

THE AUTORITÀ GARANTE DELLA CONCORRENZA E DEL  
MERCATO

AT ITS MEETING held on 20<sup>th</sup> December 2013;

HAVING HEARD the Rapporteur, Professor Piero Barucci;

HAVING REGARD to Part II, Title III, of Legislative Decree no. 206 of 06<sup>th</sup> September 2005, entitled “*Consumer Code*” and following amendments (hereafter, Consumer Code);

HAVING REGARD to art. 23, paragraph 12-*quinquiesdecies*, of Leg. Decree no. 95 of 06<sup>th</sup> July 2012, as amended by law no. 135 of 07<sup>th</sup> August 2012, which increased the statutory maximum of sanctions to 5,000,000 Euros;

HAVING REGARD to the “*Regulations for preliminary investigations on deceitful and comparative advertising, unfair commercial practices, unconscionable clauses*” (hereafter, Regulations), adopted by the Authority with resolution dated 08<sup>th</sup> August 2012;

HAVING REGARD to the Authority’s resolutions dated 03<sup>rd</sup> July and 18<sup>th</sup> September 2013, by means of which the closing date of the proceedings was extended due to particular preliminary needs, pursuant to art. 7, paragraph 3 of the Regulations;

HAVING REGARD to the official records of the proceedings;

## **I. THE PARTIES**

1. Ryanair Ltd (hereafter, also “Ryanair”), in quality of professional with registered office in the Republic of Ireland. The company’s main activity consists in airline transportation and connection of people and objects in Italy, between Italy and foreign Countries and in foreign Countries. Ryanair operates more than 1,600 flights a day (about 500,000 a year) from 57 bases, connecting 180 destinations in 29 Countries; in 2012,<sup>1</sup> the company transported over 79 million passengers (of which about 23 million in Italy).<sup>2</sup> On the basis of the airline company’s financial statements published on its website,<sup>3</sup> the professional’s turnover for the fiscal year 31<sup>st</sup> March 2012 – 31<sup>st</sup> March 2013 amounted to 4,884 million Euros and its profits amounted to 569 million Euros.
2. Adiconsum Sicilia – Adiconsum is a consumers’ association counting over 149,375 members. It was established in 1987 and it is present throughout the whole national territory, with local, provincial and regional premises. It provides individual and collective assistance and protection to consumers and families.<sup>4</sup>
3. A consumer, in quality of complainant.

## **II. THE COMMERCIAL PRACTICE**

4. On the basis of the information acquired in February 2013<sup>5</sup> in order to implement the Consumer Code, as well as on the basis of reports submitted both by Adiconsum Sicilia and many consumers in the period from November 2010 to December 2012, it is clear that the professional offers the optional “Travel Insurance Policy” during the booking process on its website

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<sup>1</sup> Cf. the professional’s website <http://www.ryanair.com/it/about> examined on 27<sup>th</sup> November 2013.

<sup>2</sup> Cf. page 60 of the document entitled “Traffic Data” examined on ENAC’s website ([www.enac.it](http://www.enac.it)).

<sup>3</sup> Cf. <http://www.ryanair.com/it/investor/download/2013>.

<sup>4</sup> Cf. [http://www.adiconsum.it/chi\\_siamo/mission.php](http://www.adiconsum.it/chi_siamo/mission.php).

<sup>5</sup> In particular, it consists of no. 254 web pages, examined in the period April 2011 – February 2013, starting from the home page of the professional’s website [www.ryanair.com/it](http://www.ryanair.com/it), filed in the official records of the proceedings PS7245 with report dated 08<sup>th</sup> February 2013. Cf. doc. no. 40 as mentioned in the index of the file.

[www.ryanair.com/it](http://www.ryanair.com/it), corresponding to the insurance policy *UND TRAVEL PLUS*<sup>6</sup> the cost of which amounts to 17.69 Euros.

5. In particular, during the booking process/purchasing of a flight ticket, the professional offers, in combination with the airline transportation service, the purchasing of a “Travel Insurance Policy,” without describing, or describing very concisely, the coverage/guarantees provided for in case of cancellation/interruption/renunciation of the travel. The company simply provides a brief listing of the risks covered by the insurance policy – Medical assistance, cancellations, delays, luggage and travel accidents, Ticket refund, etc. – without clarifying the object and the substance of the insurance service offered<sup>7</sup> (See following Image no. 1).

**Image no. 1**

Acquista l'Assicurazione di Viaggio

Se hai bisogno di cure mediche o rimpatrio con la nostra assicurazione di viaggio puoi risparmiare €18,000\* o più (\* recente risarcimento)

	ASSICURAZIONE DI VIAGGIO Leggi la polizza	ASSICURAZIONE DI VIAGGIO PLUS Leggi la polizza
Assistenza medica, cancellazioni, ritardi, bagaglio e incidente di viaggio	✓	✓
Rimborso Biglietto Aereo (Fallimento Finanziario Compagnia Aerea)	X	✓
Garanzia "riportami a casa" in caso di fallimento finanziario della compagnia aerea.	X	✓

Passeggero 1  17.69 EUR  Aggiungi Assicurazione di viaggio PLUS 2.99 EUR

Se sei già assicurato puoi selezionare "Non mi assicurare" dal menu a elencato

6. By way of example, the essential contents and the conditions upon which the insurance company actually proceeds in refunding consumers are as follows, with regard to several sections (guarantees) provided for by the insurance product under examination:<sup>8</sup> 1) **SECTION A: CANCELLATION AND INTERRUPTION OF THE TRAVEL – Coverage:** “The Insurance Company shall pay up to the maximum amount indicated in the prospect of the policy, for the part of the costs of Insured party’s cancellation, or the costs of interruption that have already been paid or that the Insured party

<sup>6</sup> Ryanair’s travel insurance is endorsed by UK General Insurance Limited, with registered office in Dublin, Ireland.

<sup>7</sup> In fact, the information is available only within the conditions of the insurance policy of not immediate use for consumers.

<sup>8</sup> Ryanair’s insurance policy Und Travel Plus endorsed by UK General Insurance Limited provides for specific guarantees, distinguished in the sections which constitute the policy, as follows: Section A Cancellation / Interruption; Section B1 Medical Expenses; Section B2 Domestic Medical Expenses; Section C-Daily excess for recovery; Section D Personal effects, travel documentation and delay in delivering luggage; Section E1 Own money; Section E2 Theft and aggression at the ATM; Section F1 Delayed departure; Section F2 Renunciation of the travel; Section G Non- departure; Section H Interruption of the travel; Section I Personal liability; Section J Legal expenses; Section K Travel accident.

Cf. the document TRAVEL INSURANCE COVERAGE UND TRAVEL PLUS, enclosure 1 and 1 bis to the report filed in the official records dated 08<sup>th</sup> February 2013, doc. no. 40 as mentioned in the index of the file.

must pay by contract and which are not refundable, if the cancellation or interruption of the travel is necessary and inevitable as the result of: **a)** the death, serious personal injury or disease of the Insured party or of a person travelling with the Insured party, or of a relative, or (...) during the period covered by the insurance policy; **b)** The Insured party, or the person travelling with the Insured party is called in quality of member of a jury or witness in Court, or put in obligatory isolation, or the Police requests for the Insured party to be present at his/her domicile (...), following a burglary (...), (o) after accidental damage to the Insured party's house (or because of) unemployment, (...); (o) sending abroad or revocation of discharge for the members of Armed Forces, Police, (...)"

**2) SECTION F2 RENUNCIATION OF THE TRAVEL – Coverage:** “The Insurance company shall pay up to the maximum amount indicated in the prospect of the policy, for travelling expenses and lodging that were paid or that by contract the Insured party must pay and that are not refundable: **a)** if the holiday or the trip is cancelled as a consequence of a 24 hour or more delay of the scheduled departure due to: strike, or industrial unrest, or adverse weather conditions, or mechanical breakdown, or technical problems of the scheduled public transportation for which the Insured party booked;”

**3) SECTION H: INTERRUPTION OF THE TRAVEL - Coverage:** “The Insurance company shall pay the Insured party the amount indicated in the prospect of the insurance policy, if Ryanair or one of its authorized agent's informs the Insured party that the first or last single flight is going to be cancelled due to an over 4 hour delay; the Insured party shall be paid a compensation whose maximum amount is what indicated in the prospect of the policy, for all travel expenses and related lodging paid by the Insured party in order to purchase a trip on an alternative means of transportation, by air, sea, railway or road, and complete the itinerary as planned.”

7. Moreover, the various guarantees, apart from the *General exclusions applied to all the sections of the insurance*,<sup>9</sup> provide for specific exclusions and limitations such as, for example, the fact that the insurance company shall not pay any amount for the *airport taxes or similar taxes*, the implementation of relevant excesses (equal to 15 Euros in case of cancellation/interruption of the travel, up to 50 Euros in case of renunciation of the travel, etc.);<sup>10</sup> even said elements are not mentioned by the professional during the booking process, but are indicated only within the

<sup>9</sup> See infra, following point 29.

<sup>10</sup> Moreover, it is important to consider that the excess envisaged in case of cancellation /interruption of the travel, renunciation of the travel and medical expenses double if the insured parties are over 65 years of age.

insurance policy or in the *Prospect of the coverage* to which the professional refers through a hypertextual link. Instead, what is shown during the booking process is the amount of a hypothetical *saving*, equal to 18,000 € in case of signing of the contract, as well as the referral to “*cancellations, delays and luggage*” which are object of specific laws for the protection of consumers (See following Image no. 2).

**Image no. 2**

Acquista l'Assicurazione di Viaggio

Se hai bisogno di cure mediche o rimpatrio con la nostra assicurazione di viaggio puoi risparmiare €18,000\* o più (\*recente risarcimento)

	ASSICURAZIONE DI VIAGGIO Leggi la polizza	ASSICURAZIONE DI VIAGGIO PLUS Leggi la polizza
Assistenza medica, cancellazioni, ritardi, bagaglio e incidente di viaggio	✓	✓
Rimborso Biglietto Aereo (Fallimento Finanziario Compagnia Aerea)	X	✓
Garanzia "riportami a casa" in caso di fallimento finanziario della compagnia aerea.	X	✓

Passeggero 1  17.69 EUR  Aggiungi Assicurazione di viaggio PLUS 2.99 EUR

Se sei già assicurato puoi selezionare "Non mi assicurare" dal menu a elencato

8. As regards the modalities used to offer the insurance policy to the consumer, many reports – among which that of Adiconsum Sicilia’s — highlighted the consumers’ difficulty in carrying out the booking process without purchasing said service. In fact, in order to do so it is necessary to find the related item “*Do not need insurance*” placed within a pull-down menu called “*Select the country of residence*,” from which it is however necessary to select one of the options indicated in order to continue the booking process; in particular, the item “*Do not need insurance*” is inserted among the 21 Countries indicated therein, specifically positioned between the Netherlands and Norway (see following Image no. 3).<sup>11</sup>

9. When selecting Italy – the choice usually induced by the request, inserted in the process of selecting the country of residence – the consumer purchases the optional insurance policy (see following Image no. 4)

<sup>11</sup> Previously between Latvia and Lithuania.

Image no. 3

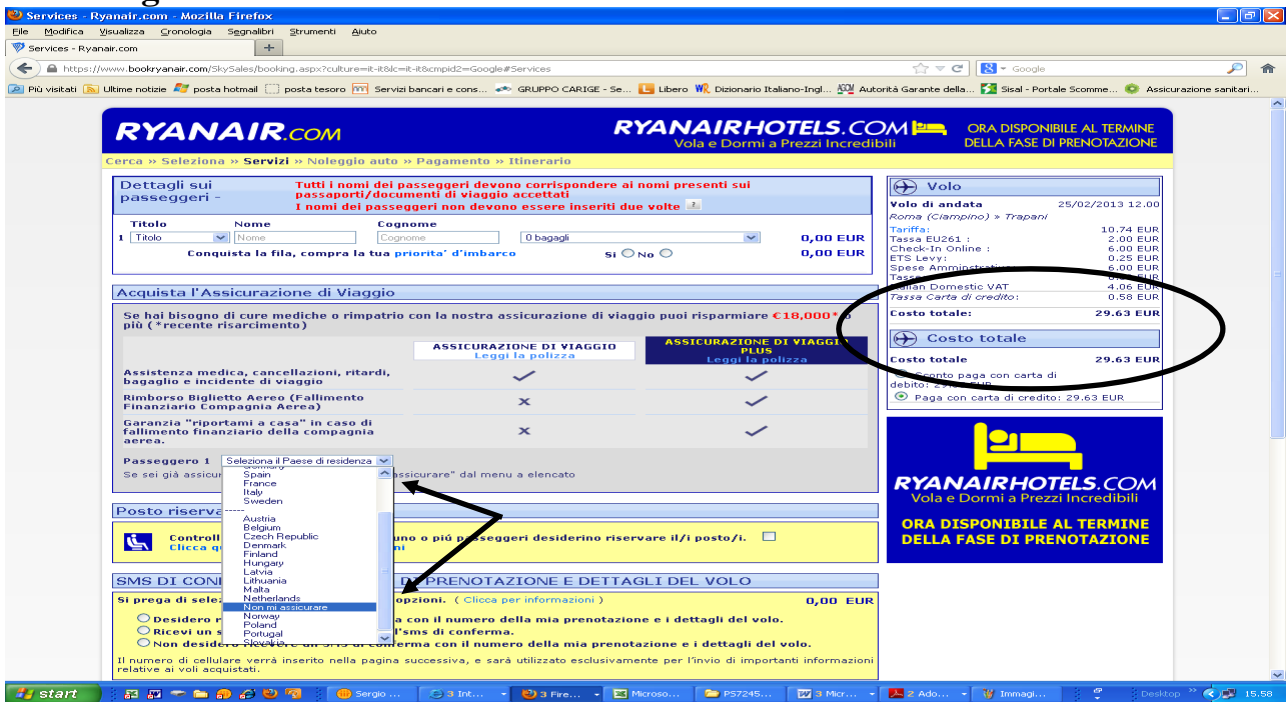
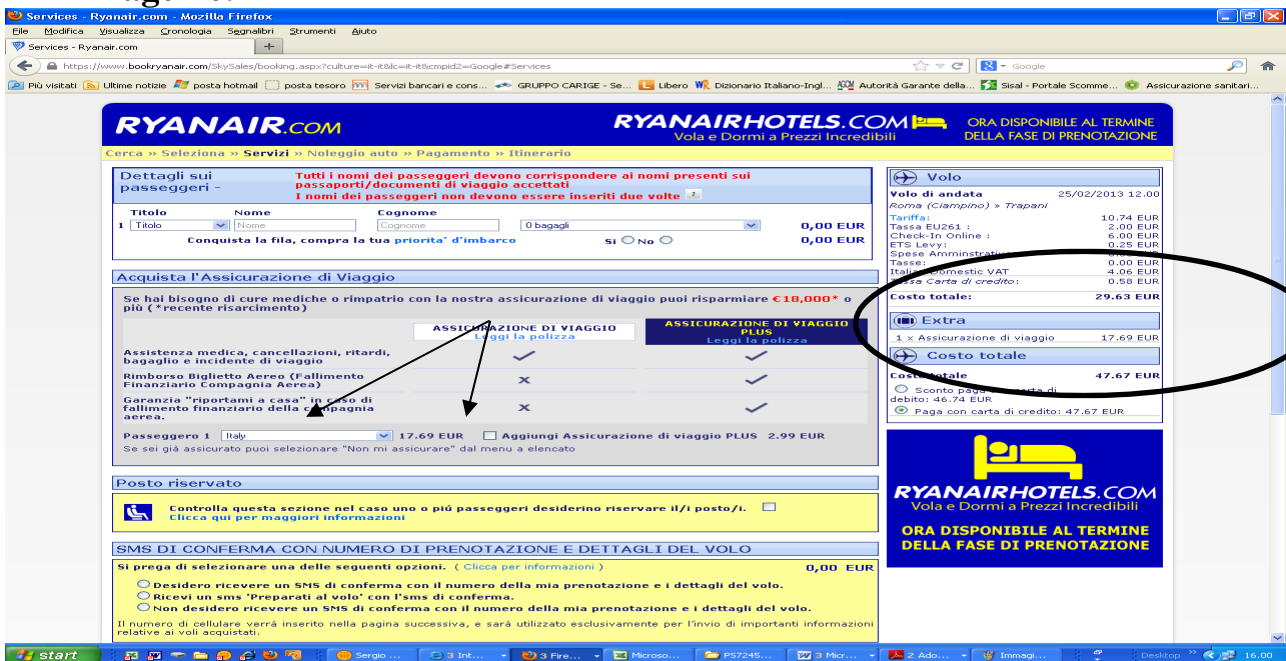


Image no. 4



10. Regarding the modalities provided for the refund in case of the occurring of the event insured, (for example, the renunciation of the travel), the insurance company asks the consumers to submit a specific *no show letter*, issued by the airline company, which certifies “(...) *the reason for the delay*

or cancellation of the insured party's trip, (...),”<sup>12</sup> in order to be able to certify the non-use of the transportation service. In particular, for the issuing of said certification, Ryanair asks for the payment of a fee equal to 20 Euros.

11. From the documentation filed in the official records of the proceedings it is clear that when the professional, during the booking process, offers the purchasing of the insurance policy, it does not notify the consumers about the need to pay an additional fee, but simply sends back to the conditions of the insurance policy through a hypertextual link (See following Image no. 5).

### Image no. 5

The screenshot shows the Ryanair.com booking interface. At the top, there are logos for RYANAIR.COM and RYANAIRHOTELS.COM. Below the logos, there is a navigation bar with options like 'Cerca', 'Selezione', 'Servizi', 'Noleggio auto', 'Pagamento', and 'Itinerario'. The main content area is divided into several sections:

- Dettagli sui passeggeri:** A form where passenger details are entered. The name 'Dott. Sergio Merlino' is visible. There is a note: 'Tutti i nomi dei passeggeri devono corrispondere ai nomi presenti sui passaporti/documenti di viaggio accettati. I nomi dei passeggeri non devono essere inseriti due volte'. The cost for this section is 0,00 EUR.
- Acquista l'Assicurazione di Viaggio:** A section offering travel insurance. It compares two options: 'ASSICURAZIONE DI VIAGGIO' (17.69 EUR) and 'ASSICURAZIONE DI VIAGGIO PLUS' (2.99 EUR). A red arrow points to the 'PLUS' option, which is highlighted in blue. The text says: 'Se hai bisogno di cure mediche o rimpatrio con la nostra assicurazione di viaggio puoi risparmiare €18,000\* o più (\* recente risarcimento)'. Below this, there is a table of benefits:
 

Beneficio	ASSICURAZIONE DI VIAGGIO	ASSICURAZIONE DI VIAGGIO PLUS
Assistenza medica, cancellazioni, ritardi, bagaglio e incidente di viaggio	✓	✓
Rimborso Biglietto Aereo (Fallimento Finanziario Compagnia Aerea)	✗	✓
Garanzia "riportami a casa" in caso di fallimento finanziario della compagnia aerea.	✗	✓
- Costo totale:** A summary of costs. The total cost is 43.40 EUR, which includes the flight (25.36 EUR) and the insurance (17.69 EUR). There is also a note about a 42.55 EUR debit and a 43.40 EUR credit.
- Posto riservato:** A section with a checkbox for 'Controlla questa sezione nel caso uno o più passeggeri desiderino riservare il/i posto/i.' and a link for 'Clicca qui per maggiori informazioni'.
- SMS DI CONFERMA CON NUMERO DI PRENOTAZIONE E DETTAGLI DEL VOLO:** A section with radio buttons for selecting an SMS confirmation option. The cost is 0,00 EUR.

At the bottom of the page, there is a banner for RYANAIRHOTELS.COM with the text 'ORA DISPONIBILE AL TERMINE DELLA FASE DI PRENOTAZIONE'. The browser's address bar shows the URL: 'https://www.bookryanair.com/SkySales/booking.aspx?culture=it-IT&cid=it-IT&cmpid2=Google#Services'. The taskbar at the bottom shows the date 'venerdì 8 febbraio 2013' and the time '13:32'.

12. Besides the payment of the mentioned administrative fee, the procedure imposed by Ryanair on the consumers who want to submit a refund request upon the occurring of the event covered by insurance, envisages also the need to contact the company's extra-charge call centre. It is a non-geographical telephone number 899 55 25 89, whose cost amounts to 0.12 € per call + 0.97 € per minute for telephone calls from Italy.<sup>13</sup>

<sup>12</sup> Cf. the document TRAVEL INSURANCE COVERAGE UND TRAVEL PLUS, section F2: Renunciation of the travel – The insurance policy does not cover, enclosure 1 and 1 bis, to the report filed in the official records dated 08<sup>th</sup> February 2013, doc. no. 40 as mentioned in the index of the report.

<sup>13</sup> Cf. report filed in the official records dated 08<sup>th</sup> February 2013, doc. no. 40 as mentioned in the index of the file. From further reports submitted by consumers during the year 2011, it is clear that the extra-charge

13. Lastly, a further report evidenced that the Italian consumers cannot cancel the insurance policy once the payment has been carried out.

### III. THE OUTCOME OF THE PROCEEDINGS

#### *1) The procedure followed*

14. With reference to the commercial practice described above, on 21<sup>st</sup> February 2013 the Party was notified concerning the launching of the preliminary investigations no. PS7245 due to the alleged infringement of articles 20, 21, letters *b*) and *d*), 22, 24 and 25 of the Consumer Code.<sup>14</sup>

15. On 22<sup>nd</sup> February 2013, a request for information was submitted to UK General Insurance Limited, whose response arrived on 12<sup>th</sup> April 2013 and was integrated on 16<sup>th</sup> May 2013.<sup>15</sup>

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telephone numbers necessary to contact the company for the issuing of the no show letter were different (for example, 8955000020 - Cf. documents no. 4, no. 9 and no. 11 as mentioned in the index of the file. The number 895 is a number with special tariffs, regardless of the geographical localisation of the customer calling). Said reports also highlight the impossibility to contact the professional at the numbers indicated.

<sup>14</sup> In this context, Ryanair's conduct was deemed unfair since the company allegedly omitted to provide consumers, or did so in an absolutely insufficient and inadequate manner, with essential information concerning the insurance service offered, and specifically: i) the existence of an additional fee, for an amount actually higher than the actual cost of the service, requested from the airline company in order to proceed with the issuing of the certification necessary for the exercising of one's right to be refunded for the event for which the consumers took out the insurance at the moment of purchasing Ryanair's transportation service (for example, the renunciation of the travel); ii) the amount of the excess provided for in case of refund owed, for example, in case of cancellation and/or renunciation of the travel and/or for medical expenses, etc.; iii) the indication that the refund does not cover airport taxes and rights (for example, in case of cancellation and interruption of the travel); iv) the brief indication of the risks actually covered by the insurance contract is not qualified to make the range of the service offered comprehensible, even due to the indication of the risks such as "cancellations, delays and luggage" which fall within the airline company's liability and are object of specific consumer protection laws. Moreover, the procedure envisaged for the exercising of the right to be refunded (with particular reference to the assumption of renunciation and/or interruption of the travel), structured on the necessary request of a no show letter to be submitted to the airline company at the cost of 20 Euros, moreover through the obligation to contact a non-geographical phone number for the activation of the procedure, could integrate a non-contractual, onerous and disproportionate hindrance as regards the use of the service purchased, imposed by the professional should the consumer decide to exercise his/her rights deriving from the contract signed with the insurance company through the professional, such to cancel or reduce substantially the actual refund. Even the modality through which the professional presents to the consumers, during the booking process, the option to purchase/non to purchase the insurance policy, hiding the specific statement Do not need insurance within a list of items concerning the various European Countries, can result ambiguous and non-transparent for an aware commercial economic choice and as such, is qualified to mislead consumers. In particular, the collocation of the box inside the menu in which it is asked to select the country of residence can mislead consumers making them think that it is a request to insert the passenger's State of residence, therefore inducing them to select the item Italy and purchase unwittingly a further service whose amount is automatically added to the price of the ticket.

<sup>15</sup> Cf. documents no. 60, no. 74 and no. 83 as mentioned in the index of the file.



16. On 15<sup>th</sup> March 2013, a consumer, in quality of complainant, requested to participate in the proceedings, pursuant to article 10 of the Regulations; said request was accepted and communicated to the Parties on 25<sup>th</sup> March 2013.<sup>16</sup>

17. On 26<sup>th</sup> March 2013, assistance was asked to the Irish Department of Enterprise, Trade Employment Enterprise, Sectoral and eBusiness Unit and to the Irish Competition Authority,<sup>17</sup> pursuant to Legislative Decree no. 70 of 09<sup>th</sup> April 2003, - stating “*Implementation of the directive 2000/31/EC concerning specific juridical aspects of services provided for information of the society in the internal market, with particular reference to electronic commerce.*”

18. On 05<sup>th</sup> April 2013, the Party submitted the information requested upon the notification of the launching of the preliminary investigations.<sup>18</sup>

19. On 08<sup>th</sup> April 2013, Ryanair submitted an undertaking of commitments – pursuant to article 27, paragraph 7, of the Consumer Code, and article 8 of the Regulations – aimed at removing the profile of unfairness of the commercial practice object of the notification. Said commitments were rejected by the Authority in its meeting held on 23<sup>rd</sup> April 2013 with a resolution communicated to the Party on 02<sup>nd</sup> May 2013.<sup>19</sup>

20. On 14<sup>th</sup> May 2013, the professional submitted an undertaking of new commitments;<sup>20</sup> on 17<sup>th</sup> June 2013, the professional was heard.<sup>21</sup> Said commitments were rejected by the Authority on 03<sup>rd</sup> July 2013<sup>22</sup> with contextual extension of the preliminary investigations; this resolution was communicated to the Parties on 05<sup>th</sup>-09<sup>th</sup> July 2013.<sup>23</sup>

21. On 18<sup>th</sup> September 2013, the Authority resolved a further extension of the conclusion date of the preliminary investigations, establishing it on 17<sup>th</sup> January 2014. Said communications were sent to the Parties on 23<sup>rd</sup> September 2013.<sup>24</sup>

22. On 22<sup>nd</sup> October 2013, the Parties were notified concerning the closing date of the preliminary investigations, pursuant to article 16, paragraph 1, of the Regulations, established for 04<sup>th</sup> November 2013.<sup>25</sup>

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<sup>16</sup> Cf. documents no. 63 and no. 65 as mentioned in the index of the file.

<sup>17</sup> Cf. doc. no. 67 as mentioned in the index of the file.

<sup>18</sup> Cf. documents no. 69 and no. 70 as mentioned in the index of the file.

<sup>19</sup> Cf. documents no. 72 and no. 77 as mentioned in the index of the file.

<sup>20</sup> Cf. doc. no. 82 as mentioned in the index of the file.

<sup>21</sup> Cf. the report of the hearing, doc. no. 93 as mentioned in the index of the file.

<sup>22</sup> Cf. doc. no. 97 as mentioned in the index of the file.

<sup>23</sup> Cf. documents no. 96 and no. 97 as mentioned in the index of the file.

<sup>24</sup> Cf. documents no. 100 and no. 101 as mentioned in the index of the file.

<sup>25</sup> Cf. doc. no. 102 as mentioned in the index of the file.

23. On 24<sup>th</sup> October 2013, another 3 website pages of the professional's website *www.ryanair.com/it*<sup>26</sup> were filed in the official records under PS7245.

24. On 05<sup>th</sup> November 2013, Ryanair submitted its conclusive notes dated 30<sup>th</sup> October 2013.<sup>27</sup>

25. On the same date (05<sup>th</sup> November 2013), an opinion was asked to the Communications Regulatory Authority, which was received on 06<sup>th</sup> December 2013.<sup>28</sup>

26. On 22<sup>nd</sup> November 2013, the Authority notified the European Commission's General Directorate for Internal Market, the Department of Enterprise, Trade Employment Enterprise, Sectoral and eBusiness Unit, the National Consumer Agency and the Irish Competition Authority concerning its intention to adopt inhibitory measures against the company Ryanair.<sup>29</sup>

## ***2) The evidence collected***

*a) The offering of the sale of the insurance policy. Presentation, pricing and quantitative data.*

27. Ryanair, on the basis of a contract signed on 31<sup>st</sup> January 2011 [*omissis*]<sup>30</sup> with UK General Insurance Limited (hereafter, also, UKG), hosts on its website, during the booking process of a flight, a specially provided section dedicated to the publication/offer of the insurance product called *UND TRAVEL PLUS*.<sup>31</sup>

28. The insurance policy offered on the professional's website concerns several guarantees whose characteristics are summarised in the following table.<sup>32</sup>

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<sup>26</sup> Cf. doc. no. 103 as mentioned in the index of the file.

<sup>27</sup> Cf. doc. no. 105 as mentioned in the index of the file.

<sup>28</sup> Cf. documents no. 106 and no. 111 as mentioned in the index of the file.

<sup>29</sup> Cf. doc. no. 109 as mentioned in the index of the file.

<sup>30</sup> In the present version some data were omitted, as they were deemed to have elements of confidentiality or secrecy of information.

<sup>31</sup> In January 2011, the contract with UKG was not in force yet, and the product was offered by the Insurance Group Axa.

<sup>32</sup> Cf. enclosure 1 and 1 bis to the report filed in the official records dated 08<sup>th</sup> February 2013, doc. no. 40 as mentioned in the index of the file.

Image 6

# RYANAIR



## COPERTURE ASSICURATIVE DI VIAGGIO UND TRAVEL PLUS\*

### Prospetto della copertura

- ✓ Franchigia Annullamento SOLO €15
- ✓ Assistenza Sanitaria 24 Ore al Giorno
- ✓ Spese Mediche fino a €150,000
- \*Soggetto a Termini e Condizioni
- ✓ Documenti di Viaggio Rubati o Smarriti
- ✓ Compensazione per Ritardata Consegna dei Bagagli
- ✓ Perdita o Danni agli Effetti Personali

### Prospetto delle Indennità

Sezione	Descrizione	Limite (per persona)	Franchigia
A	Annullamento / Interruzione	€500	€15**
B1	Spese Mediche Cure dentarie d'urgenza	€150,000 €200	€50** €50
B2	Spese Mediche Domestiche Spese per il rimpatrio - Domestiche	€10,000 €10,000	€50
C	Diarie da ricovero (massimo)	€125	
D	Diarie da ricovero (al giorno) Bagaglio (massimo) Bagaglio limite per singolo oggetto Bagaglio limite per oggetti di valore	€25 €1,500 €300 €300	€50
E1	Smarrimento / furto passaporto / documento d'identità o visto Ritardata consegna del bagaglio Denaro Proprio	€400 €200 €500	€50 €50
E2	Contanti (se minorenne)	€100	
F1	Rapina ed aggressione all'ATM Ritardata Partenza (massimo)	€50 €350 €240	
F2	Ritardata Partenza (fino a 12 ore)	€20	
G	Rinuncia al viaggio	€500	€50**
H	Mancata Partenza	€150	
I	Interruzione del viaggio	€150	—
J	Responsabilità Personale	€100,000	€350
K	Spese legali	€2,000	€100
	Infortunio di viaggio – Solo Viaggi Ryanair		
	Perdita di arti o della vista	€250,000	
	Invalidità totale e permanente	€250,000	
	Decesso (età 18+)	€100,000	
	Decesso (età inferiore ai 18 anni)	€60,000	—

\*NB. SE GLI ASSICURATI HANNO 65 ANNI O PIU' AL MOMENTO DELLA PRENOTAZIONE SONO SOGGETTI AL RADDOPPIO DELLA FRANCHIGIA

### Benefici assicurativi di Ryanair Travel Plus\* (se avete acquistato Travel Plus)

- ✓ Assicurazione per fallimento della compagnia aerea fino a €2,000\*

Prospetto delle Indennità

### Limiti Territoriali

**Area 2:** Il Continente Europeo ad ovest degli Urali, Madera, Isole Canarie, Islanda, Azzorre, Isole del Mediterraneo e paesi non Europei confinanti con il Mediterraneo (ad eccezione di Algeria, Israele, Libano e Libia).

29. All the various typologies of coverage provided for in the different sections of the insurance policy provide for specific exclusions and limitations<sup>33</sup> which add on to the many *General exclusions, applied to all the*

<sup>33</sup> With reference to the sections described in the text (see previous point 6), it is clear that the SECTION A: CANCELLATION AND INTERRUPTION OF THE TRAVEL – the insurance policy does not cover: “The Insurance company shall not pay any amount whatsoever for the following items, in addition to the General Exclusions, as regards the requests for compensation carried out pursuant to Section A. – a) Excess indicated in the Prospect of the coverage; b) any request of compensation for interruption that is not approved by the emergency medical assistance service before returning to the country of residence; c) Airport taxes, or similar taxes, where separately indicated d) any request of compensation not justified by a written medical certificate (...); e) any cost the Insured party paid or that is contractually obliged to pay, if the travel is cancelled for the following reasons: compensations deriving directly or indirectly from the Insured party’s pre-existing medical condition (...); the Insured party did not undergo vaccinations (...); the

Insured party is not in possession of a valid passport or visa; the carrying out of investigative proceedings against the Insured party (...); dismissal, (...); aversion to the travel on behalf of the Insured party for any reason whatsoever (...); the Insured party's financial situation, (...); late arrival at the airport (...); f) any cost related to what follows: any request of compensation deriving directly or indirectly from the cancellation or interruption of travel agreements, (...); loss of the condition of passenger; (...); non used multi-property, (...); non-enjoyment of the trip on behalf of the Insured party, for any reason whatsoever; for SECTION F2 RENUNCIATION OF THE TRAVEL – the insurance policy does not cover: "The Insurance company shall not pay any amount whatsoever for the following items, in addition to the General Exclusions, as regards the requests of compensation carried out pursuant to the Sections F1 & F2: a) Excess indicated in the Prospect of the coverage; b) possible refunds if the Insured party did not obtain written confirmation from the airline, railway or port company or relevant agents, certifying the reason of the delay or cancellation of the Insured party's travel; the expected departure time, and the actual departure time of the flight, train or ship, where applicable; c) possible requests of compensation deriving from the non check-in for the itinerary envisaged; d) possible delays due to strikes or labour unrest which started, or were announced publically on the date of the signing of the insurance policy; e) refund pursuant both to this policy's section concerning delayed departure and the section concerning renunciation of the travel; f) any request of compensation deriving directly or indirectly from the modalities of the trip, caused in any way, or indirectly from any ordinance or warning issued by a government, public or local authorities. (...); g) possible refunds pursuant to Section G; for the SECTION H: INTERRUPTION OF THE TRAVEL – the insurance policy does not cover: the Insurance company shall not pay any amount whatsoever for the following items, in addition to the General Exclusions present on the page as regards the requests for compensation submitted: a) Any compensation concerning the modalities of the trip, if the Insured party did not receive a written confirmation from Ryanair or another authorized agent, which includes the reasons of the delay, the scheduled departure time, the envisaged duration of the delay of the Insured party's flight or the complete details of any refund issued as regards the non-used flight; b) Any compensation if the Insured party chose to use the flight ticket of the first or last single trip flight which was cancelled on a following date for a completely separate trip; c) Any delay due to strikes or labour unrest which started or were announced publically on the date of the signing of the insurance policy; d) Any compensation for the cancellation of a flight not due to a delay above four hours; e) Refund pursuant to more than one of the following sections of the insurance policy: "Delayed Departure," "Interruption of the travel" and "Renunciation of the travel;" f) No check-in on the basis of the itinerary provided by the Insured party; g) Any request of compensation deriving directly or indirectly from the modalities of the trip, caused in any way whatsoever, or indirectly from any ordinance or warning issued by a government, public or local authorities. (...). In the calculation of any compensation payable pursuant to this section as regards the coverage, all the refunds obtained from Ryanair or from an authorized agent shall be taken into consideration, as regards any flight not used.

<sup>34</sup> The GENERAL EXCLUSIONS, APPLIED TO ALL THE SECTIONS OF THE INSURANCE concern: 1) any request of compensation for trips outside the Insured party's country of residence deriving directly or indirectly from a pre-existing medical condition. 2) Requests of compensation (regardless of the destination), deriving directly or indirectly from the Insured party or any other person on whom the Insured party's travel depends; a. travels or actions undertaken regardless of the negative opinion of a doctor b. waiting for medical report of clinical exams. c. registered in a waiting list at the hospital for treatment d. Insured party's prognosis of terminal disease e. the Insured party suffers from anxiety, stress or depression (unless hospitalized) f. omission of a material fact, the moment in which the policy started and for the whole period of the insurance. 3) Requests of compensation which are caused or contributed by: a. damage of or b. fear of damage of; or c. inability of any device or computer programme to recognize, interpret correctly or process any date as calendar date or continue to work correctly after said date for causes different from loss, damage, expenses or consequent loss not otherwise excluded deriving from the management of an insured cause. 4) Possible requests of compensation directly or indirectly caused by, (...): a. acts of terrorism; (...). 5) Any request of compensation deriving directly or indirectly from the travel undertaken by the Insured party against measures adopted by the Foreign Ministry (or any other governmental organization) or should travelling be considered dangerous. 6. Any request of compensation deriving directly or indirectly from the travel undertaken by the Insured party in contrast with the health requisites envisaged by the airline company, or any other company of public transportation or manager. 7. Any request of compensation deriving directly or indirectly from the loss or destruction or damage of any good, or any loss or expense of any kind resulting in or deriving from any loss or any legal liability of any nature, directly or indirectly caused or contributed to, or deriving from: a. ionizing radiations or contamination from radioactivity

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coming from nuclear fuels or nuclear dross of the combustion of nuclear fuel, b. or radioactive, toxic, explosive elements or however dangerous of any nuclear explosive device or nuclear component of the same. 8. Any request of compensation deriving directly or indirectly from the launching of any illegal or criminal act on behalf of the Insured party. 9. Any request of compensation deriving directly or indirectly from any illicit action or penal proceedings against the Insured party, or any other person on whom the trip depends, this exclusion does not apply in case the Insured party is obliged to participate in a Court of Justice summoned as witness, unless said obligation to participate falls within the ambit of the professional ability, job, or other similar aspects of the Insured party. 10. Any request of compensation deriving directly or indirectly from any loss due to any reason whatsoever (the requests of compensation shall be paid only for those losses that are specifically indicated pursuant to the terms of this insurance policy, with the exception of what provided for by section D, as regards the loss of travel documents). 11. Any request of compensation deriving directly or indirectly from financial difficulties different from dismissal. 12. Any request of compensation which, with the exception of this policy, is covered by any other insurance policy. a. private health insurance; b. or payments with European Card of Illness Insurance (TEAM); c. any bilateral agreement; or d. airline companies; or e. hotels; or f. insurance companies for domestic properties; or g. possible other forms found by the Insured party, at the basis of the request. h. exercise of one's rights on the basis of the EU's regulations or similar. 13. Any request of compensation deriving directly or indirectly from the condition of insolvency or impossibility or lack of will of the tour operator, airline company or any other company, business or person to accomplish any part of their obligations. 14. Any request of compensation deriving directly or indirectly from the Insured party's death, serious injuries, or disease deriving from the participation in activities during the trip not included in the list of the Acceptable and recreational Sport Activities. 15. Any request of compensation deriving directly or indirectly from: a. illness or injuries self-caused voluntarily; or b. suicide and suicide attempt; or c. exposure to useless dangers, if not in the attempt to save a human life; or d. abuse of solvents; or e. to be under the effects of alcohol and drugs, with the exception of those prescribed by a doctor certified for the profession and not drugs prescribed for addiction; or f. not undergoing suggested vaccinations, vaccinations or drugs before leaving on behalf of the Insured party; or g. sexually transmissible diseases; or AIDS; or h. HIV e/or HIV related diseases and/or derived from mutations of the same. 16. Any request of compensation deriving directly or indirectly from anxiety, stress or depression; unless not previously diagnosed at the moment of signing this insurance policy on behalf of the Insured party. 17. Any request of compensation deriving directly or indirectly from the Insured party's entrance or exit of an aircraft, which is not an aircraft with licence of passenger air transportation in which one travels as passenger or member of the crew in order to carry out any commercial or technical operation. 18. Any request of compensation deriving directly or indirectly from voluntary exposure to danger. The Insured party must act with attention so as to prevent illnesses, accidents or losses or thefts or damage to his/her property, as if the party was not insured. 19. Any request for compensation deriving directly or indirectly from the Insured party's commitment in any occupation during the trip, unless under our authorization and paid extra price. 20 Any request of compensation not proved, and the amount of refund not approved. 21. Any request of compensation for non-enjoyment of the trip on behalf of the Insured party, for any reason whatsoever. 22. Any loss for period of invalidity or loss due to an action of the Insured party or omission. 23. The rights of a third party and of no other party apart from the Insured party may be asked when submitting request for compensation pursuant to this insurance policy. 24. Differences in providing the route booked including errors, omissions or non-fulfilments on behalf of the supplier of any service which is part of the booked route. 25. Any request of compensation deriving directly or indirectly from carrying out manual work on behalf of the Insured party, with the exception of those indicated in the section Acceptable Sports Activities & Recreational Activities. 26. Any request of compensation deriving from a routine treatment or cures which could have been envisaged during the insurance period. 27. Any request of compensation deriving from the closing of airspaces due to volcanic ash. Cf. the document TRAVEL INSURANCE COVERAGE UND TRAVEL PLUS - enclosure 1 and 1 bis, to the report filed in the official records dated 08<sup>th</sup> February 2013 - doc. no. 40 as mentioned in the index of the file.

30. The cost of the insurance policy for the consumer amounts to 17.69 EUR.<sup>35</sup> For every insurance policy sold on the professional's website, Ryanair refers the *Net Travel Insurance Premium* back to UKG, corresponding to the amount of *[omissis]* EUR,<sup>36</sup> thus retaining a percentage of about *[omissis]*% on the price/premium of the single insurance product sold (*Gross Travel Insurance Premium*). In particular, according to article 7.1 of the contract, "*[omissis]*".

31. As regards the number and value of the insurance contracts taken out with the Italian consumers, for the years 2011 and 2012, the professional provided the following table:<sup>37</sup>

**Table 1**

ITALY	2011	2012	TOTAL
Number of policies	<i>[omissis]</i>	<i>[omissis]</i>	<i>[omissis]</i>
Premiums €	<i>[omissis]</i>	<i>[omissis]</i>	<i>[omissis]</i>

32. On the basis of the data provided in the above Table 1, it is clear that, during the two years 2011/2012, Ryanair's revenue amounted to over *[10-20]* million Euros (*[omissis]*) owing to the sale of the insurance policy through its website. Moreover, taking into account the total number of passengers in transit from the Italian airports (*alias* tickets sold) equal to *[omissis]* in 2011 and *[omissis]* in 2012, the *conversion index*, that is the percentage of insurance policies compared to the number of tickets sold, results to be about *[1-10]*% in 2011 and *[1-10]*% in 2012 for flights leaving from and/or arriving in Italy.

<sup>35</sup> On the date of the launching of the proceedings. Currently, as viewable on the professional's website, the insurance policy costs 18.69 Euros.

<sup>36</sup> To this amount, it is necessary to add "*[omissis]*". Cf. Schedule 5 – Payment Terms/Methodologies of the contract between Ryanair and UKG.

<sup>37</sup> Cf. doc. no. 69 as mentioned in the index of the file. Analogous data were provided by UKG in answering the Authority's request for information during the preliminary investigations. Cf. doc. no. 74 as mentioned in the index of the file.

b) *Ryanair's procedure for issuing the no show letter; Ryanair's revenues.*

33. The airline company's request for a remuneration for issuing the no show letter obliging the consumer to contact an extra-charge telephone number, dates back to at least October 2010. Said procedure, described under point II hereof, is confirmed also by the documentation filed in the official records during the preliminary investigations, and in particular by an e-mail of the service *ryanairclaims.italia@axa-assistance.com* dated 08<sup>th</sup> October 2010<sup>38</sup> which, in answer to a consumer's request, states exactly as follows: "*Dear Mr. (...), please be informed that in order to proceed with the definition of the paperwork, it is necessary for us to receive a travel cancelation certificate which you must require from Ryanair at the number 899.018.880 as proof of your non boarding. Please send it to us attached to an e-mail. Moreover, please be informed that the cost of said certification amounts to € 20.00 and it is not refundable.*"<sup>39</sup>

34. When submitting request for compensation, the insured party must send to UKG all data concerning the insured party's travel, the original tickets, the invoice of the booking and the travel itinerary.<sup>40</sup>

35. In particular, the general conditions of the policy and the request for compensation<sup>41</sup> envisage that the insured party must provide all the information and evidence necessary and in the format requested by the company.<sup>42</sup>

36. In order to prove the non-use of the transportation service so as to obtain a compensation, according to what provided for on pages 27 and 29 of the insurance conditions, it is necessary to send a so-called "no show" letter certifying that the travel service was not used and that the consumer did not board on the booked flight, thus did not use the seat purchased. This is

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<sup>38</sup> Cf. doc. no. 1 as mentioned in the index of the file.

<sup>39</sup> It is hereby reminded that in January 2011 the contract with UKG was not in force yet, and the insurance policy was offered by the Insurance Group Axa.

<sup>40</sup> For each kind of insurance coverage, pages from 27 to 29 of the conditions of the insurance policy as mentioned in the Informative Pamphlet provide for a list of the documents necessary in order to submit a request for compensations to UKG. Cf. doc. no. 74 as mentioned in the index of the file.

<sup>41</sup> Cf. page 24 of the Informative Pamphlet.

<sup>42</sup> With reference to the procedure for submitting a request for compensation, article 10 of the above mentioned general conditions provide for the fact that it is necessary to notify any request of compensation within 31 days after the accident which gave place to the damage or the loss, and that the company has the right to decline any liability for requests notified after said period. It is hereby reiterated that all the documents, certificates and medical evidence necessary to support a compensation request must be provided to the insurance company at the insured party's expense.

requested both in case of cancellation of the flight and as regards the returns flights in case of interruption.

37. The information concerning the fee for the issuing of the no show letter, and that concerning the need to contact an extra-charge telephone number in order to activate the issuing procedure (see following images no. 6 and no. 7), may be found only on the FAQ page of the professional's website. Said pages are not immediately accessible for the consumers when wanting to choose whether or not to purchase the insurance policy. Moreover, nothing is mentioned in the *Terms and conditions* whose link is placed at the end of the home page of the website *www.ryanair.com/it*. Whereas, in the Conditions of the insurance policy, on page 24, point 7, of the *General conditions applied to the policy in its whole*, it is possible to find a simple referral to the section of the frequently asked questions of Ryanair's website for the details of the administrative fees in case of non-departure.

### Image no. 7 – FAQ page, April 2011.

The screenshot shows the Ryanair website's FAQ page titled "Assicurazione per il viaggio". A callout box highlights the following text:

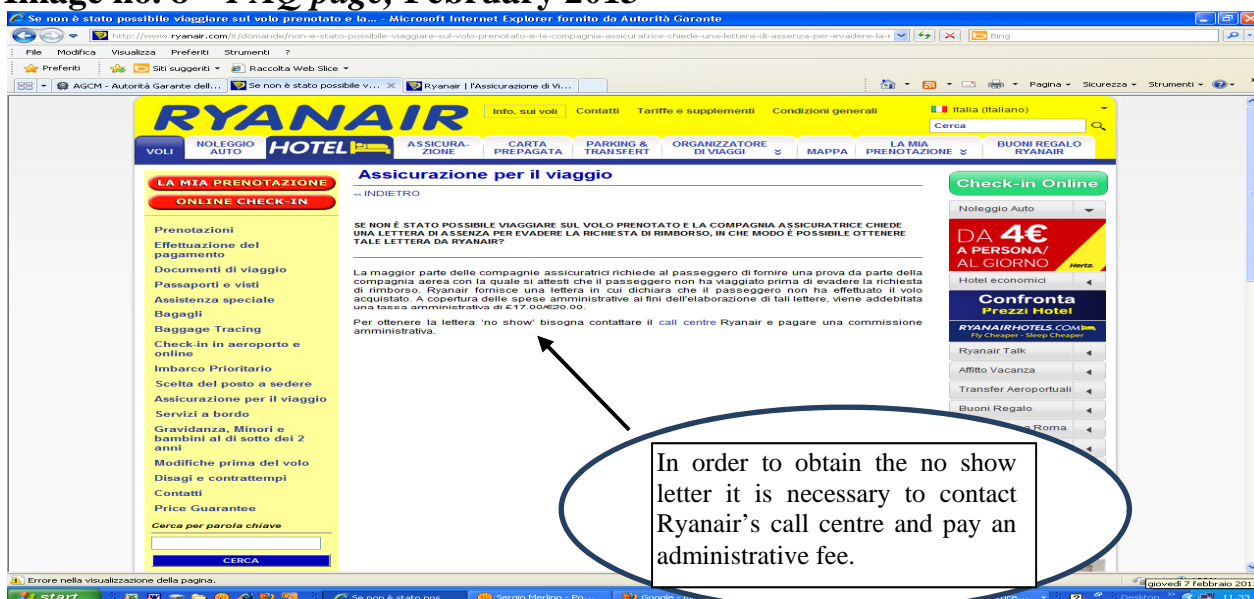
SE NON È STATO POSSIBILE VIAGGIARE SUL VOLO PRENOTATO E LA COMPAGNIA ASSICURATRICE CHIEDE UNA LETTERA DI ASSENZA PER EVADERE LA RICHIESTA DI RIMBORSO, IN CHE MODO È POSSIBILE OTTENERE TALE LETTERA DA RYANAIR?

La maggior parte delle compagnie assicuratrici richiede al passeggero di fornire una prova da parte della compagnia aerea con la quale si attesti che il passeggero non ha viaggiato prima di evadere la richiesta di rimborso. Ryanair fornisce una lettera in cui dichiara che il passeggero non ha viaggiato.

A copertura delle spese amministrative ai fini dell'elaborazione della lettera di assenza, Ryanair applica una tariffa amministrativa di €17,00/€20,00.



## Image no. 8 – FAQ page, February 2013



38. Ryanair stated to be able to provide only an estimate of the number of requests for no show certification letters for the two years 2011-2012 referable to the Italian market (on the basis of the share of said market – equal to about [omissis]% - on the total of the company's revenues).

**Table 2. Number and value of the requests of no show certifications in Italy – estimate**

Period	Ryanair's estimate of the no show letters sent	ICA's estimate of the revenues for the issuing of the no show letter (Euros)
2011	[1-5,000]	[40-80,000]
2012	[1-5,000]	[40-80,000]
TOTAL	[5-10,000]	[80-120,000]

39. On the basis of the following Table no. 3, showing the values of the average revenues per passenger in the period indicated, it is clear that the administrative fee requested from the consumer for the issuing of the penalty letter is about [omissis]% of said average revenues and results to be *always* higher than the cost of the insurance service itself (*cf.* previous point 30 hereof).

**Table 3. – Average revenues per passenger<sup>43</sup>**

January 2011 – March 2011	€[omissis]
April 2011 – March 2012	€[omissis]
April 2012 - December 2012	€[omissis]

<sup>43</sup> The data shown in Table 3 include: compensation for luggage, check-in fee, insurance levy, ets fee, promotional support, wheelchair and charges Reg. EU261. Whereas, the above mentioned data do not include airport taxes.

40. Whereas, as regards the extra-charge telephone number for requesting the no show letter, the following tables highlight the tariffs applied by the professional starting from January 2011.

**Table 4. – Telephone numbers for Ryanair’s Italian customers from January to October 2011**

Number	Type of assistance	Cost upon answering + tariff per minute
899 898 241	Priority Assistance	0.12 €+ 1.21 €
895 500 0020	Reservation	0.12 €+ 0.97 €
899 545 506	Special Assistance	0.12 €+ 0.60 €
199 201 040	Special Assistance	0.12 €+ 0

**Table 5. – Telephone numbers for Ryanair’s Italian customers from October 2011 to December 2012**

Number	Type of assistance	Cost upon answering + tariff per minute
899 482 424	Priority Assistance	0.00 €+ 1.21 €
899 552 589	Reservation	0.12 €+ 0.97 €
899 200 000	Special Assistance	0.12 €+ 0.31 €

41. According to the estimates provided by the Party, the average duration of a non-geographical phone call is allegedly equal to about 3 minutes and therefore the average revenue deriving from a telephone call for the request of a no show certificate amounts to *[omissis]* Euros.

42. Lastly, the following Tables no. 6, no. 7 and no. 8,<sup>44</sup> show the information provided by Ryanair and UKG concerning the refund requests, for the years 2011 and 2012, with reference to the *renunciation/interruption/cancellation of the flight*; said refund requests, in any case, were rejected in about *[10-20]*% of the cases as reported by the professional (see following Table no. 9 - Totals).

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<sup>44</sup> These are data provided by the professional in answer to the request for information as mentioned in doc. no. 69 of the index of the file.

**Table 6 - Renunciation**

Year	Compensations paid	Value in Euros	Compensations rejected	Total compensations requested
2011	[omissis]	[omissis]	[omissis]	[omissis]
2012	[omissis]	[omissis]	[omissis]	[omissis]
<b>Total</b>	[omissis]	[omissis]	[omissis]	[omissis]

**Table 7 - Cancellation**

Year	Compensations paid	Values in Euros	Compensations rejected	Total compensations requested
2011	[omissis]	[omissis]	[omissis]	[omissis]
2012	[omissis]	[omissis]	[omissis]	[omissis]
<b>Total</b>	[omissis]	[omissis]	[omissis]	[omissis]

**Table 8 - Interruption**

Year	Compensations paid	Value in Euros	Compensations rejected	Total compensations requested
2011	[omissis]	[omissis]	[omissis]	[omissis]
2012	[omissis]	[omissis]	[omissis]	[omissis]
<b>Total</b>	[omissis]	[omissis]	[omissis]	[omissis]

**Table 9 - Totals**

Year	Compensations paid	Value in Euros	Compensations rejected	Total compensations requested
2011	[omissis]	[omissis]	[omissis]	[omissis]
2012	[omissis]	[omissis]	[omissis]	[omissis]
<b>Total</b>	[omissis]	[omissis]	[omissis]	[omissis]

43. It is a very low number of requests – lower than 0.1% - compared to the total number of insurance policies commercialized (cf. previous Table 1), as well as not consistent with the number of no show certification letters requested by consumers and issued by the professional (cf. Table 2) and with the number of passengers that purchased the insurance policy but did not use the ticket (equal to *[50-100 thousand]* units);<sup>45</sup> when considering said data, the number of compensations paid results to be definitely inferior, that is equal to about 14% of the penalty letters issued by the professional in the same period, as well as equal to about 1% of the passengers that, in abstract terms, had the right to ask for compensation for the renunciation/cancellation/interruption of the flight.

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<sup>45</sup> Cf. doc. no. 82 as mentioned in the index of the file.

### 3) *The Party's defensive argumentations*

#### a) *Procedural issues*

44. In Ryanair's conclusive notes submitted during the preliminary investigations, the professional highlighted the alleged infringement of its right to defence, in particular as regards the impossibility to produce useful documents<sup>46</sup> due to the *sudden shortening of the preliminary terms* of the investigation owing to the fact that, according to the opinion, there were no longer the "*particular preliminary investigation needs which had induced the Authority to extend the conclusive term of the investigations twice.*"<sup>47</sup>

45. Moreover, the professional deems that Ryanair's rights to defence were seriously violated also due to the unjustified rejection of the commitments submitted on 08<sup>th</sup> April 2013<sup>48</sup> since they had been prepared in such a way to answer "*each single point*" concerning the notification received, meeting the Authority's concerns, without any omission whatsoever. Said commitments were object of a following *ameliorative correction* on 14<sup>th</sup> May 2013<sup>49</sup> and cannot in any way whatsoever be considered "new" compared to the first ones submitted.<sup>50</sup>

#### b) *The defence*

46. Preliminarily, the professional stated that the laws applicable for consumer protection were not infringed in the case at hand for the reasons exposed hereafter.

47. Concerning the modalities by means of which the insurance policy is presented on Ryanair's website, in particular as regards the difficulty for the consumer to find the option "*Do not need insurance*" placed within a pull-down menu called "*Select the Country of residence*" and hidden within the

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<sup>46</sup> In particular, it is a complex writing which shows, from a compared viewpoint, how no economic data can enable to deduce deceptive effects from the practice in object.

<sup>47</sup> In conclusion, Ryanair deems that the Authority should have re-launched the preliminary phase until 17<sup>th</sup> January 2013, enabling the further production of documents of the Parties involved in the proceedings.

<sup>48</sup> In any case, the commitments submitted on 8 April were implemented spontaneously by the company on 13 June 2013. In particular, Ryanair, with the Commitment number 3), suggested [*omissis*]. Moreover, Ryanair substituted the formulation "If you are already insured, you can select "Do not need insurance" from the listed menu," with the formulation [*omissis*] and then with the formulation [*omissis*].

<sup>49</sup> Both sets of commitments were rejected by the Authority. See previous point III of the proceedings hereof.

<sup>50</sup> In conclusion, the professional asked for the Authority to re-examine the consolidated commitments submitted on 13<sup>th</sup> May 2013 by Ryanair and to adopt a final measure of acceptance of the commitments pursuant to art. 17 of the Regulations.

list of European Countries, the professional deems that the objections submitted by the consumers and ADICONSUM are anachronistic because the system of presentation proposed by Ryanair with its commitments presented different connotations compared to those mentioned in the reports and currently further updated.

**48.** In fact, the presence of a message below the pull-down menu which states *“If you are already insured choose “Do not need insurance” from the pull-down menu,”*<sup>51</sup> would be sufficient to clarify to the average consumer that the option *“Do not need insurance”* is present within the pull-down menu; moreover, the item was duly re-placed between *“Netherlands”* and *“Norway”* according to a classic alphabetical order among the various options.

**49.** As regards the item concerning the optional insurance service, this was clearly inserted within a mask called *“Travel insurance”*, and the relevant cost, upon selecting the Country, is immediately listed in the costs details (among the *“EXTRAS”*), the recapitulating display remaining throughout the following steps and up to the moment of paying. Moreover, the service is clearly presented with *“opt-in”* modalities such to enable the consumers’ free and full self-determined choice.

**50.** In fact, in confirmation to all the above said, should the purchaser not select any option among those available (because not intended to purchase the service), the purchasing procedure of the flight ticket (and clearly also that of the travel insurance) is inhibited.<sup>52</sup>

**51.** According to Ryanair, it is also undeniable that the use of the e-commerce tool has as natural addressee an average consumer whose profile is *“technicized;”* therefore, as far as laws are concerned, the collective protection for the use of the commercial practices as those object of the proceedings, can only refer to an *“upper”* average consumer category.

**52.** As regards the concerns presented by the Authority under point 8) of the launching of the preliminary investigations, Ryanair modified some modalities concerning the presentation of its offer: on one hand, the company eliminated the referral to *“€ 18,000 or more”* substituting it with the amount *“000”*, on the other hand, it added an asterisk in the list of the risks covered by the Insurance Policy, *“Medical assistance, cancellations,*

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<sup>51</sup> The value of the expression *“if you are already insured, you can choose Do not need insurance,”* means the alternative possibility not to take out insurance if you already have an insurance coverage, but not in the sense of a choice that can be put into practice *“only”* in case you are already insured.

<sup>52</sup> In fact, the warning message textually states: *“Passenger 1 (Travel insurance): Please select an option from the list.”*

*delays, luggage and travel accident*” thus highlighting that the coverage offered concerns risks not protected by the applicable legislation, that is the Regulation EU261 and/or the Convention of Montreal 1999.

**53.** As regards the aspect of unfairness concerning the request of a fee for issuing the no show certificate (by contacting a call centre), the professional specified that the amount envisaged is requested by Ryanair in the sole assumption that the cause of non-use of the trip is not directly the company’s fault but the customer’s. In fact, said assumption justifies a compensation in order to cover the costs of elaboration of the request for the issuing of the certificate by Ryanair. Said information, similarly to other pieces of information, cannot be inserted directly when purchasing the insurance policy at the same time of the purchasing of the ticket, as it could generate confusion and scarce fluidity in the booking process to the detriment of the consumers.<sup>53</sup>

**54.** Moreover, the general conditions of the contract of the current insurance company UKG clarify that the refund to which the consumer is entitled also includes the administrative fee paid for the issuing of the certification mentioned.<sup>54</sup>

**55.** Ryanair results to comply with the regulations established in the informative sector as regards the additional cost of the insurance service. In fact, all the costs, the tariffs and compensations for the optional and not obligatory services are published and available for consultation by the consumers directly on Ryanair’s home page under the section “*Tariffs and additional costs.*” Likewise, on the same home page, there is a section exclusively reserved to the travel insurance policy.

**56.** Moreover, when purchasing the flight ticket, the moment in which the consumer is offered the additional services, among which the travel insurance policy, is prior to the moment in which the consumer is asked to conclude the purchasing of the flight ticket and the additional services.

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<sup>53</sup> Therefore, the airline company includes said further information in distinct sections, such as the FAQ (Frequently Asked Questions).

<sup>54</sup> During the preliminary investigations, the insurance company UKG clarified that the reasons for which said documentation must be submitted by customers and not by Ryanair is due to the market’s standard procedure according to which the insured parties/consumers are those who must provide the documentation supporting their request for compensation in order to exercise their rights deriving from the insurance policy, and not a third party (as Ryanair in this case). Moreover, the documentation of the insurance policy (Cf. page 24, point 7, Insurance policy UND TRAVEL PLUS) clearly indicates that any cost concerning the no show letter born by the recurring party as part of a request for refund, shall be totally compensated by the party liable for the refund request for any proceedings with positive outcome (underlining added). Moreover, in the Informative Pamphlet the customer is invited to view the section "Frequently Asked Questions" on Ryanair’s website for the details of the administrative fees owed in case of non departure. The same invitation is indicated on Ryanair’s website.

Therefore, the characteristics of the insurance service are duly communicated definitively prior to the conclusion of the long-distance contract.

57. Lastly, Ryanair pointed out that it would be impossible to publish on the website's home page the prices and the tariffs of all the (optional) services offered in combination with the flight ticket. The impossibility is due to the space that would be occupied on the home page by said publication and by the fact that the prices of the specific services can differ from country to country.<sup>55</sup>

58. With reference to the notification concerning the impossibility for the Italian consumer (compared to the citizens of other nationalities) to rescind from the insurance policy taken out, the professional highlighted that art. 67 duodecies, paragraph 5, of the Consumer Code provides for a list of services for which the consumer cannot exercise the right of rescission as mentioned in paragraph 1 of the same regulation. Among these, under paragraph 5, letter b), the legislator includes “*travel and luggage insurance policies or analogous insurance policies with short duration terms, lasting less than a month.*”

59. The different treatment of the citizens is thus justified by the different laws made by the national legislators.<sup>56</sup>

60. In conclusion and in addition to the above mentioned considerations, Ryanair highlighted that the non-deceitfulness of the modalities through which the commercial practice is presented is also evidenced by the low percentage (*[omissis]*) of Ryanair's costumers that concluded the purchasing of a flight ticket on the company's website also purchasing the travel insurance offered on the Irish carrier's website.

### *c) Modifications of the practice during the preliminary investigations*

61. In compliance with the commitments submitted, the professional, during the proceedings, carried out several partial modifications to the commercial practice.

62. With reference to the presentation of the service, the referral to the assumed refund payable (*up to 18,000€*) was eliminated and substituted with an amount equal to the average value of the compensation actually paid in

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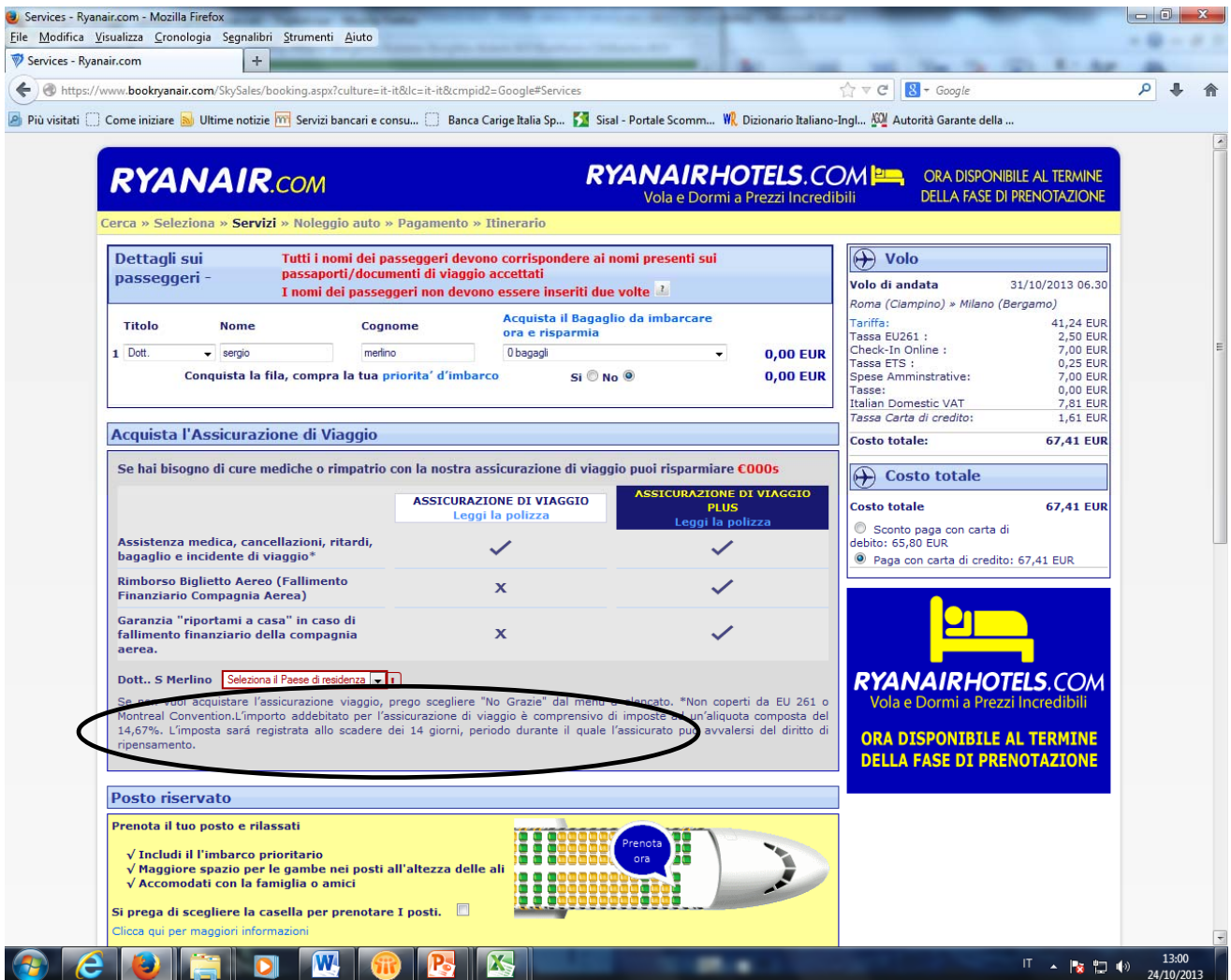
<sup>55</sup> The commitments suggested by the company were, according to the professional, qualified to remove at the root said concerns because they envisaged: *[omissis]*.

<sup>56</sup> In any case, the commitments offered by the professional, since spontaneously implemented, could be qualified to remove at the root the Authority's concerns since they envisage *[omissis]*.

cases of repatriation or medical treatment, now indicated with the amount “000.” Moreover, an asterisk was added to the list of risks covered by the Insurance Policy referring to the specification that the coverage offered concerns risks not protected by the applicable legislation.

63. With reference to the selection procedure of the insurance service, placed within the pull-down menu where the consumer is invited to indicate the Country of residence, the statement was modified from “*If you are already insured you can select "Do not need insurance" from the pull-down menu*” to the specification “*If you do not want to purchase the travel insurance, please choose "No, thank you" from the pull-down menu*” (See following Image no. 9).<sup>57</sup>

**Image no. 9 – Observation of website *www.ryanair.com* on 24<sup>th</sup> October 2013**



<sup>57</sup> The formulation, on 19<sup>th</sup> December 2013, is as follows: Already insured? Select "No, thank you" in the summing-up box.



**64.** With reference to the procedure for the compensation request, the administrative fee required for issuing the no show certification was eliminated for all the consumers purchasing the Insurance Policy, enabling them to freely download from Ryanair's website said certification, as well as the specification – both in the *Terms & Conditions* of the Policy, and in the FAQ – that said administrative fee is required only for Ryanair's passengers that do not purchase the Policy offered on the website.

**65.** Lastly, the Italian consumers purchasing the Insurance Policy were recognized the right to rescind within 14 days from its purchasing.

#### **IV. THE OPINION OF THE COMMUNICATIONS REGULATORY AUTHORITY**

66. Since the commercial practice object of the proceedings hereof was diffused via internet, on 05<sup>th</sup> November 2013, an opinion was requested from the Communications Regulatory Authority, pursuant to art. 27, paragraph 6, of the Consumer Code.

67. On 06<sup>th</sup> December 2013, said Authority submitted its opinion resolving that the commercial practice under examination is unfair pursuant to articles 20, 21, letter b) and d), 22, 24 and 25 of the Consumer Code, on the basis of the following considerations:

- Ryanair omits to provide to consumers, or however does so in an insufficient and inadequate manner, essential information concerning the insurance product offered, such as the existence of an additional fee, of an amount higher than the actual cost of the service itself, in order to proceed with the issuing of the certification needed for the exercising of one's right to be refunded for the event for which the consumers took out insurance at the moment of purchasing the ticket;
- the procedure envisaged for exercising one's right to be refunded, structured on the request of the certification, as well as through the obligation to contact an extra charge non-geographical telephone number, together with the amount of excesses provided for and the airport taxes and rights not object of refund, integrate a non-contractual, onerous and disproportionate hindrance compared to the use of the service purchased;
- the modality through which, during the booking process, the consumers are presented the option to purchase/not to purchase the insurance policy – is by finding the specially provided statement *Do not need insurance* hidden within the list of the various European Countries - results to be ambiguous and not transparent for an aware commercial economic choice, and therefore it is qualified to mislead consumers;
- Ryanair omits to provide consumers, or however does so in an inadequate manner, with essential information concerning the insurance product offered during the booking process of a flight ticket, such as the economic conditions of the offer. In fact, sending the consumer to other informative sources cannot be considered valid;
- said omissions and misleading information are not qualified to inform consumers as regards the actual characteristics of the service offered,

prejudicing their economic behaviour and inducing them to make a commercial decision which they would not have made otherwise;

- the obligation to provide the breakdown of the cost is provided for also by Reg. EC 1008/2008, under art. 23;
- the aggressive commercial practice implies all non-contractual, onerous and disproportionate hindrances imposed by the professional, in case the consumer intends to exercise his/her contractual rights.

## V. FINAL CONSIDERATIONS

### *1) Procedural issues*

68. Preliminarily, having regard to the alleged infringement of the professional's right of defence, in particular concerning the fact of *making it impossible for Ryanair to organize its own defence*<sup>58</sup> non allowing the company, due to the *sudden shortening of the terms of the preliminary investigation*, to produce documents useful for the investigations, it is hereby evidenced as follows: *a)* the preliminary investigations started on 21<sup>st</sup> February 2013 and, due to the extensions, they lasted for a total amount of 250 days; *b)* from the date on which the professional was heard (17<sup>th</sup> June 2013)<sup>59</sup> up to the date of the communication of the closing of the preliminary phase (22<sup>nd</sup> October 2013), not only no document was submitted by the professional (or by its attorneys), but the professional neither (nor its attorneys) ever reported the mere intention of producing *pro futuro*, during the proceedings, any documentation whatsoever; *c)* in its final defensive notes, no clear and circumstantiated preliminary needs were presented which would have justified an extension of the terms.

69. Whereas, as regards the alleged infringement of the procedural regulations concerning the presentation, evaluation and acceptance of the commitments which were – according to the professional – unreasonably rejected, it is hereby reminded that the Authority has full autonomy and discretionary power as regards the evaluation of the commitments, keeping

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<sup>58</sup> Cf. doc. no. 105 as mentioned in the index of the file.

<sup>59</sup> And contrarily to what stated in the conclusive notes, that is “(...) *the Authority did not even deem necessary to establish a hearing date to better comprehend the nature and the range of the interventions proposed by the company, (...)*”.

into account also the possible interest to ascertain the infringement in order to establish principles which can become a reference for the entire market, especially in the cases that present elements of novelty compared to the praxis applied by the Authority, such as, for example, the case at hand.

70. Lastly, there is no doubt that the commitments submitted on 14<sup>th</sup> May were “*New commitments*,” in consideration of their different content and the same qualification carried out by the professional.<sup>60</sup>

## 2) *Considerations*

71. The proceedings under examination concern the modalities through which an optional travel insurance policy is offered on the website [www.ryanair.com/it](http://www.ryanair.com/it), as well as the procedure envisaged for carrying out said insurance service.

72. For the reasons explained hereafter, it is deemed that the commercial practice carried out by Ryanair, described under point II of the proceedings hereof, is qualified to integrate the infringement of articles 20, 21, letter b) and d), 22, 24 and 25 of the Consumer Code, since the professional omits to provide, or does so in an absolutely insufficient or inadequate manner, essential information concerning the insurance service offered and specifically: *i*) the brief indication of the risks actually covered by the insurance contract is not qualified to make the range of the service offered comprehensible, also in consideration of the indication of risks such as “*cancellations, delays and luggage*” which fall within the carrier’s liability and are object of specific laws for consumer protection; *ii*) the amount of the excess envisaged in case of refund owed due to, for example, the cancellation/interruption and/or of the renunciation of the travel and/or for domestic medical expenses, and/or luggage, etc.;<sup>61</sup> *iii*) the indication of the refund does not cover airport taxes and rights (for example, in case of

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<sup>60</sup> As entitled by the professional: 1) the object of the note of transmission New Commitments pursuant to art. 27, paragraph 7 of the Consumer Code and art. 9 Resolution ICA of 08<sup>th</sup> August 2012, no. 23788; 2) point 2 of the same note (Professional that submits new commitments) and; 3) every point of the document as New Commitment no. 1, New Commitment no. 2, etc.). (underlining added). Cf. doc. no. 82 as mentioned in the index of the file.

<sup>61</sup> As regards excess, the insurance policy provides for as follows “*On the basis of the majority of the sections of the insurance policy, the requests for compensation are subject to an excess. Said excess is applicable to every Insured party, to every section and depending on the accident for which the compensation request is submitted. This means that the Insured party is liable for the first part of the compensation. The amount to pay corresponds to the excess. Moreover, “IF THE INSURED PARTY IS 65 YEARS OLD OR OLDER WHEN BOOKING, HE/SHE IS SUBJECT TO DOUBLE EXCESS.”* Cf. page 5 of the Insurance Policy UND TRAVEL PLUS and the prospect of the coverage, enclosure 1 and 1 *bis* to the doc. no. 40 as mentioned in the index of the file.

cancellation and interruption of the travel); *iv*) the indication of an alleged advantage of the policy in terms of "saving" by highlighting an amount absolutely relevant which corresponds to a single case of refund. It is a matter of relevant information for consumers in order to evaluate the actual nature and the economic advantage of the service offered.

73. Moreover, a distinctive element of the practice under examination is *v*) the modality through which the professional, during the booking process, envisages that the consumer will carry out the choice not to purchase the insurance policy: in particular, the professional requires for the consumer to find the relevant statement *Do not need insurance* – item positioned between the countries *Netherlands* and *Norway* within a pull-down menu in which it is requested to select one's country of origin – among the 21 items listing the various European Countries, and therefore, to proceed in the selection.

74. Moreover, the practice under examination is characterized by *vi*) the procedure envisaged for the carrying out of the refund right (with particular reference to the assumption of renunciation and/or interruption of the travel), structured on *a*) the need to require from the carrier a no show letter at the cost of 20 Euros, *b*) the obligation to contact a non-geographical telephone number for the implementation of said procedure, that is on profiles that integrate a non-contractual, onerous and disproportionate hindrance compared to the use of the service purchased, which is imposed by the professional should the consumer intend to exercise his/her rights deriving from the contract signed with the insurance company through the professional, such as to annul or reduce substantially the actual refund.<sup>62</sup>

75. Preliminarily, it is highlighted how the Party results to be liable as regards the commercialization/sale - which takes place on *its own website* - of an additional product as regards the main one - that of air transportation service - offered to consumers, whose characteristics and relevant modalities of presentation to the public fall within full awareness; moreover, as emerged from the preliminary investigations, the professional obtains consistent revenues from the commercialization of the policy, in a measure and percentage absolutely prevailing compared to what passed on to the actual insurance company UKG.

76. As regards this aspect, it is highlighted how the professional, when offering the optional travel insurance policy to the consumers in combination

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<sup>62</sup> As regards the further profile of alleged unfair conduct indicated in the communication concerning the launching of the proceedings, consisting in not recognising to the Italian consumers the right to rescind the insurance contract purchased contextually with a Ryanair flight, during the preliminary investigations the professional stated to have implemented the commitments suggested envisaging [omissis].

with the air transportation service, omits to provide, or provides in a totally insufficient and inadequate manner, a series of relevant information for a complete evaluation of the nature of the risks covered by the insurance, as well as its conditions and limitations, and therefore the economic advantage in purchasing the insurance product.

77. In particular, said information is provided in an ambiguous manner (or at least misleadingly), highlighting the risks (“*Medical assistance, cancellations, delays, luggage and travel accident*”) whose coverage concerns aspects already protected by the applicable law, i.e. the Regulation EU261 – in cases of cancellation and delay - and/or the Convention of Montreal 1999 – for luggage – or aspects of scarce utility or clearly confusing for the consumer – the reference is to the *Guarantee take me back home in case the airline company goes bankrupt*, that is in case of Ryanair’s risk of bankruptcy, in other words the company proposing the offer and the one benefitting the most from the insurance policy – or highlighting the alleged advantages in terms of “saving” linked to single cases of exceptional compensations (*If you need medical assistance or to be repatriated, with our travel insurance you can save 18,000 Euros\* or more*) (\*recent compensation),<sup>63</sup> without indicating at the same time, thus without adequately highlighting and/or making it easy for consumers to recognise those elements actually useful and significant in order to make an aware commercial decision.

78. As emerged from the preliminary investigations, in fact, the various sections present within the insurance product commercialized by Ryanair envisage, in addition to the numerous *General exclusions, applied to all the sections of the insurance*, specific conditions, limitations and/or exclusions concerning, for example, the refund of the airport taxes and in particular, the excesses (of appreciable amount<sup>64</sup>) which are not represented by the professional during the online booking process, simply providing incomplete information and sending back to the travel insurance policy through a hypertextual link, thus making it not easy for the consumer to have access to indications and essential elements for a rational purchasing choice.

79. The omission or the non-easiness to find said information (also in this case present only within the conditions of the insurance policy) appears therefore qualified to mislead consumers as regards the actual nature of the

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<sup>63</sup> Cf. previous images no. 1 and no. 2.

<sup>64</sup> For example, the excess envisaged in case of renunciation of the travel is equal to €50, other excess are envisaged in the different sections of the insurance policy UND TRAVEL PLUS and are doubled if the insured parties are 65 years old or older.

guarantee offered, since it deprives them of the possibility to be aware of fundamental elements concerning the insurance policy strictly speaking, leading them to make a commercial decision which otherwise they would not have made.

**80.** All the circumstances and the omission of information highlighted above hinder the consumer, in substance, from appreciating exactly the real nature of the insurance product offered and thus the actual risk covered. The consumer is also hindered from knowing a priori the amount and substance of the refund that can be requested to the company upon the occurring of the event insured.

**81.** With particular reference to the sections called “*Cancellation/Interruption/Renunciation of the travel*,” it is important to mention that the insurance company acknowledges the consumer’s right to be refunded only upon the occurring of particular external circumstances which hinder the consumer to fly (for example, death, serious personal injuries, illnesses, etc. in case of annulment and interruption of the travel),<sup>65</sup> whereas it does not contemplate any compensation, contrarily to what the consumer could deem by the *nomen* of the product (Travel Insurance) and of the corresponding sections of the insurance policy (Cancellation and Interruption; Renunciation of the travel; Interruption of the travel), should the decision not to use the ticket depend simply on a free choice deriving from personal hindrances.

**82.** Likewise, the indication concerning the alleged advantage of the insurance policy in terms of “*saving*” is deemed unfair, as it emphasises an amount of absolute relevance which however corresponds to hypothetical or at least very rare cases of compensation.<sup>66</sup>

**83.** Besides the omissive and deceitful aspects concerning the presentation of the product insured as described up to here, the practice under examination is also characterized by ambiguous and deceitful selection modalities conceived by the professional for the purchasing of the insurance product.

**84.** The outcome of the preliminary investigations, in fact, evidenced how the option to *purchase/not to purchase* the insurance policy during the booking process of a flight, given its collocation within the menu in which it is asked to *select the country of residence*, hidden among the countries *Netherlands*

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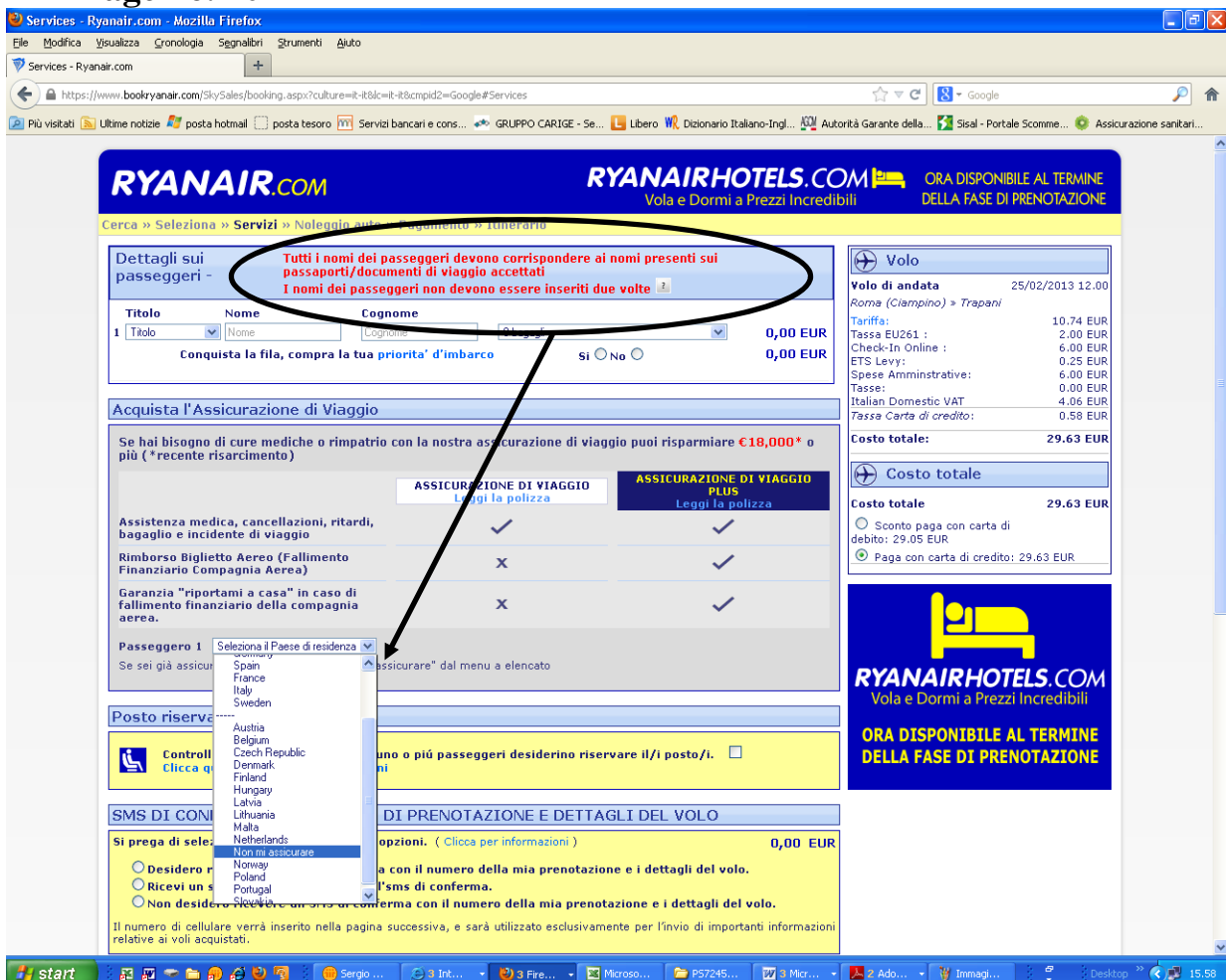
<sup>65</sup> See previous point no. 6.

<sup>66</sup> According to what represented by the professional during the preliminary investigations. Cf. the professional’s answer to the request of information, doc. no. 69 as mentioned in the index of the file, in which only 4 single cases of insurance policies are listed, with no supporting documentation, involving compensations for an amount in the thousands of Euros.

and Norway, results to be qualified to generate confusion in consumers leading them to believe that it is a request to insert the passenger's State of residence – specifically the item *Italy* – thus purchasing a further service totally unwittingly whose payment – of absolute relevance when considering Ryanair's *target* customers, generally *price sensitive* – is added automatically to the price of the ticket.

85. In particular, it appears highly deceptive to place the option which enables not to purchase the insurance service in a menu concerning the request to insert the passenger's country of residence. Moreover, it is a variable of immediate relevance as it is related to the transportation service which the consumer is getting ready to purchase. Therefore, said request appears qualified, considering the context in which it is inserted, to create confusion in the consumer since it immediately follows the section "*Passengers' details*" – in which instructions are given with particular emphasis concerning how to provide sensitive data correctly (the passengers' names) – making said request appear strictly connected to this kind of information and absolutely indispensable (see following image).

Image no. 10





86. The principle according to which the purchasing must take place through a fully aware choice is explicitly indicated by article 23 of Reg. EC no. 1008/2008,<sup>67</sup> which states clearly that “*Extra optional charges are to be communicated in a clear, transparent and non-ambiguous way at the beginning of any booking process, and their acceptance on behalf of the passenger must take place on the basis of an explicit consent of the party involved (opt-in)*”.

87. In the case at hand, and contrarily to what deemed by the professional in its defensive notes, the particular modality of selection planned by Ryanair does not respect the conditions for an explicit consent (*opt-in*) to take place since instead it is a complex mechanism characterized by many aspects of deceitfulness which make the choice not to purchase extremely complex and difficult, similarly to an *opt-out* mechanism, which paradoxically is even more serious.

88. In fact, it is important to highlight that the consumer is obliged, in the favourable circumstance in which he/she has understood the need to carry out some kind of action in order to continue with the booking process, to search for and select the relevant item *Do not need insurance* – within the pull-down menu, called misleadingly *Select the country of residence* – and therefore to carry out a substantial *de-selection* of the additional service offered through said procedure.

89. The *explicit consent of the party involved* to purchase an optional service provided for by the mentioned laws of reference becomes, in the case at hand, a devious and deceitful way to oblige the consumer to express a consent *in a reverse order*, that is to search the *do not purchase* item of the insurance policy in a pull-down menu that has a substantially different object and content.

90. Therefore, the professional’s defence appears to be totally inconsistent since it tries to justify the collocation of the item *Do not need insurance* within the pull-down menu stating its suitability on the basis of a *classic alphabetical criterion*. As regards this aspect, on one hand, it does not appear logic nor common sense to insert in an alphabetical order an item absolutely inhomogeneous from the rest of the other elements (the European Countries which state the passenger’s residence), on the other hand, the criterion claimed is disavowed by the fact that the actual item *Do not need insurance*, at least until August 2012, was positioned within a pull-down menu called

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<sup>67</sup> Reg. EC no. 1008/2008 of the European Parliament and Council, of 24<sup>th</sup> September 2008, stating common regulations for providing airline services in the Community (refund), in GUCE L 293 of 31<sup>st</sup> October 2008, art. 23, p. 1.

“*Select the country of residence,*” but among the Countries *Latvia* and *Lithuania*, in a position not even corresponding to the alphabetical order of the items.<sup>68</sup>

91. The deceitfulness of the practice carried out by the professional appears confirmed by the many reports submitted and filed in the official records, among which those of important consumers’ associations, such as Adiconsum Sicilia – Party of the proceedings.<sup>69</sup>

92. The practice under examination is relevant also for several aspects of aggressiveness linked to the procedure envisaged by the professional towards those who want to submit a refund request, in particular for its specific and high onerousness.

93. In fact, the evidence collected highlighted that the professional applies an additional fee, equal to 20 Euros,<sup>70</sup> in order to issue the certification (the so-called *no show* letter) certifying the non-use of the transportation service, a document which results to be indispensable for the consumers who want to exercise their rights to be refunded by the insurance company, in particular in case of renunciation of the travel.

94. However, the consumer finds out about the existence of this relevant expense when contacting the airline company for the issuing of the no show letter as requested by UKG. Said information, in fact, is not provided when offering the insurance policy on Ryanair’s website, nor is it easy to find within the *Policy Wording* (reachable through the link *read the insurance policy* placed in the frames as mentioned in the previous images no. 1) and no. 2) which, among the documentation to be submitted to the insurance company in case of, for example, renunciation of the travel, indicate, among other things, the letter to be issued by the airline company, without any information concerning the related cost at the consumer’s expense. Specifically, said information can be found only in the FAQ page, therefore in a section different from that of the insurance product.

95. As regards this aspect, the professional’s defence appears to be of no value when stating that the purchasing procedure of the insurance policy cannot be inserted directly and simultaneously during the purchasing of the flight ticket, since this could generate confusion and scarce fluidity in the booking process at the detriment of consumers.

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<sup>68</sup> Cf., in particular among the other reports, doc. no. 30, as mentioned in the index of the file.

<sup>69</sup> Cf., also the reports submitted by Codacons and Adoc as mentioned in documents no. 80 and no. 98 of the index of the file.

<sup>70</sup> During the preliminary investigations, the professional stated that the commitments suggested by the company envisage: i) [*omissis*];

96. To this regard, it is hereby noticed that any cost at the customers' expense, current or future, being strictly connected to a decision of economic nature that he/she is requested to make in a specific phase of the commercial *negotiation* and that can affect the choice process, must be duly and clearly represented by the professional, especially in a context such as this - a web page - in which there is wide possibility to provide relevant information fundamental for the consumer. Moreover, the providing of said information falls within the most elementary rules of due diligence required to a commercial operator of calibre such as Ryanair.

97. Said conduct takes on connotations of particular relevance and aggressiveness when considering that the administrative fee requested to the consumer is a source of appreciable revenues for the professional (*cf.* previous Table no. 2) being equal to about *[omissis]*% of the average revenue per passenger (*cf.* previous Table no. 3). It is actually higher than the cost of the insurance policy itself.

98. In fact, Ryanair's conduct appears qualified to discourage the consumer from starting the refund procedure. This, on one hand, for the excessive onerosity of the procedure (the cost represented by the administrative fee), on the other hand due to the uncertainty concerning the outcome of the refund request which, in case of rejection,<sup>71</sup> would entail a further economic prejudice for the consumer represented by the cost of the commission and by the telephone call expenses.

99. The onerous and disproportionate hindrance of the conduct carried out by the Irish airline company is further evident when considering the obligation to contact a *non-geographical* telephone number for the activation of the procedure, that is a further cost at the consumer's expense in order to obtain the refund object of the insurance contract offered by the professional that has a clear and remarkable deterring effect.

100. Should the consumer, owing to the guarantee of renunciation of the travel, intend to ask for the refund only of the cost of the ticket (travelling expenses) – moreover, upon the occurring of the conditions provided for in the corresponding section of the policy<sup>72</sup> - he/she would see the right totally

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<sup>71</sup> It is also important to consider that in cases of rejection of the refund, it is the actual price of the insurance product to be hidden by the professional for an amount even higher than 100% compared to that highlighted for the insured product during the booking process of a Ryanair flight.

<sup>72</sup> 24hrs delay or more as regards the scheduled departure time due to strikes, social unrest, etc. Cf. Section F2 of the insurance policy UND TRAVEL PLUS, enclosed to doc. no. 40 as mentioned in the index of the file.

thwarted in consideration of the amount of the excess applicable (50 € in the specific case, for passengers *under* 65, the double in case *over* 65) and the non-refund of governmental taxes.

**101.** In other terms, the fee and the cost of the call centres imposed by Ryanair on consumers appear to substantially reduce, if not even totally cancel, the right to be refunded in the light of the contract signed with UKG, through the professional.

**102.** What above mentioned appears qualified to explain the meaningless number of compensation requests with positive outcome during the two years 2011/2012 (see previous Tables from no. 6 to no. 9), when considering both the number of passengers that purchased the insurance policy but did not use the ticket and that therefore, in abstract terms would have had the right to ask for a compensation for the renunciation/cancellation/interruption of the flight, that is considering the relevant number [*omissis*] of no show letters issued in the two year period 2011/2012 (see previous paragraph 43).

**103.** In this regard, it is also important to observe the inconsistency of the data provided by the professional with reference to the totality of the compensation requests submitted by consumers in the two-year period mentioned, since it is a datum not compatible with the corresponding datum of the no show letters issued.

**104.** For this reason, it appears irrelevant for the practice under examination that the amount of the no show letters is then given back by the insurance company UKG in case of refund requests with positive outcome. In fact, the latter result to be, on the basis of the data provided by the professionals, equal to about 14% of the letters issued by Ryanair.

**105.** As regards the aggressiveness of the practice it is important to highlight that the fee requested for the issuing of the no show letter pertains an event – the non-use of the flight – whose information is already at the airline company’s disposal. In fact, owing to safety reasons, the airline company providing the transportation service verifies the consumers using the service purchased by checking whether or not they board the aircraft: it is therefore a piece of information which could easily be exchanged between the two companies (airline and insurance) without burdening the consumer.

**106.** Therefore, the unjustified imposition of charges or the interference of hindrances for the exercising of a right is considered unfair (even from the viewpoint of the muddled and complex procedure requested) as regards the refund of amounts connected to the purchasing of a ticket, especially when these impose on consumers relevant costs capable of thwarting the

exercising of the actual right. In the case at hand, the behaviours described appear preordained with the aim to discourage the consumer from submitting any request or however to thwart the exercise of said right.

**107.** In the light of what presented, *in compliance with* the opinion submitted by the Communications Regulatory Authority, it is deemed that providing consumers with clear and transparent information in order to carry out a conscious commercial choice and exercise the right to be refunded due to the travel insurance, falls within the professional's diligence, in the specific case of an air company such as Ryanair considered reliable and very well known

on the market. Therefore, the practice under examination, described under point II hereof, is to be considered contrary to professional diligence since, in the specific case, the professional did not show the normal level of competence and attention which one would reasonably expect, considering the professional's quality and the characteristics of the activity carried out.

**108.** Ryanair's conduct, in conclusion, is unfair from different viewpoints. Since the airline company, due to the ambiguous modalities of presentation, does not enable the consumer to make an easy and clear choice concerning the purchasing or the renunciation of an optional service (the travel insurance) combined with the plane ticket, the company's behaviour appears deceitful as regards the price of the service actually offered pursuant to art. 21, letter b) and d) of the Consumer Code and because it induces the consumer to make a commercial decision which otherwise he/she would not have made.

**109.** Moreover, the professional does not put the consumer in the condition to know, from the very outset, all the elements needed in order to determine correctly his/her economic behaviour. In particular, the company does not inform the consumer concerning the risks, the costs and limitations of the product, thus limiting the exercise of his/her right or considerably reducing the substance. Therefore, said conduct results to be omissive, leading the consumer to a commercial choice which otherwise he/she would not have made, thus infringing article 22 of the Consumer Code.

**110.** Lastly, the same conduct, setting onerous and disproportionate hindrances for the exercise of the consumer's right to be refunded, infringes articles 24 and 25, letter *d*), of the Consumer Code.

## **VI. QUANTIFICATION OF THE SANCTION**

**111.** Pursuant to art. 27, paragraph 9, of the Consumer Code, and art. 23, paragraph 12-*quinquiesdecies*, of Decree-law no. 95 dated 06<sup>th</sup> July 2012, as amended by Law no. 135 dated 07<sup>th</sup> August 2012, combined with the measure which prohibits unfair commercial practices, the Authority resolved the implementation of an administrative sanction from 5,000 to 5,000,000 Euros, depending on the seriousness and the duration of the infringement.

**112.** As regards the quantification of the sanction, the applicable criteria taken into consideration are those identified by art. 11 of law no. 689/81, with regard to what provided for by art. 27, paragraph 13, of the Consumer Code: in particular, on the basis of the seriousness of the infringement, the activity carried out by the enterprise in order to eliminate or mitigate the infringement, the personality of the acting party, as well as the economic conditions of the enterprise.

**113.** As regards the seriousness of the infringement, in the case under investigation, it is important to take into consideration the professional's size, one of the main European airline companies, with a relevant turnover and positive economic conditions, as well as the capability of the practice to reach a considerable amount of consumers due to the means used (the company's website) and the wide diffusion of the online procedures for the booking and purchasing of flights, in particular as regards the low cost air companies.

**114.** The seriousness of the practice is further evident for the wide and specific elements of deceitfulness found in the presentation of the product during the procedure of selection of the service, as well as in the profiles of aggressiveness found, that is the onerous and disproportionate hindrances to the compensation to consumers who want to exercise their right to be compensated in the light of the insurance policy taken out. Said aspects are further evident in particular as regards the very important number of consumers who purchased the additional insurance service which exactly through the professional's conduct were misled as regards the choice of the purchase – and it is hereby reminded that the absolutely relevant part of the amount is retained by the professional – as well as in the likewise relevant number of consumers that, upon the occurring of the event for which they thought to be covered by insurance, they started the relevant procedures bearing further and considerable costs – this time totally managed by Ryanair and always higher than the cost of the actual insurance policy –

without finding any positive outcome if not in a very marginal number of cases.

**115.** As regards the duration of the infringement, from the elements available and filed in the official records, it results that the commercial practice was carried out starting in November 2010 and is still in act. To this end, it is taken into consideration that from April 2013 the professional partially modified its conduct implementing the commitments that it had submitted, mitigating several aspects of the different profiles of deceitfulness and unfairness object of the investigation without however proceeding in the elimination of any of them (cf. point III, no. 3, letter c).

**116.** On the basis of said elements, it is resolved to establish the administrative sanction imposable on Ryanair Ltd in the amount equal to 800,000 €(*eight-hundred thousand Euros*).

**117.** In the case at hand, there is the aggravating circumstance of the recidivism, since Ryanair Ltd results to have already been submitted to other measures adopted by the Authority implementing the regulations of the Consumer Code as regards unfair commercial practices.<sup>73</sup> Taking into account this aspect, it is therefore deemed adequate to determine the amount of the administrative sanction in the final amount equal to 850,000 €(*eight-hundred and fifty thousand Euros*).

CONSIDERING, therefore, *in compliance with* the opinion of the Communications Regulatory Authority, on the basis of the considerations exposed above, that the commercial practice under examination results to be **unfair** pursuant to articles 20, 21, letter b) and d), 22, 24 and 25 of the Consumer Code since it is contrary to the professional diligence and can considerably mislead the consumer's economic behaviour since it is deceitful as regards the price of the service/services offered and it is omissive as regards the relevant information necessary to assess the actual nature and convenience of the insurance service offered to consumers, and it sets onerous and disproportionate hindrances as regards the exercise of the consumer's right to be refunded for the product/service offered by the professional;

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<sup>73</sup> Cf. resolution no. 22511 of 15<sup>th</sup> June 2011 on the case PS892 – RYANAIR, in Bulletin no. 24/2011 and resolutions of non-compliance no. 23613 of 30<sup>th</sup> May, IP117 – RYANAIR, in Bulletin no. 22/2012 and resolution IP117B – RYANAIR no. 24290 of 27<sup>th</sup> March 2013, in Bulletin no. 15/2013.

## HEREBY RESOLVES

- a)* that the commercial practice described under point II hereof, carried out by Ryanair Ltd, for the reasons and within the limits exposed in the motivation, constitutes an unfair commercial practice pursuant to articles 20, 21, letter b) and d), 22, 24 and 25 of the Consumer Code, and its diffusion and continuation is forbidden;
- b)* to sanction Ryanair Ltd with an administrative fine equal to 850,000 € (*eight-hundred and fifty thousand Euros*);
- c)* that the professional must communicate to the Authority, within the term of thirty days upon the notification hereof, the initiatives undertaken in compliance with the notice as mentioned under point *a*).

The administrative sanction as mentioned under the previous letter *b*) must be paid within thirty days upon the notification hereof, using the enclosed F24 form with identifying elements, as mentioned under Legislative Decree no. 241/1997. Said form can be presented in paper format at banks, Poste Italiane S.p.A. and Agenti della Riscossione (Collection Agents). Alternatively, the form can be presented via internet, with debit on personal bank or postal account through home-banking and CBI put at disposal by banks and Poste Italiane S.p.A., that is using the IT services of the Revenue Agency, available on the website [www.agenziaentrate.gov.it](http://www.agenziaentrate.gov.it).

Pursuant to art. 37, paragraph 49, of the decree-law no. 223/2006, subjects with VAT are obliged to present the F24 form via internet.

After the above mentioned term, for a delay period inferior to six months, the interests on accruals must be paid in the measure of the legal rate in force starting from the day after the expiry date of the term of payment up to the actual date of payment. In case of further delay, pursuant to art. 27, paragraph 6, of law no. 689/81, the amount due for the sanction imposed shall be increased by a tenth for every six months starting from the day after the expiry date of the term of payment up to that in which the role is transmitted to the agent for the collection; in said case, the increase absorbs the interests on accruals accrued in the same period.



The payment must be immediately communicated to the Authority sending a copy of the form certifying the carrying out of the payment.

This resolution shall be notified to the subjects involved and published in the Autorità Garante della Concorrenza e del Mercato's bulletin.

Pursuant to art. 27, paragraph 12, of the Consumer Code and art. 23, paragraph 12-*quinqüesdecies*, of Decree-law no. 95 dated 06<sup>th</sup> July 2012, as amended by law no. 135 dated 07<sup>th</sup> August 2012, in case of non-compliance with the resolution, the Authority shall apply an administrative sanction from 10,000 to 5,000,000 Euros. Should the non-compliance be reiterated, the Authority can order the suspension of the enterprise's activity for a period not above thirty days.

In case of controversy, any claims must be submitted to TAR of Lazio, pursuant to art. 135, paragraph 1, letter *b*), of the Code of the administrative process (Legislative Decree no. 104 dated 02<sup>nd</sup> July 2010), within sixty days from the notification of the resolution, without prejudice to the broader terms as mentioned under art. 41, paragraph 5, of the Code of the administrative process, that is an extraordinary claim can be submitted to the President of the Republic pursuant to art. 8 of the Decree of the President of the Republic no. 1199 dated 24<sup>th</sup> November 1971, within one-hundred and twenty days from the date of notification of the resolution.

THE SECRETARY GENERAL  
*Roberto Chieppa*

THE PRESIDENT  
*Giovanni Pitruzzella*