

THE AUTORITÀ GARANTE DELLA CONCORRENZA E DEL MERCATO

AT ITS MEETING held on 22nd January 2014;

HAVING HEARD the Rapporteur, Dr. Salvatore Rebecchini;

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 Article 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 “*Regulation for preliminary investigations on deceitful and comparative advertising, unfair commercial practices and terms*” (hereafter, Regulation), adopted by the Authority with resolution dated 08th August 2012;

HAVING REGARD to the Authority’s resolutions dated 02nd May 2013, by means of which inspections were authorized at the premises of the companies Webloyalty International S.r.l., Affinion International S.r.l. and Affinion International Holding S.r.l., pursuant to Article 27, paragraphs 2 and 3, of the Consumer Code;

HAVING REGARD to the Authority’s resolution dated 23rd September 2013, by means of which the closing date of the proceedings was extended due to investigative purposes, pursuant to Article 7, paragraph 3 of the Regulation;

HAVING REGARD to the official records of the proceedings;

I. THE PARTIES

1. Webloyalty International Sàrl, with registered and operational office in Eysins (Switzerland), in quality of trader, pursuant to Article 18, letter *b*), of

the Consumer Code. The company is the registrant of the domain "*acquistierisparmi.it*"¹ through which it operates in the commercialization of discount programmes and online shopping². According to the economic-financial data available on 31st December 2012, the company's revenues amounted to more than *[omissis]*³ million Euros, while its losses amounted to more than *[omissis]* million Euros.

2. Webloyalty International S.r.l., in quality of trader, pursuant to Article 18, letter *b*), of the Consumer Code. The company is indicated in the section "*Contact us*," reachable at the address <http://www.acquistierisparmi.it/Content.aspx?content=contactus>, indicated on the home page of the website "*www.acquistierisparmi.it*."⁴ The company's activity consists in the purchasing, selling, marketing, exportation, importation and, in general, the commerce – for its own benefit or for third parties - of online advertising spaces aimed at consumers or companies, as well as, by way of example, programmes characterized by advantages and discounts. According to the financial statements closed on 31st December 2012, the company's revenues from sales and services amounted to about 5 million Euros and its profits amounted to about 200,000 Euros.

3. Ryanair Ltd (hereafter, also "Ryanair"), in quality of trader, pursuant to Article 18, letter *b*), of the Consumer Code, 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). According to the airline company's financial statements published on its website, the trader's turnover for the fiscal year 31st March 2012 – 31st March 2013 amounted to 4,884 million Euros and its profits amounted to 569 million Euros.

¹ See <http://www.nic.it/web-whois/result.jsf>

² Established in 1999, Webloyalty.com Inc. is a company registered pursuant to the laws of the State of Delaware (USA) and with registered office in Norwalk, Connecticut. Webloyalty.com Inc. offers to its e-commerce customers the possibility to realize additional revenues, owing to the creation of fidelity programmes and services towards their users. Webloyalty.com Inc. was established in Great Britain in January 2007; in September 2007 it opened a French branch and then a Swiss company, Webloyalty International Sàrl which currently manages the activities concerning Purchases and Savings, a product dedicated to the Italian customers.

³ Several data were omitted in this version since it was deemed that there were elements of confidentiality or secrecy of information.

⁴ The same indication can be found on the website www.webloyalty.it, in the section called *Contacts*, such as "*Contacts in Italy*."

4. Alitalia - Compagnia Aerea Italiana S.p.A. (hereafter, also *Alitalia*), in quality of trader, pursuant to Article 18, letter *b*), of the Consumer Code. 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. According to the company's financial statements for the fiscal year 2012, Alitalia's revenues amounted to about 3.6 billion Euros, while its losses amounted to over 225 million Euros.

5. Airone S.p.A. (hereafter, also *Airone*), in quality of trader, pursuant to Article 18, letter *b*), of the Consumer Code. The company, whose operational fleet is dedicated to airline transportation service, is subject to *Alitalia*'s management and coordination, sole shareholder. According to the company's financial statements closed on 31st December 2012, its profits from sales and services amounted to about 220 million Euros, while its losses amounted to more than 33 million Euros.

6. Vacaciones eDreams, S.L. (hereafter, also *eDreams*) in quality of trader, pursuant to Article 18, letter *b*), of the Consumer Code. The company entered into the commercial agreements concerning the practice object hereof carried out in the Italian market through the website *www.edreams.it*. It belongs to an international group with registered office in the United States whose activity is based on the offer of holiday packages, flights, hotels and related online booking – through the use of technologies for research on Internet. According to the financial statements closed on 31st March 2013, the company's revenues amounted to more than 110 million Euros and its profits amounted to about 16 million Euros.

7. eBay (UK) Ltd. (hereafter, also *eBay*), in quality of trader, pursuant to Article 18, letter *b*), of the Consumer Code. The Group eBay is formed by various companies, all subject to the "*parent company*" eBay Inc., with registered office in California. Within the Group eBay, eBay UK is the company which is in charge of collecting and managing the advertising spaces of the various European platforms (eBay.it, eBay.fr, eBay.co.uk, etc.) and of closing the related commercial agreements with the advertising agencies or directly with the advertisers interested in the publishing of advertising banners within eBay's various websites, including eBay.it. eBay's activity consists in offering a technological platform of electronic

commerce where users/sellers can publish their adverts concerning the items sold so that they may be purchased by users/purchasers. According to the financial statements available (31st December 2011), the company's turnover amounted to about [omissis] million Euros and its profits were equal to over [omissis] million Euros.

8. TicketOne S.p.A. (hereafter, also *TicketOne*), in quality of trader, pursuant to Article 18, letter *b*), of the Consumer Code, is a leading company in providing services and systems for the management of a ticket office for shows, cultural and sports events, and for the booking and sale on behalf of third parties of entrance tickets (the so-called tickets). According to the financial statements closed on 31st December 2012, the company's revenues amounted to more than 23 million Euros and its profits amounted to about 4.3 million Euros.

II. THE COMMERCIAL PRACTICE

9. According to many complaints lodged as of May 2012,⁵ the traders Webloyalty International Sàrl and Webloyalty International S.r.l. (hereafter, also jointly, *Webloyalty* or *the traders*) allegedly withdrew a monthly amount – equal to 12 €- for the subscription to the service called "*Purchases and Savings*" without the consumers' consent and using the bank data provided by the latter when purchasing goods commercialized on websites belonging to companies partners of the *traders*⁶.

10. In particular, the consumers complained of being directed to the website "*www.acquistierisparmi.it*", at the end of the purchasing procedure carried out on the above mentioned websites and on the basis of promises of sure savings and offers of future discounts. At that point, they found themselves unwittingly subscribed to the mentioned service without having received adequate information on the nature, the characteristics, and the onerousness of the service (the existence of a subscription fee).⁷

⁵ The reports, in total more than one hundred, continued to arrive during the whole phase of the preliminary investigations, up until 09th January 2014 (see index of the file).

⁶ Among the companies that entered into commercial agreements with *the traders* there are the companies Parties of the proceedings PS8530 (Ryanair; Alitalia; Airone; eDreams; eBay; TicketOne).

⁷ On the basis of the complaints lodged, it is clear that many consumers did not even suspect that the 12 Euro debit was connected to a purchase on the website of a partner of *Webloyalty*'s. Hereafter, by way of example, excerpts from two reports are provided – of which, a letter sent by a consumer to *Webloyalty S.r.l.* and forwarded to the Authority as an intervention request – which can be considered representative of the

11. According to the information acquired and filed in the official records on 23rd April 2013,⁸ mainly by means of a flight ticket purchasing simulation carried out on the website of the airline company *Ryanair*, *Webloyalty's* partner, it is clear that, at the end of the booking procedure, once the purchasing of the flight ticket is confirmed, a banner appears. After notifying the consumer concerning the completion of the operation (*Your booking is complete*), on one side of the banner there is in great evidence a “*CONTINUE*” button, while on the other side there is a statement highlighting the possibility to obtain a “*(...)10€ bonus for your next booking on Ryanair!*” Moreover, in extremely small letters, there is the following statement: “*By clicking on this link, you can ask for the bonus by subscribing to our partner's programme. Please refer to the Terms and Conditions for the use of the service,*” without giving any further indications as to nature and substance of the service, and the onerousness of the subscription⁹ (see following Image no. 1).

type of complaints which the Authority received before, during and after the launching of the preliminary investigations.

“A monthly 12€ debit has been charged on my credit card starting from July 2012 up to date, for a total amount of 72€. The benefitting party of the charges was the website "acquistierisparmi.it" belonging to and managed by the reported company. I just now noticed the debits as they occurred without me knowing it. In fact, I am not aware of having undertaken the payment of said amounts. It seems that this operation took place through the website Ryanair.com on which I purchased a flight ticket on 19th June 2012. I remember that on that occasion I was offered a promotion "Purchases and Savings," which did not present any charge or cost at my expense, but simply offered discounts on purchases carried out via Internet on affiliated websites. For this reason I accepted the offer (only through the website and not actually signing anything) which seemed to be, as said, totally free.

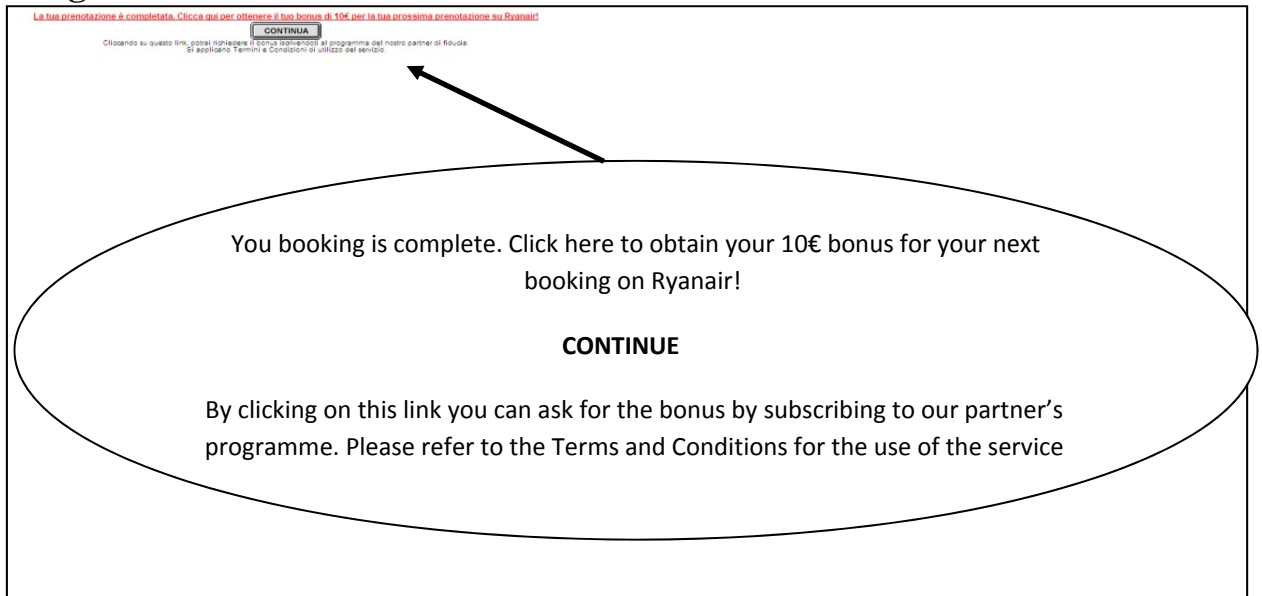
(...), I do not remember the exact formulation of the offer. In particular, I do not remember if there was an explicit statement of it being free or if it suggested deceitfully that it was (limiting to omit any reference whatsoever to costs). I do remember though that I accepted the offer relying on the fact that it was free. (...) My intention was simply to purchase a flight ticket, while “Purchases and Savings” was presented as a totally additional and promotional offer that had nothing to do with my initial intention. (...). (Report signed – Underlining added) - (See doc. no. 8 as mentioned in the index of the file).

“Re: (...). Refund request for €36.00 (...) and cancellation from any possible form of contract and subscription never voluntarily signed. (...). With this letter I want to express all my surprise and annoyance, since on 19th October 2012 I discovered, through a text message on my mobile phone sent by my bank, that your company withdrew a 12€ subscription fee directly from my credit card. After looking into the matter more in depth, I found out that (...) another two subscription fees were withdrawn for a total of € 24.00. (...) I (...) am sure that I never requested said service clearly and explicitly. (...). Therefore, with this letter (...) I ask to annul any possible subscription, understanding that I never requested it, and I never signed a request or any kind of contract for it (...); I never gave my credit card data to this company (...); My personal data were obtained dishonestly, unconscionably and deceitfully. Moreover, I never authorized the use of said data; I never received a < 10 € discount>, but (...), I have to pay 12 months of subscription for a total of 144 €. Practically, instead of receiving a 10 € discount, I have been ripped off 144 €, for a year's subscription; I never received any service and I am in no way whatsoever interested in your services (...).” (Signed letter – underlining added) – See doc. no. 15 as mentioned in the index of the file.

⁸ Most of the reports concerned purchases carried out on the website of the Irish airline company, *Ryanair*.

⁹ On the basis of a purchasing simulation carried out on the Irish airline company's website on 23rd April 2013, it is clear that, at the time, the consumer had no other alternative if not to click on the CONTINUE button in the attempt to change page and return to *Ryanair's* website to verify the positive outcome of the transaction. See doc. no. 52 as mentioned in the index of the file.

Image no. 1



12. The banner, in some cases with marginal differences, is shown at the end of the booking/purchasing procedure of the goods/services provided on the websites of the other partner traders in the so-called Thank you page¹⁰. The banners are analogous among each other and more or less used in the same way by the various partners. The differences concern several graphical aspects such as: the colour of the “*CONTINUE*” button, the presence or absence of a frame around the banner, the alignment of the text, as well as the use of the word “*ask for*” instead of “*obtain*” for some partners. Moreover, the banner can be present more than once within the same page, as well as on different pages of the partners’ websites (for example, the purchasing confirmation page or the check-in confirmation page). The following image shows the Thank you page present on Alitalia’s website (see following Image no. 2).

Image no. 2

¹⁰ For this reason, the investigation was extended subjectively, besides Ryanair, also to the so-called partners.

Complete

booking.alitalia.com/booking_confirmazione.asp

HELP Serve aiuto? CONTATTI + ASSISTENZA Selezione paese e lingua ITALIA-ITALIANO ACCEDI - REGISTRATI

Alitalia

Serve aiuto? 89.20.10

1 SCEGLI IL VOLO 2 DATI PASSEGGERO 3 PERSONALIZZA VOLO 4 ACQUISTA BIGLIETTO 5 RICEVUTA PAGAMENTO

IL TUO PAGAMENTO È STATO EFFETTUATO CON SUCCESSO! TORNASU

IL TUO CODICE DI PRENOTAZIONE (PNR) È **JHLYWR**
UNA MAIL È STATA INVIATA A **MARZETTI.CHIARA@ALITALIA.IT**

DOWNLOAD CONDIVIDI STAMPA

RIEPILOGO ORARI, PREZZI E REGOLE TARIFFARIE

PASSEGGERI - 1 ADULTO

1 ECOUPON MMG
Numero biglietto: 0552194847898

ANDATA - 19 SET 2013

AZ 1397 Economy 08:15 ROMA, FIUMICINO 09:20 GENOVA, TAVOLIERI

Quanto dura il viaggio? 1 H 5' Quanti bagagli posso portare? 1 BAGAGLI FINO A 23 KG Quante miglia ho guadagnato?

INFORMAZIONI AGGIUNTIVE E RIEPILOGO PREZZI

REGOLE TARIFFARIE PER IL VOLO DI ANDATA

Tariffa: Economy Promo EUR 71,40
Rimborso
Prima della partenza: Non consentito
Dopo la partenza: Non consentito

Cambio prenotazione
Prima della partenza: Consentito con 120,00 EUR
Dopo la partenza: Non consentito

Per ulteriori informazioni contatta il nostro Customer Center al numero 86 676 40

La tariffa e la prenotazione sono valide per un biglietto utilizzato integralmente, rispettando l'ordine di successione viaggio nelle date indicate. Le penali si applicano per ciascun passeggero/biglietto. Il cambio potrebbe comportare la tariffa se la tariffa precedentemente acquistata non è più disponibile. Il cambio, se consentito, va richiesto prima del volo che si desidera cambiare.

1 TARIFFA ADULTI	€ 18,00
TASSE	€ 28,40
SUPPLEMENTO CARBURANTE	€ 25,00
SERVIZIO DI VENDITA	€ 9,00
ECOUPON	€ -77,40
TOTALE	€ 0,00

LA TUA PRENOTAZIONE È COMPLETATA
CLICCA QUI PER OTTENERE IL TUO BONUS DI 20€ PER LA TUA PROSSIMA PRENOTAZIONE SU ALITALIA

CONTINUA

Cliccando su questo link, potrai richiedere il bonus successivo al programma del nostro partner di fiducia. Si applicano i Termini e Condizioni di utilizzo del servizio.

PRENOTA SUBITO LA TUA AUTO VEDI TUTTE LE AUTO

Step 1-ECMR € 49,74 PRENOTA Step 1-CDMR € 71,22 PRENOTA

13. After viewing the mentioned banners in the Thank you page of the partners' websites, by clicking on the "CONTINUE" button the consumer is addressed to the subscription page *Purchases and Savings* (the so-called landing page) where, in great evidence, there is the frame concerning the 10€ Welcome Bonus,¹¹ together with many statements emphasising the obtainment of said bonus after a further purchase of goods/services offered by the trader with whom the online commercial transaction was just concluded, also showing its logo on the same page.¹²

14. On this page, by providing the sensitive data required (name, surname, credit card number, etc.), the consumer is actually subscribing to the service *Purchases and Savings in 3 simple steps* with the intent to obtain the

¹¹ 20 Euros in Alitalia's and Airone's cases.

¹² With the exception of eBay whose logo does not appear neither on the Thank you page nor on the landing page.

promised *10€ Welcome Bonus*.¹³ Even in this context, no information is provided by the traders concerning the actual nature, characteristics and substance of the service offered, the trader's partners identity and the kind of purchases that can be carried out, under what conditions and on which websites. Indeed, the trader confines itself to provide the following statements: "*Save on all your online purchases on the main e-commerce websites;*" or: "*Obtain your deferred discount every time you carry out a purchase;*" highlighting with emphasis, even by means of images, the economic advantage presented to the consumer. Only at the end of the phases envisaged for the subscription there is, in extremely small letters, the statement "*No, thank you. I want to return to the website of [partner's name]*". (see following Image no. 3).

Image no. 3

The image shows a registration page for 'Acquisti e Risparmi' by Ryanair. The page is divided into three phases: 'FASE 1' (registration), 'FASE 2' (terms and conditions), and 'FASE 3' (password creation). A '10€ BONUS DI BIENVENUTO' is advertised. Annotations highlight key elements: the registration process, the partner's logo, the list of benefits (10€ welcome bonus, monthly savings, 10€ monthly bonus, deferred discount), the 'No, thank you' link, and the terms and conditions section.

15. The nature and the characteristics of the services offered by Webloyalty¹⁴

¹³ Thus authorizing *Purchases and Savings* to withdraw the 12 Euro monthly subscription fee.

¹⁴ The *Terms and Conditions of the Service*, published on the website www.acquistierisparmi.it and valid starting from 02nd May 2012, under point 1, state as follows: "**I. Description of the Service** – The Service offered by WEBLOYALTY envisages an initial Welcome Bonus payable upon the recipient's request, owing to the subscription to the Service and a following purchase carried out on the commercial partner's website according to the timing and modalities indicated hereafter. Moreover, the recipient matures the right to ask

do not emerge with clarity not even in the *Description of the Service*, provided in the *Terms and Conditions of the Service* accessible through the link placed on the page shown above. Also on the various pages of *the traders'* website www.acquistierisparmi.it, including the FAQ page (Frequently Asked Questions), the information provided to the consumers during the pre-subscription phase is very scanty and explains in general, even if assertively, the advantages obtainable by the consumer with the subscription to the service (compare what shown in the following Image no. 4), without a clear description of the actual nature and substance of said advantages and of the services offered, and without providing the consumers at least with an adequate instrument for the assessment of said advantages.¹⁵

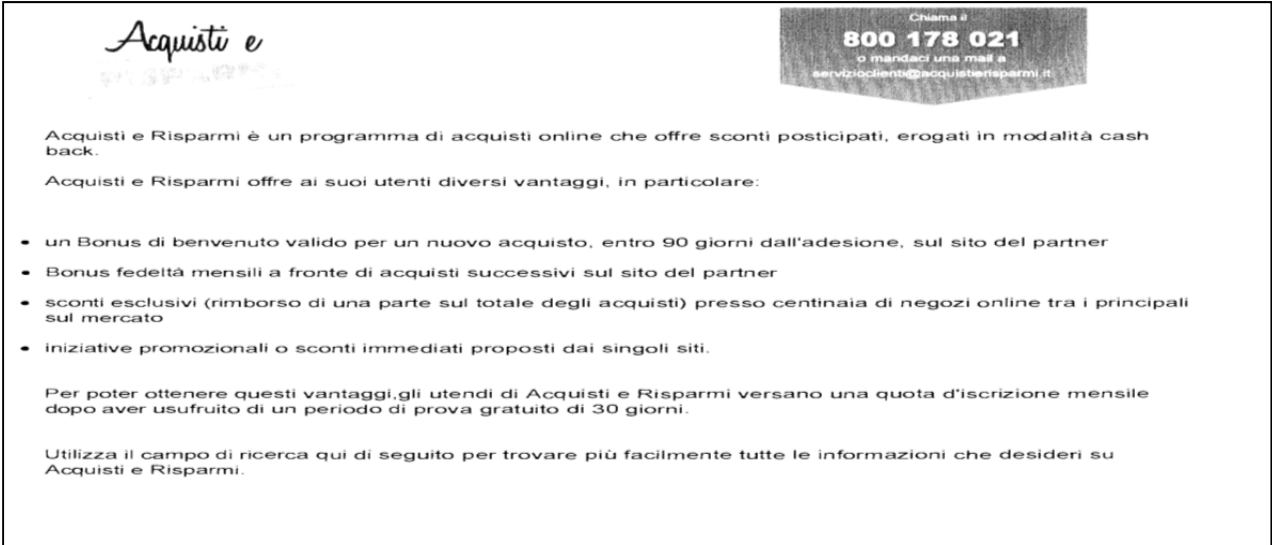
for a Fidelity Bonus for every further purchase carried out by the recipient on the partner's website, according to the conditions and the modalities indicated hereafter. The amounts of said Bonuses are established at the moment of the subscription to the service and are always consultable through the website www.acquistierisparmi.it. They are also indicated within the welcome letter which shall be sent to the recipient at the moment of the subscription to the programme. WEBLOYALTY reserves many advantages to the Recipients for the purchasing of goods and services carried out through the Service and offered by third party suppliers carefully selected and accessible through the network reserved to the Recipients of Purchases and Savings. The advantages offered by the single suppliers can be of different nature and vary depending on the availability, without notice. Among the advantages, there is the possibility to obtain deferred discounts, the so-called Cash back, according to timing and modalities indicated in the following point no. 4. The recipient can contact the "Customer Service" through the e-mail address or the toll-free number indicated on the website of Purchases and Savings, in order to verify if a specific advantage is available at the moment. The Terms and Conditions for the use of the Service can be modified by WEBLOYALTY. In such case, WEBLOYALTY shall notify the recipient via e-mail. In any case, the recipient shall always have the right to cancel the subscription.

¹⁵ See doc. no. 52 as mentioned in the index of the file, page no. 5, viewed on 22nd April 2013 on the website <http://www.acquistierisparmi.it.index.php>.

Image no. 4

QUINSTRISPARMI.IT

<http://www.acquistirisparmi.it/index.php>



Acquisti e Risparmi è un programma di acquisti online che offre sconti posticipati, erogati in modalità cash back.

Acquisti e Risparmi offre ai suoi utenti diversi vantaggi, in particolare:

- un Bonus di benvenuto valido per un nuovo acquisto, entro 90 giorni dall'adesione, sul sito del partner
- Bonus fedeltà mensili a fronte di acquisti successivi sul sito del partner
- sconti esclusivi (rimborso di una parte sul totale degli acquisti) presso centinaia di negozi online tra i principali sul mercato
- iniziative promozionali o sconti immediati proposti dai singoli siti.

Per poter ottenere questi vantaggi, gli utenti di Acquisti e Risparmi versano una quota d'iscrizione mensile dopo aver usufruito di un periodo di prova gratuito di 30 giorni.

Utilizza il campo di ricerca qui di seguito per trovare più facilmente tutte le informazioni che desideri su Acquisti e Risparmi.

16. Only under point 4 of the *General Terms and Conditions of the Service* it is provided that the subscription service *Purchases and Savings* concerns a system, the so-called cash back. This system consists in acknowledging the users who carry out purchases on online retail websites – that have an agreement for a specific platform - an amount of money every time they purchase goods and services on the selected suppliers' websites always through the website of the *service* mentioned. Said amount of money, the so-called cash back, can be a percentage of the price paid by the recipient, acknowledged as deferred discount, or an amount established in a different way (however always deferred). The deferred discounts (cash back) are subject to specific limitations and conditions. Moreover, also in this case, the timing and modalities to obtain the acknowledgement of said discounts are described – in the document *Terms and Conditions of the Service* - in an ambiguous and not very transparent manner, such not to enable a fully aware choice concerning the subscription to the service.¹⁶

¹⁶ Under point 4 of the document *Terms and Conditions*, in fact, it is stated as follows: “**4. Cash back - WEBLOYALTY shall pay every recipient an amount of money for every purchasing of goods and services carried out through the Service on the selected providers' websites and indicated in the programme Purchases and Savings. The amount acknowledged (hereafter "Cash back") is clearly indicated on the website and can be a percentage of the price paid by the recipient, acknowledged as deferred discount, or an amount established in a different way (however always deferred). 4.1. Modality for acknowledging the Cash back - For WEBLOYALTY to acknowledge the Cash back to the recipient, all the following conditions must be met: 4.1.1. the recipient must have set his/her browser in such a way that it will not refuse session or persistent cookies (for any need for clarifications, please view the privacy policy document on the website); 4.1.2. the recipient must access the selected supplier's website exclusively through the website Purchases and Savings, without modifying manually the URL addresses; other modalities (such as, for example, the direct typing on the browser of the supplier's website address, the finding of the same through research engines) entail the exclusion of the acknowledgement; 4.1.3. the purchase must be carried out within the ambit of one single session and the payment must take place exclusively online and at the same time of the purchase. In case of non-compliance with one or more of the above mentioned rules, the**

III. THE OUTCOME OF THE PROCEEDINGS

1) *The procedure*

17. With reference to the commercial practice described above, on 02nd May 2013 preliminary investigations were launched with no. PS8530 against the traders *Webloyalty International Sàrl* and *Webloyalty International S.r.l.* due to the alleged infringement of Articles 20, 21, paragraph 1, letter *b*), 22 and 26, paragraph 1, letter *f*) and *h*), of the Consumer Code.¹⁷

18. On 09th May 2013, the Parties were notified concerning the launching of the preliminary investigations, concomitantly with the inspections carried out at the premises of *Webloyalty International S.r.l.* and *Affinion International*

purchase shall not entail the Cash back. Should, for any reason whatsoever, the selected supplier not receive the amount of the sale of the product or service (by way of example and not exhaustive, the recipient's non-payment, the malfunctioning of the IT tools that manage the transaction, chance event, force majeure) or should the amount be returned to the recipient (by way of example and not exhaustive, owing to the carrying out of the possible right of recession, compromise agreement between the parties, etc.), the Cash Back shall not be acknowledged. 4.2. Calculation of the Cash back - The Cash back accumulated is indicated through a specially provided section of the website reserved to the recipient, through which the latter can verify and monitor the Cash back consequent to the purchases carried out. The recipient must verify periodically – and however thirty days after every purchase carried out – the correct calculation of the Cash Back, accessing the website through his/her own authentication credentials (Username and Password). Should the recipient find inaccuracies in the detail of the Cash back amounts, he/she must report them to WEBLOYALTY within 90 days from the date on which the good or service purchased was paid generating the Cash back which the recipients deems was not calculated or calculated incorrectly. 4.3. General Conditions for the Cash back – The amounts, the modalities and the timing for the acknowledgement of the Cash back, as well as the choice of the selected suppliers and their finding of the products and services for which the Cash back is acknowledged are subject to variations at WEBLOYALTY's discretion, without notice. Moreover, it is understood that not all the goods and services sold on the websites of the selected suppliers and indicated in the programme Purchases and Savings give the right to the acknowledgement of the Cash back. As regards this aspect, all related details may be verified in the areas specially provided by each supplier.

4.4. Modality to obtain the crediting of the Cash back – The recipient can ask to be credited the amounts acknowledged such as the Cash back upon the occurring of the following condition: the total amount of the Cash back must be equal to or above € 5.00 (five Euros). The crediting shall take place within 90 days from the recipient's request (or from the date in which WEBLOYALTY obtains all the data necessary for the crediting, if subsequent to the request date) on a bank or postal account in the recipient's name – or in two people's names. 4.5. Monthly limit of the Cash back – The maximum monthly amount of the Cash back which can be requested after the purchasing of goods and services through the selected suppliers' websites and indicated in the programme Purchases and Savings is equal to 300 Euros (three hundred Euros). Said monthly limit (Monthly limit of the Cash back) refers to each month in which the subscription to Purchases and Savings is valid. Any purchase carried out through the selected suppliers' websites and indicated in the programme Purchases and Savings within a month in which the above mentioned limit was already reached shall not be inserted in the calculation of the Cash back.

¹⁷ Upon the launching of the preliminary investigations, the main aspect assumed was the unfair conduct carried out by *Webloyalty* likely to mislead consumers concerning the nature and the characteristics of the service offered. Moreover, the practice was likely to be aggressive according to what provided for by Article 26, paragraph 1, letter *f*) and *h*), of the Consumer Code, since on one hand it induced consumers to subscribe to an onerous service without being totally aware of it (activation not requested), and on the other hand it induced them to activate the service in the sole conviction of being the addressees of a bonus to which they had right due to the purchase just carried out. See doc. no. 57 as mentioned in the index of the file.

S.r.l. (company belonging to the group Affinion Group Inc. - Delaware USA – to which also Webloyalty International S.r.l. belongs).¹⁸ During said inspections documentation was collected concerning the commercial practice object hereof.¹⁹

19. On 30th May 2013, according to the request for information notified upon the launching of the preliminary investigations, *the traders* submitted via e-mail the list of their partners and related contracts.²⁰ This answer to the request for information was integrated on 14th June.²¹

20. On 05th June 2013, the proceeding was extended subjectively to the main companies involved in the commercial practice which, through the advertising banners hosted on their websites, contributed in attracting a relevant number of consumers to subscribe to the service object of the commercial practice as mentioned herein. Specifically, the companies *Ryanair, Alitalia, Airone, eDreams, eBay* and *TicketOne*.²²

21. On 21st June 2013, pursuant to Article 27, paragraph 7, of the Consumer Code and to Article 8 of the Regulation, *Webloyalty* proposed commitments – to meet the concerns expressed to it by the Authority in its preliminary assessment.²³ Those commitments were rejected by the Authority in its meeting held on 24th July 2013 with resolution communicated to the Party on

¹⁸ Affinion International S.r.l. (company belonging to the group Affinion Group Inc - Delaware USA – to which also Webloyalty International S.r.l. belongs). The structure of the Group Affinion/Webloyalty is as follows:



¹⁹ See doc. numbers 63 and 64 as mentioned in the index of the file.

²⁰ See doc. no. 73 as mentioned in the index of the file.

²¹ See doc. no. 79 as mentioned in the index of the file.

²² See doc. no. 74 as mentioned in the index of the file.

²³ See doc. no. 88 as mentioned in the index of the file.

30th July.²⁴

22. On 25th June 2013, *TicketOne* submitted its defence together with the reply to the request for information as mentioned under the subjective integration of the proceeding.²⁵

23. On 04th July 2013, pursuant to Legislative Decree no. 70 of 09th April 2003, stating “*Implementation of directive 2000/31/EC concerning specific juridical aspects of services provided for the information of the society in the internal market, with particular reference to electronic commerce,*” assistance was asked to the English Department for Business, Innovation and Skills, to the Spanish Ministerio de Ciencia y Tecnología, Secretaría de Estado de Telecomunicaciones y para la Sociedad de la Información and to the Irish Department of Enterprise, Trade and Employment Enterprise, Sectoral and eBusiness Unit.²⁶

24. On 11th July 2013, *the traders* were heard and further information was requested to *Webloyalty* which was provided on 22nd July 2013.²⁷

25. On 16th July 2013, Ryanair answered the request for information formulated within the ambit of the subjective integration of the proceedings PS8530. The company also proposed, on 22nd July, commitments which were rejected by the Authority in the meeting held on 03rd September 2013 as communicated to the Party on 05th September.²⁸

26. On 24th July 2013, Alitalia, also on behalf of the subsidiary Airone, replied to the request for information as mentioned upon the notification of the subjective integration of the preliminary investigations.²⁹

27. On 29th July 2013, *eBay* submitted its answer to the request for information as mentioned upon the notification of the subjective integration of the preliminary investigations.³⁰

28. On 02nd August 2013, the company *eDreams* submitted commitments, then integrated on 16th October. Said commitments were rejected by the Authority in the meetings respectively held on 23rd September and 29th October 2013 as communicated to the Party on 27th September and 05th

²⁴ The commitments were rejected by the Authority for inadmissibility because regarding a conduct that, if ascertained, could integrate a commercial practice “*clearly unfair and serious,*” for which Article 27, paragraph 7, of the Consumer Code, cannot find implementation. See doc. no. 141 as mentioned in the index of the file.

²⁵ See doc. no. 95 as mentioned in the index of the file.

²⁶ See documents numbers 110, 111 and 112 as mentioned in the index of the file.

²⁷ See documents numbers 121 and 133 as mentioned in the index of the file.

²⁸ See documents numbers 127, 134 and 167 as mentioned in the index of the file. The commitments, also in this case, were rejected for the same reasons as mentioned in the previous note no. 24).

²⁹ See doc. no. 137 as mentioned in the index of the file.

³⁰ See doc. no. 140 as mentioned in the index of the file.

November 2013.³¹

29. On 17th September 2013, the Authority received *eDreams*'s answer concerning the request for information formulated within the ambit of the subjective integration of the proceedings PS8530.³²

30. On 23rd September 2013, the Authority resolved to extend the term of the conclusion of the proceedings to 27th January 2014. The resolution was notified to the Parties on 26th September 2013.³³

31. On 07th October 2013, a request for information was submitted to *the traders* whose answer arrived on 21st October 2013.³⁴

32. On 15th October 2013, the company *eBay* was heard and concomitantly requested to provide specific documentation to be file in the official records of the preliminary investigations.³⁵

33. On 16th October 2013, the Authority received a communication from the Spanish Ministerio de Industria, Energia y Turismo - Subdireccìon General de Servicios de la Sociedad de la Informaciòn.³⁶

34. On 30th October and 29th November 2013, *the traders* were heard again.³⁷

35. On 08th November 2013, the company *eDreams* was heard.³⁸

36. On 12th November 2013, the company *Ryanair* was heard.³⁹

37. On 02nd December 2013, the Parties were notified concerning the closing date of the preliminary investigations, pursuant to Article 16, paragraph 1, of the Regulation, established for 16th December 2013.⁴⁰

38. On 04th December 2013, the Authority received a note from the company *eBay* in answer to the information requested during the hearing of 15th October 2013.⁴¹

39. On 13th December 2013, the Authority received *eBay*'s conclusive defensive notes.⁴²

40. On 16th December 2013, the Authority received the conclusive defensive notes of the following companies: *Webloyalty*, *Ryanair*, *Alitalia* and *Airone*; on the same date, *TicketOne* filed a communication concerning the practice

³¹ See documents numbers 148, 184, 201 and 215 as mentioned in the index of the file. See also previous note no. 24 concerning the (same) reasons of rejection.

³² See doc. no. 174 as mentioned in the index of the file.

³³ See doc. no. 183 as mentioned in the index of the file.

³⁴ See documents numbers 188 and 203 as mentioned in the index of the file.

³⁵ See the report of the hearing, doc. no. 198 as mentioned in the index of the file.

³⁶ See doc. no. 199 as mentioned in the index of the file

³⁷ See the reports of the hearings, documents numbers 212 and 229 as mentioned in the index of the file.

³⁸ See the report of the hearing, doc. no. 218 as mentioned in the index of the file.

³⁹ See the report of the hearing, doc. no. 220 as mentioned in the index of the file.

⁴⁰ See doc. no. 232 as mentioned in the index of the file.

⁴¹ See doc. no. 236 as mentioned in the index of the file.

⁴² See doc. no. 246 as mentioned in the index of the file.

under examination, and *eDreams* submitted its conclusive defensive notes (received on 17th December).⁴³

41. On 17th December 2013, an opinion was asked to the Communications Regulatory Authority, which was received on 15th January 2014.⁴⁴

42. On 23rd December 2013, the Authority notified the European Commission's General Directorate for Internal Market concerning its intention to adopt inhibitory measures against the companies: *i) eDreams, ii) Ryanair* and *iii) eBay*. The same communication was sent to, concomitantly and respectively: *i) the Spanish Ministerio de Ciencia y Tecnología, Secretaría de Estado de Telecomunicaciones y para la Sociedad de la Información, Ministerio de Sanidad, Servicios Sociales e Igualdad - Instituto Nacional del Consumo and Ministerio de Industria, Energía y Turismo Secretaría de Estado de Telecomunicaciones y para la Sociedad de la Información; ii) the Irish Department of Enterprise, Trade and Employment Enterprise, Sectoral and eBusiness Unit and Competition Authority; iii) the English Department for Business, Innovation and Skills and Office of Fair Trading.*⁴⁵

2) The evidence collected

43. Upon the launching of the preliminary investigations on 02nd May 2013, an inspection was carried out on 09th May 2013 in Milan at the premises of the companies *Webloyalty International S.r.l.* and *Affinion International S.r.l.* On the basis of the elements acquired in said context, on 05th June 2013 the proceedings were extended subjectively to the companies indicated in the previous point I.

44. All the traders notified concerning the launching of the proceedings submitted their defensive notes, provided the commercial contracts in force with *Webloyalty*, answered specific requests for information and provided documentation which was added to what already acquired during inspections. Several Parties were also heard, upon specific request (*Webloyalty* for three times, *eBay, eDreams* and *Ryanair*).

a) The evidence collected from Webloyalty

45. During inspections, about 100 reports submitted by consumers (in

⁴³ See documents numbers 247, 248, 249, 251 e 253 as mentioned in the index of the file.

⁴⁴ See documents numbers 256 e 264 as mentioned in the index of the file.

⁴⁵ See documents numbers 258, 259 e 260 as mentioned in the index of the file.

electronic format) to the Police and Carabinieri in various Italian regions were filed in the official records of the proceedings PS8530. Said reports mainly notified the non-authorized withdrawal of amounts of money from the consumers' bank accounts after subscribing to the service *Purchases&Savings*.⁴⁶

46. In the same context, it was clear that the modalities used to deal with said reports envisaged, on one hand, a more or less standard policy of total refund for the reporting consumers and, on the other hand, the sending of standard documentation in answer to the requests submitted by the Police representing three main aspects: 1) the presentation of the Group *Webloyalty*; 2) the modalities of subscription to the service of the reporting party and 3) the reporting party's cancellation from the programme with the refund of the amounts paid.⁴⁷

47. The frequency with which the consumers reported the unaware withdrawal of 12 Euros a month from their credit card is witnessed by several e-mails filed in the official records with statements such as the following: (*Series of e-mails dated 21st September 2012*):

- "Excuse me, every time we receive this kind of report, the instructions are to cancel the recipient immediately, right? Instead, in case of a possible refund we are to wait for instructions from (...), right?"

- "Right, this way we don't lose trace of cancellations, since we are receiving at least a report a day...."

- Hi (...), the instructions received from (...) (in compliance with the total refund policy) are to cancel and if possible immediately refund. If it is not possible to carry out the refund, we are to write to the authority stating that we will refund as soon as we receive the bank account data. (...)

- Correct. So every time we receive a report from the police: BASC produce all the documentation while (...) cancels the members and if possible carries out the refund. OK? (...).⁴⁸

48. On the basis of the elements collected, it is also clear that, as regards the Italian market, *Webloyalty International Sàrl* is the company under Swiss law that realized the programme called "*Purchases and Savings*," currently

⁴⁶ See the DVD enclosure no. 2 to doc. no. 64 as mentioned in the index of the file, the *CLAIMS* file as well as the reports as mentioned in the file WL Police request retail ITALY and General Police request retail ITALY present in the same file.

⁴⁷ Analogous documentation was sent to the Authority by *the traders* in the pre-investigation phase concerning a consumer's report. See doc. no. 20 as mentioned in the index of the file.

⁴⁸ See the DVD enclosure no. 2 to doc. no. 64 as mentioned in the index of the file, present within the "*Claims*" file.

offered through a webpage advertised on its partners' websites;⁴⁹ *Webloyalty International Srl*, instead, is a company under Italian law that operates as commission agent, promoting contracts on the Italian market for the purchasing of advertisement spaces on partners' websites on behalf of the consigner *Webloyalty International Sàrl*.

49. According to what stated by *the traders*, the service enables its users to carry out purchases on about 300 online retail websites operating under agreement by adhering to a specific platform.

50. In order to subscribe to "*Purchases and Savings*," the user must first carry out a purchase on one of the partners' websites. In fact, the subscription takes place exclusively passing through a banner positioned on the Thank you page of the partner's website. It is not possible for a user to spontaneously subscribe to the service from the website www.acquistierisparmi.it.

51. By clicking on the banner, the consumer is directed to the purchase page of the programme and, once subscribed, there is the possibility to obtain an initial bonus – through the payment in the form of cash back – as soon as a further purchase is carried out on the partner's website through which the subscription to the programme took place.⁵⁰

The partnership agreements

52. On the basis of the preliminary investigations, it is clear that *Webloyalty* entered into, among others, specific contractual agreements with the companies Parties of the proceedings hereof.

53. On the basis of said agreements, the partner undertook to promote on its own website the service provided by *Webloyalty*, and the terms and conditions are defined on the basis of which the *partner* must promote the service within the spaces of its website upon the payment of a remuneration

⁴⁹ *The traders* stated that it is *Webloyalty International Sàrl* to publish the banner on its partner's website, within which it is the same company to own the mentioned web space, that is the banner (the so-called "hosting"), just like the subscription page. Therefore, the partner in general does not control these banners and the subscription page.

⁵⁰ These elements are aimed at increasing the retention of the consumers that subscribed to the programme of *Webloyalty*'s partner. Said consumers have the possibility to obtain an additional 10 Euro bonus a month for every new purchase carried out on the partner's website where the banner was present through which they accessed and then signed the subscription service. Once subscribed, the recipient can click and access the website of one of the sellers, through the section dedicated to the online shops of the website "*Purchases and Savings*." During the first month of subscription, the consumer receives several e-mails that remind him/her about the subscription to the programme, the free 30 day trial period, as well as the following debit of the 12 Euros a month on the credit card on which the withdrawal was authorized. The recipients can ask for the cancellation by calling or contacting in some other way the customer service as indicated in the information material concerning the programme. There is no minimum limit of expense.

by *Webloyalty*.

54. Moreover, said contracts provide for the positioning of the mentioned banners, in reserved spaces, on the page confirming the purchasing of the goods/services offered by the partners on their websites.

55. The partner must promote *the traders'* services in compliance with the conditions established in the contracts, and the subscription page to which the consumer is directed must be cobranded and indicate the partner's brand and the name of the service ("Subscription page").⁵¹

56. The contracts provide for different remuneration systems almost always connected to the number of consumers who subscribe to the service *Purchases and Savings* through the partners' websites. However, said systems envisage that a relevant part of the subscription fee, according to different mechanisms of calculation for the different contracts, is withdrawn from the trader who hooked the consumer.

57. The ordinary remuneration system is based on the so-called CPA, that is the remuneration which the partner is owed for every subscription of a new recipient which took place through the partner's website. The amount of the CPA is represented by a percentage of the subscription fee (12 Euros) that the *traders* withdraw from the partner.⁵²

58. In other cases, the remuneration system is based on the mechanism of the visualizations (the so-called CPT, that is 1000 *impressions viewed*), however connected and corrected with the number of consumers that subscribe to the service.

59. The outcomes show that a relevant part of the revenues deriving from the subscriptions is withdrawn from the partners, from a minimum of 12% up to about 50% of the revenues.

60. The following Table 1 summarizes all the remuneration mechanisms adopted by *Webloyalty* with the partner companies hosting on their websites the banners linking to *acquistierisparmi.it*

⁵¹ This is not envisaged in eBay's case, since the agreements consisted in advertising contracts.

⁵² In the case of *Alitalia* and *Airone*, the remunerations are represented by a fee equal to *[omissis]*. Moreover, for *Alitalia/Airone*, the contract provides for a further remuneration *[omissis]*.

Table no. 1

PARTNER	REMUNERATIONS without VAT from the launching to 30th Sept. 2013	% on the Total without VAT	REMUNERATION SYSTEM ADOPTED	AGREEMENT DETAILS
Air One	[omissis]	[omissis]	[omissis]	[omissis]
Alitalia	[omissis]	[omissis]	[omissis]	[omissis]
eBay	[omissis]	[omissis]	[omissis]	[omissis]
Edreams	[omissis]	[omissis]	[omissis]	[omissis]
Ryanair	[omissis]	[omissis]	[omissis]	[omissis]
TicketOne	[omissis]	[omissis]	[omissis]	[omissis]
Key to symbols: E-mail: remuneration for the subscription through the purchase confirmation e-mail				
POB: remuneration for the subscription through the purchase confirmation page				
KEY TO SYMBOLS OF THE REMUNERATION SYSTEM				
CPA	Remuneration which the Partner is owed by WL for every new user's subscription to Purchases and Savings			
kicker CPA	Higher value CPA (compared to the minimum CPA of reference) which is applied depending on the reaching of a pre-established net conversion rate.			
CPT	Remuneration which the Partner is owed calculated on the basis of every one thousand (1,000) Impressions viewed (that is visualizations of the banner on the partner's website – the so-called <i>impressions viewed</i>).			
kicker CPT	Higher value CPT (compared to the minimum CPT of reference) which is applied depending on the reaching of a pre-established net conversion rate (visualizations of the banner – the so-called <i>impressions viewed</i> – on the partner's website divided by the number of subscribers).			
Greater of CPT/CPA	Criterion according to which the highest remuneration between the CPT and CPA calculation is owed, depending on the same activity (for example: for the activity concerning a partner, the calculation is based on the remuneration that would result by applying both the CPA and the CPT. The highest amount among the two is applied).			
Marketing Launch Contribution	Amount paid by Webloyalty as advance payment at the moment of launching the partnership on the basis of the volume of <i>impressions viewed</i> as provided for within the partnership.			
Revenue Share	Mechanism which provides for a sharing of the revenue per-established in % between Webloyalty and the Partner company.			

Quantitative data

61. The following Table no. 2 shows in detail the number of consumers that

subscribed to the programme "*Purchases and Savings* " from October 2011 (date of the launching of the programme in Italy) up to March 2013, divided according to each of *Webloyalty*'s partners,⁵³ for a total amounting to [*more than 100,000*].

⁵³ See file called *Retail_members_20130405_March*, enclosed to doc. no. 63 as mentioned in the index of the file.

Table no. 2

	2011 Oct	2011 Nov	2011 Dec	2012 Jan	2012 Feb	2012 Mar	2012 Apr	2012 Aug	2012 June	2011 July	2012 Aug	2012 Sept	2012 Oct	2012 Nov	2012 Dec	2013 Jan	2013 Feb	2013 Mar	Total
Ryan Air	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]
eDreams	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]
eBay	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]
Alitalia	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]
TicketOne	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]
Air One	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]
Others	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]
TOTAL	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]

62. The following Tab. no. 3, instead, shows the number of “*active*” consumers, that is net of the cancellations occurred always as of October 2011 up to March 2013:⁵⁴ in particular, it is clear that already during the second half of 2012 the active consumers are comprised between 30 and 40 thousand.

⁵⁴ See previous note.

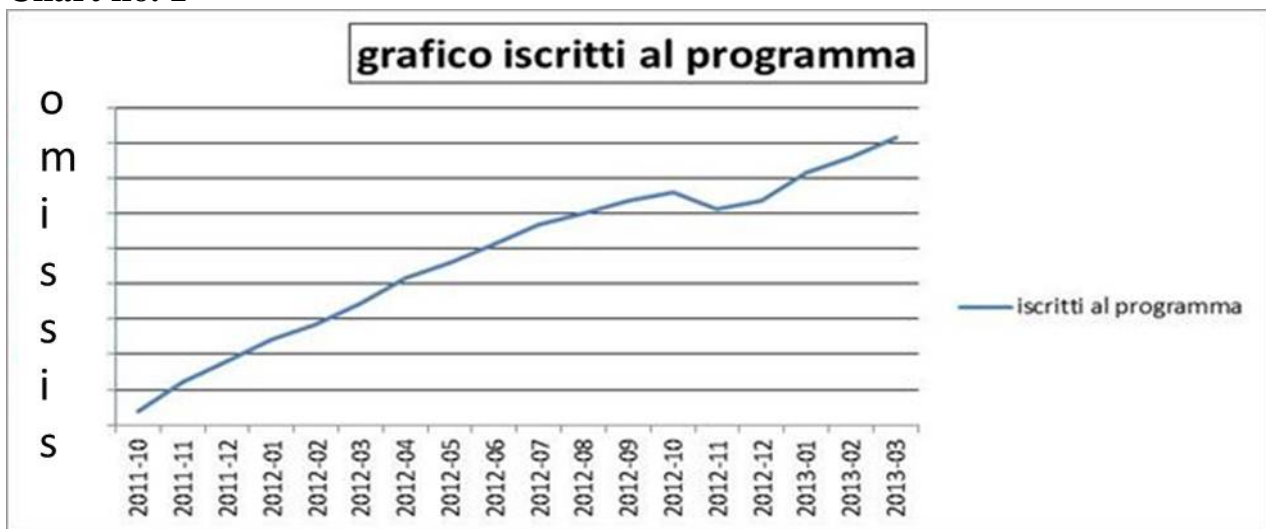
Table no. 3

	2011 Oct	2011 Nov	2011 Dec	2012 Jan	2012 Feb	2012 Mar	2012 Apr	2012 May	2012 June	2011 July	2012 Aug	2012 Sept	2012 Oct	2012 Nov	2012 Dec	2013 Jan	2013 Feb	2013 Mar
Ryan Air	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]
eDreams	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]
eBay	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]
Alitalia	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]
TicketOne	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]
Air One	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]
Others	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]
TOTAL	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]	[omissis]

63. On the basis of the data shown in the previous Table no. 3, it is clear that the total revenues obtained by *the traders* in the period of reference (Oct. 2011 – Mar. 2013) amounted to *[more than 5 million]* Euros, far above the datum communicated by the trader during the investigation (see par. 65).

64. The trend of the number of subscribers to *Purchases and Savings* in the period of reference – as mentioned in the previous Table no. 4 – shows an increasing trend, as evidenced by the following chart⁵⁵

Chart no. 1



65. *The traders* stated that, up until **30th April 2013**:⁵⁶

- a) the number of subscribers was equal to n. *[omissis]*, while the number of requests of cancellation received and carried out was equal to no. *[omissis]* (about 62%). Therefore, the number of consumers active on the service is more than no. *[omissis]*;
- b) the total amount of revenues deriving from the consumers' subscriptions amounts to Euros⁵⁷ *[omissis]*;
- c) Webloyalty International Sàrl's customer service receives an average of complaints a month equal to no. *[omissis]*.⁵⁸ All those who call for a complaint are cancelled from the programme, whenever this is expressly requested;

⁵⁵ This is the number of *net subscriptions*, that is the total subscriptions net of the cancellations carried out by consumers. See *infra*, following paragraph no. 65.

⁵⁶ *Webloyalty* stated that the data shown in the text are susceptible to variances due to the continuous evolution of the customer base.

⁵⁷ Said datum is not consistent with what stated in the previous paragraph 63.

⁵⁸ Said datum is not consistent with what stated in the previous paragraph 47.

- d) the number of refunds carried out was equal to no. [omissis];⁵⁹
- e) the total amount of the sums withdrawn from the consumers as deferred discounts was equal to [10-50 thousand] Euros;
- f) about [15-20 million] banners were diffused presenting the offer “*Purchases and Savings*” on the purchase confirmation pages of the partners’ websites and [1-5 million] clicks were recorded on these banners.

b) *Further evidence collected from the other Parties involved in the proceedings*

Ryanair

66. *Ryanair* hosted the advertisement of the product object of the investigation as of October 2011; the consumer, after purchasing the flight ticket on the company’s website, accessed a summarizing page where, among other things, there were three advertising banners concerning the service offered by *Webloyalty* (one placed in the upper part of the page, the other in the middle, and the third in the lower part). Moreover, a message showed up in the lower part of the page, however visible, connecting to a third party’s website. By clicking on the link “*CONTINUE*,” the consumer ended up landing on *Webloyalty*’s website.

67. *Ryanair* stated that it received a remuneration based exclusively on the fact that it offered a space on its website dedicated to *Webloyalty*’s banners (the so-called cost per impression), while allegedly it did not receive any remuneration as regards the amount of customers acquired for *Webloyalty* through *Ryanair*’s website (clicks per acquisitions).

68. *Ryanair* provided an estimate of the remunerations received in the period October 2011 – June 2013 on the basis of the number (about [omissis] million) of actual visualizations of *Webloyalty*’s banner published on the confirmation page concerning the acquisition of a *Ryanair* customer residing in Italy (the so-called *impression viewed*), equal to about [omissis] Euros.⁶⁰

69. According to what stated by *Ryanair*, the percentage of subscribers to the service as regards *Ryanair*’s Italian customers is equal to [omissis]%.

⁵⁹ It falls within *Webloyalty International Sàrl*’s general praxis to refund the recipients who contact the company asking to cancel the subscription or ask for a refund, regardless of the circumstance for which the recipients are complaining.

⁶⁰ Said estimate concerns the so-called minimum commitment which, in *Ryanair*’s case, according to what explained in the framework agreement and in the Amendment to Master Service Agreement – Part 2 – Italy – Specific Provision, signed with *Webloyalty*, is equal to [omissis] € for CPT. *Ryanair* could, though, benefit from the further potential remunerations deriving from [omissis]. See the professional’s remuneration system as shown in the previous Table no. 1, [omissis].

Alitalia and Airone

70. The service was launched on 19th December 2012, both on *Alitalia*'s and *Airone*'s websites. *Webloyalty*'s banners are on the receipt of the ticket, on the e-mail confirming the purchase, and on the confirmation of the check-in, which is constituted by the boarding pass.

71. Differently from the other Parties involved in the proceedings, the bonus offered by *the traders* on *Alitalia*'s and *Airone*'s websites is equal to 20 Euros; also the remuneration system adopted shows differences as regards the other partnership agreements (see previous Tab. no. 1). The airline companies, in fact, have the right to *[omissis]*.

72. *Alitalia* and *Airone* provided an estimate of the remunerations received in the period 19th December 2012 – 30th November 2013, equal to about *[omissis]* Euros (*Alitalia*) and about *[omissis]* Euros (*Airone*).⁶¹

73. Besides the fees provided for by contract, which are paid by *the traders* *[omissis]* (Article 4, *letter a*) of the contract), the airline companies received from the same a *[omissis]* equal to Euros *[omissis]* (*Alitalia*) and *[omissis]* Euros (*Airone*).

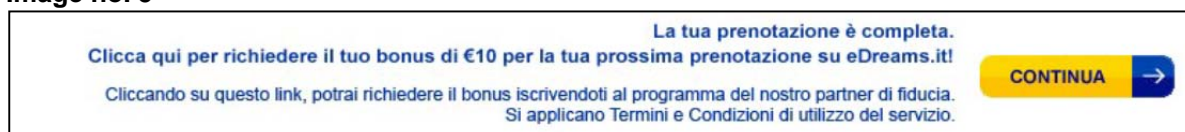
eDreams

74. The service *Purchases and Savings* is active on the website *www.edreams.it* as of 13th February 2012.⁶² The remuneration system adopted in favour of *Vacaciones eDreams* and provided for by the agreement with *Webloyalty* consists in the highest amount between: *i*) *[omissis]* Euros for every thousand impressions of the banner for the month of reference,

⁶¹ See doc. 251 as mentioned in the index of the file.

⁶² During the preliminary investigations, *eDreams* stated that the banner concerning the service "*Purchases and Savings*" was activated on the website *edreams.it* starting from the end of 2012. Beforehand, that is from 13th February 2012 up to 13th December 2012, the subscription modalities to the service consisted in a link positioned on the booking confirmation page (the so-called Thank you page), by "*clicking*" on which the consumer was readdressed to the subscription page of the service (see following image no. 5).

Image no. 5



In order to integrate what indicated in the notes dated 17th September 2013, *eDreams* stated that the total revenues obtained from the moment in which the banner concerning the service "*Purchases and Savings*" (in the version prior to the on-line changes carried out starting from 19th September 2013) was put online, amounted to *[omissis]* Euros (on a total of *[omissis]* Euros, equal to the total revenues obtained from the beginning of the collaboration with *Webloyalty*, on 13th February 2012).

and **ii)** [omissis] Euros for every new user subscribed through *eDreams*'s website, for the month of reference.

75. Starting from the date in which the collaboration with *Webloyalty* began, *eDreams* realized a total amount of revenues (from 31st August 2013) equal to Euros [omissis], of which Euros [omissis] in the period from 13th February 2012 to 31st December 2012, and Euros [omissis] for the period from 01st January 2013 to 31st August 2013.

eBay

76. As of June 2012, *eBay* signed an advertising contract with *Webloyalty*, on the basis of a "standard" model which it utilises with all its advertisers,⁶³ aimed at enabling the publication of advertisements or advertising banners created by *Webloyalty*. The advertising campaign was interrupted by *eBay* on 30th April 2013;⁶⁴ therefore, it lasted for about ten months.

77. It was an Advertising Insertion Order duly signed by *Webloyalty*, containing the main conditions of every campaign (duration, quantity, website on which the banners were to be visible, etc.). The contract also included *eBay*'s general conditions concerning the supplying of advertising spaces on the Italian website (Advertising Terms and Conditions).

78. *eBay*'s remuneration deriving from the mentioned contracts is based on the so-called "CPT" payment model.⁶⁵ Said mechanism, associated to the visualization of the banner on behalf of *eBay*'s website users, is the same applied by *eBay* for other advertising insertions.⁶⁶

79. On the basis of the documentation filed in the official records by *eBay*, it is clear that the price for the CPT applied to *the traders* for the publication of the banner Purchases and Savings is comprised between [omissis] Euros; always on the basis of the documentation submitted by *eBay*, the price applied to the other advertisers is comprised between [omissis] Euros.⁶⁷

⁶³ Without regulating or agreeing on the different modalities nor concluding any partnership with said operator.

⁶⁴ *eBay* provided documentation showing the reasons for the unilateral rescission of the contractual agreement with *Webloyalty* and the inexistence of a partnership between *Webloyalty* and *eBay*. See doc. no. 238 as mentioned in the index of the file.

⁶⁵ In other words, the cost per one thousand visualizations, that is a model through which the advertiser (in this case *Webloyalty*) pays a pre-established amount every 1,000 visualizations of the advertising banner.

⁶⁶ *eBay* filed several contracts signed, in the same period (June 2012) with other advertisers. See doc. no. 140 as mentioned in the index of the file.

⁶⁷ See doc. no. 140 as mentioned in the index of the file, in particular the contracts signed by *eBay* with other *traders*. With following note of 05th December 2013 (see doc. no. 238 as mentioned in the index of the file), *eBay* made known that for the so-called "CPT" campaigns, that is the number of pages visualized containing a banner, the cost is linked to the visibility of the pages on which the banner is published. The first page that a user sees when connecting to *eBay* has a higher value (and therefore a higher cost for the advertiser); therefore, if a customer wants to be sure that his/her advertisement has relevance, the customer will have to publish it on a page with high priority. In *Webloyalty*'s case, initially the priority chosen was very low and in fact in the first advertising contract *Webloyalty* paid CPT equal to

80. *eBay* notified the amount of remunerations received during the period of reference. In particular, for the advertising service offered by *eBay*, *Webloyalty* paid the company a total amount equal to Euros⁶⁸ [omissis].

TicketOne

81. The advertising banner present on the "*Purchase confirmation page*" on *TicketOne*'s website was published starting from 21st January 2013. The remuneration system agreed upon with *Webloyalty* provides for [omissis].

82. Starting from the date of publication of the banner on the "Purchase confirmation page" on *TicketOne*'s website (21st January 2013) up to 31st May 2013, the revenues (VAT excluded) obtained, for [omissis], by *TicketOne* were equal to [omissis] Euros.

3) *The Parties' arguments*

a) Webloyalty

83. During the preliminary investigations (and already prior to the launching of the proceedings), *Webloyalty* submitted a series of defensive notes with which it notified that it had not carried out any unfair commercial practice whatsoever.

84. In particular, *Webloyalty* argues that the aim of providing the public with a clear and complete set of information may require – and actually requires – readdressing to different and further pages with regard to the main advertising message (in the case at hand, the "banner"), due to the unbiased technical complexity of the concepts referred to in the presentation of the offer, which are not such to be treated clearly within a promotional

[omissis] Euros. Then, after agreements aimed at increasing the priority of the publication of the banner, the price for CPT passed to [omissis] and then [omissis] Euros, price applied to every advertiser for the publication of its own announcements on *eBay*'s website with a certain level of visibility. See doc. no. 238 as mentioned in the index of the file.

⁶⁸ See doc. no. 140 as mentioned in the index of the file, in particular enclosure no. 9, invoices.

message. Therefore, the level of diligence that can be reasonably attended and expected by an operator of the sector, must keep said modalities into account as well as the related objective difficulties for the transmission of the message.

85. The information provided can be defined neither omissive, nor lacking, nor misleading in any way whatsoever. The website must be considered in its whole in order to evaluate the completeness of the information provided to the consumer, keeping into consideration not only the descriptive part of the offer, but also and especially the enclosures that can be downloaded from the contractual information provided.

86. The user is given the possibility to consult the offer "*Purchases and Savings*" after carrying out a purchase on one of the partners' websites and clicking voluntarily on the banner in which it is specified that the offer is conditioned to the subscription to a programme, as well as to the terms and conditions of the service.

87. In order to subscribe to the programme, the consumer must personally fill in a form providing all sensitive data, including the credit card details. This page is presented in such a way to provide the potential recipients with all the information necessary before deciding whether or not to subscribe to the service.⁶⁹ In particular, the consumer is informed several times (both before and after the subscription) concerning the payment of a monthly 12 Euro subscription fee at the end of a 30 day free trial period. During this time, specific e-mails are sent to the consumers so as to increase awareness concerning their subscription to a paid service. Moreover, *Webloyalty* often mentions and reminds its subscribers concerning the possibility to be cancelled from the programme.⁷⁰

88. *Webloyalty* highlighted that from October 2011 (date on which the programme "*Purchases and Savings*" was launched in Italy) to June 2013, taking as reference the number of clicks registered on the banners, (see paragraph no. 65), only 3.75% of the consumers subscribed to the programme, while 96.25% of the viewers did not manifest any interest in the offer. Comparing this datum to the total number of visualizations of the banner, the phenomenon is even *less* significant (0.59%).

⁶⁹ In particular, *the traders* stated that the consumer is in no way whatsoever "obliged" to visit the website "*Purchases and Savings*" and that once the purchase is carried out on the partner's website, the consumer visualizes the banner in the context of a page placed always in the ambit of the partner's website and can choose to continue clicking and visualizing the page that enables him/her to have information on *Webloyalty*'s programme or leave the partner's website closing the window of the surfing programme through the specially provided ecs [X] placed in the right up corner. Even at the end of the subscription phase, close to the subscription button, there is a link which enables not to choose to subscribe that states "*No thank you, I want to go back to the website of < partner's name >*".

⁷⁰ This is advertised on the subscription webpage and in other communications for the recipients.

89. According to what stated by *the traders*, the service "*Purchases and Savings*" is likely to enable its subscribers to carry out purchases on about 300 websites of online retailers under specific agreement and to recover a percentage at least equal to 10% of what spent.

90. In order to justify the statement on the landing page concerning the possibility *to save thousands of Euros a year* within the ambit of the programme *Purchases and Savings*, *the traders* highlighted that the amount of cash back that can be cumulated during one month amounts to 300 € in addition to the 10 € monthly bonus in case of purchases on the partner's website through which the recipient initially subscribed. This means that a user of the service can save up to 3,720 € a year in case of purchases that entail a relevant amount of expenditure.

91. Lastly, *Webloyalty* stated the absence of aggressiveness of the practice deeming that no straining or coercion was carried out on the consumer who, instead, was consciously able to choose whether or not to register on the website *Purchases and Savings*.

b) Ryanair

92. On 16th December 2013, Ryanair submitted its conclusive notes highlighting its non-involvement in the modalities for activating *Webloyalty*'s service, since it does not establish nor does it have any role in establishing the characteristics of the same, both the intrinsic ones - such as the structure of the service - and the extrinsic ones – such as the modality for the acquisition of customers.

93. Preliminarily, the trader stated that there is no obligation to pass from *Ryanair*'s website to the website www.acquistierisparmi.it, or to subscribe “automatically” to *Webloyalty*'s services. The banner suggests only one of many (avoidable) additional services that *Ryanair* offers on its website.

94. On the basis of the contract signed with *Webloyalty*, *Ryanair* does not share its customers' personal data. Consumers subscribing to *Webloyalty*'s services must autonomously provide their data, through an operation having nothing to do with and totally autonomous from *Ryanair*'s website.

95. *Ryanair*'s revenues are not in relation with the number of subscribers to *Webloyalty*'s services (the so-called cost per acquisition), but only based on the publication of the banners on the website www.ryanair.com/it (the so-called cost per impression). In fact, the contract provides for *[omissis]*. In the case at hand, *Ryanair*

is paid exclusively on the basis of [omissis] not receiving any revenue on the basis of the number of landings on the landing page *www.acquistierisparmi.it* or of the number of subscriptions to the services offered, and it is therefore totally indifferent – in economic terms – whether or not the content of the banner or of *Webloyalty*'s service is deceptive.

96. Moreover, the Master Service Agreement – similarly to the specific agreement applied to the case at hand, the so-called SPT Specific Partner Terms – which regulates the relationship between *Ryanair* and *Webloyalty*, cannot be interpreted as a partnership contract neither by the Parties nor by third parties. The object of the contract is typical of a hosting service which limits *Ryanair*'s role in offering a space on its webpage to those wanting to promote their services, with modalities decided autonomously by the same.

97. *Ryanair*'s control is limited to what is materially published on its website – and therefore cannot be extended to the landing page or to the service observed in its whole – within the limits of action allowed by a hosting provider. In other words, *Ryanair* does not have the right to prohibit the publication of *Webloyalty*'s banner, nor can it complain concerning the content, unless it has sure information concerning the infringement of mandatory rules. *Ryanair*'s activity, in the case at hand, is regulated by Leg. Decree no. 70/2003 which implements directive 2000/31/EC concerning specific juridical aspects of the services of the information society in the internal market with particular reference to electronic commerce, and in particular by Articles 16 and 17.⁷¹

⁷¹ Articles 16 and 17 of Leg. Decree 70/2003 are as follows (Implementation of Directive 2000/31/EC concerning specific juridical aspects of the information services in the internal market, with particular reference to electronic commerce): **Article 16** (Liability in the activity of information memorization - Hosting) - 1. In providing an information service consisting in the memorization of information provided by an addressee of the service, the provider is not liable for the information memorized upon request of an addressee of the service, upon the condition that the provider: is not really aware of the fact that the activity or information is illicit and, as regards the compensation actions, is not aware of facts or circumstances which make clear the illegality of the activity or information; as soon as aware of said facts, upon communication of the cognizant authorities, it acts immediately to remove the information or make it inaccessible 2. The provisions as mentioned under paragraph 1 do not apply if the addressee of the service acts under the authority or the control of the provider. 3. The cognizant judicial or administrative authority can require, even urgently, that the provider, in carrying out the activity as mentioned under paragraph 1, hinders or puts an end to the infringements carried out. - **Article 17** (Absence of the general obligation of surveillance) - 1. In providing the services as mentioned under Articles 14, 15 and 16, the provider is not subjected to a general obligation of surveillance concerning the information that it transmits or memorizes, not to a general obligation to research actively facts or circumstances that indicate the presence of illicit activities. 2. Without prejudice to the provisions as mentioned in Articles 14, 15 and 16, the provider is therefore obliged: to duly inform the surveillance judicial or administrative authority, should it be aware of alleged illicit activities or information concerning an addressee of the information service; to duly provide, upon the cognizant authorities' request, the information in its possession which enables to identify the addressee of its services with which it has agreements concerning the data to memorize, in order to find and prevent illicit activities. 3. The provider is civilly liable of the content of said services in case, requested by the surveillance judicial or administrative authority, it did not act promptly to impede the access of said content, that is if, being aware of the illicit or prejudice character of one third of the content of a service to which it ensures the access, it did not inform the cognizant authority.

98. In any case, the trader does not deem the content of *Webloyalty*'s advertising campaign deceitful, since the promotional message must be assessed in its whole, that is taking into account the quality and quantity of information provided to the consumer prior to the subscription and not with exclusive regard to the content of the so-called first contract banner which has a totally neutral content as regards the modalities of presentation of the service compared to those presented on the website *www.acquistierisparmi.it*.

99. Lastly, according to the Irish airline company the rejection of the commitments submitted during the preliminary investigations is unjustified, and the company unilaterally undertook to publish on its website only those banners from *Webloyalty* complying with the standards of transparency and fairness.⁷²

c) *Alitalia – Airone*

100. The Italian airline companies, respectively on 24th July and 16th December 2013, jointly submitted their defensive notes. They both deem not to have carried out any unfair commercial practice whatsoever, not having provided any untrue or unclear information and not having induced consumers to make commercial decisions which they would not have made otherwise. They also reiterate not to have carried out aggressive commercial practices nor to have demanded immediate payments for services not requested, nor to have led consumers to believe in inexistent premiums or bonuses.

101. *Alitalia* and *Airone* stated not to have carried out any tracing whatsoever of the customers' IP addresses, and that the passing to a "*different*" website (that of *Webloyalty*'s) is clearly perceivable by the consumer put in the condition to choose consciously whether or not to continue with the subscription to the programme mentioned.

102. In fact, it seems unlikely that in the procedure made of several phases for the subscription to the programme "*Purchases and Savings*," the consumer is not aware of the onerousness of the programme, since it is indicated in the information provided before having to provide the data concerning the credit card as well as in other parts

⁷² See the report of Ryanair's hearing, doc. no. 220 as mentioned in the index of the file.

of the webpage.

103. In any case, *Alitalia* and *Airone*, in the view of a practical collaboration with the Authority, in order to eliminate or mitigate the consequences of the infringement notified, in agreement with *Webloyalty*, carried out a series of changes to the banners containing the advertising message on their websites.

104. Lastly, the practices notified certainly had a low impact in their regards as evidenced by the very limited incidence on the total revenues realized by *Alitalia* and *Airone*.⁷³

d) *eDreams*

105. In the notes filed during the preliminary investigations as well as during the hearing in November 2013, *eDreams* stated that the commercial practice object of the proceedings hereof is largely due to *Webloyalty*'s conduct, as also provided for by a specific contractual clause; *eDreams*, in turn, is to be considered liable limitedly for what contained and advertised on its own website.⁷⁴

106. The banners of the service "*Purchases and Savings*" which are present on the website *www.edreams.it*, when informing the user concerning the positive outcome of the purchase ("*Your booking is complete*"), also give the possibility to ask for a discount for future purchases on the same website, inviting consumers to click on the link "*CONTINUE*" in order to subscribe to the service. Therefore, the user that does not want to subscribe is free to close the banner and visualise the webpage in its wholeness with the confirmation of the booking. In no case whatsoever the user is automatically addressed to the website *www.acquistierisparmi.it*; consequently, *eDreams* cannot be notified for unfair practices.⁷⁵

107. Without prejudice to *eDreams*'s non-involvement as regards the contents of the

⁷³ See previous paragraphs from no. 70 to no. 73. The reduced harmful potentiality of the contested commercial practices and the limited incidence of the revenues derived from the same on the total turnover of *Alitalia* and *Airone* show the extenuating circumstance in the quantification of the sanctions for the infringement of the regulation on PCS.

⁷⁴ *eDreams*, in fact, gives great attention to the regulation concerning consumer protection, and periodically carries out audit and compliance programmes which are specially organized also taking into account the kind of business carried out. In the case at hand, the compliance course, specific for every business function (commercial, marketing, advertising, call centre) was carried out on different dates, with the aim to update the business functions involved in the regulation and jurisprudence as regards unfair commercial practices and deceitful advertising. The compliance programme is structured on the basis of a series of meetings with the various business functions involved, starting from the top management, and then involving the employees that have a closer contact with the consumers.

⁷⁵ Moreover, the Spanish authority reached the same conclusion after the Authority's request for assistance submitted pursuant to Leg. Decree 70/2003. See doc. no. 199 as mentioned in the index of the file.

services offered by *Webloyalty* and other companies with which the latter entered into collaboration agreements, *eDreams* stated that the object and functioning of the service offered by *Webloyalty* is clearly described in the “*Terms and Conditions of the Service*” published on *Webloyalty*’s website.

108. The company stated that the number of reports of the consumers who carried out a purchase on the website *edreams.it* is irrelevant when considering the total amount of reports submitted to the Authority during the proceedings.⁷⁶

109. In any case, it is not possible to consider the company liable as regards the customers’ personal data and credit/debit card for the subscription to the service “*Purchases and Savings*” since these are not provided nor communicated in any way whatsoever by *eDreams* to *Webloyalty*.⁷⁷

110. Moreover, it is important to consider, as voluntary disclosure, the effort carried out in terms of technical and human resources in order to improve the conditions of transparency, clarity and completeness of the information provided to consumers.

e) *eBay*

111. During the preliminary investigations, *eBay* was heard and submitted its defensive notes. The trader always highlighted how the company’s position within the ambit of the proceedings PS8530 is different compared to that of the other traders involved in the preliminary investigations, entailing its non-involvement and total absence of liability/co-liability in the commercial practice under examination.

112. According to the trader, the difference as regards the contractual relationship existing between *eBay* and *Webloyalty* (simple relationship: advertiser/website hosting the advertisement) and the partnership relationship between *Webloyalty* and all the other operators in Italy is characterized, apart from specific elements, by the Parties’ sharing of the position and especially the content of the banner.

113. In particular, i) the website *www.ebay.it* merely hosted *Webloyalty*’s simple advertising banners that were limited in size and were placed within areas clearly identifiable as areas dedicated to advertising insertions and not, instead, within a

⁷⁶ *eDreams* stated not to have received direct reports concerning *Webloyalty*’s services, and that it thought in good faith that there were no unfair profiles. Moreover, the professional highlighted that over 800,000 bookings have been carried out from 13th February 2012 to date, through the website *edreams.it*; this shows that the changes carried out in May and in September 2013 by *eDreams* on the text and on the layout of the banner concerning the service “*Purchases and Savings*” improved the clarity, the transparency and the completeness of the information for consumers.

⁷⁷ Also as regards the requests for information submitted by the State Police and Carabinieri within the ambit of penal proceedings or reports for transactions not recognized on the credit card of users that carried out a purchase on *eDreams*’s website. Moreover, the criticalities reported by the consumers that had subscribed to the service “*Purchases and Savings*” were resolved by *Webloyalty*.

purchasing flow;⁷⁸ *ii*) during the use of the website no user was ever obliged to view *eBay*'s webpages nor those of third parties' containing invitations to subscribe to other traders' promotions, including *Webloyalty*; *iii*) *eBay* entered into simple "standard" advertising contracts with *Webloyalty* without, in any way whatsoever, regulating or agreeing on modalities of "particular" or different aspects, and without entering into any partnership with said operator; *iv*) *eBay* never received any economic advantage from the users' possible subscriptions to the service offered by *Webloyalty*;⁷⁹ *v*) lastly, *eBay* never offered or agreed upon with *Webloyalty* (or third parties) concerning any discount or other forms of reductions for following purchases on the website on behalf of those subscribing to *Webloyalty*'s service.

114. Therefore, *eBay* merely offered a totally "ordinary" advertising service to *Webloyalty* – in which the content of the advertising message, and its possible deceitfulness, remains in the advertiser's full and exclusive liability – putting at its disposal a "virtual space" within the website, identical to what offered daily to hundreds of other advertisers, and without ever authorizing it to use *eBay*'s name or logo.⁸⁰

115. In particular, it is clear that *Webloyalty* actually suggested to *eBay* to modify the contractual relationships from simple advertiser to commercial partner, but *eBay* did not accept to enter into said *partnership* and, exactly on that occasion, it decided to rescind unilaterally, with immediate effect, from the advertising contract.⁸¹

116. As regards the modality of subscription to the service presented to the consumers, *eBay* highlighted that the users-purchasers are free to decide whether or not to click on the "CONTINUE" button present within the banner, without this influencing in any way whatsoever the conclusion and/or validity of the purchase carried out on the website or on the continuation of the user's activities on the website. (see following image no. 6).

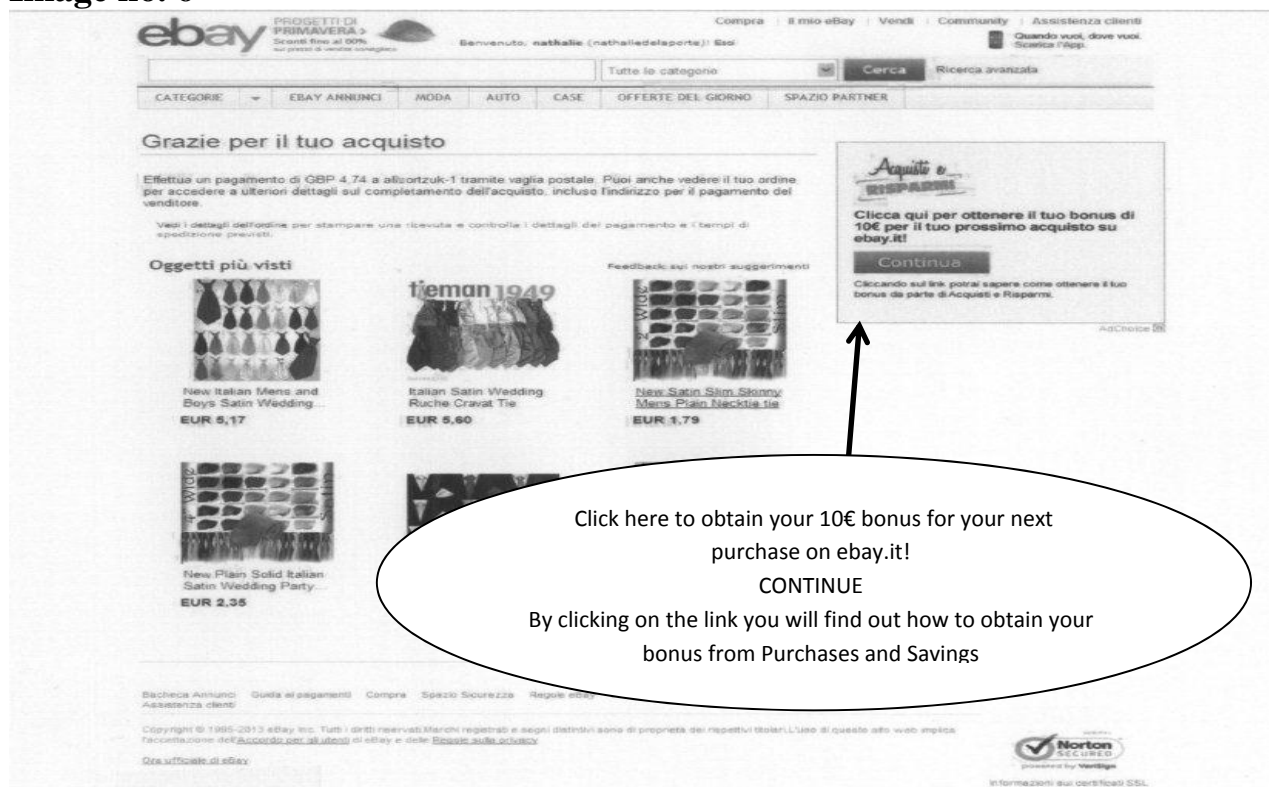
⁷⁸ *Webloyalty*'s advertising banners appeared on the website, and therefore could be visualized by the users/purchasers, exclusively on the "Thank You Page," after the closing of the transaction and were placed within areas clearly identifiable. In particular, the advertising banner is separated from the other contents of the website and appears in the upper right corner of the same, recognizable by the logo "*Purchases and Savings*."

⁷⁹ *eBay* states, moreover, not to have received any "direct" benefit from the success of *Webloyalty*'s initiative, because it did not obtain any revenue owing to the users' subscription to the service *Purchases and Savings*, nor did it receive any "indirect" benefits, because it did not obtain any revenues from the fact that users clicked or not on *Webloyalty*'s banner after visualizing it.

⁸⁰ The advertising banners hosted on the Website were realized autonomously by *Webloyalty* which, as it occurs for all other advertisers, by signing the Contracts undertook the total liability as regards the legality of the same and of the services offered through the same, without any involvement on behalf of *eBay UK* or any other company of the Group *eBay*.

⁸¹ The professional filed in the official records of the preliminary investigations documentation showing the exchange of e-mails between the two companies concerning the possible change of the relationship, as well as *eBay*'s unilateral rescission.

Image no. 6⁸²



117. As regards *eBay*'s role and liability concerning the material present on the website, including the advertising banners, the trader emphasised to be an Internet Service Provider (so-called hosting provider) whose activity is expressly regulated by Article 16 of Legislative Decree No. 70/2003 and it is characterized by the absence of obligations of preventive control of the information inserted by the addressees of the service, as well as for the consequent lack of liability for the possible illicit content of the same, remaining the hosting's liability the obligation to remove them only in case of concurrence of both the requisites of actual awareness of the illegality of the content and of a measure adopted by the cognizant authority.⁸³

118. It is evident that between *eBay* and *Webloyalty* there is no partnership whatsoever or any kind of commercial collaboration as regards the activity carried out by *Webloyalty*, just as there is no relationship between its own website and the subscription service "*Purchases and Savings*." Even on the subscription page for the service offered by *Webloyalty*, in *eBay*'s case, the landing page does not show *eBay*'s logo (see following image no. 7). This entails that no element present on the

⁸² *Webloyalty*'s advertising banner – as all banners of any other advertiser – contains the icon "AdChoice" (in the lower right corner): if the user clicks on said icon, a page appears, the so-called pop-up, containing a disclaimer from which it is clear that the banner has as object third parties' advertising content.

⁸³ eBay highlighted its juridical qualification of hosting provider and its non-liability for the contents vehiculated, producing, in this regard, a specific jurisprudence of merit which established that "*eBay's activity [...] is regulated by Leg. Decree no. 70/2003 [...]eBay's activity can be deemed similar to that carried out by the so-called hosting provider.*"

subscription page can generate in the average consumer the perception that it concerns a service offered by *eBay*.

Image no. 7



119. Lastly, as regards the modalities and the criteria through which *eBay*'s remuneration was established with *Webloyalty*, the trader highlighted how it is not possible to state that the amount paid by *Webloyalty* results to be higher than what applied in contracts similar to other advertisers since it corresponds to the priority chosen by the advertiser; in the case at hand, *Webloyalty* brought the CPT from [omissis] to [omissis] and then [omissis] Euros.

f) *TicketOne*

120. On 25th June 2013, *TicketOne* submitted its defensive notes⁸⁴ with which it highlighted to have entered into a partnership agreement with *Webloyalty International S.r.l.* through which it undertook to promote the service *Purchases and Savings* on its own website against the payment of a specific remuneration.

121. The activity as mentioned above was carried out and concluded with the insertion of an advertising banner linking to the *partner's* website, not representing in any way whatsoever a deceitful or aggressive commercial practice.

122. In fact, the trader did not make any decisions concerning the text, which was established by *Webloyalty* on the basis of a standard model which results to be applied also with other partners. Moreover, it did not have any role in the organization, planning and realization of the mentioned banner (including the positioning on the Thank you page), thus resulting totally non-involved in the commercial practice notified.⁸⁵

123. *TicketOne* highlighted that at the end of the procedure for purchasing a ticket for a specific event on *TicketOne's* website, the consumer is absolutely free to click on the “*CONTINUE*” button or exit the company's website by clicking on the “*exit*” link, and there is no mechanism which obliges the consumer to necessarily continue surfing landing on *Webloyalty's* subscription webpage. The registration to *TicketOne's* website and the purchasing of a ticket does not entail the “automatic” registration also to the partner's services that, instead, envisages a whole series of further operations to carry out autonomously.⁸⁶

124. Consumers have the right, to their complete discretion and full awareness, to decide whether or not to enter into two distinct contracts, one (with *TicketOne*) for the online purchasing of a ticket for a specific event, the other (with *Webloyalty*) in order to make use of a series of advantages (discounts, refunds, bonuses, etc.) within

⁸⁴ See doc. no. 95 as mentioned in the index of the file.

⁸⁵ As regards the aggressiveness of the practice, in particular the case regulated by Article 26, paragraph 1, letter h) of the Consumer Code, *TicketOne* highlighted its non-involvement concerning both the planning of the promotional message vehiculated through the banner that appears on the “Purchase confirmation page” of its website, and the planning and management of the subscription page for the service reported, which both fall within *Webloyalty's* exclusive competence.

⁸⁶ *TicketOne* highlighted, moreover, that the users' personal data collected during the purchasing of the ticket for a specific event cannot be diffused nor made accessible on the basis of a clear prohibition contained in the contract.

the online sale portals affiliated to *Webloyalty*.

g) Changes carried out by the Parties involved in the proceedings

125. On 16th December 2013, before the closing date of the proceedings, *the traders* notified to have made a series of changes to the commercial practice under examination aimed at eliminating the criticalities highlighted in the communication concerning the launching of the investigation.

126. In particular, *Webloyalty* modified both the text of the banners present on the Thank you page of the partners' websites, and on the landing page on which the consumer lands after clicking on the mentioned banners. All the partners agreed on the changes carried out on the banner hosted on their websites.

127. As regards the text of the banners, the changes were aimed at making the service offered by the Companies more transparent since these highlight: *i)* the actual nature of the programme (cash back service); *ii)* its onerousness; *iii)* the advertising nature of the banner; *iv)* the name of the programme "*Purchases and Savings*." Even the modalities concerning the graphical representation were modified closing the text in a special window in order to clarify the advertising nature of the message.⁸⁷

128. All the partners, Parties of the proceedings hereof,⁸⁸ put themselves at disposal in order to make the mentioned variations. In fact, the changes are already visible on their respective websites (see, as an example, the following images no. 8 and 9, concerning *Ryanair's* and *eDreams's* Thank you pages⁸⁹).⁹⁰

⁸⁷ When filing *the traders'* conclusive notes (December 2013), the latter made known that the graphical layout of the banners had not been modified yet due to the complex technical, structural and coordination work necessary in order to make said changes.

⁸⁸ With the exception of *eBay* that interrupted its relationship with *Webloyalty* starting from 30th April 2013.

⁸⁹ As regards *eDreams*, it is clear that the company during the preliminary investigations had already implemented several changes to the text of the banners in compliance with the commitments submitted, pursuant to Article 9 of the Regulation. As specified under point III hereof, said commitments were rejected by the Authority.

⁹⁰ Analogous changes were carried out also on the Thank you page of *Alitalia/Airone* and *TicketOne*.

Image no. 8

Your booking is complete. Subscribe to Purchases and Savings - our Partner's cash back programme with a monthly fee - and you will obtain a 10€ Bonus on your next booking on Ryanair. Promotional message. Please refer to the terms and conditions for the use of the service are those applied

Image n. 9 – Banner present at the end of eDreams’s Thank you page

129. As regards the subscription page, besides making the various steps for subscribing and requesting the bonuses more evident, the consumer is given the possibility, by clicking on the specially provided link, to know which are *Webloyalty’s* partners with whom it is possible to then obtain the benefits promised by the programme after carrying out the subscription through the website *Purchases and Savings*.

130. Lastly, it is important to highlight that, during the preliminary investigations, *Webloyalty* decided not to launch the programme “*Purchases and Savings*” with the new customers/partners with whom it had already started negotiations and was about to carry out agreements.⁹¹

IV. THE OPINION OF THE COMMUNICATIONS REGULATORY AUTHORITY

131. Since the commercial practice object of the proceedings hereof was diffused via Internet, on 17th December 2013 an opinion was requested from the Communications Regulatory Authority, pursuant to Article 27, paragraph 6, of the Consumer Code.

132. On 15th January 2014, said Authority submitted its opinion resolving that the commercial practice under examination is unfair pursuant to Articles 20, 21, paragraph 1, letter *b*), 22 and 26, paragraph 1, letter *f*) and *h*), of the Consumer Code, on the basis of the following considerations.

133. First of all, the promotional aim is carried out exclusively through the message which carries out its function by inducing the addressee to rely on the operator. Therefore, this cannot be deemed capable to make up for the incompleteness of the information provided concerning essential elements, such as the economic conditions of the service advertised, and the sending to further informative sources to which the consumer is invited to resort.

134. From the analysis of the texts object of the commercial practice under examination, it is important to highlight that the consumers, through the website *www.acquistierisparmi.it* and the commercial partners’ websites, are induced to subscribe, without having total awareness, to a service called *Purchases and Savings* at the cost of 12 Euros a month.

135. The communication is aimed at promoting the product mentioned, carried out by the companies *Webloyalty International Srl* and *Webloyalty International Sàrl*, and by their commercial partners. Moreover, it is based on the expectation of a sure saving on a future purchase, and therefore it is qualified to false in relevant measure the consumers’ economic behaviour. In fact, misleading and not qualified information is provided thus not informing the consumer concerning the actual characteristics and the real value of the service offered. Owing to the deceitfulness of said information, it can prejudice the addressees’ economic behaviour, inducing them and/or conditioning them to make a commercial decision which otherwise they would not have made.

136. Apparently, consumers are offered the possibility to make use of a discount bonus while, actually, they are encouraged to subscribe to an onerous service. The

⁹¹ See doc. no. 152 as mentioned in the index of the file.

modalities of presentation of the page omit to provide essential information concerning the actual modalities, the conditions and the limitations of the service.

137. Moreover, since consumers are not allowed to fully assess the economic moderateness of the subscription, the practice results to be aggressive since it induces consumers to subscribe to an onerous service without having full awareness of this aspect. Actually, consumers are led to activate the service convinced that they are recipients of a premium which they are owed due to the purchase carried out, and because it entails the return or the safeguard of products which the trader provided, but that the consumer did not request.

138. In the light of what exposed, the Communications Regulatory Authority deemed that the commercial practice under examination is qualified to false the consumers' economic behaviour, since it is deceitful and aggressive, infringing what provided for by Articles 20, 21, paragraph 1, letter *b*), 22 and 26, paragraph 1, letters *f*) and *h*), of the Consumer Code.

V. FINAL ASSESSMENT

Introduction

139. The commercial practice at issue consists in the conduct described in the previous paragraph II.

140. The assessment of such conduct requires several preliminary considerations aimed at finding the subject/s liable/s of the commercial practice under examination, in particular as regards the companies of the group *Webloyalty* involved in the proceedings.

141. The outcomes of the proceeding highlighted that the service "*Purchases and Savings*" is offered by several companies parts of the group *Webloyalty* in many European member States, by means of contracts with traders located and operating mainly at national level, as well as traders active in various countries.

142. For the purposes of the proceeding, *Webloyalty International S.r.l.* is a company with registered office in Italy, which operates as commission agent, promoting contracts on the market for the purchasing of advertising spaces on partners' websites in the interest of the consigner *Webloyalty International Sàrl.* Said company results to have entered into contracts with many Italian and foreign companies for the service "*Purchases and Savings*" offered in Italy.

143. Moreover, the company is indicated in the section "*Contact us*," reachable at the address <http://www.acquistierisparmi.it/Content.aspx?content=contactus>, indicated on the home page of the website "*www.acquistierisparmi.it*." Besides, according to the evidences acquired at the company's premises, it is clear that it participated in the

entire practice, by managing also relationships with many customers.

144. *Webloyalty International Sàrl* is a Swiss company active in planning and developing online marketing services, offering added value service packages enabling to retain the customers of those partners through which the company's activities are advertised.

145. *Webloyalty International Sàrl* is the registrant of the website *www.acquistierisparmi.it*. It realized and provides the service "*Purchases and Savings*" which is offered through a subscription webpage.

146. In the light of such elements, keeping into account also the many documents acquired during the proceeding at the premises of *Webloyalty International S.r.l.*, it is deemed that the commercial practice at issue must be attributed to both the companies, jointly referred to as *Webloyalty*.

147. As regards the other traders involved following the notification of the subjective integration of the proceedings PS8530, they are to be considered to all effects jointly responsible of the commercial practice under examination, since they participated practically in said practice.

148. On the basis of the commercial relationships established with the companies of the group *Webloyalty*, they all accepted and contributed in the particular modalities of presentation of the service *Purchases and Savings*. In particular, they accepted that: *a)* the *Webloyalty*'s banner, offering a discount on a following purchase with the same trader, was to be shown on their own Thank you page after the purchasing of a good or service; *b)* such banner was to be shown according to specific modalities which did not enable the consumer to recognize, in any way whatsoever, that it was a new and specific onerous service offered by a third party, but rather that it only promised a 10 Euro discount (20 in the case of Alitalia and Airone) on a following purchase with the same trader; *c)* the subscription page of *Purchases and Savings* shows the partner's logo and the indication of the same as privileged partner.⁹²

149. Moreover, the considerations foreseen for the partners are connected, according to different modalities, to the rate of subscriptions to the service *Purchases and Savings*, an aspect for which there is an information exchange and access to the redemption data between the Parties.

150. Indeed, those aspects result specifically regulated by specific and complex agreements with *Webloyalty* defined by the parties as *partnership*,⁹³ with the exception of the trader *eBay* which highlighted such element as distinguishing feature

⁹² The condition *sub c)* does not concern the professional *eBay*.

⁹³ Including Ryanair. In fact, contrarily to what stated by the Irish company which does not consider the agreement with *Webloyalty* configurable as partnership on the basis of a specific contractual clause, it is clear that, besides the specific elements that characterize the agreement as partnership, the actual banner hosted on *Ryanair*'s website shows the statement "By clicking on this link you can ask for the bonus subscribing to our partner's website" (underlining added); in analogous terms the landing page shows *Ryanair*'s logo and qualification as partner.

of its position. Moreover, as emerged during the preliminary investigations and highlighted under the previous point II, all the partners involved obtained relevant revenues for hosting on their websites the banner linking to the subscription page for the service *Purchases and Savings*.

151. To this regard, contrarily to what stated by some of the traders (for example, *Ryanair*), the previous Table no. 1 (provided by *Webloyalty*) clarifies that all the traders involved, except for *eBay* (see *infra*), made use of (and continue making use of) a remuneration system which depends, according to different modalities, not only on the number of visualizations on their own Thank you page (CPT = no. 1,000 *impression viewed*), but also on the number of subscribers to the service through their websites, connecting the considerations owed to the number of subscriptions to the service (*Revenue Share; Greater of CPT/CPA; kicker CPT; CPT + kicker CPA; POB; e-mail*).⁹⁴

152. Therefore, the relevant incomes obtained by *the traders'* partners, whose amount was deemed to be absolutely and in percentage relevant compared to what obtained by *Webloyalty* itself – which planned and realized the content and the format of the banner proposed and accepted by the partners – confirm their full and aware participation in the commercial practice at issue.

153. Moreover, given that the *moment* and place in which consumers make their choice (by clicking on the banner) is the partners' website, that is the phase in which the most critical moment of the practice begins as notified herein, there is no doubt that said partners concur directly in the realization of the unfair commercial practice.

154. By contrast, as regards the trader *eBay*, it is deemed that, even if the relationship with *Webloyalty* was established in part differently compared to that between the latter and the other partners (remuneration based only on the CPT, non-use of the logo on the subscription page, etc.), it is nonetheless to be considered jointly responsible for the commercial practice under examination.

155. In fact, the banner hosted on the trader's website, which sends to the service *Purchases and Savings*, was always positioned on the Thank you page and had the same misleading content. In particular, such content consisted in the invitation to the consumer to continue "*click here*" ... *in order to obtain the ... 10 € bonus for your ... next purchase on eBay* (underlining added), by offering him a relevant advantage as to a future purchase with the same trader. This aspect, which could not be ignored by *eBay*, engendered in the consumers an expectation as to the seriousness of the bonus/discount promised, inducing them to continue and subscribe to the service offered. This is shown by the significant number of consumers "acquired" by *Webloyalty* through *eBay*.

156. In this perspective, the argument that the trader did not recognize any discount

⁹⁴ See the report of *Webloyalty's* hearing of 30th October 2013, doc. 212 as mentioned in the index of the file.

to consumers on the following purchase confirms that the promise made to consumers at the moment of purchasing on its website was fake. It also highlights the aware participation of the company in carrying out the practice in order to obtain an economic advantage.

157. In fact, it is clear that the remuneration for such banner, measured in the so-called *impression*, was however significantly higher than the other advertising contracts submitted by the trader during the proceedings.

158. For these reasons, the *eBay*'s argument based on the juridical nature of the hosting provider whose activity, pursuant to Article 16 of the Legislative Decree No. 70/2003, should finish with the "*memorization of information provided by an addressee of the service*"⁹⁵ without any liability concerning the content hosted must be rejected.

159. Nor can the *Ryanair*'s analogous be deemed acceptable owing to the different characteristics of the activities carried out by the two companies, the different typology of agreement entered into with *Webloyalty*, as well as the clear difference of content of the advertising banner hosted on the respective websites.

160. Therefore, in the light of the foregoing, it is deemed that the companies Parties of the proceeding are to be considered, to all effects, jointly responsible for the implementation of the commercial practice at issue. Indeed, they are all directly liable as regards the advertising of a product/service which is carried out on their own websites, distinguished by the main product/service commercialized and offered to consumers, whose characteristics and related modalities of presentation to the public fall within their full awareness.

Findings of the Authority

161. The commercial practice under examination concerns the particular modalities through which the traders induced consumers to subscribe to a service called *Purchases and Savings*, a cash back service which entailed an automatic monthly 12 Euro withdrawal from the subscribers' bank accounts.

162. For the reasons which are set out below, it is deemed that the commercial practice carried out by *Webloyalty*, *Ryanair*, *Alitalia*, *Airone*, *TicketOne*, *eDreams* and *eBay*, described under point II hereof, is in breach of Articles 20 and 26, paragraph 1, letter *h*), of the Consumer Code.

163. On the basis of the outcome of the proceeding, the unfair practice carried out by the Parties involved in the proceedings is characterized by two distinct phases. First of all, the consumers are *hooked* on the trader's website where they purchased a good

⁹⁵ Where the addressee of the service is, depending on the case, the advertiser that creates sale advertisements or advertising banners that are hosted on the website.

or a service through a statement which seems to come from the trader itself. In fact, it presents the same type as well as the same graphics and/or colour (see the *CONTINUE* button in the case of *eDreams*). Therefore, it cannot be considered as an advertising banner placed by a different trader.

164. The actual content and presentation of the said banner induce consumers to continue in the procedure (in particular for the emphasis placed on the “*CONTINUE*” button), in that a relevant economic advantage is proposed, that is a bonus for a following purchase and directly consequent to the one just carried out, through the trader with which the online transaction was just concluded. All these aspects are qualified to induce consumers to continue in the procedure.

165. Then, once landed on *Webloyalty*'s webpage *www.acquistierisparmi.it* (always as a consequence of clicking on the “*CONTINUE*” button of the banner), the possibility to receive the above mentioned economic advantage is again strongly emphasised, inducing consumers to complete the subscription procedure to the onerous service – indispensable requisite to obtain the mentioned economic advantage – without being fully aware of the nature and cost of the service subject to subscription and in the belief that this is necessary to obtain the promised welcome bonus.

166. In this first phase, therefore, the conducts under examination concern the lack of clear information and the misleading modalities through which the Parties involved in the proceedings induce consumers, at the end of the purchasing procedure, to continue in the procedure. In fact, to this end, those parties offered to the consumers the possibility to obtain a discount bonus for a following purchase of a good/service from the same trader owner of the website, omitting to provide a whole series of information concerning the following elements: identity of the offering party, the real nature, the onerousness and substance of the service offered, and therefore hindering the addressees of the advertising message from carrying out an aware evaluation concerning the economic moderateness of the subscription to the service.

167. Therefore, the hooking system is structured on the basis of a mechanism of *continuity* of the booking/purchasing of the service on the partner's website. On one hand, great emphasis is placed on the *CONTINUE* link, which indicates the need to continue the sequence. On the other hand, it is the actual offer of an economic advantage (*Click here to obtain your 10€ bonus...*) that leads the consumer to believe of having purchased, owing to the purchase carried out [...*for your next booking/purchase on (Ryanair – eDreams, TicketOne, eBay, etc.).....*], the right to receive a bonus simply following the instructions shown on the banner (..... *By clicking on this link you can ask for the bonus by subscribing to our partner's programme. (...)* (see previous Images no. 1 and no. 2).

168. In substance, the offer of an economic bonus to exploit with the following

booking/purchase is seriously misleading. It highlights only the promise to obtain an advantage without, at the same time, indicating minimally – or however making easily recognizable to consumers – all those elements actually useful and determining to make an aware commercial decision, such as, first of all, the onerousness of the subscription, as well as to provide, even synthetically, a description of the mechanism of the service.

169. Viceversa, by clicking on the "*CONTINUE*" button, the consumer, who thinks to be recipient and therefore entitled to a bonus for which it is necessary to carry out formalities, is sent to the subscription webpage of the service *Purchases and Savings in 3 simple steps* (the so-called landing page) where, owing to that *continuity* mechanism mentioned above, *Webloyalty's* partner's brand continues to be present.⁹⁶ Those circumstances strengthen the consumer's conviction to be still on the website of the trader with which the purchase/booking was just concluded and to be asking for the bonus, while instead the consumer actually *landed* on *Webloyalty's* webpage and is induced to subscribe to *Purchases and Savings*.

170. Also on this page, in great evidence, there is the frame concerning the *10€ Welcome Bonus*⁹⁷ and there are many statements which continue particularly to emphasise the possibility to obtain said bonus, a specially provided link, as well as the illustration of other alleged advantages offered, among which, in particular, the possibility for consumers to immediately make use of exceptional discounts in the best online shops, as well as to save, by subscribing to the programme *Purchases and Savings*, "*.... thousands of Euros a year.*" (see previous image no. 3).

171. This page provides absolutely negligible information concerning the cost of the service,⁹⁸ and no information is provided concerning the actual nature, characteristics and substance of the service offered, the modalities through which it is presented, who the trader's partners are, the categories of the merchandise, the typology of purchases that can be carried out, under what conditions and on what websites. For example, there are general statements such as "*You can save on all your online purchases on the main e-commerce websites*" or "*A 10€ monthly bonus for any booking/purchase carried out on ...*" and still "*Obtain your deferred discount every time you carry out a booking (or carry out a purchase)*" emphasising, even by means of images, the economic advantage prospected to the consumer. To this regard, by clicking on the link "*Click here for more information on your 10€ bonus*", the following image no. 10 is viewed. Even in this case, the information provided is centred only and exclusively on the obtainable advantages.

⁹⁶ This does not occur for the professional eBay.

⁹⁷ The bonus envisaged in the case of Alitalia and Airone is equal to 20 Euros.

⁹⁸ Even if, in the page under examination, the monthly cost of the subscription is indicated, this is written in extremely small letters or inserted in contexts which highlight the advantages of the commercial operation.

Image no. 10



172. The outcomes of the preliminary investigations highlighted that the mechanisms for acknowledging the bonus and the more general functioning of the cash back service (deferred discount on every purchasing carried out) are quite complex and subject to specific conditions, limitations and/or exclusions such as, for example: *i*) not all the goods and services being sold on the selected suppliers' websites and indicated in the programme *Purchases and Savings* (however not recognizable by the consumer if not after the onerous subscription to the service) give the right to the cash back; *ii*) there is a monthly limit of the cash back referable to each month in which the subscription to the programme is valid; *iii*) the request for the *Welcome Bonus* and the *Fidelity Bonus* must be sent to *Webloyalty* within 30 days from the purchasing date, etc.

173. Moreover, for the traders to recognise the cash back to the recipient, it is strictly necessary for all the following conditions to be met: *i*) the recipient must set the browser so that it does not refuse session or persistent cookies; *ii*) the recipient must access the selected supplier's website exclusively through the website *Purchases and Savings*; *iii*) the purchase must be carried out within a single session and the payment must take place exclusively online and at the same time of the purchase.⁹⁹

174. This information is not provided by the trader on the landing page under

⁹⁹ In case of non-compliance with one or more rules above mentioned, the purchase does not benefit from *Cash back*. Moreover, it is important to consider that the amounts, the modalities and the timing for the acknowledgement of the Cash back, as well as the choice of the selected providers and the finding on their behalf of the products and services for which the Cash back is recognized are subject to variations at *Webloyalty*'s discretion, without any notice. See point 4.3 of the document *General Terms and Conditions of the Service*, enclosed to doc. no. 52 as mentioned in the index of the file.

examination, where the consumer is attracted by the offer of the bonus and induced to proceed with the subscription to the service. Such information is provided only in the *General Terms and Conditions of the Service* to which the trader sends the consumers, through a hypertextual link. Therefore, in such way, the trader makes the instructions and essential elements for an aware subscription to the programme not easy to access or to find.

175. Therefore, consumers are artificially and deceitfully *diverted* to the subscription page. Besides, even in the – remote – hypothesis in which consumers have understood being on a different website belonging to a different trader that offers a different paid service, they are incorrectly informed and not provided with the elements necessary to carry out a full, rational and aware subscription choice.

176. In conclusion, the commercial practice under examination, considered in its whole, not only presents many profiles of deceitfulness and omissiveness as regards the essential elements which concern both the recognisability, the nature, the onerousness and the content of the service offered, but through a plurality of deceitful and omissive profiles it is characterized for its aggressiveness inducing consumers to subscribe and activate an onerous service through the false offer of a bonus for a following purchase on the same trader's website, infringing Article 26, letter *h*), of the Consumer Code. In fact, an essential and characteristic element of the practice under examination consists in the particular modality of hooking the consumer, by giving them the idea of a captivating economic advantage presented at the end of the purchasing procedure, that is a 10/20 Euro bonus for the following purchase. This aspect induces the consumer to continue in the procedure subscribing unwittingly to an onerous service with a monthly debit on the consumer's credit card.

177. In fact, the modalities followed to attract the consumer on the Thank you page – the particular position of the banner, its non-recognisability, the content of the message, as well as the serious inaccuracies and omissions in the information provided on the landing page, constitute an illicit conditioning which seriously limited the free choice of many consumers.

178. It is important to highlight the relevant number of complained (more than one hundred) lodged by consumers about the fact that they had never subscribed to the service *Purchases and Savings*, nor had they ever explicitly authorized any withdrawal on their credit card (whose data had been provided only to complete the purchase on the trader's website hosting *Webloyalty's* banner). The consumers reported that, despite all the above, they underwent without understanding the modalities, a systematic monthly 12 Euro withdrawal from their bank accounts, when instead they thought that it was an operation similar to a *fidelity card* or that however,

by subscribing to the service *de quo*, they would have obtained guaranteed savings.¹⁰⁰

179. Moreover, the documentation acquired through the inspections carried out at the Italian premises of the companies belonging to the group *Webloyalty* evidenced that almost the same amount of consumers (in this case a little less than one hundred) submitted claims and reports to the Carabinieri, to the State Police and the Postal Police throughout the national territory.

180. Moreover, the data acquired confirms that, between October 2011 and April 2013, a very high number of consumers requested the cancellation from the service (*[omissis]*, equal to more than 62% of those who initially subscribed to the programme) which they had not requested and to which they were subscribed totally unwittingly.

181. The evidence collected highlighted the particular seriousness of the conduct under examination when considering that through this practice all the Parties under investigation obtained relevant remunerations against an absolutely irrelevant amount recognised to the consumer (see previous point III, paragraph 65, letter *e*)).

182. As mentioned, the subscriptions were all induced by *Webloyalty*, with the active participation of the important online operators involved in the proceedings, offering a “false” possibility to obtain a 10/20€ bonus as a consequence of the purchase carried out on the operators’ websites and without any expense whatsoever.

183. In the light of the foregoing, and 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 whether or not to carry out the subscription to an onerous service falls within the traders’ diligence (in the case at hand, all important and renown operators in the e-commerce sector and airline companies considered reliable and very well-known in the market). Therefore, the practice described under point II hereof is in breach of Article 20 of the Consumer Code, in that it is contrary to the trader’s diligence. In fact, in the case at issue, all the traders involved did not show the normal level of competence and attention which one would reasonably expect, considering the traders’ quality and the characteristics of the activity carried out. Therefore, the conduct carried out by *Webloyalty*, *Ryanair*, *Alitalia*, *Airone*, *TicketOne*, *eDreams* and *eBay*, not only is deceitful and omissive, but also aggressive infringing Article 26, paragraph 1, letter *h*), of the Consumer Code, since it is qualified to induce the consumer to subscribe to a service with an automatic 12 Euro monthly withdrawal, in the false convincement of receiving a bonus owing to the purchase carried out on the companies’ websites having commercial relationships with *the traders*.

¹⁰⁰ See previous note no. 7 in which, by way of example, there are some excerpts of several important reports submitted to the Authority.

VI. QUANTIFICATION OF THE SANCTION

184. Pursuant to Article 27, paragraph 9, of the Consumer Code, and Article 23, paragraph 12-*quinquiesdecies*, of Decree-law no. 95 of 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 the implementation of an administrative sanction from 5,000 to 5,000,000 Euros, depending on the seriousness and the duration of the infringement.

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

186. As regards the seriousness of the infringement carried out by *Webloyalty International Sàrl* and *Webloyalty International Srl*, in the case under examination, it is important to take into consideration the traders' sizes, since they are companies operating at European level within the ambit of the commercialization of discount programmes and online shopping, with a relevant turnover, as well as the capability of the practice to reach a considerable amount of consumers due to the means used (in the case at hand, the website of which the Party is registrant – *www.acquistierisparmi.it* – and the websites of the main e-commerce operators and European airline companies) and the wide diffusion of the online booking procedures and those for the purchasing of goods and services. Moreover, the practice caused a relevant economic prejudice for the consumers and generated consistent revenues for *the traders* that withheld a relevant part of the subscription fees on the basis of different remuneration systems agreed upon with the other companies Parties of the proceedings.

187. The seriousness of the practice is further evident for its elements of aggressiveness, with particular reference to the considerable amount of consumers who resulted to be subscribed to the service unwittingly, induced in the conviction to have been given a bonus owing to the purchase carried out on the website of one of the companies Parties of the proceedings.

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 October 2011 up to at least December 2013. It must be kept into consideration that *the traders* notified the carrying out of a series of changes to the commercial practice with the aim to eliminate the criticalities highlighted in the communication of the launching of the investigation. All the companies Parties of the proceedings agreed to

the variations carried out on the banner hosted on their websites. In particular, changes were carried out both on the banner offering the service and on the related subscription page.

188. On the basis of these elements, and keeping into account the measures adopted so as to correct the presentation of the service even modifying the relationships with the enterprises Parties of the proceedings, as described in detail in the previous point III, no. 3), letter g), hereof, it is resolved to impose on the companies Webloyalty International Sàrl and Webloyalty International srl belonging to the group *Webloyalty* an administrative sanction in the amount equal to eight hundred and fifty thousand Euros (850,000), jointly and severally.

163. Considering the extremely negative conditions of Webloyalty International Sàrl's financial statements, it is resolved to reduce the sanction for an amount equal to fifty thousand Euros (50,000), imposing on the above mentioned companies a sanction in the amount equal to eight hundred thousand Euros (800,000), jointly and severally.

189. As regards the seriousness of the infringement carried out by *Ryanair Ltd*, it is important to keep into account, in the case at hand, the trader's size, since it is 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 booking and purchasing procedures of its air transportation services.

190. Moreover, the practice caused a relevant economic prejudice and, through *Ryanair's* website, it misled a very high number of consumers as highlighted by the evidence collected during the investigation, while generating consistent revenues for the trader due to the remuneration system agreed upon with *Webloyalty*.

191. As regards the duration of the infringement, from the elements available filed in the official records, it is clear that the commercial practice was carried out starting in October 2011 and continued at least until December 2013, keeping into account that the trader accepted to carry out the changes suggested by *Webloyalty* on the banner offering the service hosted on its website.

192. On the basis of said elements, it is resolved to establish the basis amount for the administrative sanction imposable on *Ryanair Ltd* in the measure of four hundred thousand Euros (400,000 €).

193. Lastly, it is important to take into consideration the aggravating circumstance of the recidivism, since *Ryanair Ltd* results to be already addressee of other measures adopted by the Authority implementing provisions of the Consumer Code as regards

unfair commercial practices.¹⁰¹ Keeping these aspects into account, it is therefore deemed fair to establish the administrative sanction in the amount equal to four hundred and twenty thousand Euros (420,000 €).

194. As regards the seriousness of the infringement carried out by *Alitalia - Compagnia Aerea Italiana S.p.A.* and *Airone S.p.A.*, in the case at hand, it is important to take into account the traders' sizes, since they are airline companies that continued the activity of the previous national flagship airline; in particular, Alitalia - Compagnia Aerea Italiana S.p.A. still results as the main airline company in Italy with a relevant turnover. Moreover, it is important to consider 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 booking and purchasing procedures of its airline transportation services.

195. Moreover, the practice caused a relevant economic prejudice for consumers and, as clear from the evidence collected during the investigation, it generated consistent revenues for the trader due to the remuneration system agreed upon with *Webloyalty*.

196. As regards the duration of the infringement, from the elements available filed in the official records, it is clear that the commercial practice was carried out by both companies from December 2012 up until at least December 2013, keeping into account that the traders accepted to carry out the changes suggested by *Webloyalty* on the banner offering the service hosted on their websites.

197. On the basis of said elements, it is resolved to establish the basis administrative sanctions imposable on the company *Alitalia - Compagnia Aerea Italiana S.p.A.* in the amount equal to 165,000 € (one hundred and sixty-five thousand Euros) and on the company *Airone S.p.A.* in the amount equal to 35,000 € (thirty-five thousand Euros).

198. Since, in the case at hand, both the traders' financial statements present extremely negative economic conditions, it is resolved to reduce the sanction for an amount of 40,000 € (forty thousand Euros) as regards the company *Alitalia - Compagnia Aerea Italiana S.p.A.* and for an amount of 10,000 € (ten thousand Euros) as regards the company *Airone S.p.A.*

199. Lastly, it is important to consider, as regards the company *Alitalia - Compagnia Aerea Italiana S.p.A.*, the aggravating circumstance of recidivism, since *Alitalia - Compagnia Aerea Italiana S.p.A.* already results to be addressee of other measures adopted by the Authority implementing provisions of the Consumer Code as regards

¹⁰¹ See resolution no. 22511 of 15th June 2011 on the case PS892 - Ryanair, in Bulletin no. 24/2011 and resolutions of non-compliance no. 23613 of 30th May, IP117 - Ryanair in Bulletin no. 22/2012 and IP117B resolution no. 24290 of 27th March 2013, Bulletin no. 15/2013.

unfair commercial practices.¹⁰² Therefore, as regards the latter, it is resolved to increase the amount of the sanction in the measure of 20,000 € (twenty thousand Euros).

200. On the basis of the elements acquired it is resolved, therefore, to impose a sanction equal to 145,000 € (one hundred and forty-five thousand Euros) on *Alitalia - Compagnia Aerea Italiana S.p.A.* and a sanction equal to twenty-five thousand Euros (25,000 €) on *Airone S.p.A.*

201. As regards the seriousness of the infringement carried out by *Vacaciones eDreams S.L.*, in the case at hand, it is important to take into account the trader's size, since it is an online tourist agency whose activity is based on offering flights, hotels and holiday packages through the use of research technologies, 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 website *www.edreams.it*) and a wide diffusion of the online booking and purchasing procedures of services and holiday packages.

202. Moreover, the practice caused a relevant economic prejudice for consumers and, as clear from the evidence collected during the investigation, it misled a high amount of consumers through *eDreams's* website, as well as generated consistent revenues for the trader due to the remuneration system agreed upon with *Webloyalty*.

203. As regards the duration of the infringement, from the elements available filed in the official records, it is clear that the commercial practice was carried out from February 2012 to at least December 2013,¹⁰³ keeping into account that the trader accepted to carry out the changes suggested by *Webloyalty* on the banner offering the service hosted on the website *www.edreams.it*.

204. On the basis of these elements, it is resolved to impose an administrative sanction on *Vacaciones eDreams S.L.* in the amount equal to two hundred and twenty thousand Euros (220,000).

205. As regards the seriousness of the infringement carried out by *eBay (UK) Ltd*, in the case at hand, it is important to take into account the trader's size, since the company belonging to the Group eBay collects and manages the advertising spaces of the various online trading European platforms (*eBay.it*, *eBay.fr*, *eBay.co.uk*, etc.), 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 website *www.ebay.it*) and the wide diffusion of the online purchasing procedures.

¹⁰² See resolution no. 24586 of 29th October 2013, on the case PS7771 "ALITALIA-CARATTERISTICHE DEL SERVIZIO", in Bulletin no. 45/13 and resolution no. 22343 of 28th April 2011 on the case PS5530 - Alitalia-Commissioni payment with credit card, in Bulletin no. 17/11.

¹⁰³ In fact, for the calculation of the duration, the date considered is that on which the presence of the link to the website www.acquistierisparmi.it was ascertained, whose graphical modalities were totally similar to those of the banner. See the previous note no. 62 and image no. 5.

206. Moreover, the practice caused a relevant economic prejudice for consumers and, as clear from the evidence collected during the investigation, it generated relevant revenues for the trader due to the remunerations recognized by *Webloyalty*.

207. As regards the duration of the infringement, from the elements filed in the official records, it is clear that the commercial practice was carried out from June 2012 to April 2013, the moment in which the trader interrupted unilaterally its commercial relationship with *Webloyalty*.

208. On the basis of these elements, and in particular considering the minor seriousness of the practice in consideration, it is resolved to establish an administrative sanction imposable on *eBay (UK) Ltd* in the amount equal to twenty thousand Euros (20,000 €).

209. As regards the seriousness of the infringement carried out by *TicketOne S.p.A.*, in the case at hand, it is important to take into account the trader's size, since it is a leading company in providing services and systems for the management of tickets for entertainment, cultural and sports events, and in the booking and selling on behalf of third parties of entrance tickets, with a relevant turnover and positive economic conditions, as well as of 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 ticket booking and purchasing procedures for cultural, entertainment and sports events.

210. Moreover, the practice caused a relevant economic prejudice for consumers and, as clear from the evidence collected during the investigation, it generated appreciable revenues for the trader due to the remuneration system agreed upon with *Webloyalty*.

211. As regards the duration of the infringement, from the elements available filed in the official records, it is clear that the commercial practice was carried out from January to at least December 2013, keeping into account that the trader accepted to carry out the changes suggested by *Webloyalty* on the banner offering the service hosted on its website.

212. On the basis of these elements, it is resolved to establish the basis administrative sanction imposable on *TicketOne S.p.A.* in the amount equal to thirty thousand Euros (30,000 €).

213. Lastly, it is important to consider the aggravating circumstance of recidivism, since *TicketOne S.p.A.* already results to be addressee of measures adopted by the Authority implementing provisions of the Consumer Code as regards unfair commercial practices.¹⁰⁴ Keeping these aspects into account, it is therefore deemed fair to establish the administrative sanction in the amount equal to fifty thousand Euros (50,000 €).

¹⁰⁴ See resolution no. 22915 of 26th October 2011, on the case PS3049 - PREZZI SPETTACOLI MUSICALI-DIRITTO DI PREVENDITA, in Bulletin no. 43/2011.

CONSIDERING, therefore, in compliance with the opinion of the Communications Regulatory Authority, on the basis of the considerations presented above, that the commercial practice under examination results to be unfair pursuant to Articles 20 and 26, paragraph 1, letter *h*) of the Consumer Code since it is contrary to the trader diligence and can wrongfully condition the consumer considerably limiting the latter's freedom to choose;

HEREBY RESOLVES

a) that the commercial practice described under point II hereof, carried out by the companies Webloyalty International Sàrl, Webloyalty International S.r.l., Ryanair Ltd., Alitalia — Compagnia Aerea Italiana S.p.A., Airone S.p.A., Vacaciones eDreams, S.L., eBay (UK) Ltd and TicketOne S.p.A., for the reasons and within the limits presented in the motivation, constitutes an unfair commercial practice pursuant to Articles 20 and 26, paragraph 1, letter *h*) of the Consumer Code, and its diffusion and continuation is forbidden;

b) to sanction the companies Webloyalty International Sàrl and Webloyalty International S.r.l. with an administrative fine equal to eight hundred thousand Euros (800,000 €);

c) to sanction the company Ryanair Ltd. with an administrative fine equal to four hundred and twenty thousand Euros (420,000 €);

d) to sanction the company Alitalia — Compagnia Aerea Italiana S.p.A. with an administrative fine equal to one hundred and forty-five thousand Euros (145,000 €);

e) to sanction the company Airone S.p.A. with an administrative fine equal to twenty-five thousand Euros (25,000 €);

f) to sanction the company Vacaciones eDreams, S.L. with an administrative fine equal to two hundred and twenty thousand Euros (220,000 €);

g) to sanction the company eBay (UK) Ltd. with an administrative fee equal to twenty thousand Euros (20,000 €);

h) to sanction the company TicketOne S.p.A. with an administrative fee equal to fifty thousand Euros (50,000 €);

i) that, within sixty days from the notification of the proceedings hereof, the traders must communicate to the Authority the initiatives undertaken in order to comply with the claim as mentioned under letter a).

The administrative sanctions as mentioned under the previous letters b), c), d), e), f), g) and h) 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 Agenzia delle Entrate (Revenue Agency), available on the

website *www.agenziaentrate.gov.it*.

Pursuant to Article 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 Article 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 Article 27, paragraph 12, of the Consumer Code and Article 23, paragraph 12-*quinqüesdecies*, of Decree-law no. 95 of 06th July 2012, as amended by law no. 135 dated 07th August 2012, in case of non-compliance with the resolution, the Authority shall impose 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 Article 135, paragraph 1, letter *b*), of the Code of administrative proceedings (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 Article 41, paragraph 5, of the Code of administrative proceedings, that is an extraordinary claim can be submitted to the President of the Republic pursuant to Article 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.

THE SECRETARY GENERAL
Roberto Chieppa

THE PRESIDENT
Giovanni Pitruzzella