lists on overall management of processing for promotional purposes, as well as the related obligation to account for one's online activities with the principle of accountability.

Furthermore, the events in question highlight a partially flawed functioning of the automated system exclusion from the contact lists, confirmed by various anomalies on the systems admitted in addition occasions by the Company (see notes dated 8/3/2019, 3/4/2019 and 12/11/2019), which did not guarantee a correct and consistent representation, in the IT systems dedicated to this, of the negative will of the interested parties, involving, depending on the cases represented above, a processing of personal data for marketing purposes carried out without complying with the legitimate exercise of the rights of the interested parties, in particular that of opposition.

2.2. Calls to users not present in TIM's contact lists (so-called "unlisted calls")

Numerous complaints about the persistence of unsolicited promotional calls concerned non-users included in TIM's contact lists (so-called "off list").

In this regard, the Company has declared that "…partners are contractually prohibited from using contact lists autonomously found and not authorized by TIM", however "... during the useful contact with the line ... present in the contact list provided by TIM, it may happen that the person contacted requests to be call back on another number or indicate another person in the household to contact for the offer in question, providing its numbering [so-called references]…". Again with reference to "calls out list", TIM stated that these "...cannot be known to the Company as they are carried out by the partners through their phone systems/CRM…" except when "the customer/prospect accepts the commercial offer, [which] is compulsorily traced in the 'Verbal Order' system" (hereinafter also "VO") of TIM (see pp. 7 and 8, feedback 3/14/2019). This is whether the numbering contacted derives from the contactability lists provided by the Company, whether you are among the so-called "off-list".

The Company was therefore unable to quantify the "unlisted" calls made by its partners commercial, nor to provide the list of numbers contacted, and has quantified, only partially and indirectly, this information, providing the numbers not present in the contact lists delivered to the partners who, in period 1 July 2018- 28 February 2019, resulted, on the campaign management system associated with a verbal orderl whose presence is revealing only of the commercial contacts made which ended with the signing of a contract, ratified precisely by the Verbal Order. Therefore, "…the Company has applied a calculation methodology based on the comparison between the information stored in the "Verbal Order" system with respect to the numbers contained in the contact lists provided to the partners, being able to calculate only the "off-list" associated with a verbalized order...", i.e. in total, 116,461, and a good 184,655 starting from 1 March 2018 (see TIM memory 10/10/2019). Also in order to understand the extent of the phenomenon of "off-list" contacts, it can it may be useful to point out that the Verbal Order number provides a default indication of the calls underlying: for example, during the inspections, XX declared that, on customers present in customer base, the number of contracts stipulated represents around 9% of the promotional calls made in the case of upselling campaigns, while only 3% in the case of campaigns aimed at activating new lines. That rate moreover, it is generally even lower in the case of promotional campaigns aimed at individuals "prospect" due to the lower accuracy of the data (e.g. numbers that are no longer active or subjects who have be more advantageous subscriptions than those proposed).

Moreover, in the contracts entered into by TIM with its partners, it emerged that the assignment to carry out telephone contacts promotions concerned not only contact lists provided by TIM, but also so-called "lead" numbers acquired by the partners following the request of the interested parties to be contacted again to receive a specification commercial offer (see art. 2 "Subject" of the TIM-3G spa contract, attached to the inspection reports), while in the the contract does not contain instructions and organizational and technical measures with specific regard to the particular category of "off the list" represented by the so-called "referenced". Nevertheless, the Company could not fail to have awareness of the fact that the partners made "off-list" contacts outside the "lead" numbers, as this

it was concretely detectable by the misalignment of the numbers associated with the Verbal Orders, uploaded by the partners in the Company's systems, with respect to the numbers entered in the contact lists, provided by TIM to its own partner. Indeed, during the inspections, only two partners declared that the "off-list" contacts they came from lead lists; in the other cases, it emerged that the "off-list" contacts made concerned instead so-called “referenced” subjects.

The analysis of the so-called "off-list" numbers and of the black lists held by the Company also highlighted how much he follows:

- 1,504 numbers contacted were present in the marketing black list at the time of registration of the verbal order (and therefore at the time of making the commercial telephone contact);

- of these 1,504, 1,464 were contacted despite having been included by the Company in the black list marketing following the aforementioned provision of 22 June 2016, which - as highlighted above - had prohibited the processing for marketing purposes;

- 15 users had expressed a refusal to marketing before the registration of the Verbal Order (and therefore before making the telephone commercial contact).

With regard to the aforementioned 1,504 numbers, the Company assumed that these "were autonomously found by the Partners with the mechanism of leads and references, and therefore used for the purpose of commercial contact on the basis of ... the consent provided by the interested party or the balance of interest existing for i referenced", but did not provide any further elements, nor did it document this assumption, as requested instead from the principle of accountability.

Furthermore, since 1,464 users are included by TIM in its marketing blacklist following the aforementioned provision of 22 June 2016, in order not to incur in a repeated violation of the aforementioned provision, the Company itself should have provided such blacklist to its partners, supervising the activity of its partners, in order to be able to allow an appropriate match with the data acquired or in the possession of the partners, and thus avoid a new unwanted contact.

For the purpose of an appropriate study of the so-called "off-list" phenomenon, the Authority carried out investigations inspections also at some partners.

In operational practice, the method of manually composing the numbering was, in fact, admitted object of contact, a method that was not regulated by TIM in the contracts with its partners in order to limit possible abuses. It was found that, in general, outgoing call management systems used the call centers keep track of these calls, an element which has allowed the Authority to carry out some checks

compared to the data provided by TIM regarding the aforementioned Verbal Orders, once again ascertaining obvious inconsistencies quantitative (see communication initiating the procedure of 25 July 2019). In particular, the data provided by TIM with regard to the Verbal Orders (see response of 8/3/2019) appeared quantitatively and qualitatively (being different numbers resulting in contact) other than those acquired from the aforementioned call center operators, ad highlight inadequate governance of the phenomenon in question by the Company.

The checks carried out also highlighted that - with reference to some call centers (XX; XX; XX; XX) - numbers of "referenced" subjects were contacted although in the presence of a previous opposition to the treatment expressed by the interested party, as well as numbers included in the marketing black list following the cited provision of 22 June 2016 (in particular, this was found for: 258 "referenced" calls made by XX; 250 "referenced" calls made by XX; as well as a “referenced” call made by XX).

It appears evident that TIM - while knowing and accepting the phenomenon of calls to users "referenced", from which it has constantly collected the related profits, as attested by the above-mentioned Verbal Orders - has not regulated it with specific and detailed instructions in order to guarantee its compliance with the law in force (in these terms, see also Note XX of 10/18/2019). This resulted in the processing of personal data a marketing purposes carried out in the absence of a proven and suitable legal basis (not resulting that for they have acquired a suitable consent, such as e.g. by proxy, mail, recording of the phone call), or without taking into account the right of opposition previously expressed by the interested parties.

With specific regard to the Verbal Orders - as well as the composition of the contact lists - the Company, afterwards an alleged discussion with partners on November 7, 2019, provided elements (such as the "use of coding criteria of separate data flows from the Partners, which generate different nomenclature"; comparison made on lists partial in the availability of the Partners"; the different denomination of the type of "off-list" contacts, referred by some partners also to "Lead" users, acquired directly by the same partners, and not only to users "referenced"; the different concept of VO, used in practice), on the basis of which the Company believes it can reasonably circumscribe and reduce the phenomenon in question (see memorandum of 10/10/2019 and explanatory note 12/11/2019, cit.). However, these elements do not appear to fully and punctually justify the considerable diversity of quantitative data, in particular of VO.

Even today, the management of lists and VOs - as well as of the - is not adequately demonstrated and reported contacts "off the list" - by TIM, also due to evident differences in the criteria used and not shared with the partners, so much so that the Company itself has come to represent that "checks are still in progress punctual to numerically compare and check with the Partners in question the lists of off-lists and of related Verbal Order" and to report "that the interventions initiated ... and represented (in the memorandum 12.11.19)

will make it possible to adopt control methods for off-lists based on more structured and expected feedback from the contractual obligations", as proof of the gaps that emerged.

2.3. Additional unsolicited promotional communications that emerged from the feedback provided by TIM regarding reports and complaints and management of the rights of data subjects

Following the analysis of the feedback provided by TIM (6/12/2018; 13/2/2019 and 1/3/2019) regarding the requests made by the Authority on 7 November 2018 and 14 January 2019, in relation to multiple reports; to some complaints (TIM findings 25/10/2018; 8/1/2019; 5 and 16/9/2019), as well as supplementing the aforementioned inspections (findings 8/3/2019, 20/3/2019 and 2/5/2019), the following emerged:

1) for almost all of the reports and complaints, TIM denied unwanted promotional contacts, affirming the non-involvement of the users of the whistleblowers with respect to the lists used for promotional purposes as well as the calling users with respect to its sales force;

2) nevertheless, the following reports were found to be founded; in particular the Company:

to. with regard to XX, despite the opposition exercised by them, he admitted to having it mistakenly entered in contact lists and actually contacted him, through the call center XX s.r.l.;

b. with reference to XX, despite the opposition exercised by the latter, he represented that he had continued to include him in the contact lists and then call him, as XX srl, call center author of the call, did not receive "due to errors within the .... back office" will negative of the interested party "in the marketing systems", so that the user in question has been inserted in subsequent contact lists (see TIM feedback 2/13/2019);

3) with regard to the requests of other interested parties (XX; XX; XX; XX; XX; XX; XX; XX; XX), the call centers those entrusted with the execution of the promotional calls have admitted (as, moreover, TIM itself: see memorandum of 10 October 2019) undesirable contacts alleging, generically, alleged "oversights" or errors of typing of the telephone number to be contacted or occasional contact initiatives "in modality manual", unauthorized, carried out by its own personnel and not further detailed and clarified (see also specific feedback from: XX srl and XX srl of 30/1/2019: XX srl and XX srls of 30/11/2018; XX spa dated 12/5/2018; XX srls of 19/3/2019 - the latter with a total of 4 reports, object of distinct acknowledgment; all attached to the aforementioned TIM responses). Generic explanation also results the one provided by XX spa, which claims, to motivate a further unwanted promotional contact, "a duplication of data on (own) CRM (technical error) ascertained following the control of the reporting..." (response XX 22/11/2018, attached to the TIM response dated 6/12/2018, cit.);

4) in the case of so-called "hybrid" telephone calls, the promotional contact made by the Company resulted carried out, despite the refusal already expressed to the treatment also for promotional purposes, in the context of "intra-contractual" or in any case "service" communications (in a first case, reporting XX, by telephone call with operator: v. TIM reply 12/6/2018, cit.; in a second case, complainant XX, by sms: v. TIM reply 8/1/2019, cit.). In this second case, according to the Company, the late response at the request of the whistleblower and the inclusion in the black list - in the face of multiple oppositions made by complainant, even by means of documented communication by pec - would have happened for a non better detailed "...incorrect operation by customer care operators";

5) the following critical issues also emerged with regard to the requests presented by the interested parties, with particular reference to the opposition to the treatment for promotional purposes:

a) the lack of a written or otherwise documented reply to the requests of the most interested parties (XX; XX; XX; XX: see response 2/5/2019); failure to respond to requests received by means of certified mail (see for XX's report: reply 2/5/2019, cit.; see for XX's complaint: reply 10/25/2018). In the first case, the instance “is not tracked in the … archiving systems of the correspondence received”; in the second case, an "alleged loss of information ... in the process of transferring from certified e-mail to paper documentation ..."). There is a similar lack was found for: the report of XX, whose application was printed and sent to the outsourcer in charge of the 'typing', but not found due to a problem relating to the said procedure (review 20/3/2019, cit.); for signaling XX, managed, with insertion in black list, only on the occasion of the reply provided to the request for information formulated by the Authority (matches 8/3/19 and 5/11/2018); as well as for the complaint of XX, in relation to which multiple requests formulated to the Company - although sent several times via pec and ordinary e-mail - are not detected in the systems for technical anomalies or managed late and whose opposition to the promotional treatment is entered into the system only after a period greater than 4 months from the originally formulated request (references 09/05/2019 and 10/10/2019);

b) the successful response to opposition requests, but without effective implementation in the systems corporate, of the refusal to the treatment expressed by other interested parties (XX; XX; XX: see reply 2/5/2019, cit.).

In the face of some of the aforementioned critical issues submitted to TIM by this Authority, the Company (see memorandum of 10/10/2019), has pointed out that “the integration of the text of the i-sms with information is currently being evaluated about the ways in which the customer can object to receiving the aforementioned messages."

Such conduct once again highlights the making of unwanted promotional calls in the absence of appropriate consent or even in the presence of an express refusal by the interested parties.

2.4. The processing of customer data called "OLO" (Other Licensed Operator)

During the inspections, the retention of personal data in the Company's CRM emerged belonging to non-customer subjects (name, surname or company name; tax code or VAT number; line telephone; address; contact details).

In particular, in relation to some data breach events, one of which had involved the personal data of a "subject" never belonging to TIM customers, the Company has represented that the processing of the related data was necessary as the interested party himself, despite being a customer of another telephone operator (Other Licensed Operator- OLO/Alternative Network Operator), appeared to use a "wholesale line rental" (WLR) service, sold by TIM to the OLOs and offered by the latter to its customers.

The Company also declared that "the general category of "customers" also includes customers of the services of residential landline telephony to which customers of WLR services are also assimilated. For this type of interested party the general criteria for the availability of personal data are defined which envisage [...] the visibility of the data for 5 years from the termination (unless there are cases in derogation, e.g. disputes, specified in the policy) for the purposes carried out by of customer care" and "the maximum availability for 10 years for the purposes of tax management and obligations tax matters (unless there are exceptions, e.g. disputes), including the retention of invoices for the service provided." (see p. 9, feedback 12/13/2018 and 12/14/2018, p. 8).

Instead, the results of the inspections highlighted - differently from the provisions of the aforementioned TIM policy – that access to OLO customer data was allowed to customer care operators even beyond the period of 5 years. In this regard, the Company has specified that only following the inspections has it proceeded to modify "the visibility of the personal data of the customers of the WLR services by the operators of the customer care" by inhibiting them "from seeing the personal data of customers of WLR services if terminated by over 5 years." (see p. 8, response 12/13/2018, cit.).

Furthermore, the presence of a whistleblower's personal data in the CRM (i.e. the management system) was verified of customers) of the Company, even though more than 10 years have passed since the date of termination of the contract with TIM. In this regard, the Company has declared that the "... customer records remain visible to TIM Customer Care operators as long as the underlying telephone line is active with another Operator (OLO) and for the following 5 years from the termination (technical deactivation) of the line" (see response 14/3/2019, p. 6). However, for the line in question - which has been managed by another telephone operator for over 10 years - no WLR service was found to be active (see report attached to the response sent on 2/5/2019).

Moreover, the result relating to the presence in TIM's CRM of 23,298 assignees of WLR lines managed by another OLO (overall referring to 23,428 telephone lines), is of dubious compatibility with the legitimate purposes of the treatment attributable to TIM, taking into account that – according to the provisions of the Company's online portal, "il WLR service allows Operators to virtualize the customer's connection to their network and to provide directly to manage the customer with regards to various contractual or otherwise connected functions to the execution of the service. Furthermore, in the manual of procedures relating to this service (Annex G to the reference 12/13/2018), it is indicated that "The WLR Operator fully manages its customer for the taxation and invoicing of the subscription and consumption fees used by the latter…".

Although the Company has declared its intention to reorganize the CRM which would also lead to a review of i OLO customer data (memo 10/10/2019), to date these data are stored in the Company's CRM beyond the limit expected 10 years. This represents an overly large amount of time that it doesn't find any justification in the light of the alleged purposes pursued by TIM.

From another point of view, as a result of internal audits conducted by the Company, the same has declared that they have emerged "anomalous behavior in accessing and consulting the database relating to the 'faults' allegedly by part of OLO employees ... object of a complaint to the Public Prosecutor ... on 1 October 2019, so that the same can carry out the investigative investigations deemed necessary..." (see note of 12/11/2019).

With the same note, the Company represented that, "with reference to the 23,428 lines corresponding to lines active at the date of "native" customers of OLO for the WLR service ... only 2,410 were included in the Lists of contactability of prospect campaigns for the period from 1 July 2018 to 28 February 2019 …"; of the 2410 mentioned utilities, 414 would have been "acquired from the telephone directory and verified against the Opposition Register and 2 instead, they would have subsequently returned to TIM" (see memorandum of 10/10/2019). Nonetheless, the Company is not was able to substantiate and prove - for the 414 users - the aforementioned verification activity and - for the remaining 2 - the circumstance of the possible acquisition of valid consent for promotional purposes (such as, for example: copy paper or online forms; Audio Recording; log files regarding any online collections).

With regard to the remaining 1,995 numbers, the Company represented that "the subsequent technical analyses, in in the meantime he concluded" they would have "confirmed that the promotional campaigns on active fixed lines aimed at the so-called "prospects" can also be addressed to former TIM landline customers registered in the CRMR system have provided consent to the contact valid for 5 years from the termination", and that these analyzes - highlighting a new critical element - "they identified an anomaly in the extraction procedure from the CRMR such for which the procedure was unable to discriminate between two inherent cases: (i) the numbering of discontinued lines e subsequently reactivated and assigned to a different user (OLO customer) to activate a new system with the WLR service ... and (ii) the active lines migrated for the transfer of the TIM customer to an OLO. As a result of that anomaly, 1,995 numbers assigned to OLO customers and corresponding to previously used numbers

by ex-TIM customers with consent to contact have been included in the Lists of prospect campaigns. Such an anomaly has been corrected by eliminating from the extractions made by CRM ... all the lines registered to OLO customers" (see note 12/11/2019). In other words, the aforesaid anomaly resulted, with reference to the promotional campaigns carried out by the Company towards former customers, the inclusion in the contact lists of numbers belonging to them to customers of the Company, then deactivated and subsequently reassigned, as available, to customers of others operators. This has led to unlawful processing of data relating to the telephone numbers of other customers operators, since the commercial contact took place in the absence of the prior consent of the interested parties or others suitable legal basis. Moreover, it must be taken into consideration that the quantification of the phenomenon (1.995 numbers) refers only to the promotional campaigns carried out by TIM in the period July 2018-February 2019, while the anomaly in question has reasonably involved a much longer period of time.

In addition, the arguments represented by the Company are not adequately substantiated in deeds. In some cases (213 numbers and 638 commercial contacts) the WLR service activation date was in fact more than 5 years earlier than the date on which the commercial campaign was carried out: after 5 years also any consent to marketing provided by the ex-client terminated - incorrectly attributed, according to the Company, to a different subject, OLO customer - it should have been considered - based on the same policy TIM - no longer valid for carrying out the commercial contact.

The conduct described above denotes unlawful processing as it is carried out in the absence of suitable consent by the interested parties as well as in conflict with the principles of limitation of conservation and the obligation to ensure and prove compliance with data protection regulations in accordance with the principle of accountability (cfr. infra par. 3.8).

2.5. The “TIM Party” online program

The Company, as shown by the analysis of the site www.tim.it, offers its customers the possibility of adhering to the "TIM Party" program, which allows access to benefits and discounts, as well as participation in competitions a awards, representing to them that "If you have not yet released it, you will be asked for your consent for the purposes of marketing by Telecom". The customer, therefore, to access this program and the related benefits, must express consent to promotional purposes. Moreover, the number of customers they have is very high subscribed to this program (about 2,000,000 telephone lines, up to December 2018: see minutes 5 and 6/2/2019).

In this regard, TIM represented (see memorandum of 10/10/2019) that "the dedicated offers are not already a promotional activity ... but rather the specific function and purpose of the program itself, i.e. the cd object of the contract ... Thus, the TIM customer who intends to join the program makes a conscious ed informed choice and demonstrates, through registration, its willingness to receive communications relating to offers, benefits and competitions, which represent the sole purpose of TIM Party. For this reason, the subscription to TIM

Party necessarily involves the modification of the consents registered in the CRM, as the enrollment in the Program it turns out ictu oculi incompatible with the denial of commercial offers...". The Company, in the same office, leaking some reasonable doubts about the legitimacy of this practice, he added that “If this indication is not shared, it is alternatively noted that the 'transfer of consent' in the face of advantages however, it remains a free choice of the consumer, not expressly precluded by the Regulation." and he did reference to an alleged, and unidentified, opinion requested on the matter by this Authority.

In this way, the Company making participation in the "TIM Party" loyalty program subject to the release of the consent to the treatment for promotional activities, appears to condition the will of the interested parties in relation to the (generalized and undifferentiated) receipt of promotional communications from the same and with the modalities more diverse (automated and traditional). This, although the aforementioned treatment is not necessary for the purposes of execution of the contract stipulated by the interested party by joining the program, which has as its object the achievement of prizes and discounts. Nor is it duly clarified in the information provided to the interested parties that such manifestation of will automatically entails the modification of any denials expressed by the same prior to joining the Program. Therefore, the Company, in violation of the principles of fairness and transparency of the treatment, has collected the consent of the interested parties for promotional purposes in such a way as not to guarantee its free, specific and conscious manifestation.

2.6. Apps made available to customers

The Company offers its customers the possibility of installing certain online applications on their mobile devices. In during the inspection it emerged that, in particular, "My TIM", "TIM Personal" and "TIM Smart Kid" provided that the user, in order to take advantage of the various features provided, at the time of installation of the same, should 'accept' together with the "terms of service" also the "privacy policy", which also referred to promotional purposes, geolocation and communication to third parties for promotional purposes.

Considering the very high number of customers who have installed these applications (7,000,000, "My TIM"; 400,000, "TIM Personal"; 10,000, "TIM Smart Kid": see all. 1 to the report dated 02/06/2019 cit.), and that for a whistleblower (XX) it is having emerged the valorisation of consent to marketing despite the original refusal expressed in the contract, the Company, upon specific request, denied that the acceptance of the "terms of service" together with the "information privacy” would lead to a change in the wishes previously expressed by customers in the office for activation of the Sims (see report of 6/2/2019).

With regard to the information, TIM has denied using the data collected with these Apps for carrying out the promotional activities, geolocation and communication to third parties for promotional purposes. With specific reference to the “My TIM” App, however the Company subsequently produced a new one for the Authority

information revised in the light of the criticality highlighted above (see minutes 6, 14 and 28/2/2019; as well as feedback 20/2/2018).

More generally, the same - in invoking his own "good faith", in his opinion, proven precisely by following changes made to the configuration of the "My TIM", "TIM Personal" and "TIM Smart Kid" apps - ha represented that (see memorandum of 10/10/2019):

- “activation of the Apps in question does not require express consent for use nor does it allow modification of the consents for marketing purposes of the customer, which can be managed by the same through i channels relating to the management of the TIM line (ie via the My TIM web portal and, from August 2019, via l’App My TIM)”;

- to have “acknowledged the remarks raised by the Authority regarding the potential textual ambiguity of the disclosures in relation to the possible effects deriving from the installation of the Apps in question, and proceeded to amend", in the period between February and August 2019, "the text of the disclosures accordingly same”;

- to have modified, in line with the critical issues that emerged during the inspection, also the relative procedure to the "acceptance of the Terms & Conditions and acknowledgment of the Privacy Policy", by setting "the required selection of two separate buttons”.

In addition, the "My TIM" Apps; "TIM Personal"; "TIM Smart Kid", at the time of the investigations, did not foresee the acquisition of a free and specific consent of the interested parties for the treatment of personal data against more purposes and multiple processing operations (including, in particular, "statistical" activities; "sizing of the service"; "diagnostics"), heterogeneous among them and not all apparently necessary for the services provided to the interested parties through the Apps.

In summary, with regard to the Apps indicated above, a correct and transparent treatment is therefore not carried out; And the failure to acquire a free and specific consent of the users in relation to each individual also emerged purpose pursued.

2.7. Forms used for the "self-certification of possession of a prepaid line"

The Authority has received a report highlighting the administration to the whistleblower of the aforementioned forms from part of TIM, where, for various processing purposes (statistics; promotional; profiling), it was a single indistinct consent is required. In this regard, the Company represented that: “the form of self-certification in question (ed. March 2009), used by the Customer Care Business, had not been updated e therefore it presented contents that were no longer adequate, including the declaration of privacy consents ... it is not possible

trace the number of business customers who have subscribed to this form, as there is no specification tracking for this type of module (used only for the header of the prepaid mobile line to a third party person with respect to the holder of the business mobile phone contract)", adding that "The review is in progress of the form ... , which, once completed, will be distributed to all Customer Care Business structures ... " (see feedback 3/20/2019).

The Company subsequently presented (on 10/10/2019) documentation relating to new modules responsible for same function and already distributed, presenting the request for free and specific consents based on the different ones purposes of the processing pursued, noting that the data collected by the reporting person and by the other interested parties are not would have been used for the purposes indicated in the information (including promotional ones), thus confirming, however, the collection of an unsuitable consent.

2.8. Data breach management - anomalies and misalignments relating to customer personal data

Based on the findings of the inspections and the examination of some of the most significant notifications of data breach presented by the Company, it was found that:

- in some cases the Company belatedly identified and correctly managed the incidents of violation occurred, activating the DPO only a few months after the detection of the problem, as well as the carrying out of communications to this Authority prescribed by current legislation;

- the systems that process customers' personal data frequently encounter "misalignments", "anomalies" and "wrong associations".

These events appear to have been the cause of data inconsistencies, which resulted, for example, in the erratum attribution of telephone lines to the holders or the incorrect association between holders and contact details (yes see, for example, data breaches no. 170, 171, 175 and 186). This resulted in undue communications of data personal data to subjects other than the interested party, for example at the time of sending the invoice and traffic data telephone and telematics associated with it. Furthermore, there have been accesses, by customers, to data of other subjects, displayed in your self-care area of the customer portal.

The misalignments, suitable for jeopardizing the accuracy of the data processed, also appear to have had an impact on the privacy consents reported in the customer data sheets. In this regard, during the investigations inspections, the presence of an inconsistency between the privacy consents reported in the registry of a customer and the data that can be deduced from the examination of the consent history (see p. 5, report of 14/2/2019; p. 7, report 28/2/2019).

The Company specified that the misalignment indicated concerned a further 2,894,292 lines and occurred at following the occurrence of an "anomaly" during a massive reclamation activity, which involved all the lines furniture of TIM's consumer customers, carried out, starting from 14/1/2019, on the DWH-Consensus system (see feedback 3/20/2019).

Therefore, for these lines, from the date the reclamation was carried out to 18/3/2019 (the date on which the Company declared it having resolved the anomaly), there was an inconsistency between the consents in the personal data sheet and the status of the last consent change. Therefore the expression of the last change of consent made by the interested party, during the indicated period, was not correctly "propagated" in the consumer CRM, whose personal data card continued to show the values of the consents prior to the last expression of will.

An anomaly also concerned the denials black list, in particular affecting the date of insertion of numbers in the black list itself. The Company appears to have become aware of this only when, in the course of the said inspections relating to telemarketing, had to explain the reasons why almost half of the numbers inserted in the aforementioned exclusion list had the same date of insertion (see p. 2, report 2/28/2019; match 3/4/2019). The Company, stating that the software malfunction had taken starting on 30/1/2018 and lasted until 14/2/2019, he assured that he had "structurally resolved the anomaly at date from 8/3/19...", and to have blacklisted "all the denials 'blocked' and only temporarily not results on all databases and, therefore, the black list is currently complete and correct", thus admitting that this black list previously presented some inconsistencies in the data (see memorandum of 10/10/2019). There Company, in the same memorandum highlighted that these misalignments did not "lead to the destruction, the loss, modification, unauthorized disclosure or access to personal data transmitted, stored or however processed, but only the misalignment between different databases and/or interfaces", since "the updated data and exact they were however present in the DWH-Consensus, i.e. from the master system on which all the are based activities conducted by TIM by virtue of the privacy consents of customers ..". It is also noted that this last statement is partially in contrast with what was represented by the Company, in the memorandum dated November 12, 2019, in which he stated that: "the anomaly already represented to the Guarantor in the Response of 3 April 2019, which has temporarily stopped updating the Consensus Prospect DWH archive and has been reverted the anomaly as of February 15, 2019, some denials were recorded in the DWH Consent Prospect to starting from that date. [...] As already represented in the Memorandum and in the Response of 8 March 2019", according to TIM, there would have been an "anomaly in updating the Prospect Consensus DWH archive e consequently of the Black List Denials used by the marketing functions…" from which it would seem that anomalies relating to the status of the consents of the interested parties were also present in the DWH Consent system.

The aforementioned anomalies reveal an incorrect and unsuitable treatment to guarantee the accuracy of personal data, as well as the integrity and confidentiality of the systems, and therefore the failure to adopt technical and organizational measures suitable for these purposes.

3. LEGAL ASSESSMENTS

With reference to the factual profiles highlighted above, also on the basis of the declarations of the Company for which it responds to pursuant to art. 168 of the Code, the following assessments are made in relation to the profiles concerning the discipline in matter of personal data protection.

3.1. Calls made to "unlisted" users

With specific regard to calls made to "unlisted" users by certain call center partners of TIM, it turned out that "referenced" subjects were contacted, on the basis of constant operating practice attributable to a conscious corporate choice of the Company and not attributable to exceptional non-authorized undertaken - without the knowledge of the client - and call center in charge of promotional activities - from personal (see par. 2.1).

In this regard, TIM should have, directly or through its partners, subjected the information to verifications collected on the so-called "referenced" CDs, especially in relation to the origin and concrete methods of data acquisition (in in particular, the existence of the necessary prior consent for the promotional purpose or the presence of the user in a public list and, at the same time, its non-registration in the public register of oppositions, cf. provision 18 April 2018, doc. web no. 9358243). In fact, the status of "referenced" cannot substitute for what is necessary fulfillment of the obligation of the prior acquisition of a specific, documented and unequivocal consent of the interested party. This is because the referring third party is (as a rule) not entitled to give any valid consent on behalf of the interested party receiving the call (see provision 26 July 2018, web doc. n. 9358243).

In addition, it turned out that the "off-list" users contacted also included 1,464 users who, in compliance with the aforementioned provision of 22 June 2016, had been placed on the black list and therefore not could have been contacted for promotional purposes.

Furthermore, it cannot be invoked as a legal basis - as TIM did, moreover, only with the note of May 13, 2019 and the brief of 10 October 2019, trying to move away from what has already emerged and crystallized during the inspection - that of the "legitimate interest" of TIM and its partners in marketing activities, perhaps together with the alleged interest of the "referencing" subject, which involves the friend or relative in the promotion.

In this regard, it should first of all be reiterated that TIM has not detailed or demonstrated the status of "referenced" for the individual users contacted "off the list" (including, among the elements, the origin and exact methods, even temporal, of

acquisition of the data in question), but limited itself to assuming, generically and without distinction, that it could these are "referenced" users.

It should also be highlighted that the legitimate interest, pursuant to art. 6, par. 1, lit. f), of the Regulation - already provided for by the abrogated directive 95/46/EC, as well as by the Code in force prior to the changes made by Legislative Decree no. 101/2018 (legislative decree n. 196/2003, art. 24, paragraph 1, letter g) - cannot substitute - in general - the consent of the interested party as the legal basis of marketing. Indeed, the Regulation itself – as already the directive 95/46/CE in the art. 7, paragraph 1, lett. f) - admits it only “on condition that interests or rights and freedoms do not prevail fundamental data of the data subject which require the protection of personal data”. Furthermore, the same Regulation (see recital 47), with specific regard to the applicability of legitimate interest to marketing demands - with a rigorous and prudent approach - that reasonable expectations are taken into account by the interested party on the basis of his relationship with the data controller. For example, there may be such legitimate interests when a relevant and appropriate relationship exists between the data subject and the data controller treatment, for example when the interested party is a customer or is employed by the data controller. In each case, the existence of legitimate interests requires a careful assessment also regarding the eventuality that the interested party, at the time and in the context of the collection of personal data, can reasonably expect that processing takes place for this purpose. The interests and fundamental rights of the data subject could in particular override the interests of the data controller where personal data are processed in circumstances where the data subjects cannot reasonably expect further processing of the personal data". The application of the legal basis of the legitimate interest therefore presupposes the prevalence in practice (on the basis of a balance left to the owner, but always assessable by the Supervisory Authority) of the latter on the rights, freedoms and mere interests of the interested parties (specifically, the recipients of promotional communications not assisted by the consent). In such a comparison, careful weighting of the impact of the treatment, which is intended, is required carry out on these rights, freedoms and interests (among which, in the case of marketing, the right to data protection and the data subject's right to individual peace of mind, see, most recently, Annual Report 2018, p. 107; also provision 22 May 2018, doc. web no. 8995274), and it is also necessary, in compliance with the principles of accountability and transparency, the concrete implementation of adequate measures to guarantee the rights of data subjects, which in particular that of opposition (in this sense, see already the Opinion of the Group Art. 29, n. 6/2014, on the concept of legitimate interest – WP 217, p. 35: the institution of legitimate interest “guarantees a greater protection of the data subject; in particular, it establishes that not only rights and freedoms are taken into consideration fundamentals of the interested party, but also his "interest" - mere and unqualified. … all categories of interests of the data subject must be taken into account and weighed against those of the controller, insofar as they are relevant within the scope of the directive').

Moreover, “the data controller cannot …. retroactively resort to the legitimate interest basis in the event of consent validity issues. Since it has the obligation to communicate [in the information issued to the interested party] the legitimate basis at the time of collecting the personal data, the data controller must have decided on the basis legitimate prior to data collection" (see Group guidelines Art. 29 on consent pursuant to Regulation (EU) 2016/679, 10 April 2018, WP 259 rev.01).

Therefore - if the above conditions for legitimate interest do not apply and with the exception of hypothesis of the so-called "soft spam" (art. 130, paragraph 4, Code), as well as the "opt-out" system for the data present in public lists – it must be assumed that the general rule to follow for processing for promotional purposes is that of the prior informed, free, specific and documented consent of the interested parties (as also underlined by the Guidelines of the Guarantor on promotional matters, 4 July 2013, cit., and even earlier by the provision gen. 19 January 2011, “Prescriptions for the processing of personal data for marketing purposes, through the use of the telephone with operator, following the establishment of the public register of oppositions", Doc. web no. 1784528, that - in recalling the need, also with respect to the users of companies or freelancers available in directories or public registers, the further stringent limit, in compliance with the principle of 'purpose', of the strict and direct functionality between telephone promotional offers and the specific object of the entrepreneurial/professional activity - clarified that, apart from the aforementioned cases, the processing for promotional purposes of the "data contained in databases however formed is permitted only in compliance with the general principles of the Code and therefore only prior issue of suitable information and the acquisition of specific consent….."); principles, as known, confirmed e indeed made more stringent by the Regulation through the provisions of Articles 6, 7, 12 and 13.

With regard to "unlisted" users (in particular, those "referenced"), the "general" responsibility for processing promotion carried out must be attributed – differently from what is believed by TIM – also to the latter, in the light also of what was noted by the Art. 29 Group, with regard to the concept of data controller, who "is functional, that is, aimed at attributing responsibility where an effective influence occurs: it is therefore based on a factual rather than a formal analysis”. In particular, for the purpose of identifying ownership in practice exercised, it is also necessary to examine "non-contractual elements, such as the actual control exercised by one party, the image given to the interested parties and the legitimate expectations of the latter on the basis of this visibility" (see Opinion n. 1/2010).

Indeed, based on the elements collected, the Company in fact constitutes the client on behalf of the which telemarketing activity is carried out (including that of finding and contacting "unlisted"), on the basis first of all of the contract but also in the operating practice of the call centres, constantly committed to using the name and image of TIM, as well as the scripts of the promotional messages of the same Company; however the itself is clearly the subject to whom the economic advantages deriving from the contracts are mainly intended stipulated with interested parties who adhere to the telephone offer. Against this, it does not appear that TIM originally has

adequately regulated, nor adequately monitored such methods of managing telephone contact, nor either intervened to discipline or dissuade her after the signing of contracts with partners (at least up to to the letter sent on 9 October 2019 to the aforementioned partners, inviting them to suspend this contact activity pending the definition of the proceeding initiated by the Guarantor on 25 July 2019).

In this regard, it should also be noted that, from the contracts stipulated with the partners, it emerges that TIM has appointed these subjects to carry out the promotional activity using not only their own contact lists, but also “outside” users list", such as those "leads". However, in contracts with partners, TIM has not clearly circumscribed the notion of "lead", nor has it indicated specific procedural methods for acquiring the relative numbers, thus accepting the risk of contacts that do not comply with the law, indeed encouraging such activities already in the contractual provisions e by forfeiting the data of commercial contacts in its information systems - carried out in the absence of the consent of the interested, but successful - as well as receiving the consequent economic benefits (deriving from the stipulation of service supply contracts - see, for example, art. 7 of the TIM-3G spa type contract, according to which for "lead" means the "authorization to be contacted provided by the Customer who releases his personal data (full and correct name, correct and active telephone number and/or correct and active e-mail address) … in agreement with the laws in force, collected in paper, vocal or digital form)" where it is also established that for "the calculation of the fees, the useful Contacts made and the contracts acquired will be taken into consideration and activated according to the data resulting from Telecom's information systems", in which in fact also i so-called "referenced"). Furthermore, despite the data of the "off-list" numbers - having been collected by the partners in violation of the regulations in force – and therefore could not be used (art. 2-decies of the Code), TIM has however constantly accepted the registration in their systems for the management of the stipulated contracts, without take care to verify its origin and, in particular, its legitimate acquisition.

Considering the extent of the phenomenon of unwanted promotional contacts with "unlisted" attributable, as illustrated above, also to the persistent and serious shortcomings of the Company, the latter must be held responsible for the aforementioned violation of consent with respect to "referenced" users, as not it appears that it has put in place “adequate and effective measures, in consideration of the nature, scope of application, context and purpose of the processing, as well as the risk to the rights and freedoms of individuals physical" to guarantee, and be able to prove, the compliance of the treatment with the protection discipline of personal data, thus seriously and repeatedly violating the obligations of accountability (see articles 24 and 28, especially par. 3, of the Regulation). In particular, no measures have been taken to prevent calls from being made unlawful promotions with respect to "referenced" users, or to guarantee the acquisition of a valid quote consent of the interested parties for promotional purposes or the presence of another suitable legal prerequisite (as in the case in which adequate checks had been carried out regarding the traceability of the so-called "reference" in a public list and its simultaneous absence in the public register of oppositions).

This, not to mention the fact that precisely for the "referenced" users present in the public directories and at the same time in the Public register of oppositions, art. 1, paragraph 11, of the law n. 5/2018, introduced in our regulation an express principle of joint responsibility of the owner-purchaser for promotional activities entrusted to third party call centres, establishing that: “The personal data controller is jointly liable of violations of the provisions of this law also in the case of outsourcing of call activities to third parties center for making telephone calls.".

It should also be specified that this legal arrangement has not been denied, as instead stated by TIM, from the aforementioned ordinance-injunction adopted by this Authority on 11 April 2019, against XX srls (web doc. n. 9116053), taking into account the substantial diversity of the case covered by the aforementioned ordinance, concerning an articulated treatment chain that descended from the client up to a company Albanian through several subjects and intermediate passages.

Furthermore, it cannot be excluded in practice that the relationship between TIM and its partners may be qualified as terms of ownership. It appears, in fact, that these partners have identified and contacted external "off-list" users of the contact lists and the contract formally stipulated with TIM, effectively exceeding the role of mere responsible for the treatment formally entrusted to them for the execution of promotional campaigns aimed at interested parties present in the TIM lists and determining "purposes and means of processing", in the context of a design unitary and in fact shared, at least with regard to the purpose of acquiring new customers and its effects operative, with TIM (see provision 1 February 2018, web doc. n. 7810723). This is also in consideration of the irrefutable circumstance, that the use of "off-list" numbers was functional to the pursuit of an interest shared, both by TIM and by its partners, from which everyone derived an economic advantage. In such In this way, TIM also substantially influenced the data processing implemented by the partners by participating in the determination of the purposes and means of such processing.

In this context, the telemarketing activity carried out on behalf of TIM towards the "off-list" must be considered a substantially unitary economic activity, since it is neither possible nor correct to separate and separate i related related obligations and responsibilities (for similar considerations on the responsibility of the customer with respect to the conduct of its partners as well as of other subjects possibly involved in the "chain of treatment”, v. provision 26 October 2017, doc. web no. 7320903; provision gen. 15 June 2011, doc. web no. 1821257, which, in arguing the ownership of the treatment by the clients, highlights some precise elements: if, as in the present case, the promotional contacts are made in the name, on behalf and in the interest of the principal company, "a legitimate expectation is generated in the interested parties, since they perceive be recipients of advertising initiatives conducted directly by the company on behalf of which it is the proposal for the sale of products or services has been formulated; … - the mandate, often with representation, from time to time conferred binds the agent to the presentation of offers and the conclusion of contracts in the name, however for

account of the principal using, moreover, the forms prepared by the latter". Also, according to the mentioned provision General June 15, 2011, “the powers strictly provided by the Code for the configuration and exercise of ownership” …. “they are and remain the exclusive prerogative of the principals. Among these, first of all: - hiring decisions relating to the purposes of processing the data of the recipients of promotional campaigns for the purpose of sending advertising material or direct sales or commercial research or commercial communication carried out by third parties who act in outsourcing for the performance of the aforementioned promotion and marketing activities marketing of goods, products and services”. For similar arguments, see also: the Guidelines on the subject of promotional activity and fight against spam, 4 July 2013, doc. web no. 2542348; provision gen. April 18, 2019, in electoral propaganda and political communication, doc. web no. 9105201; in this sense v. Court of Milan, section I civ., 28 March 2019, n. 2629, which confirms the orientation expressed by the Guarantor in the provision 26 October 2017, doc. website 7320903, on the co-ownership of the treatment by the client; ord. injunction June 18, 2015, doc. web no. 4253116; opinion no. 1/2010 WP no. 169 of 16 February 2010, which highlighted, already in line with the Directive 95/46/EC, which, for the purpose of identifying the ownership actually exercised, it is necessary to examine also "non-contractual elements, such as the real control exercised by one party, the image given to the interested parties and the legitimate expectations of the latter on the basis of this visibility". See, in this sense also the orientation of the Community jurisprudence, with respect to which the obligation of conforming interpretation of the rules applies: sentence CGUE, Cause C-131/12 – Google Spain SL, Google Inc./Spanish Agency for Data Protection, Mario Costeja Gonzáles, on the well-known "Google Spain" case, from which it can be deduced that the responsibilities cannot be separated from the advantages, such as economic profits, deriving from the same treatment activity; sent. CJEU, 5 June 2018, C-210/16, Wirtschaftsakademie Schleswig-Holstein, referring to a broad concept of (with) ownership in the treatment, also including the subject who, in some way, has contributed to the determination also of the sole purposes of the processing. On co-ownership, see sent. CJEU, 10 July 2018, C-25/17, Data Protection Commissioner; CGUE, 29 luglio 2019, C-40/17, Fashion ID GmbH & Co. KG / Consumer Advice Center NRW eV).

So much considered, since the aforementioned treatments took place in the absence of the necessary consent of the interested parties or other suitable legal basis, TIM is found to have violated articles 5, par. 1, lit. a), and par. 2, 6, 7, 24 and 28 of the Regulation, as well as the art. 130 of the Code.

3.2. "Hybrid" promotional communications and violation of the provisions on the exercise of the rights of the interested

The cases regarding the failure to adequately respect the rights of the interested parties are varied (see par. 2.2 e 2.3).

It has been ascertained that the requests to exercise the rights envisaged on the matter formulated by some interested parties, some of which sent by certified mail, and therefore a conduct inconsistent with

the obligation of the owner to facilitate the exercise of the rights of the interested parties provided for by the law with appropriate measures relevant legislation and to satisfy the same without delay (see art. 12, paragraphs 1, 2 and 3, Regulations; see also already art. 8, paragraph 1, of the previous Code, to certify the constant nature of this obligation).

In this regard, however, it must be noted that the gaps emerging from the feedback to some interested parties (see XX, XX, XX, XX, XX, XX, XX, XX) and in particular the period of time between the date of exercise of the rights and the date of inclusion in the corporate black list, refer to the period prior to the adoption of the aforementioned provision of 2016 "and therefore physiologically reflects(s) the anomaly already detected at the time by the Guarantor ... (so much so that it is subject to specific provisions with the aforementioned provision and the subsequent plan of adaptation put in place by the Company and fully documented to the Authority itself..." (in these terms, the acknowledgment 2/5/2019). Confirming (see note from the Authority of 25 July 2019) that the said gaps cannot therefore be challenged, are, however, subsequent to the aforementioned provision - and therefore worthy of censure - the analogous gaps ascertained with respect to the instances of XX; XX; XX; XX; XX; XX; and, lastly, XX, recognizing itself the violation of the right of withdrawal of consent and of opposition referred to, respectively, in articles 7, par. 3, and 21, par. 2 and 3, of the Regulation (right, that of opposition, already enshrined in article 7, paragraph 4, letter b, Code previous).

A lack of management of the opposition will of the interested parties also results with reference to the malfunction of the software which did not allow for a long period (see above par. 2.8) the timely loading of the denials in blacklists and their timely and correct result on all company databases.

Furthermore, it does not appear that the Company has correctly managed the data processing of the so-called "off-list" and any oppositions made by them (see par. 2.1), nor that it has adequately monitored the correct management of denials and the correct implementation of blacklists by its partners, having emerged, in in particular, that various denials were recorded in the corporate systems even 451 days after the date of the denial (see attached table - n.1- in the note dated 11/12/2019), and in any case well beyond the acknowledgment required by law (without unjustified delay or, at the most, within one month of receipt of the request, as established by art. 12, par. 3, Regulation) (see par. 2.1). The seriousness of TIM's conduct emerges all the more in the light of the fact that in the law in force, the dissent expressed one to one (from the individual concerned to the individual owner) prevails over the generic mechanism authorizing telephone marketing under the opt-out regime envisaged by the Public Register of the oppositions with respect to the utilities present in the public directories (see general provision of 19 January 2011, cit.).

Also on the basis of what has already been said regarding the responsibility of TIM, as co-owner with regard to such calls or in any case client of the promotional campaigns, an even more serious violation can be found with respect to telephone users which - although placed on the marketing black list following the aforementioned provision 22 June 2016, which had prohibited their processing for marketing purposes - however, they are contacted in the context of "off-list" calls made by call centres, in the absence of adequate monitoring activity

and "filter" of such promotional contacts which should be blamed on the Company, as for the call centers responsible for the contacts. Neither it appears that the Company, for all the interested parties in question, has proven, producing suitable documentation, the necessary consent. This, without prejudice to the non-applicability of the institute to the present case legitimate interest, even if proposed by the Company.

Furthermore, the practice, which has sometimes emerged, is not in line with the right to object, nor with the principle of fairness to address, within the same promotional campaign, a very large number (even 155 times, all the more considering the period - monthly - of their execution) of telephone calls to the same user; excess that can be considered facilitated by TIM when it does not appear to have adopted organizational and technical measures adequate to avoid, perhaps with adequate on-site supervision, unwanted promotional recontacts.

Also with specific regard to communications made by TIM, also via SMS, for purported purposes endo-contractual, but also containing a promotional offer despite the refusal of those interested to receive promotional communications (see par. 2.3), the violation of the principles of purpose and fairness of the treatment, as well as the right to oppose the treatment for promotional purposes (sanctioned, respectively, by art. 5, par. 1, lit. a and b, and by art. 21, par. 2 and 3, of the Regulation), as well as the violation of the rules on automated promotional communications (articles 6, 7, of the Regulation, and 130 of the Code). In fact, it doesn't detect if the promotional offer, in concrete terms, does not benefit the company but the interested party (see TIM memorandum 10/10/2019), detecting instead only the promotional content, even if only in part, of products and/or services.

Finally, with reference to unwanted phone calls caused by alleged "oversights or errors" committed by some partners of TIM (see par. 2.3), it is believed that the latter, in addition to revealing, on the part of the call centers, the possible violation of rules of technical and professional diligence, also bring out the liability of the Company, which it does not have proved to have worked sufficiently to prevent them. It is, in particular, recognized to the same one culpa in vigilando, as it does not emerge that TIM has adequately verified, even with on-site audits, that telephone calls were not made to users in the absence of a suitable legal basis, thus violating art. 28, par. 3, letter. a), of the Regulation.

3.3. So-called “OLO” customer data and data on the black list

For greater clarity (also with respect to what is indicated by the Company in order to reduce the number of calls carried out, noting the percentage of "reachability" of the same), it is necessary, first of all, to observe that the inclusion of the user data in contact lists as well as the promotional phone call made, even if it does not "reach" the interested party (perhaps because the latter does not answer or block the contact attempt).

With specific reference to the quantity of OLO customers included in the prospect campaign lists (see par. 2.4), the The Company has not provided proof that the processing for promotional purposes was carried out on the basis of a

appropriate preventive consent for the marketing activity of the individuals concerned, thus violating the articles 6 and 7; recitals 32, 40, 42 and 43 of the Regulation, as well as art. 130 of the Code (as already established by articles 23-130, previous code). In this regard cf. also Guidelines on the processing of personal data for profiling online - 19 March 2015), nor does it appear to have detailed and documented other different and alternative legal bases, with reference to the same interested parties.

In this regard, the Company (see briefs of 10/10/2019 and 11/12/2019, cited above), limited itself to proposing the origin of the data referring to the OLOs included in commercial campaigns, that some users would be obtained from telephone directories public, but without documenting the necessary preventive verification activity in the Public Register of oppositions; others would be users who have returned to TIM, without, however, detailing this eventuality (in particular: times; collection channel), nor provide proof of the fulfillment of the information and of the successful collection of the specific consent for promotional purposes. For the rest, he made express reference (only in the note 12/11/2019) to an anomaly in the procedure which would have led to the consequent inclusion in the lists for the promotional campaign. Therefore, the Company has also violated the obligation pursuant to articles 5, par. 2, and 24 of Regulation, placed in charge of the data controller to demonstrate the compliance of the treatment with the principles of the regulation itself.

For such data (OLO customers) - as for data present in the black list, subject to systematic misalignment - however, it should be remembered that, regardless of whether or not they are used for promotional purposes, the relative treatment, for what has been said, must be considered illicit already on the basis of the non-compliance with the principles of correctness, limitation of the purpose, limitation of conservation, as well as accuracy and integrity pursuant to art. 5, par. 1, lit. a), b) and e), of the Regulation.

3.4. The “TIM Party” online program

With reference to the "TIM Party" (see par. 2.5), the fact that the Company has made the customer's acceptance of the various features of the service to the acquisition of consent to the processing of data concerning him for purposes of marketing, uniting the various contractual purposes in a unitary and inseparable formula (provision of benefits and discounts; participation in prize competitions) with promotional purposes, also determines in this case a coercion of the interested party's will, with consequent violation by TIM of the principles of correctness of the treatment, and of the freedom to express consent (articles 5, paragraph 1, letter a, and 7, paragraph 4; recital 32, 40, 42 and 43, Regulation; principle already enshrined in art. 23 of the previous Code. On the need for a free and informed consent, see also: Guidelines on consent pursuant to Regulation (EU) 2016/679, elaborated by the Art. 29 Working Party and adopted by the European Data Protection Board in the version of 10 April 2018; Opinion no. 15/2011 on the definition of consent – WP 187, adopted by the Art. 29 Working Party on 13 July 2011; Recommendation CM/Rec(2010)13 of the Committee of Ministers of the Council of Europe to member states

on the protection of natural persons with regard to automated processing of personal data in context
of the profiling activity, 23 November 2010).

In fact, consent to the processing of personal data cannot be defined as free, and is unduly necessary
that the interested party must pay, accepting (in this case as a condition for obtaining the advantages
of the prize operation) the use of personal data provided for other purposes for sending communications
advertising (obviously, the consent for promotional purposes thus acquired at the time of accession of the interested party
to the "TIM Party" program will overwrite any refusal present in the Company's systems).
The interested parties must instead be enabled to (knowingly and) freely express their own opinions
choices regarding the processing of data concerning them, expressing their consent (so to speak,
'modular') for each distinct purpose pursued by the owner, further than joining the program
"TIM Party" loyalty and use of the related benefits. While the processing of data preordained to the
loyalty in the strict sense may in fact be deemed necessary for the execution of a contact of which the interested party
is a party, therefore it does not require any consent for its execution (Article 6, paragraph 1, letter b, of the Regulation),
any other processing purpose (e.g. profiling, marketing, etc.) instead requires free consent,
specific, informed and distinct for each of them (Article 6, paragraph 1, letter a, of the Regulation). Such ability to
self-determination is not ensured when undifferentiated consent is collected to prosecute
distinct aims since each of them could well be pursued individually in the presence of an autonomous one
assessment and determination of the interested party.

This orientation finds full and constant correspondence also in the provisions of this Authority (see
in this regard, provision gen. 24 February 2005, doc. web no. 1103045, as well as among the many, provv. 02-03-2005, doc. web no.
1109503; provision 9-3-2006, doc. web no. 1252220; provision 2-22-2007, doc. web no. 1388590; provision 5-3-2009, doc.
web no. 1615731; provision 15-7-2010, doc. web no. 1741998; provision 22-7-2010, doc. web no. 1741988; provision
7-10-2010, doc. web no. 1763037; provision 20 December 2012, doc. web no. 2223607; provision 24-1-2013, doc. web no.
2433614; provision 21-11-2013, doc. web no. 2830611; provision 9-1-2014, doc. web no. 2904350; provision 25-9-2014, doc.
web no. 3457687; 1 October 2015, doc. web no. 4452896; provision 27 October 2016, no. 439, doc. web no. 5687770;
provision 10 March 2016, doc. web no. 4988238; provision 11 February 2016, doc. web no. 4885578; provision may 22
2018, doc. web n. 8995274).

The orientation itself was confirmed by the Authority, even after the full operation of the Regulation (see
provision 12 June 2019, doc. web no. 9120218). The Authorities also appear to have expressed themselves in the same way
control of the other Member States of the European Union (see ICO, Direct marketing guidance, version 1.124 October
2013; CNIL, Deliberation no. 2013-378 of December 5, 2013 adopting a recommendation relating to
Cookies and other tracers referred to in article 32-II of the law of January 6, 1978).

Also consider the procedure relating to the "TIM Party", in the event of failure to provide consent for the purposes promotions, it results in root prevent access to this program and, thereby, the participation in more services and functionalities all united and conditioned, without distinction, to the provision of said consent. In particular, such this procedure thus results in prejudice to the interested party who intends to remain free in the choices with respect to the processing of data concerning him, at the same time discriminating against him - with respect to the subjects who leave each other persuade to release said consent - regarding access to several different benefits of appreciable content economic. This foreclosure, with specific reference to the prize competitions indicated by the program in question, in a more systematic view, it also contrasts with the principles of gratuity and equal treatment which should oversee this type of initiative (see Circular No. 1/AMTC of 28 March 2002, "First indications explanatory and operational information regarding the new regulation on prize events (Presidential Decree no. 430 of 26 October 2001)".

The violation of the freedom of the interested parties is even more serious because it is carried out massively compared to a very high number of people and because the aforementioned constraint to consent is not assisted by a prior one suitable and specific information for the processing of data dedicated to the "TIM Party" program (but, in the case in point, from a concise presentation sheet, where the 'gratuity' of the programme), nor from the possibility of revoking the compulsory consent at the time of joining, with consequent violation of articles 7, par. 4, and 13 of the Regulation.

Furthermore, it should not be underestimated that the Company could have developed its business and obtained economic benefits (different from the coercion of consent) against the benefits provided (such as discounts) and benefits potential (as for prize contests) in alternative ways, moreover widespread in consumer practices, e.g example by providing procedures that attribute reserved discounts, or greater points and discounts dedicated to whom spend more or make regular purchases, or similar forms of loyalty aimed at rewarding more constant customers and high-spending, such as to preserve the fundamental right to consent, which is also a fundamental guarantee of power of control over the data released and the purposes of the processing.

3.5. The critical issues concerning the Apps subject to the investigation

In relation to the "My TIM", "TIM Personal" and "TIM Smart Kid" apps (see par. 2.6), the non-compliance of the treatment under articles 5, paragraph 1, lett. a), and 12, par. 1, of the Regulation, with specific reference to the obligation to information with correct and transparent methods, in order to make interested parties aware of the treatment concerning the data concerning them. Indeed, activities of processing for promotional purposes of geolocation and/or communication to third parties for promotional purposes, although not actually carried out, as declared by the Company.

Nor did it appear that these disclosures contained adequate elements, in terms of content and clarity of the formulation, regarding the actual data processing carried out by the Company through these Apps. Need to correctness and transparency, understood above all as easy and effective comprehensibility, which is evidently even greater when it comes to Apps (such as the "TIM Smart Kid") aimed (also) at minors and other subjects vulnerable, which should also be concretely ensured with suitable graphic means, such as, for example, icons "standardized" (see recital 60, Regulation, and also Group Guidelines Art. 29 on transparency, adopted on 29 November 2017 and amended on 11 April 2018).

Furthermore, the version used by TIM, with regard to the "My TIM" Apps; "TIM Personal"; "TIM Smart Kid, at the time of the investigations did not require the data subjects to give suitable consent for the processing of the personal data against multiple purposes and multiple processing operations (including, in particular: "statistical" activities; of "service sizing"; "diagnostics"), although indicated in the information provided to users, heterogeneous between them e moreover apparently not necessary for the provision of services to the interested parties through the Apps.

It should also be considered that the Company has set up a procedure where acceptance was necessary - joint e inseparable - of "terms of service" and privacy information. Even this approach cannot be considered correct nor transparent, since - even in the absence of an effective ability to modify the privacy consents previously expressed by the interested party – in any case generates a reasonable doubt in users regarding a possible interference of the aforementioned acceptance with the management of users' consent to processing indicated in the information.

Particularly relevant shortcomings in consideration of the fact that through the Apps the owner is able to acquire (e therefore treat) various types of personal information (see ENISA report "Privacy and data protection in mobile Applications. A study on the App development ecosystem and the technical implementation of GDPR, November 2017) and, precisely because of this peculiarity, the interested party must be able to express a conscious, free, informed and specific consent, in relation to the treatment to be carried out (see moreover, Opinion no. 2/2013 of the Art. 29 Group on applications for smart devices - WP 202, of 27 February 2013; the aforementioned Guidelines adopted by the European Data Protection Board on the matter of consent, especially p. 6; as well as the aforementioned Opinion 15/2011 on the definition of consent of the Art. 29 Group, pp. 35-37).

Therefore, in addition to incorrect or transparent processing, methods for acquiring consent have emerged not compliant with the principles of freedom and specificity of the same in relation to each single purpose pursued (articles 4, point 11 and 7, par. 4 of the Regulation).

3.6. Self-certification form of possession of a prepaid line

Also with reference to the self-certification form of possession of a prepaid line (see par. 2.7), the violation of the art. 7, par. 1 and 2, in conjunction with art. 4, par. 1, point 11, and of the Regulation for failure to obtain the free and specific consent of the interested parties, already enshrined in the articles 23 and 130, Code previously in force. This is because, with reference to the said form, a single consent per purpose has been acquired contracts and distinct and different purposes for which a further and specific consent would have been necessary (promotional and/or profiling). Moreover, as further confirmation of their non-compliance, the Company communicated, with the memorandum dated 10 October 2019, of having taken steps to amend the same.

In this regard, what was stated by the Company regarding the non-use, for purposes other than those contractual, of the data collected with this contractual means - moreover in true affirmed, but not adequately demonstrated, not having produced the Company any evidence, taken from its own information systems, from the campaign reports promotional or aliunde, of the non-inclusion of such data in promotional campaigns conducted, directly or through third parties - not relevant due to a further necessary consideration. That is, that the collection and the subsequent retention of personal data carried out in the absence of the necessary free and specific consent for the promotional purposes, as carried out by the Company, constitute in themselves two processing operations relevant for the purposes of the legislation on the matter (see provision of 12 June 2019, web doc. no. 9120218 as well as provisions 27 October 2016, cit.; 20 November 2014, doc. web no. 365793), and therefore - differently from what is claimed by TIM - are to be considered illicit treatments.

3.7. Misalignments and data breaches

With regard to the aforementioned data breaches (see par. 2.8), the violation of the provisions aimed at guaranteeing, through appropriate technical and organizational measures, the integrity and confidentiality of the systems, the accuracy of the data, as well as to allow the timely activation of the verification procedures by the Authority (see articles 5, paragraph 1, lit. d and f); 32, par.1; 33, paragraph 1, Regulation).

Furthermore, various anomalies and misalignments relating to a very large number of personal data have emerged clientele. These misalignments, capable of jeopardizing the accuracy of the data processed, also appear to have had an impact on the privacy consents reported in the customer data sheets. In this regard, during the inspections, the presence of an inconsistency between the reported privacy consents was found in the master data of a customer and the data which can be deduced from the examination of the consent history, again with violation of the principles of accuracy of the data and integrity of the systems pursuant to art. 5 of the Regulation (see p. 5, minutes 14/2/2019; p. 7, verbal 28/2/2019).

3.8. Violation of the principles of accountability and privacy by design

They were found to be incorrectly designed - and therefore not suitable for guaranteeing correct management of the right to opposition - the procedures for uploading denials in the various archives, and, albeit in a limited way, those

to prevent users already on the black list from being included in promotional campaigns. This as such procedures have not been found, in particular, suitable for allowing a timely registration of consents/denials in the corporate systems, nor a correct updating of the black lists, also considering the lack of unique and shared coding criteria (see par. 2.1). In addition, TIM's policy was severely affected deficient in the management of contacts made by partners towards the so-called "off-list" and relatives denials.

In this context, the Company thus appears to have violated, under several aspects, the principle of privacy by design, since "taking into account the state of the art and implementation costs, as well as the nature, scope, of the context and purposes of the processing, as well as the risks having different probabilities and seriousness for the rights and freedoms of natural persons constituted by the processing, both when determining the means of processing and at the time of the treatment itself, the data controller" does not appear to have implemented adequate "technical measures and adequate organizational ... aimed at ... integrating the necessary guarantees in the treatment in order to satisfy the requirements of this regulation and protect the rights of data subjects" (see Article 25, paragraph 1; recitals 75 and 78, regulation).

From a different point of view, TIM has revealed that it does not have sufficient knowledge and ability to account for various matters fundamental aspects of the treatments carried out by the same directly or through its own third parties partner, and therefore highlighted an inadequate ability to prove the exact fulfillment of the legislation on the subject, thus resulting in violation of the fundamental principle of accountability (articles 5, paragraph 2 and 24, paragraph 1 and 2, regulation).

In particular, TIM - while promoting, knowing and endorsing the practices established by the partners, as well as drawing profit, regarding off-list calls made by their business partners - has not been able, in the headquarters of inspection, to precisely quantify the same, nor to provide the list of numbers contacted, except those successful and, therefore, associated with a Verbal Order. Furthermore, TIM has had considerable difficulties in even clarify the functioning of the registration of denials and therefore of the black lists, making one more explicit articulated functioning only with the note of November 12, 2019.

Moreover, again with regard to these calls, as indicated above, there are serious inconsistencies - from the comparison of statements and findings respectively relating to the Company and its business partners – regarding the quantification of both the off-list calls, including those "referenced", and the related Verbal Orders type of contacts.

It should be added that, at times (see above, par. 2.1), it has been found, through verification, in some cases punctual in others sample, a significant divergence between the contact lists exhibited by TIM and allegedly provided to the callers center and those in concrete possession of the same call centers, for carrying out the campaigns

promotions on its behalf, as well as among the black lists of TIM and those of some call centers, even if they refer to the campaigns promotions made for this Company. Divergence that has only been partially clarified and documented by TIM (see pleadings of 10/10/2019 and 11/12/2019, as well as hearing of 11/5/2019).

With regard to the behavior of its partners, for which TIM has a specific supervisory obligation (art. 28 of the Regulation), the Company - also during the hearing of 5 November 2019 and most recently with the note of the 12/11/2019 - was unable to fully clarify the failure/late inclusion in the blacklist denials by the partners as well as indicate and document the timing relating to the effective insertion of denials in corporate systems, demonstrating a tiring exercise of the obligation of accountability.

Furthermore, the Company appears to have taken adequate account, only on the occasion of the aforementioned investigations, of the inadequacy of the self-certification forms of possession of a prepaid line, moreover dating back to 2009, and was unable to provide the number of business customers subscribing to this form, as it did not provide “a specific tracking for this type of module..." Moreover, as further confirmation of their non-compliance, the Company communicated, with the memorandum dated 10 October 2019, that it had taken steps to amend the same.

4. DETECTED VIOLATIONS

The processing of personal data carried out by TIM is even more serious if we consider that the Company itself has been, even in recent times (2016 and 2017), already the recipient of various injunctions, prescriptive and sanctions precisely with regard to the same type of violations (unwanted marketing; inadequate management the rights of the interested parties; data breaches; see provision 22 June 2016, doc. web no. 5255159; 30 May 2007, doc. web no. 14125989; provision 21 July 2016, doc. web no. 5436585). This, without considering that, albeit under a different profile (unsolicited phone calls, even if not with promotional content), has been ascertained (see provision of 6 April 2017, doc. web no. 6376175) the unjustified activation by TIM, in the name of a complainant and without his knowledge, of a large number of residential telephone lines (over 800), the processing of personal data that affected many other customers.

There are also numerous injunction orders adopted for the aforementioned and other similar violations; to alone by way of example, reference is made to the injunction orders of 3 October 2013 (web doc. n. 2726332); of 16 May 2018, doc. web nos. 9370105 and 9370122); of 18 January 2018 (web doc. n. 7665804).

We note - confirming the extent and continuation of the critical issues encountered - the persistence of many reports and complaints, received by the Authority even after the date of the inspections made to TIM SpA and its commercial partners up to today's date, and containing similar complaints to those ascertained, on which this Authority reserves the right to carry out further preliminary activities.

As a result of the analysis of the overall documentation acquired in deeds, in consideration of some elements that emerged (such as, in particular, among others, the very high number of data subjects involved in the processing issue as well as the variety and seriousness of the violations found against TIM), this Authority - also evaluated some measures whose forthcoming implementation the Company has envisaged - deems it necessary to intervene ad broad spectrum (inhibitory, prescriptive and disciplinary), in order to ensure compliance with current legislation of the treatments covered by this provision.

The aforementioned violations ascertained against TIM, in fact, represent proof, on the one hand, of a policy implemented by the Company in serious non-compliance with current regulations, moreover under multiple profiles; on the other side, of the alarming context in which the phenomenon of unwanted promotional calls must take place. Such The phenomenon has been the subject of social alarm on the part of citizens and attention on the part of the public for over fifteen years legislator and the Guarantor. The numerous regulatory interventions connected to the regulation of the sector have been accompanied by constant control activities by the Authority, carried out in a widespread manner with reference to all the aspects of the phenomenon, from the relationships between the various subjects involved, to the correct acquisition of the lists of interested parties who can be contacted, from the management of telephone directories and the public register of oppositions, to their use of call centres. The numerous provisions adopted on the subject have all been published and carefully taken up by the media, without this having led to a significant contraction of the phenomenon, so as to induce the Authority, in April 2019, to send a general information to the Public Prosecutor's Office at the Court of Rome aimed at highlighting the criminal consequences of telemarketing activities carried out in violation of the provisions on the protection of personal data.

On the basis of the elements set out above, the violations indicated in par. 3 of this provision, yes considers, pursuant to art. 58, par. 2, lit. d) and f), of the Regulation, to consequently have to adopt in against TIM SpA the corrective measures of the definitive limitation of some treatments, also ordering to comply with the regulations in force as detailed in the device, as well as having to adopt towards the same Company an injunction order, pursuant to articles 58, par. 2, lit. i), of the Regulation, 166, paragraph 7, of the Code, and 18 of the law n. 689/1981, for the application of the foreseen pecuniary administrative sanction by art. 83, para. 3 and 5, of the Regulation.

In fact, various provisions of the Regulation and of the Code are violated in relation to connected treatments carried out by TIM SpA for marketing purposes, for which art. 83, par. 3, of the Regulation, on the basis to which, if, in relation to the same treatment or related treatments, a data controller violates, with willful misconduct or negligence, various provisions of the Regulations, the total amount of the non-pecuniary administrative sanction exceeds the amount specified for the most serious violation (referred to in Article 83, paragraph 5, letter a, of the Regulation) thus absorbing the less serious violations (see article 83, paragraph 4, letter a, and 5, letter a and b, of the Regulation). Therefore, the aforementioned violations having as object, among others, the conditions of lawfulness of the treatment pursuant to articles 6 and 7,

Regulation, and 130 of the Code, are to be traced back, pursuant to art. 83, par. 3 of the same Regulation, in the context of the most serious violation envisaged for the non-compliance with the aforementioned conditions of lawfulness with consequential application of the sole sanction provided for in art. 83, par. 5, letter. a), of the Regulation.

For the purpose of determining the amount of the pecuniary sanction, the elements must be taken into account indicated in the art. 83, par. 2, of the Regulation, which, in the present case, are relevant in the following respects:

1. the wide scope of the treatments, almost always concerning (e.g., the modules for self-certification of possession of a prepaid line, reserved for business customers) the generality of customers and users of the telephone service and connected services, as well as the high number of interested parties involved, to date of on-site checks (February 2019), and in particular: 2,894,292 lines affected by misalignments computer systems; customers who have downloaded the "My TIM" Apps; "TIM Personal"; “TIM Smart Kid” (respectively: 7,000,000; 400,000; 10,000); the approximately 2,000,000 customers adhering to the “TIM Party "(Article 83, paragraph 2, letter a) of the Regulation);

2. the seriousness of the violations found, based on: the illegitimate, and in particular unwanted, contacts made in the context of telemarketing and teleselling activities (potentially harmful to various fundamental rights and, in particular, in addition to the right to the protection of personal data, the right to individual tranquility and the right to privacy); of data collection procedures, such as those envisaged for the “My TIM” and “TIM Personal” and “TIM Smart Kid”, for the prepaid line ownership self-certification forms and for the program "TIM Party", such as to coerce the free expression of the will of the interested parties with regarding the processing of their data and therefore also to undermine the fundamental right to the self-determination of the interested parties (regardless of any actual use of the same for purposes not adequately permitted, such as promotional or geolocation purposes: v. App “My TIM”, “TIM Personal” and “TIM Smart Kid”); of access to various benefits of appreciable content economic (including various discounts and prize contests), precluded by the "TIM Party" program for concerned (already, of course, burdened, as consumers, by the information asymmetry regarding forms and clauses prepared unilaterally) who have not been able to adhere to it to safeguard the freedom of one's consent, even in violation of the principles of gratuitousness and equal treatment in the matter of contests with prizes; of the difficulties that the interested parties have encountered in stemming the phenomenon of unwanted marketing, also considering the inadequate management of the right to object through the medium blacklists; the multiplicity and variety of conduct (active and passive) attributable to TIM in violation of more provisions of the Regulation and of the Code; of the serious organizational deficiencies they have found resulted in an inadequate implementation of the fundamental principles of data protection since design (privacy by design) and accountability; violation of the fundamental principles of accuracy of data, as well as the integrity and confidentiality of the systems, as attested by various data breaches, however

managed by TIM with considerable delay, and above all by the various misalignments of the systems that have affected a very high number of interested parties (Article 83, paragraph 2, letter a, of the Regulation);

3. the significant duration of the violations and, in the absence of precise elements for some, prudently limited by this Authority, even if the very high number of interested parties involved would lead to backdate the start of the same with respect to the date identified below: for some (such as those relating to principles of privacy by design and accountability, as well as the retention of excess data OLO), initiated at least from 25 May 2018, the date of full operation of the Regulation and not yet resulting fully regulated and resolved; for others (such as unwanted telemarketing, protracted at least until October 9, 2019, when TIM sent its partners a note inviting them not to contact the so-called "referenced" CDs); for others still (such as the procedure for installing the Apps identified) at least from 25 May 2018 until February 2019 (App "My TIM", in truth, further updated in August 2019, and "XX Kid") or July 2019 ("TIM Personal" App); for the misalignments of the systems - which prevented the completeness and correctness of the blacklist denials and corrected them representation in all corporate databases - the software malfunction started on 30/1/2018 and lasted until 2/14/2019, and resolved on 3/8/2019; for "TIM Party" instead, the violation still results in be (Article 83, paragraph 2, letter a, of the Regulation);

4. the malicious nature of the following conducts, with particular regard to their conception and implementation, in relation to the following profiles: the incorrect information provided to the interested parties in the context of the installation of the aforementioned Apps and the methods of acquiring the consent of the interested parties who do not they ensured free demonstration; the methods of obtaining consent, neither free nor specific, through the self-certification forms of possession of a prepaid line for purposes other than invasive (such as marketing and profiling); the "TIM Party" service, with regard to the acquisition of a non-free consent to marketing; the processing, through some partners, of the data of numerous subjects "referenced", in the absence of the necessary prior consent for promotional purposes, despite i previous injunctions and prescriptive measures of which TIM, precisely in the matter of unwanted telemarketing, had already been addressed and in contrast with consolidated obligations both in the legislative codification and in the orientation of the Guarantor (Article 83, paragraph 2, letter b, of the Regulation);

5. the grossly negligent, more properly negligent, nature of other treatments, such as: the non adequate implementation of the fundamental principles of privacy by design and accountability, also proven from various procedural anomalies and from the evident difficulties that emerged in providing certain and precise reconstructions of some problems encountered; the numerous data breaches; excess retention of OLO data and the use, of a part of these, for non-permitted promotional purposes; inadequate management blacklists; the inadequate activity of controlling the work of one's own partners with respect to contacts towards

users entered manually or the result of alleged oversights/errors; this, also taking into account the use of procedures in clear contrast with the current regulatory framework and the interpretation provided by the Guarantor with various general and specific measures; or, as for the data of the OLOs, taking into account that it is a matter of treatments and practices, in part, non-compliant, as well as with current legislation, with the internal procedures of the Company (Article 83, paragraph 2, letter b, of the Regulation);

6. the existence of numerous previous measures - adopted by this Authority against TIM - inhibitory, prescriptive and sanctioning, the latter defined with reduced payments or with orders injunction, including those cited above, of 3 October 2013; of 16 May 2018; of 18 January 2018 in the which, moreover, it has already been pointed out that "TIM SpA has undertaken a telephone contact activity aimed at subjects who had expressed a clear will of the opposite sign, reaching them with communications unwanted or disturbing ... has carried out the aforementioned activity on the basis of a conscious choice and not for mere negligence, having acquired, over the years, through constant interlocution with the Guarantor, all the interpretative elements that should have allowed it to take decisions in line with the law in force and with the guidelines of the Authority, expressed in multiple provisions including the one addressed to TIM SpA on May 30, 2007" (see injunctions and prescriptions of 22 June 2016, doc. web no. 5255159; of 21 July 2016, doc. web no. 5436585; of 6 April 2017, doc. web no. 6376175, concerning certain violations similar to those ascertained with the provision) (Article 83, paragraph 2, letter e, of the Regulation);

7. the existence of significant economic advantages, mostly current or even potential, deriving from the activities – in particular, unwanted telemarketing and teleselling and those related to the "TIM Party" (with specific reference to saving resources in terms of denied utilities, bonuses and discounts, to customers who have not signed up for the program in order not to be obliged to receive promotional offers) - carried out in violation of the Regulation and the Code, having regard to both the turnover as indicated in financial statements of TIM SpA for the year 2018, the latest available (13,901,473,076 euros), both at primary market position of the Telecom group, and, in particular, of TIM in the sector of telecommunications (Article 83, paragraph 2, letter k, of the Regulation);

8. as a mitigating factor, the adoption of measures - albeit limited, if considered with respect to the variety and gravity of detected violations - to mitigate or eliminate the consequences of violations. In particular, TIM has declared (with a note dated 10/10/2019) to have changed the installation procedure (including information and consents) of the "My TIM" and "TIM Smart Kid" Apps in February 2019 and of the "TIM Personal" Apps in July 2019; with the note dated 10/5/2019, it communicated that it had terminated the contracts with two of the partners who highlighted critical issues in the management of promotional phone calls and to have applied contractual penalties to a other partner, due to similar problems. With the memorandum dated October 10, 2019, the Company has

represented that he has modified the aforementioned self-certification forms of possession of a prepaid line - without it appearing in the records, however, having carried out checks regarding the possible use of modules with analogous (no correct) methods of obtaining consent - as well as having urged its partners to suspend i promotional contacts of the "referenced" subjects, proposing possible sanctions to them as provided for by existing contracts. The Company also appears to have proposed, mostly between 10 October and 12 November 2019 - but not yet implemented - some remedies, also with specific regard to calls to users "referenced" (in particular: selection and reorganization of its sales network with mechanisms incentives, including regulatory compliance; request partners to provide appropriate documentation a prove the effective fulfillment of the obligations on the subject, such as those relating to information e consent; periodic checks of their work, even with access to their information systems). However, to date it does not appear to have made any intervention on the non-free acquisition of consent for treatment for promotional purposes of "TIM Party" (article 83, paragraph 2, letter c, of the Regulation);

9. as a mitigating factor, the cooperation provided in the context of on-site inspections and in the subsequent course of the preliminary investigation, while demonstrating, on the whole, evident difficulties in reporting to the Authority of the own actual processing activities and related fulfilments (article 83, paragraph 2, letter f, of the Regulation);

10. as extenuating factor - despite the invasiveness of the violations found, the type of data used compared to those held overall by the Company, i.e. identification and contact data (users telephone calls) of the interested parties involved in data breach events; contact details of "referenced" subjects and other interested parties (customers and prospects) not permitted for invasive promotional purposes (Article 83, paragraph 2, lit. g, of the Regulation);

11. as a mitigating factor, the proposed "participation in working tables with trade associations for the definition of rules and codes of conduct applicable to market operators (telesellers)" (see brief TIM 10/10/2019; art. 83, par. 2, lit. j, of the Regulation);

12. as a mitigating factor, the loss of turnover achieved in 2018 compared to the previous year (2017), together with the declared contraction of its market share (Article 83, paragraph 2, letter k, of the Regulation), as well as the prospected employment situation of the Company, which declared that the its personnel has been under the solidarity regime since 2011 (Article 83, paragraph 2, letter k, of the Regulation).

Moreover, in application of the principles of effectiveness, proportionality and dissuasiveness to which the present Authority must comply in determining the amount of the sanction (art. 83, paragraph 1, of the Regulation), it is rendered further necessary to consider the following additional elements:

- the ample time margin granted to all operators in the sector in order to allow them to complete and consistent adaptation of systems and procedures to the new European legislation, already in force since 25

May 2016 and fully operational from 25 May 2018; adjustment that TIM does not appear to have properly carried out;

- that the aforementioned provisional activity, with which indications and clarifications on the matter were provided (see general provisions and Guidelines cited in this provision), and constant interlocution of the Authority with subjects operating in the telemarketing sector, and in particular with TIM (as most reported operator and, therefore, recipient of numerous investigations) - can reasonably do believe that all operators (including TIM) have achieved sufficient awareness of the provisions which must be unfailingly observed;

- therefore, in the light of the above, the inadequate dissuasive nature of the sanctions charged to date against TIM, also taking into account the fact that the phenomenon of unwanted calls in the field of telemarketing is been the subject of constant and punctual attention by the legislator (see, most recently, law n. 5/2018) and by the Guarantor, as well as complaints from citizens;

- the current persistence of numerous reports and complaints received by the Authority after the date of the investigations carried out at the Company up to today's date, similar to those covered by the this provision.

However, in an overall view of the necessary balance between the rights of the interested parties and the freedom to do business and in first application of the pecuniary administrative sanctions provided for by the Regulation, it is necessary to evaluate the aforementioned various criteria prudently, also in order to limit the economic impact of the sanction on needs organisational, functional and occupational aspects of the Company.

Therefore it is believed that - on the basis of all the elements indicated above, against the statutory sanction maximum (556,058,923.00 euros, equal to 4% of TIM's turnover, i.e. 13,901,473,076 euros, and not the highest turnover of the Telecom group) - the administrative sanction of the payment of a sum equal to 0.2% of the aforementioned turnover corresponding to Euro 27,802,946.00 twenty seven million eight hundred two thousand nine hundred and forty six).

It should be noted that the conditions pursuant to art. 17 of Regulation no. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

In this context, it is also believed - also in consideration of the invasiveness of the contested illicit treatments with respect to fundamental rights of data subjects; the high number of the same, even potentially, involved; of the graves misalignments detected in the Company's information systems; of inadequate control of the same in respect of its partners and, finally, the lack of dissuasiveness of the measures adopted up to now by the Guarantor in the against the Company itself - which, pursuant to art. 166, paragraph 7, of the Code, and of the art. 16, paragraph 1, of the

Regulation of the Guarantor n. 1/2019, this provision should be published on the website
website of the Guarantor, as an accessory sanction.

Please note that pursuant to art. 170 of the Code, anyone who is bound by it does not observe this
definitive limitation of the treatment is punished with imprisonment from three months to two years and that, in
in the event of non-compliance with the same provision, the sanction referred to is also applied in the administrative office
to art. 83, par. 5, letter. e), of the Regulation; furthermore, failure to comply with the injunction issued is sanctioned
administratively pursuant to art. 83, par. 5, letter. e), Regulation.

ALL THIS CONSIDERED

having detected the illegality, in the terms of which in the justification of the treatments in the terms carried out by TIM SpA, with registered office in Via Gaetano Negri n.1, Milan, Tax Code 00488410010:

1) pursuant to art. 58, par. 2, lit. f), of the Regulation, provides for the definitive limitation of the treatment within 60 days of receipt of this provision:

a) for marketing purposes, of numbers of subjects already reached by contacts commercials with a "denial" result, as well as those on the black list;

b) for marketing purposes, of numbers relating to "referenced" subjects in the absence of a suitable consent;

c) for marketing purposes, of the OLO customer data present in the residential CRM, in lack of adequate consent;

d) for purposes other than the provision of services through the aforementioned Apps, of the data of the customers that have been collected through the “My TIM”, “TIM Personal” and “TIM Smart Kid” - prior to the changes made by the Company - in the absence of a suitable one consent;

e) for marketing purposes, of customer data which, before joining the “TIM Party”, appears to have expressed a refusal to the same purpose or to have expressed none will;

f) for marketing and profiling purposes, of the data collected through the forms self-certification of possession of a prepaid line, in the absence of suitable consent;

2) pursuant to art. 58, par. 2, lit. d), of the Regulation, enjoins the same Company to carry out, within 180 days of receipt of this receipt:

a) the punctual verification of the consistency of the black lists used, is respect
the insertion of the numbers of subjects who have opposed or are opposed to the
treatment through the Customer care, both with respect to the insertion of the numbers of
those who have objected or object to the processing in the course of a contact
commercial through partners;

b) the timely acquisition of any black lists used by partners for the purposes of
subsequent prompt transfer, to the so-called denial black list, of the numbers therein
present, relating to commercial contacts made on behalf of the Company;

c) verifiable verification, at regular intervals, of the effective and timely modification of the
enhancement of consent for marketing activities and effective blacklisting
list, in relation to the numbers reached by commercial contacts with a "denial" result
that they belong to active customers present in the Company's CRM or to non-customer subjects;

d) the implementation of technical and organizational measures regarding the management of
instances to exercise the rights of data subjects - and in particular the right to object to
promotional purposes - which allow to give feedback to the interested parties, as well as identify and
correctly implement their effective will, without unjustified delay, and in any case, al
later, within 30 days of receipt of the request, without prejudice to overriding legitimate reasons
and without prejudice to the need, promptly communicated to the interested parties, for a possible
extension for the reply;

e) the implementation of a technical and organizational procedure, in the campaign system
management, which allows the Company to know and govern properly, as well as
to adequately document the phenomenon of calls addressed to so-called ""outside" users
list "", as well as to ensure that these users are contacted for promotional purposes only
if you have a suitable consent or on the basis of another detailed e
documentable legal basis pursuant to articles 6 and 7 of the Regulation;

f) the adoption of organizational and technical measures to document and comply with the denials
of subjects "off the list", as well as to circulate such denials also among their partners,
so that they do not proceed to contact the users concerned;

g) the implementation of an organizational procedure, regularly verified e
documented, aimed at a more efficient management of any future violations of
personal data, guaranteeing, in particular, the relative communication without unjustified
delay to the Personal Data Protection Officer of this Company for the

necessary assessments and communications to the Guarantor, as well as, where the conditions are met, to data subjects whose personal data are involved in the violations;

h) the adoption of organizational and technical measures, such as to ensure, constantly ed effectively, the conservation of OLO customer data in compliance with the principles of correctness, legitimacy, purpose and minimization of the treatment, in order to proceed to the processing only data that is adequate, relevant and limited to what is necessary for the pursuit of legitimate purposes, as well as access to the same data exclusively to specifically authorized personnel;

i) the deletion of OLO customer data, if the terms have expressly expired provided for by law (including the provisions of AGCOM and this Authority) and/or are the legitimate purposes of the processing have been exhausted, provided that no reason is discernible legitimate prevalence to proceed with the conservation;

l) the strengthening of measures aimed at ensuring quality, accuracy and timeliness updating of the personal data processed by the various systems of the Company;

m) the execution of specific and documented regression tests aimed at verifying, for each modification (corrective or evolutionary) concerning the systems that process personal data of the customers, that the impact of the modification itself does not reduce the quality of the treatments carried out and the accuracy of the data processed;

n) the revision of the procedure relating to all the Apps that, if any, present gaps similar to those noted above, so that they are fully described - with clear and easily understandable language and, if necessary, also by means of graphic means - which treatments are actually carried out by the Company with indication specification of the purposes pursued and the treatment methods actually used; a free and specific consent is acquired - distinct from the acceptance of the "terms of service" - for each of the purposes other than the provision of the service, as well as from administrative and accounting purposes;

o) the modification of the application procedure of the "TIM Party" programme, integrating the information provided in this regard, with an indication of the methods of treatment for the purposes promotional (e.g.: paper mail; telephone calls with an operator; automated methods, such as e-mail, sms and/or pre-recorded phone calls) and making it free to acquire the consent for these purposes;

p) the modification of any forms similar to the self-declaration of possession prepaid line so that a suitable consent is collected for purposes other than those contractual, administrative, accounting;

3) pursuant to art. 157 of the Code, requests TIM SpA to notify, within 30 days of receipt of this provision, what initiatives have been undertaken or are intended undertake in order to implement the provisions therein and to provide feedback in any case adequately documented; any failure to reply may result in the application of the pecuniary administrative sanction provided for by art. 83, par. 5, of the Regulation;

4) believes that the conditions set forth in art. 17 of Regulation no. 1/2019 concerning the internal procedures having external relevance, aimed at carrying out the tasks and exercising them of the powers delegated to the Guarantor;

ORDER

pursuant to art. 58, par. 2, lit. i), of the Regulation, to the aforementioned TIM SpA, in the person of its lawyer representative pro-time Of pay the sum of euro 27.802.946,00 (twenty-seven million, eight hundred, two thousand, nine hundred and forty-six), by way of a pecuniary administrative fine for the violations indicated in the justification; it is represented that the offender, pursuant to art. 166, paragraph 8 of the Code, has the right to settle the dispute by payment, within the term of 30 days, for an amount equal to half of the fine imposed;

ENJOYS

to the aforementioned Company, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, Of pay the sum Of euro 27.802.946,00 (twenty-seven million, eight hundred, two thousand, nine hundred and forty-six), in the manner indicated in the attachment, within 30 days from notification of this provision, under penalty of the adoption of the consequent executive acts a norm of art. 27 of the law n. 689/1981;

HAS

pursuant to art. 166, paragraph 7, of the Code, the full publication of this provision on the Guarantor website.

Pursuant to articles 152 of the Code and 78 of the Regulation, the present measure can be opposed proposed opposition to the ordinary judicial authority, with an appeal lodged with the ordinary court of place where the owner of the processing of personal data has his residence, or, alternatively, to the court of

place of residence of the interested party, within the term of thirty days from the date of communication of the provision itself, or sixty days if the appellant resides abroad.

Rome, 15 January 2020

PRESIDENT

Difficult

THE SPEAKER

Califano

THE SECRETARY GENERAL

Busia