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THE ITALIAN COMPETITION AUTHORITY

AT ITS MEETING held on 20th December 2013;

HAVING HEARD the Rapporteur, Professor Piero Barucci;

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

HAVING REGARD to art. 23, paragraph 12-*quinquiesdecies*, of Decree-law no. 95 of 06th July 2012, as amended by law no. 135 of 07th 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 08th August 2012;

HAVING REGARD to the Authority’s resolution dated 06th February 2013, by means of which inspections were authorized at the premises of the company AGA International S.A. – General Agent for Italy, pursuant to art. 27, paragraphs 2 and 3, of the Consumer Code;

HAVING REGARD to the Authority’s resolutions dated 03rd July and 18th September 2013, by means of which the closing date of the proceeding was postponed due to particular investigative needs, pursuant to art. 7, paragraph 3 of the Regulations;

HAVING REGARD to the official records of the proceedings;

I. THE PARTY

1. EasyJet Airline Company Ltd (hereafter, also “EasyJet”), low cost airline company under English law, in quality of professional; its registered office is located in the United Kingdom, and its main activity consists in airline transportation and connection of people and goods between Italy and foreign

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Countries and among foreign Countries. The company's turnover, on the basis of its financial statements closed on 31st December 2012,¹ amounted to 3,854 million pounds, with a considerable increase compared to the previous fiscal year. During 2012, the number of passengers transported by EasyJet reached 58.4 million (of which about 11 million in Italy),² with a 7.1% increase compared to the previous year.

II. THE COMMERCIAL PRACTICE

2. On the basis of the information acquired in January/February 2013³ in order to implement the Consumer Code, as well as on the basis of two reports submitted by consumers, respectively on 03rd June and 15th November 2011,⁴ it is evident that the professional carried out an unfair commercial practice as regards the modalities through which it offered optional travel insurance policies during the booking process on its website *www.Easyjet.com/it*. In fact, the information provided concerning said insurance policies was insufficient and inadequate. With particular reference to the insured risks in case of flight cancellation/renunciation, whose cost varied from 8-9 €per person. Moreover, also the procedure followed so as to carry out the insurance service resulted to be unfair.

3. When booking online EasyJet's air transportation services, consumers were offered further services (additional products), to be purchased exclusively in combination with the transportation service (main product).⁵ Said services, as regards the proceedings hereof, were based on different typologies of AGA's travel insurance policies (*EasyJet cancellation; EasyJet all inclusive; EasyJet all inclusive single ticket; EasyJet all*

¹ Cf. enclosure 3 with doc. no. 19 as mentioned in the index of the file.

² Cf. page 60 of the document entitled "Traffic Data" as found on ENAC's website (*www.enac.it*).

³ Cf. report dated 06th February 2013, doc. no. 6 as mentioned in the index of the file. In particular, it consists of no. 244 web pages, examined from 08th January to 06th February 2013, as well as an audio file regarding the information provided by the answering service activated by calling EasyJet's call centre at the number 199201840, as filed in the official records with report dated 06th February 2013.

⁴ Cf. docs. no. 1 and 3 as mentioned in the index of the file. During the preliminary investigations further reports were submitted, always on behalf of consumers, dated 03rd April and 26th June 2013. Cf. docs. no. 20 and 32 as mentioned in the index of the file.

⁵ Such condition is essential in order to take out an insurance contract. All the typologies of policies commercialized on EasyJet's website must be taken out in order to guarantee a travel with EasyJet. Specifically, in case of renunciation of the travel, the warning states that the guarantee is valid exclusively if the policy was taken out on the same date of the booking of the EasyJet flight ticket. It is important to notice that, on the basis of the documentation filed in the official records, it is clear that up to 08th January 2013, EasyJet's website showed insurance policies offered by AGA International S.A. with the trademark Mondial Assistance. From 11th January 2013, the trademark on the same website was modified into Allianz — Global Assistance.

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*inclusive winter sports, EasyJet all inclusive Italy; EasyJet business travel insurance; EasyJet safe travel; EasyJet luggage plus).*⁶

4. The following Images no. 1 and no. 2 show the frames that popped up during the flight booking process presenting the risks covered by some of the various insurance policies commercialized on EasyJet's website, such as "Cancellation Insurance" and "All-Inclusive Insurance".

Image no. 1 – Representation of the frame commercializing the Cancellation Insurance, cost € 10.24, offered during the simulation of the booking of a round trip flight Palermo–Rome on 30th January 2013

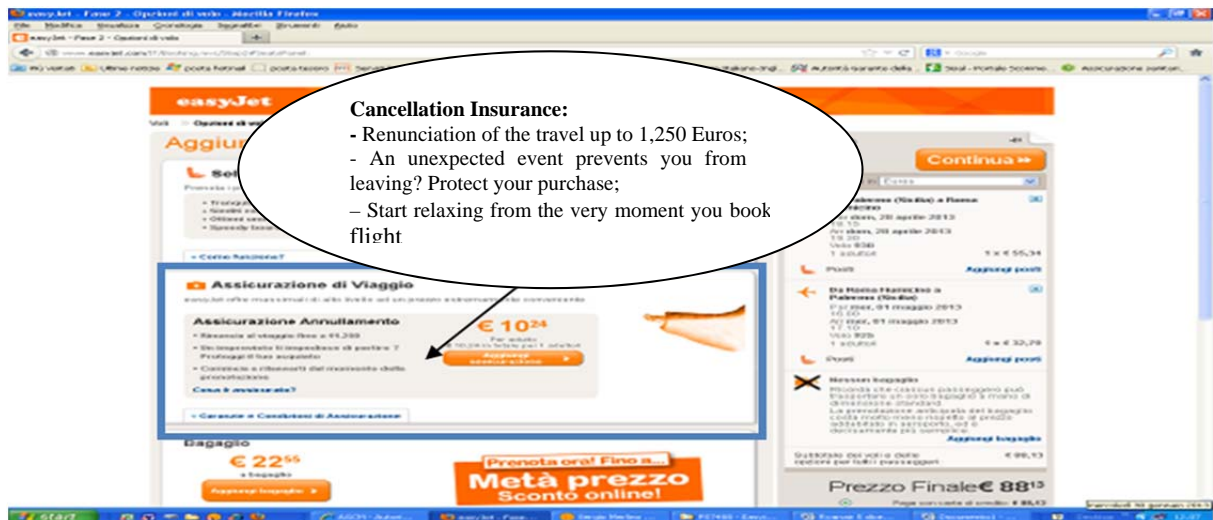
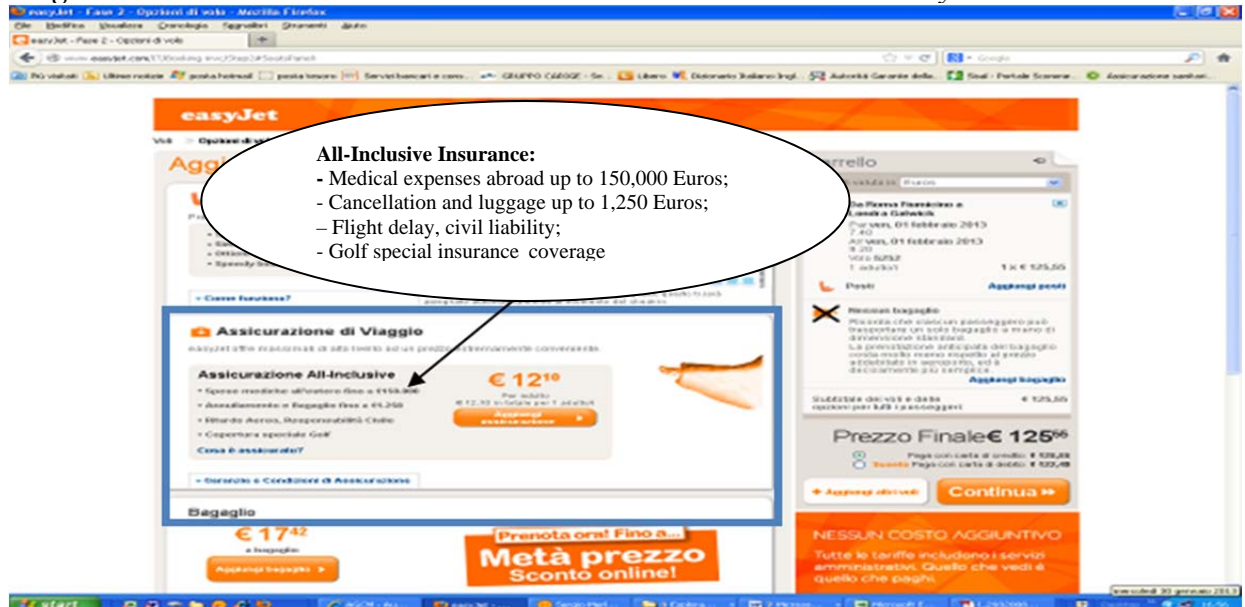


Image no. 2 – Representation of the frame commercializing the All Inclusive Insurance, cost € 12.10, offered during the simulation of the booking of a

⁶ According to what stated by the professional in its defence notes, not all the typologies of policies are offered on EasyJet's Italian website (this is the case, for example, of the policy EasyJet All inclusive winter sports since it is not considered an interesting product for Italian consumers).

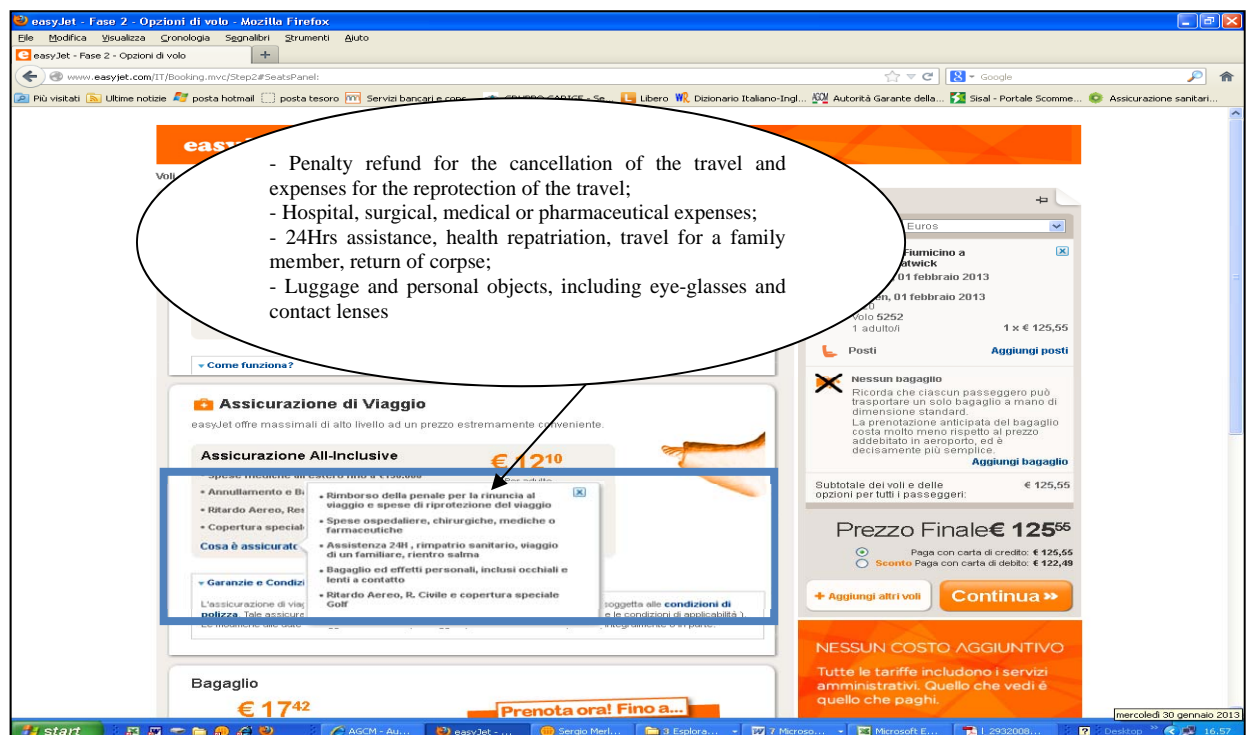
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single ticket Rome Fiumicino–London Gatwick on 30th January 2013



5. By clicking on the link in the mentioned frames “Cosa è assicurato” (What is covered by insurance), the details provided concerning the characteristics, the nature and the substance of the risks covered by insurance do not change (see following image no. 3, regarding the All Inclusive Insurance).

Image no. 3 – Representation of the frame “Cosa è assicurato” (What is covered by insurance) regarding the All Inclusive Insurance, cost € 12.10, offered during the simulation of the booking of a single ticket Rome Fiumicino – London Gatwick on 30th January 2013



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6. Depending on the insurance policy commercialized, the coverage provided for is described very concisely (*cf.* previous images numbers 1 and 2), as well as the details concerning the risks covered (*cf.* previous image no. 3), without clarifying the object and the substance of the service offered and without highlighting the many exclusions, limitations and allowances present in the context of the various insurance contracts.⁷

7. Under the General Conditions of the insurance, instead, the real risk covered is specified together with the other conditions and limitations of the service offered. Specifically, with reference to the *EasyJet Cancellation* insurance policy in the section called “*Renunciation of the travel*,” it is indicated that “*Allianz Global Assistance refunds, within the limit of € 1,250.00 per person, the penalty for the renunciation of the travel, excluding the costs for the management of the paperwork and airport taxes, contractually applied by EasyJet⁸ as a consequence of renunciations due to: a) serious sudden illness (or unforeseeable recurrence) certified by a doctor; b) pathologies connected to pregnancy, if ascertained after the booking; c) intolerance to vaccinations; d) accident or death (occurred after the booking) of the insured party or of a family member or of a person not family member indicated in the insurance policy (fellow traveller); e) house damage caused by natural disasters or theft, which require the presence of the insured party; f) dismissal or suspension from work (redundancy, mobility) of the insured party.*” The same description is provided in the insurance policy “*EasyJet All-Inclusive*”, section 2, *Renunciation of the travel*.

8. Moreover, the various typologies of insurance policies provide for specific exclusions and limitations (for example, the policy does not cover the refund of airport taxes and expenses for the management of the paperwork) and high excesses (such as the one equal to 25 Euros provided for in case of renunciation of the travel). All these elements are not presented by the professional during the booking process and are indicated only in the *Insurance Guarantees and Conditions* reachable through a hypertextual link. Whereas, during the booking process, the element represented is the maximum amount refundable, equal to €1,250.00.

⁷ Cf. doc. no. 11 as mentioned in the index of the file; in particular, the various insurance policy contracts collected during the inspection at AGA’s premises.

⁸ Article 6.2 (Cancellation within 24 hours from booking) of the document Terms and Conditions published on the professional’s website, provides for, among other things, as follows: “A cancellation fee shall be charged per passenger and flight in compliance with the costs indicated under Costs and Charges.” Said cancellation fee is equal to 36 Euros, as evident from the page Costs and Charges reachable through the specially provided hypertextual link inserted within the context of article 6.2.

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9. As regards the modalities for submitting a refund request, should any of the events covered by the insurance policy occur, the professional requires an extra fee from the consumers, of high amount, even above the cost of the insurance service equal to 12 Euros.⁹ The payment of said fee is necessary in order to proceed with the issuing of the certification (the so-called penalty letter) which certifies the non-use of the transportation service and the breakdown of the cost of the non-used ticket. However, there is no mention whatsoever of the cost of said certification during the booking process, that is when the professional invites the consumer to purchase the insurance policy – in particular as regards the cancellation of the flight.¹⁰

10. Besides the payment of the mentioned administrative fee, EasyJet also provides for the need to contact an extra-charge non-geographical phone number (**199201840**)¹¹ in order to carry out the relevant payment through credit card and therefore receive, through mail or e-mail, the letter requested. Said telephone call represents the only way through which EasyJet can carry out the operations necessary for the issuing of the letter. As a matter of fact, even the consumer using e-mail or fax is invited to call the call centre. Therefore, said procedure results to be indispensable for the implementation of one's right to be refunded.

III. THE OUTCOME OF THE PROCEEDINGS

1) *The procedure followed*

11. With reference to the commercial practice described above, on 06th February 2013, preliminary investigations were launched under no. PS7488 against EasyJet for an alleged infringement of articles 20, 22, 24 and 25 of the Consumer Code.¹²

⁹ Cf. docs. no. 1 and 3 as mentioned in the index of the file.

¹⁰ This kind of "risk" is present in almost all the typologies of insurance policies commercialized on EasyJet's website in the specially provided sections entitled "Renunciation of the travel."

¹¹ The number 199 has tariffs which do not depend on the customer's geographical localization. In the specific case, the number is 199201840 (cost 0.06 Euros/minute upon answering and 0.12 Euros/minute). Cf. doc. no. 1 as mentioned in the index of the file, as well as the audio recording carried out on 14th January 2013 of the pre-recorded message that can be heard by calling the above mentioned number 199201840 and filed in the official records with report dated 06th February 2013 (duration 1 min, 50 sec); cf. doc. no. 6 as mentioned in the index of the file.

¹² Upon launching the preliminary investigations, the alleged unfair conduct carried out by EasyJet consisted in not providing the essential information concerning the insurance service offered, and in making said information absolutely insufficient and inadequate, thus not enabling consumers to evaluate the actual nature and convenience of the service. Moreover, the procedure provided for the implementation of one's right to be refunded (with particular reference to the hypothesis of renunciation of the travel), structured on the necessary request for a penalty letter to be submitted to the company with a cost equal to 12 Euros. Said

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12. The launching of the proceedings was communicated to the Party on 14th February 2013,¹³ concomitantly with the inspections carried out at the premises of AGA International SA – General Agent for Italy (hereafter, also AGA or Allianz), the insurance company offering the policies commercialized on the professional's website *www.Easyjet.com/it* in combination with the purchasing of a flight ticket.

13. On 14th February 2013, during the inspection carried out at the premises of AGA International SA – General Agent for Italy, documentation was acquired concerning the commercial practice object hereof,¹⁴ then integrated by the insurance company on 05th March.¹⁵

14. On 26th March 2013, assistance was asked to the English Department for Business, Innovation and Skills and the Office Fair Trading, pursuant to Legislative Decree no. 70 dated 09th 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.”*

15. On 02nd April 2013, the professional submitted its defence notes enclosing the documentation and information requested upon the launching of the preliminary investigations. Concomitantly, EasyJet submitted its petition concerning the undertaking of commitments – pursuant to article 27, paragraph 7, of the Consumer Code and of article 8 of the Regulations – aimed at removing the profiles of unfairness of the commercial practice object hereof. Said commitments were rejected by the Authority in its meeting held on 23rd April 2013 with a resolution communicated to the Party on 02nd May 2013.¹⁶

16. On 13th May 2013, a request for information was submitted to the Istituto per la Vigilanza sulle Assicurazioni (IVASS) whose answer arrived on 27th May 2013.¹⁷

17. On 10th June 2013, the professional was heard.¹⁸

request, carried out by contacting a non-geographical telephone number for the activation of the actual procedure, together with the amount of the excesses as well as the absolute non determination of governmental taxes which are not object of the refund on behalf of the insurance company, can integrate a non-contractual, onerous and disproportionate hindrance compared to the actual cost of the service imposed by the professional, should the consumer want to exercise his/her rights deriving from the contract signed with the insurance company through EasyJet, such to annul or substantially reduce the actual refund.

¹³ Cf. doc. no. 7 as mentioned in the index of the file.

¹⁴ Cf. doc. no. 11 as mentioned in the index of the file.

¹⁵ Cf. doc. no. 16 as mentioned in the index of the file.

¹⁶ Cf. docs. no. 19 and 24 as mentioned in the index of the file.

¹⁷ Cf. docs. no. 26 and 29 as mentioned in the index of the file.

¹⁸ Cf. the report of the hearing, doc. no. 31 as mentioned in the index of the file.

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18. On 03rd July and 18th September 2013, the Authority resolved the extension of the closing of the investigations, establishing it on 02nd January 2014. Communications were sent to the Party respectively on 05th July and 23rd September 2013.¹⁹

19. On 18th October 2013, the Party was notified concerning the conclusion date of the preliminary investigations, pursuant to article 16, paragraph 1, of the Regulations, established for 31st October 2013²⁰.

20. On the same date (18th October 2013), EasyJet submitted a conclusive defence.

21. On 04th November 2013, an opinion was asked to the Communications Regulatory Authority, which was received on 09th December 2013.

22. On 15th November 2013, the Authority notified the General Directorate for the Internal Market of the European Commission, the English Department for Business, Innovation and Skills and the Office Fair Trading concerning its intention to adopt restrictive measures against the company EasyJet.

2) *The evidence collected*

a) *The sale of the insurance policies (in particular, the coverage “Renunciation of the travel”). Presentation, pricing and quantitative data.*

23. On the basis of the contract signed on *[omissis]* (and following Letter of Variation dated *[omissis]*) with Mondial Assistance Europe N.V., AGA International SA (hereafter, AGA or Allianz), EasyJet undertook to host on its website a specially provided section dedicated to the publication/offer of insurance products commercialized during the booking process of a flight.

24. The object of the insurance policies offered on the professional’s website concerns different kinds of coverage depending on the different typologies of products offered.²¹ The following table summarizes the characteristics of the insurance coverage in the different policies “*EasyJet Cancellation*” (image 4) and “*EasyJet All-Inclusive*” (image 5).

¹⁹ Cf. docs. no. 34 and 38 as mentioned in the index of the file.

²⁰ Cf. doc. no. 40 as mentioned in the index of the file.

²¹ EasyJet cancellation; EasyJet All Inclusive; EasyJet All Inclusive single ticket; EasyJet All Inclusive winter sports; EasyJet All Inclusive Italy; EasyJet business travel insurance; EasyJet safe trip; EasyJet luggage plus

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Image no. 4

CARATTERISTICHE DEL PRODOTTO ASSICURATIVO		
<ul style="list-style-type: none">• L'assicurazione può essere acquistata per servizi di durata massima di 31 giorni.• Nessun limite di età per l'acquisto della polizza.• La polizza è riservata alle persone residenti o domiciliate in Italia.		
SCHEMA SINTETICA DELLE GARANZIE E DEI MASSIMALI(*)		
Garanzie	Massimali (fino a)	franchigia
Rinuncia al viaggio	€ 1,250,00	€ 25,00

(*) I massimali indicati si intendono per ogni persona assicurata

CHARACTERISTICS OF THE INSURANCE PRODUCT

- The insurance can be purchased for services **lasting maximum 31 days**.
- The insurance can be purchased with **no age limit**.
- The policy is reserved for **people residing or domiciled in Italy**.

SUMMARIZING TABLE OF THE GUARANTEES AND MAXIMUM COVERAGE (*)

Guarantees	Maximum coverage (up to)	Excess
Travel Cancellation	€1,250.00	€25.00

(*) The maximum coverage indicated is meant for every insured party

Image no. 5

CHARACTERISTICS OF THE INSURANCE PRODUCT

- The insurance policy covers **the whole duration of the service booked with EASYJET**.
- The insurance can be purchased for services **lasting maximum 31 days**.
- The insurance policy can be purchased with **no age limit**.
- The insurance policy is reserved for **people residing or domiciled in Italy**.
- Coverage up to €1,250 in case of **Cancellation**.
- **24Hrs Health Assistance**.
- **Medical expenses** up to €150,000
- Up to €1,250 in case of theft, loss or damaging of **Luggage**.

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SUMMARIZING TABLE OF GUARANTEES AND MAXIMUM COVERAGE (*)

Guarantees	Maximum (up to)	Excess
Travel cancellation	€1,250.00	€25.00
Safe travel – Assistance during travel and medical expenses	See details	See details
Direct payment of medical and hospital expenses	Up to €150,000.00	NO
Travel re-protection expenses	€400.00	€30.00
Luggage and personal objects	€1,250.00	NO
Luggage – Maximum coverage per object	€150.00	NO
Advance payment of expenses in case of delay in luggage delivery	€150.00	NO
Golf insurance	See details	See details
Insurance for flight delay	See details	NO
Civil liability third parties	€200,000.00	€250.00 for damage to objects
Insurance winter sports	See details	See details

25. All of the above mentioned guarantees provide for specific exclusions and limitations which are indicated in the various contracts.

26. As an example, with reference to the most relevant typology of insurance policy for the proceedings hereof - *EasyJet cancellation* – after specifying the peremptory causes for the “renunciation of the travel” (cf. par. 7), and in order to integrate the Exclusions Common to all other insurance guarantees, as mentioned under Art. 6 of the Common Regulation,²² Allianz once again

²² Exclusions common to all guarantees – The insurance does not cover any compensation, service, consequence and/or event deriving directly or indirectly from: a) damage caused by, due to or in consequence of wars, accidents caused by war devices, invasions, actions by foreign enemies, hostility (both in case of declared or undeclared war), civil war, situations of armed conflict, rebellions, revolutions, insurrections, mutiny, martial law, military power or usurped or attempt to usurp power; b) strikes, uprisings, popular riots; c) curfew, border block, embargo, reprisals, sabotage; d) seizure, nationalization, kidnapping, restrictive measures, imprisonment, appropriation, requisition on behalf of or upon order of any Government (be it civil, military or “de facto”) or other national or local authorities; e) acts of terrorism, meaning any kind of act which includes but is not limited to the use of force or violence and/or threat on behalf of any person or group/s of people acting on their own or behind or in connection with any organization or government for political, religious, ideological or similar reasons including the intention to influence any government and/or cause alarm in the public opinion and/or the community or in part of it; f) journeys in territories where the competent public Authority has issued prohibitions or limitations (even temporary), extreme trips in remote areas reachable only through special means of rescue transportation; g) tornados, hurricanes, earthquakes, volcano eruptions, inundations, floods and other natural disasters; nuclear explosions and, even only partially, ionizing radiations or radioactive contamination caused by nuclear combustions or by nuclear waste or by nuclear armaments, or deriving from phenomena of transmutation of the nucleus of the atom or by radioactive, toxic, explosive properties, or by other dangerous characteristics of nuclear devices or related components; i) biological and/or chemical materials, substances, compounds, used in order to harm human lives or cause widespread panic; j) any kind of pollution, infiltrations, air, water, land, subsoil contaminations, or any environmental damage; k) failure of the Carrier or any supplier; l) fraud or serious offence of the insured party or of people for whom he/she is liable; m) illegal actions carried out by the insured party or his/her violation of laws or prohibitions of any government; n) errors or omissions during booking or impossibility to obtain visa or passport; o) abuse of alcohol and drugs, non-therapeutic use of narcotics or hallucinogen; p) insanity, schizophrenia, maniac-

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specifies that it does not refund the penalty for cancellations caused by: “**a**) *injuries and pre-existing illnesses with evolutionary nature and relevant complications, or should there already be at the moment of the booking conditions or events which can cause the cancellation, unless the ability to travel is certified by a doctor; b*) *pathologies connected to pregnancy known before booking; c*) *professional reasons, with the exception of what provided for under previous article 2.1/f*”.

27. As regards the prices of the insurance products offered during the booking process of an EasyJet flight, it was verified that this is variable and can be totally flat or flat within price ranges of the transportation service purchased. The prices applied for the consumer are described in the tables enclosed in the contract between EasyJet and the insurance company, distinguished by typology of product. *[omissis]* ²³.

28. According to what specified by EasyJet, Allianz, by means of the company Fusion (company established in June 2012 as spin off of Allianz) manages the IT structure which enables the interconnection between Allianz’s and EasyJet’s systems. It selects the insurance policies to offer on the company’s website on the basis of several criteria, such as: *i*) preferences of the Italian passengers; *ii*) typology of flight chosen; *iii*) market request; *iv*) price of the ticket; *v*) functionality of the product; *vi*) experience matured. Said company carries out price tests periodically, through which it verifies the reasonableness of the premium requested for a specific typology of insurance policy and proposes to EasyJet the modification of the price applied. The tests are carried out with EasyJet’s consent, and the results are shared between the two companies (air company and insurance company).

29. Once the consumer completes the first phase of the booking process, the programme receives the characteristics of the flight chosen (for example, single trip from Italy to a European destination) and selects, on the basis of pre-established criteria, the insurance policy considered more appropriate for the passenger, with related price.

depressive forms, psychosis, severe depression; q) suicide or attempt to commit suicide; r) Human Immunodeficiency Virus (HIV), Acquired Immunodeficiency Syndrome (AIDS) and sexually transmitted diseases; s) driving of vehicles which require a driver’s licence of a category above B and of motorboats for non-private use; t) epidemics with pandemic characteristics (declared by WHO), of such seriousness and virulence to cause high mortality, that is to the point of requiring restrictive measures in order to reduce the risk of transmission to the civil population. As an example and not limited to: closure of schools and public areas, limitation of public transportation in cities, limitation of air transportation; u) quarantine.

²³ Cf. the report of the inspection carried out at the premises of AGA International SA – General Agent for Italy, and its enclosures, as mentioned in doc. no. 11 of the index of the file.

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30. The following Table no. 1 shows the prices of the insurance products offered to Italian passengers through EasyJet’s website.²⁴

Table n.1	One Way Flights Italy and Europe (all inclusive)	Round trip Europe (all inclusive)	Round trip Italy (all inclusive for [omissis] of passengers)	Round trip Italy (EasyJet cancellation for [omissis] of passengers)	Round trip Italy (EasyJet cancellation for [omissis] of passengers)
Cost of insurance policy	€1.80	€19.50	€4.60	Price of insurance policy* from €7.80 to €19.00	Price of insurance policy* from €7.99 to €19.99

* Depending on the variability of the price of the ticket ranging from 0 and 300,000 Euros. Price test carried out by the company Fusion in the months of May and August 2012.

31. EasyJet’s commission on every insurance policy sold on the website is equal to [omissis] on the price/premium of the various products,²⁵ whereas the value of the insurance contracts signed in Italy through EasyJet’s website in 2011 was equal to [omissis], while in 2012 it was equal to [omissis]²⁶.

32. The following Table no. 2 shows the number of insurance policy contracts signed with EasyJet’s Italian passengers in 2011 and 2012, as well as the total number of tickets sold by EasyJet on the Italian market.²⁸

Table no. 2	2011			2012				
	Insurance contracts	policy	Tickets	%	Insurance contracts	policy	Tickets	%
National flights	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]
Flights between Italy and foreign countries	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]
Total	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]

33. From the above Table no. 2, it is clear that the so-called “conversion index,” that is the percentage of insurance policies compared to the tickets sold, is about [1-10]% for flights with origin and destination in Italy and about [1-10]% for flights with origin in Italy and foreign destination.

b) EasyJet’s procedure for the issuing of the penalty letter; EasyJet’s revenues.

²⁴ EasyJet made known that the prices offered to consumers result to be slightly higher than those indicated because the booking system adds administrative fees to the tariff, which however are included in the price showed to the consumer from the very outset.

²⁵ The contract between EasyJet and the insurance company also provides for other commissions for EasyJet, such as for example the [omissis]. Cf. the report of the inspection carried out at the premises of AGA International SA – General Agent for Italy, and its enclosures, as mentioned in doc. no. 11 of the index of the file.

²⁶ Cf. doc. no. 19 as mentioned in the index of the file.

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34. The introduction of the procedure carried out by EasyJet for the issuing of the penalty letter dates back to 15th April 2011. Said procedure, described under point II hereof, is confirmed by the documentation acquired and filed in the official records during the preliminary investigations, and in particular by an e-mail from *EasyJet's Customer Assistance* which, in answer to a consumer's request,²⁷ states textually: "*Dear Mrs. (...). Please be informed that the mailing of a penalty letter to your person and directly to Mondial Assistance*²⁸ envisages the payment of an administrative fee equal to € 12.00. Should you decide to proceed with your request for said documentation, please kindly contact our Call Centre at the number 199.201.840 (cost of the phone call € 0.12 per minute, from Monday to Sunday, from 08:00 a.m. to 8:00 p.m.) in order to carry out payment through credit card and receive the desired letter (...)."²⁹

35. The information concerning the payment required for the issuing of the penalty letter may be found only in the document *Terms and Conditions* of the airline company's contract, whose link is at the end of the home page of the website *www.EasyJet.com/it*, through the hypertextual link *Costs and Charges*. Said link, placed within several articles of the same document [Articles: 4: Bookings; 5: Tariffs; 6: Costs of Cancellation and Refunds; 7: Bookings; 8: Change of Name; 9: EasyJet Flexi and 20: Luggage], leads to a webpage in which a series of costs are listed, at the consumers' expense, mainly connected to the object of the articles mentioned above, but also to the request of possible added services, administrative fees, extra luggage, etc. The last item on this page concerns the *Administrative fee for insurance letters and printed confirmations of the flight*.

36. The following Table no. 3 shows the amount of letters sent as well as the revenues derived from the certifications issued upon the Italian consumers' requests, for the period 15th April 2011 – 31st December 2012. The following numbers represent an estimate provided by the Party.³⁰

Table no. 3

Period	Estimate of the revenues derived from the issuing of the non-flight certification (in Euros)	Estimate of the amount of letters sent
15 th April 2011 – 31 st December 2012	[40-50.000]	[3-5.000]

²⁷ Cf. doc. no. 1 as mentioned in the index of the file.

²⁸ Now AGA International S.A. – cf. previous note no. 5.

²⁹ Cf. also the audio recording of the phone call made to the number 199201840 as mentioned in doc. no. 6 as mentioned in the index of the file.

³⁰ EasyJet is not able to provide the exact number of letters sent to the Italian consumers and relevant proceeds, because said data are collected only at European level.

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37. On the basis of the following Table no. 4 showing the average price of a ticket (one way and round trip) with reference to all the routes covered by EasyJet departing from and arriving in Italy, for the years 2011 and 2012, it is clear that the administrative fee which the consumer has to pay for the issuing of the penalty letter amounts to about *[omissis]* of the average price of the tickets, and in some cases, it is even higher than the cost of the actual insurance service (*cf.* previous Table no. 1).

Table no. 4	Average price of a ticket for flights departing from Italy	Average price of a ticket for flights arriving in Italy
2011	<i>[omissis]</i> GBP (<i>[omissis]</i> Euros)	<i>[omissis]</i> GBP (<i>[omissis]</i> Euros)
2012	<i>[omissis]</i> GBP (<i>[omissis]</i> Euros)	<i>[omissis]</i> GBP (<i>[omissis]</i> Euros)

38. Whereas, no information is provided on EasyJet's website as regards the obligation to call an extra-charge telephone number in order to ask for the penalty letter.

39. According to the estimates provided by the Party, the average phone call to the non-geographical number lasts 322 seconds. Therefore, considering that for Italian consumers the cost of a phone call towards the call centres is equal to 0.06 Euros upon answer and 0.12 Euros per minute, considering the waiting time for an available operator, the professional stated that, in average, a phone call costs the consumer about 1 Euro.

40. Finally, from the evidence collected and filed in the official records (*cf.* following Table no. 5),³¹ it is clear that for the years 2011 and 2012 the number of requests for refunds submitted by consumers on the basis of the *travel cancellation* guarantee was equal to no. *[omissis]* of which no. *[omissis]* did not receive any refund whatsoever (about 35%).³² From Table no. 5 it is also clear that this typology of risk, compared to the others envisaged, is the one with the highest number of compensation requests.

³¹ Elaboration obtained from the documents in electronic format acquired during the inspections carried out at the premises of AGA International S.A. and the enclosures to the report of the inspection (*cf.* doc. no. 11 as mentioned in the index of the file).

³² In 2011, the cases refunded were equal to no. *[omissis]* for a total of about € *[omissis]*; in 2012, the cases refunded were equal to no. *[omissis]* for a total of about € *[omissis]*. The total amount for the two years is equal to no. *[omissis]* cases refunded for a total of about € *[omissis]*.

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Table no. 5³³

Years 2011 – 2012

Guarantee	N. Accidents (Refund requests)	Total Paid
Travel cancellation	[omissis]	[omissis]
Assistance	[omissis]	[omissis]
Luggage	[omissis]	[omissis]
Civil Liability	[omissis]	[omissis]
Refund for Guarantee Assistance Expenses	[omissis]	[omissis]
Flight delay	[omissis]	[omissis]
Non Used Services	[omissis]	[omissis]
Expenses for Re-protection of Travel	[omissis]	[omissis]
Medical Expenses	[omissis]	[omissis]
Total	[omissis]	[omissis]

c) Information provided by IVASS

41. On 27th May 2013, upon the Authority's specific request for information,³⁴ the Istituto per la Vigilanza sulle Assicurazioni (IVASS) notified that EasyJet does not result registered in the Single Register of insurance and re-insurance intermediaries (Registro Unico degli Intermediari assicurativi e riassicurativi), nor does it result registered in the list of community intermediaries that carry out intermediation throughout the Italian territory, connected to the above mentioned Register.³⁵

3) *The Party's defensive argumentations*

a) EasyJet's objections concerning the Authority's lack of jurisdiction in the sector of the sale of insurance products

42. During the preliminary investigations, EasyJet submitted several observations concerning the Autorità Garante della Concorrenza e del Mercato's lack of jurisdiction (hereafter, also, AGCM) in the specific sector

³³ According to what stated in the report of the inspections, Table no. 5 also includes the compensations for the costs borne by consumers for the further services purchased concomitantly with the flight, such as for example the renting of a vehicle or hotel booking. During the inspections, AGA submitted further additional documentation from which it is clear that the number of accidents which were refunded during the second six-month period of 2012, for an amount referable as "just flight," was equal to about no. [omissis], for a total of €[omissis].

Cf. docs. no. 11 and 16 as mentioned in the index of the file.

³⁴ In particular, IVASS was requested to provide information concerning EasyJet's registration in the single register of insurance and re-insurance intermediaries kept by IVASS, or however the possibility for the company to carry out insurance intermediation in Italy.

³⁵ Cf. docs. no. 26 and 29 as mentioned in the index of the file.

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of the sale of insurance products.³⁶ In particular, EasyJet mentioned the rulings of the Adunanza Plenaria del Consiglio di Stato according to which the principle of *lex specialis*, pursuant to art. 19, paragraph 3 of the Consumer Code, does not allow for the implementation of two different laws providing for the same case in point, should one of the two present all the elements of the other and add a further element of peculiarity.³⁷

43. Moreover, EasyJet highlighted that the Tar of Lazio recently recognized the existence of a special law – represented by the Code of private Insurances³⁸ - which gives exclusive jurisdiction to the Istituto per la Vigilanza sulle Assicurazioni (IVASS, former ISVAP) as regards consumer protection.³⁹ Said regulation allegedly hinders the Authority from dealing with these profiles, and therefore from adopting measures providing for sanctions.

44. According to the professional, such logical-argumentative *iter* is applicable in this case at hand, because EasyJet has been registered since 02nd April 2008 in the register of insurance intermediaries kept by Financial Services Authority (FSA),⁴⁰ acting as agent of Mondial Assistance (now Allianz). Therefore, EasyJet, as regards the sale of travel insurance policies, is to all intents and purposes an insurance intermediary, pursuant to directive no. 2002/92/EC, of 09th December 2002, concerning insurance intermediation,⁴¹ and subject in exclusive way to the control of the Financial Services Authority and IVASS.

³⁶ Cf. doc. no. 19 (answer to the request for information contained in the communication regarding the launching of the proceedings), doc. no. 31 (report of the hearing held on 10th June 2013) and doc. no. 40 (the professional's conclusive notes), as mentioned in the index of the file.

³⁷ The professional highlighted that, in the resolution of the Adunanza Plenaria dated 11th May 2012, no. 11, § 5, concerning the sector of telecommunications, the administrative judge referred to the resolution 10 of directive 2005/29/EC, according to which (...) it is applicable only if there are no specific regulations of the community law that regulate specific aspects of unfair commercial practices (...). It offers a protection for consumers when there is no specific legislation of the sector at community level.

³⁸ Legislative Decree no. 209 of 07th September 2005 (Code of private Insurances).

³⁹ The referral is to the ruling of Tar of Lazio, section 1, of 17th January 2013, no. 535. In particular, according to the administrative judge, as regards IVASS's surveillance tasks, article 3 of the Code of private Insurances clarifies that these "...are aimed at [...] ensuring the transparency and the fairness of the undertakings' behaviour, as well as that of the intermediaries and other operators in the insurance sector, as regards [...] the protection of the insured parties and of others having the right to insurance services, information and consumer protection." Likewise, pursuant to article 5 of the Code of the private Insurances, IVASS "carries out functions of surveillance in the insurance sector by implementing its authorizing, prescriptive, ascertaining, precautionary and repressive powers provided for by the regulations hereof ... " and in particular "... carries out the activities necessary to promote an appropriate level of consumer protection."

⁴⁰ FSA is an independent authority of the United Kingdom that watches over the financial markets defined by the Financial Services and Markets Act 2000, which also determines its powers to impose sanctions.

⁴¹ Said circumstance, moreover, is explicitly mentioned in the contract with Allianz as regards the commercialization of the travel insurance policies, according to which EasyJet undertook to keep said authorization when intermediating insurance products, as representative of Mondial Assistance (now Allianz).

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45. The Code of private Insurances, so as not to hinder the regime of free circulation of intermediaries as provided for by the mentioned directive no. 2002/92/EC, enables insurance intermediaries that reside or have their registered office in the territory of another member State to carry out the activity of establishment or free providing of services on the Italian territory.⁴²

46. IVASS's answer did not oppose to said conclusion, since the Institute simply specified that EasyJet does not result registered in the Single Register of insurance and re-insurance intermediaries, nor in the list of community intermediaries that carry out intermediation throughout the Italian territory and belonging to the above mentioned Register, without giving its opinion as regards the jurisdiction. The circumstance concerning the registration, at the most, is a simple administrative matter, which does not take on any relevance as regards IVASS's jurisdiction in the case at hand.

b) The defence

47. EasyJet, despite its objection concerning the lack of jurisdiction, participated actively in the proceeding and kept a collaborative behaviour, providing both answers to the Authority's requests and submitting its defensive notes.

48. Preliminarily, the professional stated that the practice under examination was not contrary to professional diligence,⁴³ nor capable of altering in appreciable measure the consumer's economic behaviour, highlighting the circumstance according to which the conduct under examination has at its basis a pan-European contract between EasyJet and Allianz; therefore, it is carried out in many European countries without the competent authorities having submitted any charges whatsoever.

49. In any case, should the Authority ascertain the existence of an unfair commercial practice, the liability of said conduct should mainly fall upon Allianz. Likewise, should it be ascertained, Allianz should be deemed liable for the aggressive nature of the conduct under examination since most of the charges would be ascribable to the insurance company (above all, the need for the consumer to obtain a non-flight letter and the amount of the allowance).⁴⁴

⁴² The referral is to article 116 of legislative decree no. 209 of 07th September 2005.

⁴³ The appraisal letters submitted by consumers throughout the years could be sufficient to exclude this aspect; likewise, the same could be said considering the very few reports submitted to the Authority.

⁴⁴ According to EasyJet, the commercial practice *de quo* is not aggressive because the hypotheses considered by the legislator in order to reach such qualification are based on material conducts (use of

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50. On the basis of the contract with the insurance company, the development and the management of the website dedicated to the insurance products offered to EasyJet's passengers, as well as the selection and the pricing of the products, all fall within Allianz's obligations.⁴⁵ The airline company stated not to have an actual role in the choice of the kind of insurance policy offered to the passengers, and to carry out through its website a mere function of pure display.

51. As regards the fee imposed for the issuing of the so-called penalty letter, EasyJet observed that the consumers were provided with the information concerning the existence of said fee. Moreover, they were not discouraged from the procedure adopted for the issuing of the same letter since the document *Terms and Conditions* contains a link on the page *Costs and Charges* in which the existence and the amount of said fee is specified for the issuing of the letter.

52. The need to obtain said certification for the refund is integral part of a procedure determined by Allianz which requires the letter due to the general principle for which the damaged party has the obligation to prove the damage. On the other hand, EasyJet cannot provide personal information to Allianz (specifically, concerning the non-boarding) without the consent of the party involved.

53. As regards the *quantum* of said fee, EasyJet highlighted that it is necessary in order to cover the administrative fees, and that in the United Kingdom a commission for the issuing of information to consumers is considered *reasonable* when it is equal to 10 pounds (about 12 Euros). Moreover, the exiguity of what appropriated by EasyJet in almost two years for the issuing of the penalty letters⁴⁶ should eliminate any suspect concerning alleged lucrative intents to the detriment of consumers.

54. Always with reference to the procedure for the issuing of the penalty letter, EasyJet specified that it does not obtain any profits whatsoever from the Italian consumers' phone calls to the call centre. The profits deriving from said phone calls - whose tariff is not comparable to a "premium" tariff number - are used to cover the costs of the service. In the light of the tariff

physical strength, etc...) or illicit conditioning, decisive in conditioning consumers' free commercial decision but not noticeable in the case under examination.

⁴⁵ EasyJet is not in charge of the section dedicated to the travel insurance policies. In fact, although the section is part of its website, it is curated by the company Fusion.

⁴⁶ Cf. previous Table no. 3

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applied, EasyJet deems that the average consumer is not discouraged from carrying out his/her right to be refunded.⁴⁷

55. As regards the other aspects of its objection, EasyJet observed that the governmental taxes (the so-called APD) are automatically refunded when the consumer submits the request for the penalty letter due to the non-use of the transportation service.⁴⁸ Basically, the consumer does not undergo any economic prejudice, since he/she receives the whole amount of the ticket paid (the APD directly from EasyJet, while the remaining amount from the insurance company).

56. As regards the excess franchise envisaged in case of refund and the lack of information concerning their amount, EasyJet stated that it is possible to view from the very first page the *Insurance Conditions* - which the consumer can read thanks to a hypertextual link placed in the frame dedicated to the insurance - showing a brief table listing the guarantees and the maximum coverage with all the amounts of the allowances.

c) Modifications carried out in the practice during the preliminary investigations⁴⁹

57. During the preliminary investigations, a series of modifications were carried out integrating the commitments that had been presented by EasyJet and rejected by the Authority. Said modifications were aimed at eliminating all criticalities highlighted in the communication of the launching of the proceedings.

58. First of all, upon submitting its commitments (April 2013), EasyJet eliminated definitively the 12 Euro fee which the consumers were asked for the issuing of the penalty letter.

⁴⁷ As of the end of 2010, EasyJet has reduced the tariff of the call centre (199201840), today equal to 6 cents of Euros upon answer and 12 cents of Euros per minute.

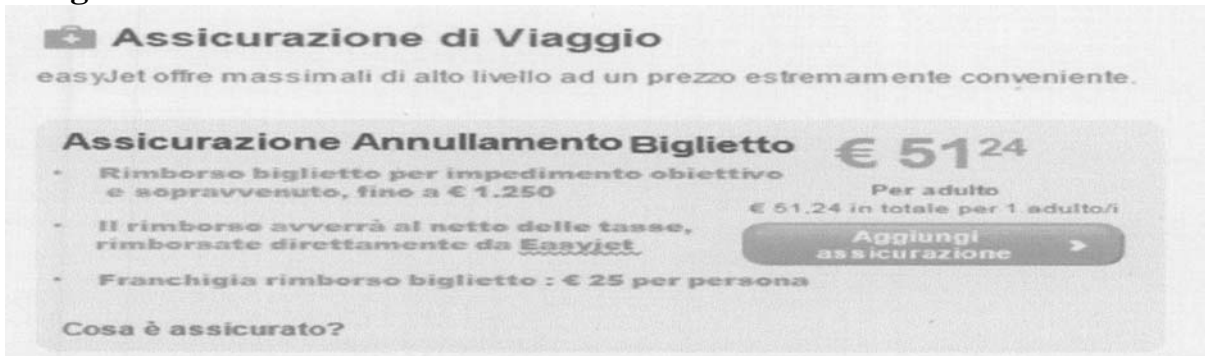
⁴⁸ If the amount of the airport taxes to be refunded is above 12 Euros, EasyJet deducts the administrative fee from said amount. The APDs (Air Passenger Duty) are the taxes that the airline company must pay to the airport company in order to carry out the passenger transportation service and which it is authorized to ask from the consumers at the moment of booking. However, should the passenger not use the ticket, EasyJet is not obliged to pay said taxes to the company managing the airport; consequently, the passenger has the right to receive the refund of the taxes paid when booking. Should the amount of the APDs be inferior to 12 Euros, EasyJet deducts said amount from the administrative fee and asks the passenger to pay the difference.

⁴⁹ EasyJet highlighted several times that Allianz, directly or through the sub-supplier Fusion, controls and manages the section of EasyJet's website dedicated to the presentation of the travel insurance policies. All the proposals of modifications presented after the launching of the proceedings were solicited by EasyJet, while their formulation and implementation are under Allianz's competence. This being said, after the rejection of the commitments, the professional solicited Allianz to carry out several modifications which were integrally implemented (see infra).

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59. As regards the presentation of the travel insurance policies on the professional's website, EasyJet made known as follows: *i*) the product Insurance cancellation is now called "*Ticket cancellation insurance*" so that there may be no uncertainty whatsoever concerning the object of the insurance coverage; *ii*) Excess Cancellation is now called "*Excess franchise ticket refund*" and the amount applicable is always indicated in the frame of the website dedicated to the travel insurance policy; *iii*) in substitution of the expression "*renunciation of the travel*," it has been clarified that the insured passenger shall have the right for a ticket refund in case of "*sudden and fair impediment*;"⁵⁰ *iv*) always in the box dedicated to the insurance, it is clarified that this does not cover airport taxes, as these are refunded directly by EasyJet; *v*) the text contained in the pop-up windows - which can be opened from the box on the website dedicated to the insurance - has been modified and integrated in conformity with what suggested under *ii*), *iii*) and *iv*); *vi*) the text modifications were carried out also in the English version of the Italian website (see following images no. 6 and no. 7).

Image no. 6



The image shows a screenshot of a website interface for travel insurance. At the top, it says "Assicurazione di Viaggio" and "easyJet offre massimali di alto livello ad un prezzo estremamente conveniente." Below this, there is a section titled "Assicurazione Annullamento Biglietto" with a price of "€ 51,24". The price is broken down as "Per adulto € 51,24 in totale per 1 adulto/i". There are three bullet points: "Rimborso biglietto per impedimento obiettivo e sopravvenuto, fino a € 1.250", "Il rimborso avverrà al netto delle tasse, rimborsate direttamente da Easyjet", and "Franchigia rimborso biglietto : € 25 per persona". A button labeled "Aggiungi assicurazione" is visible. At the bottom, there is a link "Cosa è assicurato?".

⁵⁰ By clicking on the link "What is covered by the insurance policy?", placed in the box of the website dedicated to the insurance, the consumer has at disposal all the information necessary concerning the events covered by the insurance product offered.

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Image no. 7

Assicurazione di Viaggio
easyJet offre massimali di alto livello ad un prezzo estremamente conveniente.

Assicurazione All-Inclusive

- Spese mediche all'estero fino a € 150,000
Bagaglio fino a € 1,250, Assistenza 24H
- Rimborso biglietto per impedimento obiettivo e sopravvenuto, fino a € 1.250
- Franchigia rimborso biglietto € 25 per persona, tasse rimborsate direttamente da EasyJet

€ 19⁹⁹
Per adulto
€ 19,99 in totale per 1 adulto/i

Aggiungi assicurazione

Cosa è assicurato?

60. As regards the indication of the airport taxes, EasyJet modified the online booking system in order to notify consumers before the actual purchasing of the ticket concerning the amount of the airport taxes (see following Image no. 8).

Image no. 8

Carrello

➔	Da Milano Malpensa a Roma Fiumicino Par mer, 09 ottobre 2013 07:00 Arr mer, 09 ottobre 2013 08:20 Volo 901 1 adulto/i	1 x € 58,16
➔	Da Roma Fiumicino a Milano Malpensa Par sab, 12 ottobre 2013 19:00 Arr sab, 12 ottobre 2013 20:15 Volo 914 1 adulto/i	1 x € 53,03
✕	Nessun bagaglio da stiva aggiunto Le tariffe per la prenotazione online del bagaglio da stiva sono considerevolmente più economiche rispetto a quelle applicate in aeroporto e le operazioni sono molto più semplici. Aggiungi bagaglio da stiva	
Subtotale dei voli e delle opzioni per tutti i passeggeri: *Tasse governative di € 14,00		€ 111,19

61. Moreover, as regards the modalities for submitting the request for the non-boarding letter, EasyJet introduced a new procedure which enables passengers to ask for the letter by sending a simple e-mail to EasyJet's customer service.

62. In confirmation of the company's will to meet the transparency requests, EasyJet notified to have already added on its home page a link called "*Costs and Charges*" which shows the information concerning all the costs and charges applicable concerning the sale of EasyJet's services.

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63. Lastly, the professional submitted the reasons according to which, in any case, the sanction applicable should be equal to the minimum statutory or of an absolutely modest amount considering the moderateness of the damage caused to consumers, as well as, in particular, of EasyJet's voluntary disclosure implementing all the commitments proposed despite the Authority's rejection of the same, making all the necessary modifications for the removal of the aspects considered as unfair practice.

IV. THE OPINION OF THE AUTORITÀ PER LE GARANZIE NELLE COMUNICAZIONI

64. Since the commercial practice object of the proceedings hereof was diffused via internet, on 04th November 2013, an opinion was requested from the Autorità per le Garanzie nelle Comunicazioni, pursuant to art. 27, paragraph 6, of the Consumer Code.

65. On 06th December 2013, said Authority submitted its opinion resolving that the commercial practice under examination is unfair pursuant to articles 20, 22, 24 and 25 of the Consumer Code, on the basis of the following considerations:

- EasyJet omitted to provide essential information, or however provided it inadequately, concerning the insurance product offered to consumers during the plane ticket booking process on the company's website, such as: the existence of a 12 Euro fee for the issuing of the letter certifying the non-use of the ticket, the amount of the excess, the indication that the refund does not cover taxes, the breakdown of the cost of the ticket;
- said omissions and misleading information do not enable consumers to be informed concerning 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 information provided after the first contact did not have an amending effect;
- the obligation to provide the breakdown of the cost is provided for also by Reg. EC 1008/2008, under art. 23;

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- the aggressive commercial practice implies all non-contractual, onerous and disproportionate hindrances imposed by the professional, in case the consumer intends to carry out his/her contractual rights.

V. FINAL CONSIDERATIONS

1) Concerning the Authority's jurisdiction

66. During the preliminary investigations, EasyJet raised an objection concerning the Authority's lack of jurisdiction as regards the imposition of sanctions implementing article 19, paragraph 3, of the Consumer Code in the specific sector of the sale of insurance products.

67. As regards this issue, it is highlighted that the travel insurance policies, regardless of the legal ownership of the subject actually offering the insurance coverage (in the specific case, Allianz), are presented during the booking process on EasyJet's website (online shop) as an additional product to the service of air transportation offered by the professional and in no way whatsoever separable from it.

68. Said condition, in fact, is essential for the purchasing of the insurance product. To this regard, it is highlighted that all the typologies of insurance policies offered on the professional's website *must be taken out in guarantee of an EasyJet flight*. Specifically in the case of renunciation of the travel, *the guarantee is valid exclusively if the insurance policy was taken out concomitantly with the booking date of the EasyJet ticket*.

69. Moreover, the insurance service object hereof is optional just as any other service (such as speedy boarding, extra luggage, etc. offered always during the online booking/sale of a flight) that the consumer, according to an opt-in logic, can choose to purchase (always in combination with the main service, that is the flight).⁵¹

70. Therefore, as mentioned above, since it is indisputable that the commercial practice being charged is carried out within the ambit of EasyJet's main activity - that is air transportation service - and that the insurance policy (whose purchase is optional for the consumer) is a merely additional service offered during the flight booking process, it does not result that, in the specific case, EasyJet can be considered an insurance

⁵¹ Cf. ruling no. 14 of 2012 of the Adunanza Plenaria del Consiglio di Stato mentioned also by the professional in its defence notes.

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intermediary; moreover, the same professional stated in its defence notes that its role, in the practice under examination, was only that of *mere display* of Allianz's products.

71. In any case, it is highlighted that *TITLE IX – Insurance and re-insurance intermediaries* – of the Code of private insurances, in regulating the conditions in order to access and carry out the activity of insurance and re-insurance intermediation for a consideration in the territory of the Republic, provides for specific exclusions in the implementation of the regulation upon the occurrence of specific conditions, among which the fact that the insurance is an additional product or service or, in case of booked travels, it guarantees for the loss or the damage of luggage or it covers risks in the ambit of life insurance and civil liability connected to the actual travel.⁵²

72. Consistently with said reconstruction, it is here observed that, according to what emerged during the preliminary investigations, “(...) *the airline company EasyJet Airline Company Ltd does not result registered in the Single Register of the Insurance and re-insurance Intermediaries nor in the list of community intermediaries that carry out intermediation throughout the Italian territory, connected with said Register.*”⁵³

2) Conclusions

73. The proceedings hereof concern the modalities through which EasyJet offered, through its website *www.EasyJet.com/it*, optional travel insurance policies, in particular the insurance policy concerning the risks of

⁵² In particular, art. 107 (Ambit of Implementation), paragraph 2, provides for as follows: “This title does not regulate: (...); c) the activities of insurance intermediation when the following conditions occur concomitantly: 1) the insurance contract only requires knowledge concerning the coverage provided; 2) excepting the case as mentioned under number 4), it is not a life insurance or against civil liability risks; 3) the intermediation is not carried out professionally; 4) the insurance is an additional product or service and it covers the risks of loss or deterioration or, in case of booked trips, it guarantees for the loss or the damage of luggage, and it covers the risks of life insurance and civil liability connected to the actual trip; 5) the amount of the annual premium does not exceed five hundred Euros and the total duration of the insurance contract, including possible renewals, is not above five years.

⁵³ Cf. the note submitted by IVASS on 27th May 2013 - doc. no. 29 as mentioned in the index of the file. To this regard, the reference is to paragraph 2 of art. 116 of the Code of Private Insurances (leg. decree no. 209 of 07th September 2005), registered as Activity carried out for the establishing and providing of services, which, moreover, provides for as follows: “Insurance and re-insurance intermediaries that reside or have registered office in the territory of another Member State, can carry out their activity establishing or freely providing services in the territory of the Republic, starting from the thirtieth day following the actual communication that ISVAP receives from the Authority of Surveillance of the Member State of origin. (...)”. This so that ISVAP, pursuant to paragraphs 3 and 4, may communicate the measures which regulate the carrying out of the intermediation activity which, in the general interest, must be observed on the Italian territory, as well as adopt specially provided measures against the intermediary that does not comply with said regulations. (emphasis added)

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cancellation/renunciation of the flight, as well as the procedure for implementing said insurance service.

74. For the reasons mentioned hereafter, it is deemed that the commercial practice carried out by EasyJet, described under point II hereof, can integrate the infringement of articles 20, 22, 24 and 25 of the Consumer Code, since the professional omitted to provide, or provided in a totally insufficient and inadequate manner, essential information concerning the insurance service offered. Moreover, the procedure envisaged for the implementation of the consumer's right to be refunded (with particular reference to the hypothesis of renunciation of the travel), appeared structured in such a way to integrate a non-contractual, onerous and disproportionate hindrance compared to the actual cost of the service, such to annul or substantially reduce the refund.

75. Preliminarily, it is important to mention that the Party appears objectively liable as regards the commercialization/sale carried out *on its own website* concerning an additional product compared to the main service of air transportation offered to the consumers, whose characteristics and relevant modalities of presentation to the public fall within its full knowability. Moreover, as emerged during the preliminary investigations, the professional obtains important revenues from the commercialization of the policy, in a measure and percentage absolutely prevalent compared to Allianz. Furthermore, it also agrees and participates in the determination of the product and the pricing proposed by Allianz.

76. As regards this aspect, it is highlighted how the professional, when offering the travel insurance policy to consumers, in combination with the air transportation service, omits to provide, or provides in a totally insufficient and inadequate manner, a series of relevant information for a correct evaluation of the nature of the risks covered by the insurance, as well as the conditions and therefore the economic convenience in purchasing the insurance product.

77. In particular, the description of the products is provided in an ommissive and misleading manner, highlighting either aspects connected with the maximum coverage of the refund (*Renunciation of the travel up to € 1,250; Cancellation and luggage up to € 1,250, etc.*) or emphatic information not really useful for the consumer (*Protect your purchase; Start relaxing the moment you book, etc.*)⁵⁴ without, at the same time, indicating and giving adequate emphasis or however making easily recognisable those elements

⁵⁴ Cf. previous images numbers 1 and 2.

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useful and relevant so as to make an aware commercial decision, such as the actual risk covered, the excess and the main limitations.

78. In fact, as emerged from the preliminary outcomes, the various typologies of insurance products envisage specific conditions, limitations and/or exclusions as regards, for example, the refund of airport taxes, expenses for practical management and, in particular, excess (of considerable amount⁵⁵) which are not represented by the professional during the online booking process, simply providing incomplete information to consumers and sending them, through a hypertextual link, to the *Insurance Guarantees and Conditions*, thus making it hard for them to find indications and essential elements for a rational purchase choice.

79. With particular reference to the insurance policy *EasyJet cancellation* and the section called “*Renunciation of the travel*” present in the policy EasyJet All-Inclusive and in other types of insurance coverage offered,⁵⁶ the evidence collected highlighted that the insurance company recognizes the right for the consumer to be refunded only upon the occurrence of a few particular external circumstances hindering the consumer from travelling (for example illnesses, accidents, etc.).⁵⁷ Whereas, it does not contemplate any compensation, contrarily to what the consumer could believe on the basis of the actual *nomen* (Cancellation/renunciation of the travel) and especially from the presentation of the service (for example: “*an unexpected event hinders you from leaving? Protect your purchase*”), in all those cases in which the decision not to use the plane ticket depends on the consumer’s free choice deriving from personal impediments.

80. The omission of or not easy access to said information (also in this case present only within the insurance policy conditions) appears therefore capable of misleading consumers on the actual nature of the guarantee offered, driving them to make a commercial decision which they would not have made otherwise.

81. With specific reference to the airport taxes, which as mentioned are not object of refund in all the typologies of insurance policies commercialized on the professional’s website, it is also important to consider the lack of indication, at the moment of the offer of the insurance product, of the

⁵⁵ For example, the excess franchise provided for in case of renunciation of the travel is equal to €25, other excesses are provided for in different sections of the Insurance, EasyJet all inclusive - Golf Insurance – Luggage Insurance, etc.

⁵⁶ See previous point no. 3.

⁵⁷ See previous point no. 7.

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breakdown of the price of the ticket – moreover provided for by article 23 of Reg. EC 1008/2008 regarding the transparency of plane ticket prices – so that the consumer is not even put in the condition to calculate the incidence on the price paid.

82. All these circumstances and the omitted information as mentioned above hinder the consumer, in substance, from calculating exactly the insurance service offered, as well as from being aware *a priori* of the amount and substance of the refund that may be asked upon the occurrence of the event insured.

83. Besides the omission of essential elements concerning the actual nature and content of the insurance service offered (the policy strictly speaking), the practice under examination is characterized by several aspects of aggressiveness connected to the procedure envisaged by the professional towards those who want to submit a refund request, in particular for its specific high onerousness.

84. The evidence collected, in fact, highlighted that the professional requires an additional fee, equal to 12 Euros, in order to proceed with the issuing of the document (the so-called penalty letter) certifying the non-use of the transportation service, which results indispensable for the consumer who wants to ask for the refund in case of renunciation of the travel.

85. In particular, the consumer discovers the existence of this charge right at the moment in which he/she contacts the airline company for the issuing of the penalty letter required from Allianz. Said information, in fact, is not provided neither when the insurance policy is offered on EasyJet's website, nor within the *General Conditions of Insurance* (reachable through the specially provided link in the boxes as mentioned in the previous images numbers 1, 2 and 3). Said *General Conditions* indicate as documentation to submit to the insurance company in case of renunciation of the travel, among other things, the *penalty letter/e-mail issued by the airline company*, but they omit to indicate the cost at the consumer's expense. In fact, said information was inserted in a different page, extremely difficult to find, called Costs and Charges, reachable through a link placed in the document Terms and Conditions.⁵⁸

⁵⁸ In fact, the link Costs and Charges, besides being extremely generic and not specifically relatable to the charge to which it refers, is placed in different articles of the mentioned Terms and Conditions with different object. Moreover, by clicking on said link, a page opens listing a series of various administrative fees and only the last item indicates the "Administrative fees for insurance letters and printed confirmations of the flight;" whereas, the latter is not mentioned within the relevant article 29 – Insurance, nor in the FAQ page (Frequently Asked Questions) of the professional's website.

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86. Said conduct takes on particular relevance when considering the administrative fee required to the consumer, source of appreciable profits for the professional (*cf.* previous Table no. 3), in some cases even higher than the cost of the actual insurance service (*cf.* previous Table no. 1), being equal to about *[omissis]*% of the average price of an EasyJet plane ticket (*cf.* previous Table no. 4) and a much higher percentage of the amount refundable, estimated around 30%, when considering the actual amount refundable.⁵⁹

87. From a different perspective, since the certification described is indispensable so that the insurance company may carry out the refund, it is clear that the actual price of the insurance product being concealed by the professional is in some cases equal to or even above 100% of what highlighted during the booking process of an EasyJet flight.

88. The nature of onerous and disproportionate hindrance of the conduct carried out by the airline company is further appreciated when keeping into account 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 policy offered by the professional. In other words, the fee and the cost of the call centre imposed by EasyJet to consumers seem to reduce substantially, if not even annul the right to be refunded deriving from the contract stipulated with Allianz through the actual professional.

89. To this regard, the evidences filed in the official records show that about *[omissis]*% of the refund requests submitted by consumers on the basis of the *travel cancellation* guarantee did not have a positive outcome. (See previous point no. 40)

90. Taking into consideration the aggressiveness of the practice, it is also highlighted that the fee required for the issuing of the penalty letter concerns an event – the non-use of the flight – whose information is already available for the air company that provides the transportation service and which, owing to safety reasons, verifies the consumers using the service purchased and accessing the plane: therefore it is a piece of information which could easily be exchanged with the insurance company without burdening the consumer.

⁵⁹ In fact, deducting the excess, the taxes and expenses for the management of the paperwork from an average ticket price (*cf.* previous Table no. 4), the amount refundable is assessed in an amount inferior to 50% of the price of an EasyJet ticket considering both flights leaving from and arriving in Italy.

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91. In this regard, unjustified impositions of charges or hindrances in carrying out a right (even considering the muddled and complex procedure required) are deemed unfair, such as in the case at hand concerning the refund of amounts connected to the purchasing of a travel ticket, especially when these impose on the consumers relevant costs capable of thwarting the exercise of the actual right. In the specific case, in fact, the behaviours described seem to have been thought in order to discourage the consumer from submitting said request or however frustrate the exercise of said right.

92. In the light of what exposed, in compliance with the opinion submitted by the Autorità per le Garanzie nelle Comunicazioni, 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) deriving from the purchase of a travel insurance policy, falls within the professional's diligence - in the specific case that of an air company such as EasyJet considered reliable and very well known on the market. Therefore, the practice object hereof, described under point II, is to be considered contrary to professional diligence since 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.

93. EasyJet's conduct did 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 did not inform the consumer concerning the costs and conditions connected to the product limiting the exercise of his/her right or reducing considerably the substance. Therefore, said conduct is to be considered omissive, leading the consumer to a commercial choice which otherwise he/she would not have made, thus infringing article 22 of the Consumer Code. Moreover, 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

94. Pursuant to art. 27, paragraph 9, of the Consumer Code, and art. 23, paragraph 12-*quinquiesdecies*, of Decree-law no. 95 dated 06th July 2012, as amended by Law no. 135 dated 07th August 2012, combined with the measure which prohibits unfair commercial practices, the Authority resolved

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the implementation of an administrative sanction from 5,000 to 5,000,000 Euros, depending on the seriousness and the duration of the infringement.

95. 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.

96. 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. This finds confirmation in the considerable amount of consumers who purchased the additional insurance service, thus generating relevant profits for the professional that keeps a relevant part of said profits. The seriousness of the practice is further evident due to the elements of aggressiveness found, with particular regard to the onerous and disproportionate hindrances imposed on the consumers that want to carry out their right to be refunded having taken out the insurance policy, which gives the professional further profits.

97. 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 from June 2011 and continued until June 2013, moment in which the professional partially implemented the commitments submitted during the investigation eliminating the fee for the issuing of the penalty letter. However, the practice stopped before the conclusion of the investigative phase due to the measures adopted by the professional.

98. On the basis of said elements, it is resolved to establish the administrative sanction imposable on EasyJet Airline Company Ltd in the amount equal to 250,000 € (*two-hundred and fifty thousand Euros*).

99. However, since in the specific case there are extenuating circumstances owing to the fact that the professional had already carried out measures aimed at eliminating the prejudicial of the illicit conduct carried out against consumers - described in detail under the previous point III, no. 3), letter c),

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hereof - it is resolved to reduce the amount of the sanction to 75,000 € (*seventy-five thousand Euros*).

100. Lastly, the aggravating circumstance of the recidivism must be taken into account. In fact, EasyJet Airline Company Ltd results to have already been submitted to other measures resolved by the Authority implementing the regulations of the Consumer Code as regards unfair commercial practices.⁶⁰ Taking into account these aspects, it is therefore deemed adequate to determine the amount of the administrative sanction in the final amount equal to 200,000 (*two-hundred thousand*) Euros.

CONSIDERING, therefore, in compliance with the opinion of the Autorità per le Garanzie nelle Comunicazioni, on the basis of the considerations exposed above, that the commercial practice under examination results to be unfair pursuant to articles 20, 22, 24 and 25 of the Consumer Code since it is contrary to the professional diligence and can considerably false the consumer's economic behaviour since it omits relevant information necessary for the assessment of the actual nature and convenience of the insurance service offered, and it sets onerous and disproportionate hindrances as regards the carrying out of the consumer's right to be refunded for the product/service offered by the professional;

HEREBY RESOLVES

a) that the commercial practice described under point II hereof, carried out by EasyJet Airline Company Ltd, for the reasons and within the limits exposed in the motivation, constitutes an unfair commercial practice pursuant to articles 20, 22, 24 and 25 of the Consumer Code, and its diffusion and continuation is forbidden;

b) to sanction EasyJet Airline Company Ltd with an administrative fine equal to 200,000 € (*two-hundred thousand Euros*);

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

⁶⁰ Cf. resolution no. 20956 of 30th March 2010 on the case PS2915 - EASYJET-MANCATO RIMBORSO, in Bulletin no.13/2010 of 19th April 2010; resolution no. 22456 of 24th May 2011 on the case PS6147 - EASYJET-COMMISSIONI CARTE DI CREDITO, in Bulletin no. 21/2011 of 13th June 2011 and resolution of non compliance no. 23615 of 30th May 2012 (IP131 - EASYJET-COMMISSIONI CARTE DI CREDITO), in Bulletin no. 22/2012 of 20th June 2012.

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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 Agenzia delle Entrate (Revenue Agency), available on the website 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 06th July 2012, as amended by law no. 135 dated 07th 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 02nd 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 24th November 1971, within one-hundred and twenty days from the date of notification of the resolution.

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THE SECRETARY GENERAL

Roberto Chiappa

THE PRESIDENT

Giovanni Pitruzzella