

Wind Tre's GDPR Fine: Real Deterrent or Cost of Doing Business?

Hyun Choi
Brown University

Abstract

Wind Tre S.p.A. is an Italian service provider of mobile phone, telephone, and Internet. In July 2020, Wind Tre was fined 16.7 million Euros for its violation of the GDPR in its data processing activities for direct marketing. Italy has recently been ramping up its enforcement of the GDPR with relatively high fines. However, the fined amounts may not be enough to truly deter future violations.

1 Background

Telemarketers seem to be an omnipresent nuisance to people around the globe. Being the subject of numerous complaints to *Garante per la protezione dei dati personali* (the Italian Data Protection Authority under the GDPR), Wind Tre S.p.A., an Italian telecommunications company, was investigated for violations of the GDPR in carrying out its direct marketing activities. The investigation found promotional activity through text messages, e-mails, faxes, telephone calls, and automated calls made by Wind Tre with varying degrees of prior consent.

2 GDPR Violations

2.1. Lack of Adequate Consent

In the Garante investigation, Wind Tre was only able to demonstrate customer consent to being contacted for a portion of marketing target consumers. Many instances of marketing activity were performed without any consent at all. Many others were made “on the basis of consent to be considered unsuitable.” Some consent agreements dated back to before the stringent requirements of the GDPR, while some others were acquired from business partners. There is also a long

discussion of inadequate nature of marketing contact consent given through Wind Tre's apps, MyWind and My3. In many cases, revoked consent was not properly recorded, and the same consumer was contacted repeatedly. The most egregious violations are the instances where customer consent was given to other companies, and this data was acquired illegally by Wind Tre.

2.2. Wind Tre's Negligence

While it is indisputable that the data subjects at hand are the consumers who were contacted by Wind Tre, and the data controller was Wind Tre itself, the company also did not properly check that its data processors were acting in compliance with the GDPR. The report states that “subjects who carry out a promotional activity on their own have been appointed as data processors,” but there were inconsistencies that should have caused Wind Tre to undertake more stringent checks on its data processors. Even after a serious violation was noticed, Wind Tre only sent a “simple reminder for a more careful application of the rules,” indicating the company's wanton neglect of the gravity of the situation. Simply put, if Wind Tre actually cared about complying with the GDPR to any degree, these violations would not have occurred. The company received an injunction from Garante in 2018 for similar violations of the GDPR. Clearly, company executives did not take the GDPR as seriously as they should have or thought that the cost of a fine would be outweighed by the potential benefits.

These violations occurred over a significant period of time. While Garante only notes the violations starting on May 25, 2018, when the GDPR came into full force, it is apparent that customer data and consent were not properly obtained since before that date.

2.3. Financial Penalty

In deciding the financial penalty, Garante found significant factors weighing against Wind Tre. These factors included the “significant duration of the violations,” malice found in obtaining consent, negligence found in the “inadequate implementation of the fundamental principles of privacy by design,” and previous sanctions levied upon Wind Tre in past years. It was apparent that Wind Tre did not learn its lesson from the previous time it was the recipient of an injunction in 2018. Accordingly, Garante fined Wind Tre a total of 16,729,600 Euros, while allowing a payment of just half of this amount to settle this matter if paid within 30 days. [1] Additionally, Wind Tre was ordered to “implement technical and organizational measures appropriate for the effective control and management of its business partners in order to avoid further marketing violations.” [2]

3 Discussion

3.1. Prevention

It seems that there was no clear technical issue with how Wind Tre was utilizing consumer data. It was its attitude toward collecting customer consent (or lack thereof) that caused the issues. In the process of collecting customer data and using it to make marketing communications, Wind Tre did not take the proper precautions to ensure compliance.

If Wind Tre had designed its marketing software such that it made sure that whenever an outbound call was made, a record of customer consent was present, the violations would have been less egregious. However, this does not solve the problem for the case where the customer consent obtained was illegitimate to begin with.

This incident proves that the GDPR does not provide real protection against companies using personal data illegally if they do not take the most basic precautions to follow the law to begin with. Consumer consent was treated as an afterthought, and the incident where customer data was illegally obtained further proves malicious intent on the part of Wind Tre.

3.2. Is this a real deterrent?

The total fine levied was about 16.8 million Euros. From Wind Tre’s financial statements as of 2018 Q2,

we know that the company’s total revenue exceeds 6 billion Euros, with profits exceeding 2.8 billion Euros.

In short, the fine simply does not seem sufficient to properly deter other companies (or even Wind Tre itself) to properly adhere to the GDPR. Wind Tre has shown itself to be a repeat offender and intentionally malicious in its flagrant disregard of the law. And yet, its fine amounts to 0.32% of annual revenue, according to Garante’s calculations. Even though the telecommunications industry is not known for its large profit margins, 16.8 million Euros is almost a rounding error for a multi-billion-euro company like Wind Tre. I believe it is likely that these relatively small fines for large companies do not act as enough of a deterrent from breaking the GDPR. Since Wind Tre’s violations had to do with direct marketing activities, it is entirely possible that even after paying the fine, Wind Tre made a profit by breaking the law, especially since the fine could be reduced by 50% by paying it within 30 days.

4 References

- [1] Injunction order against Wind Tre SpA - 9 July 2020. <https://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/9435753>
- [2] 16.7 M Direct Marketing Fine Issued By Italian Authority. <https://securityboulevard.com/2020/07/e16-7m-direct-marketing-fine-issued-by-italian-authority/>
- [3] Wind Tre Revenue, EBITDA to Decline at Least to Q4 2018. <https://reorg.com/tear-sheet-wind-tre-revenue-ebitda-to-decline-at-least-to-q4-2018-management-tells-investors-in-meetings-driven-by-intense-competition-ahead-of-iliad-entry-synergies-deriving-from-network-improve/>