

HISTORICAL SIGNIFICANCE OF THE BUSINESS PREVAILS OVER THE IDENTITY OF THE ENTREPRENEUR: THE COUNCIL OF STATE UPHOLDS THE RENEWAL OF THE CONCESSIONS IN THE VITTORIO EMANUELE II GALLERIA

By judgment No. 5887 of 7 July 2025, the Council of State dismissed the appeal filed by the Municipality of Milan against the decision by virtue of which the Lombardy Regional Administrative Court – Milan had annulled the denial orders regarding the renewal of the concessions for the use of two municipal units intended for commercial purposes. The premises in question are located in Milan, Piazza Duomo No. 19, within the monumental Galleria Vittorio Emanuele II, and are used for jewellery, goldsmith and watchmaking businesses. These businesses had been recognised as “historic shops” by the Municipality of Milan and as “stores of historical activity” by the Lombardy Region.

The Municipality had deemed that the historical continuity requirements laid down by Municipal Council Resolution No. 1246 of 26 July 2019 – which allows for the renewal of expiring concessions by way of derogation from the general rule of public tendering – were not met. Specifically, the Administration excluded the fulfilment of the requirement of business continuity, as the current concessionaire had taken over the two previous jewellery businesses originally operating in the leased premises by way of a merger by incorporation. According to the Municipality’s interpretation of the aforementioned Resolution, the requirement of continuity was to be found not only in the organised set of assets and services functional to the business activity, but also in the figure and role of the entrepreneur, who – through personal vision and business strategy – would have built and maintained over time the historical identity and tradition of the premises.

The Regional Administrative Court upheld the concessionaire’s claim, finding the Municipality’s assessment to be unlawful. The Court held that the historical character of the business must be assessed with reference to both the continuity of the business activity and the commercial establishment’s identity value, deeming as irrelevant any subjective discontinuity in management.

The Council of State fully endorsed this interpretative approach, holding that the assessment regarding the historical requirements should focus on the uninterrupted presence of the jewellery, goldsmith and watchmaking business within the monumental setting of the Galleria, rather than – as stated by the Municipality – on the persistence of the same entrepreneurial subject. The Council of State noted that the corporate transactions concerning the company – namely, the merger by incorporation – had not interrupted business continuity, nor altered the defining features of the establishment or its target clientele. The Council of State further remarked that the artistic and cultural promotion activities started

during the period of ownership by the previous jewellers retain their significance even after the current concessionaire took over, as operational continuity has been maintained by the same commercial establishment.

DISCLAIMER

The sole purpose of this *Client Alert* is to provide general information. Consequently, it does not represent a legal opinion nor can it in any way be considered as a substitute for specific legal advice.

2

Laura Sommaruga, Partner
Email: laura.sommaruga@grplex.com

Federico Ianeselli, Senior Associate
Email: federico.ianeselli@grplex.com

Sandra Sacchi, Junior Associate
Email: sandra.sacchi@grplex.com