

THE GUARANTOR AUTHORITY OF COMPETITION AND MARKET

IN ITS MEETING of 19 December 2014;

HAVING HEARD the Speaker, Dr. Salvatore Rebecchini;

GIVEN Part II, Title III, of Legislative Decree No. 206 of 6 September 2005, headed “*Consumer Code*”, as subsequently amended (hereinafter referred to as “Consumer Code”);

GIVEN article 1(6) of Legislative Decree No. 21 of 21 February 2014, according to which the minimum statutory penalty has been confirmed as being the sum of 5.000.000 Euros already prescribed by article 23(12-*quinquiesdecies*) of Legislative Decree No. 95 of 6 July 2012, as abrogated by the selfsame Legislative Decree No. 21/2014;

GIVEN the “*Rules on investigation procedures in the field of misleading and comparative advertising, unfair commercial practices, vexatious clauses*” (hereinafter referred to as “Rules”), adopted by the Authority pursuant to resolution dated 8 August 2012 and subsequently replaced by the “*Rules on investigation procedures in the field of misleading and comparative advertising, unfair commercial practices, breach of consumers’ rights in contracts, vexatious clauses*” (hereinafter referred to as “New Rules”), adopted by the Authority pursuant to resolution dated 5 June 2014;

GIVEN its own order dated 13 May 2014, by which, in terms of article 27(2) and (3) of the Consumer Code, an investigation at the premises of the company TripAdvisor Italy S.r.l. was arranged;

GIVEN its own order dated 12 November 2014, by which, in terms of article 7(3) of the Rules, the deadline for the finalization of the proceedings was extended due to special investigative requirements;

GIVEN the documents submitted in the proceedings;

I. THE PARTIES

1. TripAdvisor LLC, a company duly incorporated under US law, in its capacity of a professional in terms of 18 (b) of the Consumer Code. The said company manages the www.tripadvisor.it website, through which general tourist information is gathered and reviews posted by the registered users on the profiles of the hotel, catering and miscellaneous facilities included in the database are collected. TripAdvisor, moreover, offers to some of the aforesaid facilities a subscription service for valuable consideration, for the sake of activating the so-called company profiles. [omitted]¹.

2. TripAdvisor Italy S.r.l. (hereinafter referred to, together with TripAdvisor LLC, as “TripAdvisor”), in its capacity of a professional in terms of 18 (b) of the Consumer Code. The said company, which is part of the TripAdvisor group, provides marketing services to TripAdvisor Limited UK, a company duly incorporated under Anglo-Saxon law, which is in turn engaged in the development, promotion and valorization of TripAdvisor’s business in Europe, the Middle East and Africa². [omitted]

3. National Consumer Union, in its capacity of reporting consumer association.

4. Federation of Italian Hotel and Tourism Associations (hereinafter also referred to as “Federalberghi”), in its capacity of reporting subject.

5. Agriturismo La Vecchia, in its capacity of reporting subject.

II. THE COMMERCIAL PRACTICE

6. The order relates to the conduct engaged in by the professionals, consisting in the divulgation of misleading information about the sources of published reviews, in respect of which the adopted tools and procedures are found to be inadequate to the task of combating the phenomenon of fake reviews.

7. It emerged, on the strength of the reports received since the month of September

¹ In the present version, some of the data are omitted, since elements of confidentiality or secrecy were deemed to be present in the information.

² See document no. 212 - attachment 5.

2011, the information obtained as of rule from the www.tripadvisor.it Internet website, for purposes of applying the set of rules dictated by the Consumer Code in the field of unfair commercial practices, as well as the report by the National Consumer Union, received on 11 March 2014³ and later supplemented on 14 November 2014⁴, that TripAdvisor had divulged misleading information about the sources of the reviews.

8. TripAdvisor, in fact, while stating that it does not check the facts set out in the reviews, and while aware that on the said website fake reviews, both positive and negative in their judgments, are published by users who have not actually availed themselves of the services provided by the facilities included in the database, uses particularly assertive information, capable as such of increasing the consumers' trust in the authentic and genuine character of the reviews published by users.

9. In particular, the information divulged by professionals consist in the following:

a. *“It does not matter whether you prefer hotel chains or niche hotels: on TripAdvisor you can find several true and authentic reviews you can trust. Millions of travellers have published online their most sincere views on hotels, beds & breakfast, pensions and much more still”;*

b. *“Do you want to organize a trip? Then pass by TripAdvisor first. The travellers of the TripAdvisor community have written millions of reviews on the best and worst vacations, which are going to help you decide what to do. In our free of charge guides, you can find the travellers' valuable advices and photos so as to guide you through the discovery of the most important travel destinations”;*

c. *“Download our free of charge travel guides, as you will then discover the travellers' advices on tourist attractions, hotels, restaurants and entertainment sites”;*

d. *“TripAdvisor provides reliable trip advices, published by real travellers”;*

e. *“Secure the travellers' reviews and opinions about hotels in the most visited cities”;*

f. *“[number] of persons have written a review about this hotel”, “What do the travellers say about [city]?”.*

³ See document no. 36.

⁴ See documents no. 190 and no. 190 – attachment 1.

III. FINDINGS OF THE PROCEEDINGS

1) Evolution of the proceedings

10. With regard to the aforesaid conduct, on 19 May 2014 the Parties were notified of the commencement of investigation proceedings no. PS9345⁵ against TripAdvisor, for possible breach of articles 20, 21 and 22 of the Consumer Code.

11. By notifying the commencement of the said investigation proceedings, the hypothesis was raised of the misleading nature of implemented commercial practices, consisting, on the one hand, in the dissemination of deceptive information about the sources of reviews published by users of the www.tripadvisor.it website, in the light of the inappropriateness of the tools and procedures adopted in order to combat the phenomenon of fake reviews, and, on the other hand, in the dissemination of non-transparent information about: i) the existence of a commercial relationship between TripAdvisor and the tourist facilities which have activated a company profile through a subscription for valuable consideration; ii) the possible effects which the company profiles have on the positioning of the facilities within the popularity index; iii) the implication, method of issue and impacts of the “Certificate of Excellence” on the popularity index.

12. On 19 May 2014, an inspection was conducted at the premises of TripAdvisor Italy S.r.l.⁶.

13. On 18 July 2014, TripAdvisor forwarded its own reply to the request for information set out in the notification of commencement of the proceedings⁷. On 13 August 2014, a second request for information was put forward to the professionals⁸, the reply to which, after the extensions requested⁹ and granted¹⁰, was received on 9 October 2014¹¹.

14. In the course of the proceedings, the professionals put forward various claims of confidentiality¹², in respect of which a deferred access was resolved upon¹³. On 7 November 2014, the professionals were notified of the partial acceptance of the said claims¹⁴. TripAdvisor forwarded some remarks on

⁵ See documents no. 40 and no. 41.

⁶ See documents no.44 and no. 45.

⁷ See documents nos. 98a, 98b, 98 – attachments from 1 to 8, 99a, 99b and 100

⁸ See document no. 104.

⁹ See documents nos.106, 111 and 119.

¹⁰ See document no. 113.

¹¹ See documents nos. 120; 120a; 120b; 120 – attachments from 1 to 22; 121; 121 - attachments 1 and 2;127 - attachments 1, 3, 4, 5, 6 and 17; 128 - attachments 20, 21 and 22; 130; 145 and 145 - attachments 1 and 2.

¹² See documents nos. 64; 64 - attachment 1; 101; 125; 125 - attachments 1 and 2.

¹³ See documents nos. 82; 103; 126.

¹⁴ See document no. 169.

14 November 2014¹⁵.

15. Federalberghi, on 17 June 2014, put forward the request to take part in the proceedings¹⁶, which was subsequently accepted by the Authority's Offices¹⁷. On 10 July 2014, Agriturismo La Vecchia's request for participation therein was accepted¹⁸.

16. The professionals were granted access to the contents of the investigation file on 18 June and on 7 November 2014¹⁹.

17. The Offices granted Federalberghi access to the contents thereof on 8 July, 24 September and 17 October 2014²⁰.

18. On 31 October 2014 and 4 November 2014, TripAdvisor asked to be given a hearing.

19. Federalberghi, on 3 November 2014, forwarded its own written deposition in terms of article 10 of the Rules, simultaneously with a claim of confidentiality²¹. On 6 November 2014, Federalberghi was notified of the partial acceptance of the said claim. Federalberghi, on 7 November 2014, forwarded its own remarks²².

20. On 7 November 2014, the notification of the deadline for the finalization of the investigation, set at 18 November 2014, was sent to the Parties²³.

21. The Authority, on 12 November 2014, notified to the parties a thirty days' extension of the deadline for the finalization of the investigation²⁴.

22. On 18 November 2014, the hearing requested²⁵ by TripAdvisor took place at the Authority's premises²⁶.

23. TripAdvisor, on 19 November 2014, forwarded its own written deposition²⁷. On the same date, the view of the Authority for Communication Guarantees was requested²⁸. The said request was supplemented on 20 November 2014²⁹.

¹⁵ See documents no. 207 and no. 207 – attachment 1.

¹⁶ See documents no. 85 and no. 85 - attachments 1 e 2.

¹⁷ See documents nos. 90 and no. 91.

¹⁸ See document no. 95.

¹⁹ See documents no. 88 and no. 168.

²⁰ See documents nos. 94; 115bis; 129.

²¹ See documents nos. 151, 152, 152 – attachment 1 and 2, 153 and 153 – attachments 1 and 2.

²² See documents no. 167 and 167 – attachments from 1 to 3

²³ See document no. 170.

²⁴ See document no. 174.

²⁵ See documents no. 150 and no. 158.

²⁶ See documents no. 207bis and no. 207bis – attachment 1.

²⁷ See documents nos. 208, 208 – attachments from 1 to 13, 211 and 211 – attachment 1.

²⁸ See document no. 209.

²⁹ See document no. 210.

2) *Evidence obtained*

24. Recorded hereunder are the investigation elements acquired in the course of the proceedings.

i) *TripAdvisor's entrepreneurial model and the relationship with the commercial partners*

25. TripAdvisor introduces its own Internet site, *www.tripadvisor.it*, as “*the largest travel site in the world, born to help travellers plan the perfect vacation. TripAdvisor offers reliable travel advices, published by real travellers, and a broad range of information search functionalities, with direct links to the booking instruments*”³⁰. On its own Internet site, moreover, TripAdvisor states that it is the largest community of travellers in the world, boasting nearly 260 million unique travellers every month and more than 150 million reviews and opinions relating to more than 4 million facilities, restaurants and attractions³¹, as well as that it is “*the largest travel website and online travel guide in the world. Our sites operate in 34 Countries and in 21 languages throughout the world. On TripAdvisor it is possible to trace information, advices and dispassionate opinions from those who have really travelled*”³². In the course of the proceedings, TripAdvisor has asserted that it was “*a site of online reviews through which the users can publish reviews on hotels, restaurants and other places of tourist interest*”³³.

26. TripAdvisor places at the consumers' disposal a database containing tourist information pertaining to hotel and catering facilities as well as facilities classified as “*tourist attractions*”³⁴. The profiles of the facilities included in the said database comprise both company information, more or less detailed depending on whether a so-called “*company profile*” for valuable consideration (see below) has been activated, and the reviews of registered users (hereinafter referred to also as “*users*”).

27. The so-called *database*, with special reference to the category of hospitality facilities, makes it possible to assimilate the TripAdvisor site to those which carry out so-called metasearch functions, inasmuch as it enables travellers to acquire comparative tourist information, including information pertaining to the price and availability of rooms in the facilities, thanks to the presence of links and information supplied by the online travel agencies

³⁰ See document no. 167 – attachment 3, page 1.

³¹ See document no. 167 - attachment 3, page 1.

³² See document no. 73, page 39.

³³ See document no. 211 – attachment 1, page 11.

³⁴ See documents no. 73 - attachment 2, and no. 183, p. 12.

(“OTA”)³⁵.

28. TripAdvisor adopts an entrepreneurial model in which part of the commercial activity consists in the sale of advertising spaces within its own Internet site. The commercial relationships which arise in this manner are governed by advertising agreements envisaging remuneration methods based on so-called click-based and display-based schemes³⁶. The professional, with regard to the said profile, expressly asserted that the main source of income of its commercial activity consisted in the revenues generated by the pay per click advertising contracts³⁷. In particular, TripAdvisor, by virtue of the aforesaid contracts, applies a price to its own commercial partners (*i.e.* to the advertisers)³⁸, the amount of which is found to be directly linked to the volume of clicks generated by the visitors on the advertising links present on the site.

29. The second main source of income consists in the sale of advertising spaces, which are followed by agreements envisaging remuneration methods based on the so-called display-based scheme. TripAdvisor sells advertising spaces at a price generally calculated on the basis of a number amounting to one thousand visualizations of the banners placed on the site³⁹, capable of being placed on any page without any predetermined portion having been contemplated⁴⁰.

30. TripAdvisor introduces the company profiles as a potent marketing tool for hotels, as they enable improved visibility and an increase in bookings⁴¹. [omitted]⁴².

ii) Structure and functioning of TripAdvisor’s online platform as regards the creation and management of the proprietary profiles, the registration of users and the issuing of reviews

³⁵ See document no. 173 p. 3 ff. The visitors access the Internet sites of the OTA through the advertising links, where they can book a room in the facility selected through the database.

³⁶ See documents no. 98b, pp. 25 and 26, and no. 120 – attachment 20.

³⁷ The income drawn by TripAdvisor thanks to the advertising agreements based on the mechanism of pay per click remuneration has been the following: 500 million dollars with regard to the 2011 fiscal year; 588 million dollars with regard to the 2012 fiscal year; and 696 million dollars with regard to the 2013 fiscal year (we are speaking of aggregate data, relating to the group turnover). See document no. 98b, p. 26.

³⁸ See document no. 120 – attachment 18. Among TripAdvisor’s commercial partners there are also the so-called online travel agencies (OTA), as evinced by the content of the advertising banners present on the professional’s site (see document no. 173), by the documents filed in the proceedings, and by the content of the annual report filed with the United States Securities and Exchange Commission. See documents no. 145 - attachment 2, p. 34, and no. 120 – attachment 21, p. 13.

³⁹ The income generated through the said advertising agreements has been the following: 86 million dollars with regard to the 2011 fiscal year; 94 million dollars with regard to the 2012 fiscal year; and 119 million dollars with regard to the 2013 fiscal year (we are speaking of aggregate data, relating to the group turnover). See document no. 98b, p. 26.

⁴⁰ See document no. 207 bis, p. 2.

⁴¹ See document no. 189, p. 1.

⁴² [omitted]

31. TripAdvisor places at the visitors' disposal, on its Internet site, a database consisting of the profiles that contain tourist information pertaining to hospitality⁴³ and catering facilities⁴⁴, as well as to so-called tourist attractions. In particular, TripAdvisor envisages different forms for creating such profiles. In fact, besides those instances where that is done by an official representative of the facility⁴⁵, there are also the following possibilities: *i*) users who have reported or reviewed the facility⁴⁶; *ii*) commercial partners of TripAdvisor⁴⁷; *iii*) TripAdvisor editors who had come to know the facility thanks to an article or a guide⁴⁸.

32. TripAdvisor requires, in relation to checking the status of official representative during the phase of creating the proprietary profile, the mere adherence to a statement⁴⁹.

33. By virtue of the existence of different methods of creating the proprietary profiles, therefore, their management is found not to be necessarily linked, and in any event not immediately consequential upon, the phase of including the facility in the database. The professional, indeed, enables the management of a proprietary profile to be carried out only by those official representatives who have positively undertaken the procedure of identity⁵⁰ verification and affiliation to the facility⁵¹.

34. Such profiles contain both the company information inserted during the phase of creating the profile along with the additions made by the verified official representatives, and the tourist information included in the users' reviews⁵². The procedure of user registration, necessary and preparatory to the possibility of issuing reviews, might be carried out in one of two alternative ways: *i*) by linking a preexisting Facebook or Google+ account⁵³; *ii*) by directly creating a user account on the TripAdvisor site⁵⁴.

⁴³ See documents no. 87 and no. 173.

⁴⁴ See documents nos. 69, 76 and 78.

⁴⁵ The professional deems any of the following to be an official representative: *i*) the manager; *ii*) the owner; *iii*) the marketing agency; *iv*) franchising; *v*) other. See document no. 200, p. 3.

⁴⁶ See document no. 183, pp. 6 and 21.

⁴⁷ See document no. 73, p. 56. In these instances, it is directly the professional who creates the profiles.

⁴⁸ *Ibid.* The existence of various methods for creating the proprietary profiles has been confirmed by the professional even in the course of the hearing held on 18 November 2014. See document no. 207 bis, p. 3.

⁴⁹ See document no. 200, pp. 5, 11 and 18.

⁵⁰ See document no. 187, p. 25.

⁵¹ See document no. 187, p. 30.

⁵² See document no. 183, p. 21. There is also a guide on ascertaining the representatives' identity. See document no. 204.

⁵³ The registration through a Facebook profile is available since 13 April 2009, and the one through a Google+ profile is available since 7 April 2014. The professional has stated that, since 1 April 2009, [omitted] of users from all over the world, who registered on the site through a link to a preexisting account on one of the aforesaid social networks, have issued reviews on the profiles of Italian facilities. See document no. 145 - attachment 2, pp. 2 and 3.

⁵⁴ See document no. 98b, p. 3. In that instance, the users have to insert an e-mail address, their name and

35. From the investigations carried out as of rule, it emerged that it is very easy to register on the site, even by using a *proxy server*⁵⁵ and a temporary e-mail service, since the professional does not provide any *captcha*⁵⁶, nor does it send any e-mail to verify the validity of the e-mail address used in creating the user account⁵⁷. Compared to the findings of such an investigation, moreover, Federalberghi was proved to have created a user account traceable to a fantasy character⁵⁸ by resorting to the procedure of registration via a link to a preexisting Google+ account⁵⁹. Through such account, Federalberghi subsequently issued an invented review about a hotel facility no longer active on the market⁶⁰. From the investigations carried out as of rule, it emerged that the said review was still published on the site⁶¹.

36. The users intending to issue a review must select the facility and fill out the relevant module⁶². The review is made up of a part in which the user is called upon to allocate an overall score to the facility within a range oscillating from a minimum of 1 to a maximum of 5 points, and of another part relating to the description of the tourist experience⁶³. The reviews are not published immediately after being issued, as they are in fact approved approximately 24-48 hours⁶⁴ after they have been sent, and are actually published only if they conform to TripAdvisor's rules – the said process might require a longer time when the review is marked by the professional's system and is the subject of an in-depth analysis⁶⁵. The users can publish more than one review about the same facility, by complying with the time frames envisaged by the professional's rules⁶⁶, though it is specified that for purposes of calculating the popularity index only the latest review is lent weight⁶⁷.

37. At the time of issuing a review, TripAdvisor informs the users of the policy adopted with the aim of combating the publication of untruthful

surname, reference to a nickname with whom they want to associate their own reviews, and reference to a city. See document no. 98b, p. 3, and no. 145 – attachment 2, p. 3.

⁵⁵ The utilization of a proxy server is done in order to mask the real Internet Protocol of the device.

⁵⁶ A typically used CAPTCHA test is the one in which the user is requested to write down the letters or the numbers in a sequence, which appears distorted or blurred on the screen.

⁵⁷ See document no. 144.

⁵⁸ See document no.167 - attachment 1, pp. 11 and 167 – attachment 3, p. 5.

⁵⁹ Google's policy for combating the use of pseudonyms, nicknames and non-standard real names, which had characterized the first phase of life of the Google+ platform, resulting in the suspension of the accounts created in breach of those rules, ended on 15 July 2014, as evinced by the professional's official declarations, publicly traceable at the following website address: <https://plus.google.com/+googleplus/posts/V5XkYQYYJqy>.

⁶⁰ See document no.167 – attachment 3, p. 9.

⁶¹ See document no.166.

⁶² See document no.181, p. 3.

⁶³ See document no. 181, pp. 11 and 12.

⁶⁴ See document no. 207 bis, p. 4.

⁶⁵ See document no.181, p. 14.

⁶⁶ As regards accommodation and attractions, the professional accepts reviews pertaining to subsequent visits to the same facility only three months after publication of the last review, whereas, as regards restaurants, it accepts them one month after publication of the last review. See document no. 181, p. 6.

⁶⁷ See document no.207 bis, p. 2.

reviews, thereby requesting them to opt into a specific declaration⁶⁸.

38. The professional allocates badges to users, which appear in the form of an icon next to all the published reviews⁶⁹. Among these badges there are those shaped as coloured stars, which are directly related to the number of published reviews⁷⁰. From the investigations carried out it, emerged that several users had issued reviews about facilities with an open profile, even though they were no longer active on the market⁷¹.

39. The official representatives of the facilities are entitled to reply to the reviews published by the users⁷². Any such reply, if found to conform to the rules, is published within a few working days beneath the corresponding review⁷³. TripAdvisor nevertheless reserves for itself the right to remove it at any time and at its own description⁷⁴. The replies by management are merely informative in character, as they have no direct impact on either the exercise of control over reviews or the effects produced by the published reviews upon the positioning of the facilities within the popularity index⁷⁵. The official representatives of the facilities have no chance of directly moderating or filtering the reviews which are published⁷⁶.

iii) The classification tools of the facilities “Popularity Index Ranking” and “Bubble Rating”

40. Preliminarily, we set out hereunder a screenshot taken from the TripAdvisor site and concerning the profile of a hospitality facility. In the illustrating example, the parts indicating the popularity index and the “Bubble Rating” are highlighted respectively in red and blue. See **figure 1**.

⁶⁸ See document no.98b, p. 16, and no. 179, p. 1.

⁶⁹ In the section on the site headed “Navigation on TripAdvisor – What are the badges?”, it is specified that the badges comprise: i) badges for the reviewers; ii) badges for the category (linked to the number of reviews for the same type of facilities); iii) badges for the cities; iv) passport badges; v) useful mark badges. See document no.192, p. 1. Only the users registered with the site can give useful marks to other users’ reviews. See document no.207 bis, p. 2.

⁷⁰ The levels of badges in relation to the number of reviews are: i) contributor (from 3 to 5 reviews); ii) experienced contributor (from 6 to 10 reviews); iii) reviewer (from 11 to 20 reviews); iv) experienced reviewer (from 21 to 49 reviews); v) super reviewer (over 50 reviews). See document no.192, pp. 5 and 6.

⁷¹ Reference is especially made to the “Don Pedro” restaurant situated in Sorrento, on whose profile reviews have been published even subsequently to its closure. See document no. 163. An analogous situation occurred in respect of a hotel as well. See documents no. 166, 167 – attachment 1, pp. 18, and 167 – attachment 3, pp. 9 and 10.

⁷² “Rules on replying to (proprietary) reviews – Rules on the publication of management’s replies”. See document no. 185, pp. 2, 3, 4, 5, 15 and 16.

⁷³ See document no. 98b, p. 6.

⁷⁴ See document no. 185, pp. 2, 3, 4, 5, 15 and 16. The same holds true even of users’ reviews (See document no. 181, pp. 11 and 12).

⁷⁵ See document no. 207 bis, p. 4.

⁷⁶ See document no. 98b, p. 31.

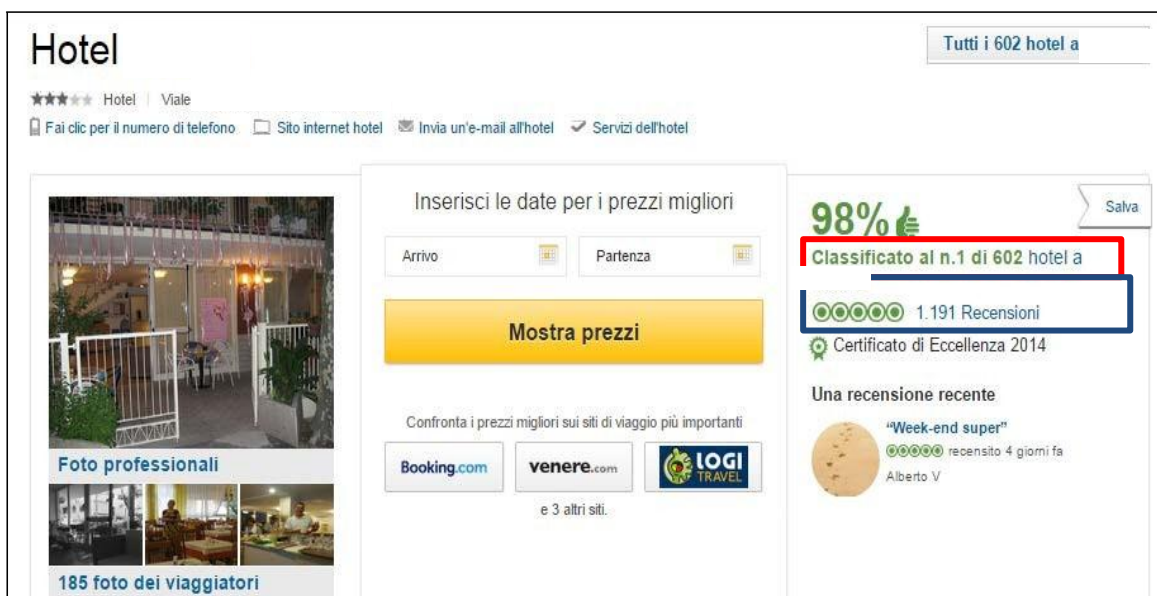


Figure 1: Example of a profile page in the database

a) *The popularity index*

41. The position held by the facilities within the reference geographical area is called “Popularity Index Ranking” (hereinafter also referred to as “popularity index” or as “ranking”). This tool serves to compare the facilities situated in the same locality, by offering the travellers a measure of their popularity. The algorithm utilized by the professional to calculate the ranking⁷⁷ of the facilities is essentially based on the quantity (that is, the number of reviews issued per facility), quality (that is, the positive or negative character of the reviews as determined by the “Bubble Rating”), and recent nature of the reviews, [omitted]⁷⁸. [omitted]⁷⁹ [omitted]⁸⁰.

42. The professional has stated that the following elements are devoid of any relevance when it comes to calculating the ranking: *i)* the activation of a company profile; *ii)* the number of visualizations of the facility’s page; *iii)* the type of activity of the facility; *iv)* the fact that the facility belongs to a chain⁸¹.

43. The popularity index is recalculated once daily for every geographical area, so that reviews do impact on the position held by a facility within the next 24 hours⁸². TripAdvisor has then affirmed that “A single review in a very “crowded” geographical area such as Rome will in all likelihood have a

⁷⁷ The professional has stated that it takes into account even other elements for calculating the facilities’ popularity index. See documents no. 98b, p. 11, and no. 145 – attachment 2, pp. 4 and 5.

⁷⁸ [omitted]

⁷⁹ [omitted]

⁸⁰ [omitted]

⁸¹ See documents no.98b, p. 11, and no. 145 – attachment 2, p. 4.

⁸² See document no.145 – attachment 2, p. 6.

*more significant impact on the Popularity Index than when the same review relates to a small city with only 10 facilities, each one of which boasts a modest number of reviews*⁸³.

b) The “Bubble Rating”

44. The “Bubble Rating” of a facility (hereinafter also referred to as “rating” or “point score”) indicates the point scores average assigned by users through the reviews⁸⁴ (see **figure 1**). At the stage of issuing a review, the users, apart from providing a word for word description, are also called upon to assign a score, expressed as points ranging from 1 to 5, with regard to the general level of satisfaction with their own experience (“overall point score”)⁸⁵.

45. The *rating* only expresses the average from the “overall point scores” and does not take into account scores relating to the sub-categories⁸⁶. Such a score is recalculated once daily⁸⁷, and is placed at the top of the facility’s profile alongside the indication of the total number of reviews earned⁸⁸.

iv) The review monitoring system

46. TripAdvisor states that it makes use of various tools for monitoring reviews⁸⁹, which come into the picture both at the stage of issuing the reviews and the subsequent one of their publication.

47. The users intending to issue a review are required to register with TripAdvisor’s site⁹⁰. [omitted]^{91,92}.

48. TripAdvisor has stated that it makes use of human⁹³ and technological resources to monitor the reviews, and in one section of the website which is accessed through a screen it affirms that: “*We do not conduct checks on the facts set out in the reviews. Given the more than 100 million reviews and the more than 1.5 million hotels, restaurants and attractions, it would be*

⁸³ Idem.

⁸⁴ See document no.145 – attachment 2, pp. 8 and 9.

⁸⁵ The users must also assign a point score in respect of a few specific characteristics of the facilities. See document no.145 – attachment 2, p. 7.

⁸⁶ See document no.145 – attachment 2, p. 9.

⁸⁷ Idem.

⁸⁸ See document no.145 – attachment 2, pag. 10.

⁸⁹ See document no. 98b, p. 15.

⁹⁰ See above, under III.2).ii). The professional states that it includes monitoring of the registration procedure within its review monitoring system. See document no.98b, p. 3.

⁹¹ [omitted]

⁹² [omitted]

⁹³ See document no.196 p. 6. TripAdvisor states that the [omitted] “Content Integrity” department, which appears to consist of more than 300 employees. See document no.145 – attachment 2, p. 32.

*impossible for us to ascertain every single detail. We are of the view that the large number of reviews (we publish on average 60 of them every minute) allows travellers to identify the trends and establish whether a facility is suited to his needs*⁹⁴. The check that is carried out is both automatic and manual⁹⁵.

a) The system of automatic filtering of reviews

49. [omitted]^{96 97 98}

50. [omitted]^{99 100}

51. [omitted]^{101 102 103}

52. [omitted]¹⁰⁴

53. [omitted]^{105 106 107 108}

54. [omitted]¹⁰⁹

b) The manual control of reviews prior to their publication on the site

55. TripAdvisor has stated that the manual control of reviews yet to be published is carried out by the employees of “Content Integrity”¹¹⁰ [omitted]. It is those employees who decide whether to turn down the reviews when deemed to be fraudulent or suspicious, or to allow their publication¹¹¹.

56. The reviews turned down are then placed, within TripAdvisor’s IT systems, under two macro categories: “Suspicious Removal” (hereinafter, use will also be made of the term “suspicious” to indicate such reviews) or “Fraud Removal” (hereinafter, use will also be made of the terms “fake” and, in line with the professional’s terminology, “fraudulent”, to indicate such reviews). [omitted]¹¹².

⁹⁴ See document no.196 p. 6.

⁹⁵ See document no.145 – attachment 2, p. 17.

⁹⁶ [omitted]

⁹⁷ The professional has stated that “[t]he reviews removed for being ‘suspicious’ have not been subjected to penalties, and for that reason some of them are removed only through the automatic filter system, while others require human intervention”. See document no.145 – attachment 2, p. 20.

⁹⁸ [omitted]

⁹⁹ [omitted]

¹⁰⁰ [omitted]

¹⁰¹ [omitted]

¹⁰² [omitted]

¹⁰³ [omitted]

¹⁰⁴ [omitted]

¹⁰⁵ [omitted]

¹⁰⁶ [omitted]

¹⁰⁷ [omitted]

¹⁰⁸ [omitted]

¹⁰⁹ [omitted]

¹¹⁰ See document no.145 – attachment 2, pp. 14, 17, 18 and 20. [omitted]

¹¹¹ See documents no. 98b, pp. 17 and 21, no.145 attachment 2, p. 20, and no. 207 bis, p. 4.

¹¹² [omitted]

57. During the phase of manual check, the reviews are deemed to be: a) fake: when there is a clear series of suspicious activities as regards a given facility, e.g. *optimization*¹¹³; b) suspicious: when direct evidence of the realization of a fraud is lacking, yet the review displays such characteristics as to instil a sufficient doubt to justify its removal (on the basis of the anti-fraud filters); the reviews are also deemed suspicious “*in those instances where there is no clear link between a number of reviews that justifies the removal of the fraudulent review*”¹¹⁴. [omitted]¹¹⁵

c) *The manual control of reviews after their publication on the site*

58. The manual control which is carried out on the reviews subsequently to their publication is activated, in most cases, pursuant to reports from users and from owners of the facilities. [omitted]^{116 117}.

59. The reports might be provided by users, by visitors or by owners of the facilities through the function called “*Report a problem through a review*”, placed under every review, followed by the choice of one of the three available options: i) the review infringes the rules; ii) the review is suspicious; iii) review published in the wrong place. The verified official representatives might even use the procedure for managing their own reviews¹¹⁸, available through the profile “*Management Centre*”¹¹⁹.

60. The professional has also stated that the data on the number of grievances received from users and others with regard to fake reviews are: [omitted] reports in 2012, along with the removal of [omitted] reviews; [omitted] reports in 2013, along with the removal of [omitted] reviews; [omitted] reports in 2014, until the date of 18 July, along with the removal of [omitted] reviews¹²⁰. Out of these reports, the ones which related to the lack of concordance between the tourist facilities and the assessments set out in the reviews or with the photos published on the profiles of the facilities amounted to: [omitted] in 2012 ([omitted]); [omitted] in 2013 ([omitted]) and [omitted] in 2014 until the date of 18 July ([omitted]).

61. [omitted]^{121 122}

¹¹³ See document no. 145 – attachment 2, p. 17.

¹¹⁴ Idem.

¹¹⁵ [omitted]

¹¹⁶ See document no. 98b, p. 24.

¹¹⁷ See document no. 98b, p. 21.

¹¹⁸ See documents no. 98b, pp. 21-24, and no. 145 – attachment 2, p. 33.

¹¹⁹ The “*Management Centre*” represents an operational tool to manage the facility’s profile. It consists in an interface which allows one, for instance, to chat with users and manage the widgets.

¹²⁰ [omitted]

¹²¹ See documents no. 98b, p. 18, and no.145 – attachment 2, p. 19.

¹²² See document no. 98b, pag. 18.

v) The system of penalizing the facilities involved in the activity of issuing fake reviews

62. TripAdvisor has stated that it does not impose any penalty on the popularity index in the event that the review, not published or removed after publication, is deemed to be merely suspicious¹²³. [omitted]¹²⁴. If the fake review is not attributable to the facility, no penalties are levied¹²⁵.

63. TripAdvisor has stated that it imposes a penalty on the popularity index of the facilities involved in the activity of issuing fake reviews, whenever identified¹²⁶. [omitted]¹²⁷. In those scenarios, TripAdvisor contacts the facility so as to notify the fact that an activity contrary to the rules has been detected and that, unless it is desisted with, additional penalties might be inflicted¹²⁸.

64. The already penalized facilities which further pursue the disallowed activities are subjected to a more severe application, which consists in affixing a red badge¹²⁹ onto the profile and in relegating the position occupied in the ranking to 40 positions lower¹³⁰. [omitted]^{131 132}

65. [omitted]¹³³

vi) The investigative activity carried out by TripAdvisor

66. Inside the “Content Integrity” department, the “Investigation team” operates, which team is concerned with identifying the frauds organized¹³⁴ through: [omitted]^{135 136}

67. [omitted]^{137 138 139}

¹²³ See documents no.145 – attachment 2, p. 20, and 207 bis, p. 5.

¹²⁴ [omitted]

¹²⁵ See document no.145 – attachment 2, pp. 19 e 20.

¹²⁶ See documents no.145 – attachment 2, p. 21, and no. 207 bis, p. 5.

¹²⁷ [omitted]

¹²⁸ See documents no. 98b, p. 18, and no. 145 – attachment 2, p. 21. TripAdvisor, moreover, adopts other substantial penalties, consisting for example in the exclusion from press releases (“Top10 Lists”), from allocation of the “Excellence Certificate”, and from the “Travellers’ Choice” prizes. See documents no. 98b, p. 19, and no.145 – attachment 2, pp. 22 and 36.

¹²⁹ See documents no.98b, p. 19, and no. 145 – attachment 2, p. 21.

¹³⁰ See document no.145 – attachment 2, p. 21.

¹³¹ [omitted]

¹³² [omitted]

¹³³ [omitted]

¹³⁴ See document no. 98b, p. 21. The investigation team was created in 2008 as a sub-section of the anti-fraud department, and was then officially set up in 2013. See document no.145 – attachment 2, p. 23.

¹³⁵ [omitted]

¹³⁶ [omitted]

¹³⁷ [omitted]

¹³⁸ [omitted]

¹³⁹ [omitted]

68. [omitted]^{140 141}

69. [omitted]^{142 143 144 145}

vii) The additional investigative elements

a) The presence of untruthful reviews on TripAdvisor's site

70. In the period between 27 August 2014 and 9 September 2014, the TripAdvisor site disclosed a series of patently untruthful reviews¹⁴⁶ issued by a number of users, who, in some instances, had reviewed through the same account various facilities situated in different geographical areas¹⁴⁷.

71. From the investigations carried out on the Internet site *www.tripadvisor.it*, it has further emerged that, within Florence's geographical area, there were at least 10 profiles of facilities which had ceased their commercial activity¹⁴⁸. Contrary to what should take place in those cases, these profiles are not stated to be "Closed"¹⁴⁹. Only the official representatives of conclusively closed facilities are entitled to remove the profile¹⁵⁰. Concerning the said aspect, there is for instance the report of a user who reviews a facility only to notify the fact that it has been closed for at least 9 years¹⁵¹.

72. Federalberghi has reported a few episodes pertaining to the issue of untruthful reviews, such as: *i)* two reviews issued in respect of Roma's Hotel Regency which, though closed since 2007, presented a still active profile on the professional's site¹⁵²; *ii)* a review issued in respect of Alghero's Hotel Capo Caccia (closed since 2013) through an account created on behalf of

¹⁴⁰ [omitted]

¹⁴¹ [omitted]

¹⁴² [omitted]

¹⁴³ [omitted]

¹⁴⁴ [omitted]

¹⁴⁵ [omitted]

¹⁴⁶ See document no.122 – attachment 1, pp. 188-197, 243-256 and 308. By way purely of illustration, the texts of a few of those reviews are set out hereunder: *i)* "We liked it a lot!!! I am not however sure whether it actually was this restaurant or the nearby kebab outlet. TA's filters do not work ... one can write anything here", review issued in respect of Rivoli's "Combalzero" restaurant published on 6 September 2014; *ii)* "I've never been here!!! This websites has NO filters (*sic*) so I can say anything about this Restaurant and everyone is going to believe it. Goodnight", review issued in respect of Modena's "Osteria francescana" restaurant published on 6 September 2014; *iii)* "It is undoubtedly the best Chinese restaurant in Milan. Excellent duck, wonderful buffets, cordial waiters. Fantastic review filters as you can see! Five green points", review issued in respect of San Mauro Torinese's "Pomodoro & basilico" restaurant published on 4 September 2014.

¹⁴⁷ See document no. 144.

¹⁴⁸ See also documents no.132 and no. 138.

¹⁴⁹ TripAdvisor, even when it ascertains the cessation of a facility's business activity, does not remove the profile from the database, contenting itself with marking it as "Closed".

¹⁵⁰ See document no.187, p. 5.

¹⁵¹ See document no.161, p. 8.

¹⁵² See documents no.167 – attachment 1, p. 17, and no.167 – attachment 3, pp. 7 and 8. The review dated 21 March 2013, in particular, proves to be issued by an experienced reviewer (see document no. 167 – attachment 3, p. 8).

Federalberghi itself and traceable to a fantasy character¹⁵³; *iii*) a review published by a journalist in respect of a restaurant which does not exist, the profile of which had been appositely created by the selfsame journalist who issued the review¹⁵⁴; *iii*) the case of a hospitality facility on whose profile two perfectly identical reviews in terms of title, content of information and overall point score (5 points) had been published from the accounts of two different users¹⁵⁵; *iv*) a review, boasting only 1 overall rating point, published on the profile of a hotel facility and relating to a period during which the same happened to be closed¹⁵⁶. In this instance, the profile manager had also exercised the right of reply, yet TripAdvisor never eliminated the review¹⁵⁷; *v*) the case of a hotel closed since 2009 with a still active profile on which a “super reviewer” had issued a review in 2013¹⁵⁸.

73. Federalberghi further reports the names of some organizations which realize optimization schemes: *i*) Aumenta TripAdvisor¹⁵⁹; *ii*) agenzia GDG sa.¹⁶⁰; *iii*) Holidadvisor¹⁶¹; *v*) agenzia Alder S.r.l.¹⁶²; *vi*) TripAdvisorSuccess¹⁶³; *vii*) RecensioniTripAdvisor¹⁶⁴. Almost all the said organizations have sought to establish contact with the owners of the facilities through a mailing activity, carried out also by relying on alleged online promotion agencies.

3) The professional's defensive arguments

74. Hereunder set out are the defensive arguments put forward by the professional through the written deposition produced, in terms of art. 16 of the Rules, on 19 November 2014¹⁶⁵.

75. TripAdvisor asserts that the operation of its own procedure is characterized by no procedural or information shortcoming capable of

¹⁵³ See documents no.167 – attachment 1, p. 18, and no. 167 attachment 3, pp. 9 and 10. It emerged from the investigations carried out as of rule on 7 November 2014 that such a review was found to be still published (see document no. 166), and on the facility's profile there were also other reviews published by a reviewer and by an experienced reviewer subsequently to the closure. See. document no. 166.

¹⁵⁴ See documents no.167 – attachment 1, pp. 18 and 19, and no. 167 - attachment 3, pp. 11 and 40.

¹⁵⁵ See documents no.167 – attachment 1, p. 19, and no. 167 – attachment 3, p. 12. It emerged from the investigations carried out as of rule that such reviews, as at the date of 5 November 2014, were found to be still published on the facility's profile (Federalberghi's investigations dated back, instead, to 17 September 2014). See documents no.152 – attachment 2, p. 12, no. 167 – attachment 3, pp. 12, and no.161, p. 4.

¹⁵⁶ See documents no. 167 – attachment 1, p. 19, no. 167 – attachment 3, pp. 16-18 and 161, pp. 5-7.

¹⁵⁷ Idem.

¹⁵⁸ See documents no. 167 – attachment 1, p. 20, and no. 167 – attachment 3, pp. 41-43.

¹⁵⁹ See documents no. 167 – attachment 1, p. 30, and no.167 – attachment 3, p. 54.

¹⁶⁰ See documents no. 167 – attachment 1, pp. 30 and 31, and no. 167 – attachment 3, pp. 55 and 56.

¹⁶¹ See documents no. 167 – attachment 1, p. 31, no. 152 – attachment 2, pp. 60-65, and no. 167 – attachment 3 pp. 61-62.

¹⁶² See documents no. 167 – attachment 1, p. 31, and no. 167 – attachment 3, p. 63.

¹⁶³ See documents no. 167 – attachment 1, p. 31, and 167 – attachment 3, p. 65.

¹⁶⁴ See documents no. 167 – attachment 1, p. 31, and no. 167 – attachment 3, pp. 66 and 67.

¹⁶⁵ See documents no. 208, no. 208 – attachments 1 to 13, no. 211 and no. 211 all. n. 1.

undermining the consumers' economic decisions¹⁶⁶, as evinced by the fact that 2,6% of the reviews issued by the users have been blocked prior to their publication¹⁶⁷; the fake ones published on the site, instead, remain therein only for a very short time thanks to the subsequent checks.

76. TripAdvisor has then acknowledged that *“even if it cannot exclude the occurrence of a paltry and negligible number of frauds on its own site, that fact does not render it ‘unreliable’ or its content ‘fake’ or ‘misleading’”*¹⁶⁸, and that *“it is not possible to prevent a user from writing a concocted review”*¹⁶⁹.

77. The professional has also asserted that the fact that a user must devote some time to be registered on the site, so as to be able to issue a review, *“already has the effect of avoiding the publication of reviews made ‘as mere play’ or ‘in jest’, and discourages whoever has no intention to become part of TripAdvisor’s community”*¹⁷⁰.

78. TripAdvisor highlights the fact that it would not be possible to prevent a user from writing a concocted review, while specifying that such a review would not have the capacity of altering the conduct of TripAdvisor’s users, since it configures itself as an isolated phenomenon. [omitted]

79. The issue of such reviews would lack any relevance even in the scenario where it is reiterated more than once, because: *i)* the other reviews issued in respect of the same facility would tend to isolate the fake one; *ii)* the owner’s reply would have the capacity of neutralizing the fake negative review; *iii)* the consumer might in any event be able to verify all the other reviews of that user.

80. TripAdvisor highlights that the conduct complained of by the Authority would not configure a commercially unfair practice, as it alleges that the expressions which the Authority objected to were employed purely in order to distinguish its own service from that of other professionals. The consumers, in any event, would be capable of understanding those messages¹⁷¹ and, accordingly, they would not be inclined to perceive them as indicators of the certainty and reliability of the site contents. It is further

¹⁶⁶ The professional mentions some of the data from a study undertaken by PhoCusWright, according to which 89% of the interviewed subjects felt like recommending TripAdvisor and 33% of them, in particular, would definitely recommend it. 91% of those interviewed, instead, were of the view that the reviews published on TripAdvisor’s site were accurate and corresponded to real tourist experiences. See documents no. 211 - attachments 1 p. 13.

¹⁶⁷ The professional further asserts that the reviews not removed prior to their publication represented an irrelevant number, one in any event lower than 1% of the total volume of reviews included in the database. TripAdvisor, however, has provided no element corroborating or accurately endorsing the said percentage claim. See documents no. 207 bis and no. 211 – attachment 1.

¹⁶⁸ See document no.145 – attachment 2, p. 14.

¹⁶⁹ See document no. 211 – attachment 1, p. 15.

¹⁷⁰ See document no. 98b, p. 3.

¹⁷¹ Some of the disputed claims, such as the one headed “miscellaneous reviews”, are placed halfway through the homepage, are written in a smaller character, and are devoid of any special graphical emphasis.

stressed by TripAdvisor that the conduct complained of is addressed to the average member of the group, that is, only to the Internet users who frequent the *www.tripadvisor.it* site.

81. TripAdvisor further objects to the claim that it discharges the role of a professional in terms of art. 18 of the Consumer Code. TripAdvisor qualifies instead as a hosting provider in terms of Legislative Decree No.70/2003, which gives effect to the so-called Directive on e-commerce (Directive 2000/31/CE). The professional accordingly maintains that he is not responsible for the reviews issued by the users on its site, and that it had decided to carry out checks on a voluntary basis purely in order to eliminate the contents with a potential to undermine its reputation¹⁷².

82. TripAdvisor further raises the objection that the conduct in question does not conflict with the criterion of professional diligence. In that connection, the professional specifies that it has equipped itself with complex and effective review monitoring measures¹⁷³, [omitted]

83. The professional fully objects to the content of Federalberghi's written deposition, by claiming the inadmissibility and unfounded nature of all the solicited measures, particularly as regards those aimed at identifying the users at the registration stage¹⁷⁴ and ensuring that the same prove to have actually gone through the tourist experience at the facilities for which they issue a review.

IV. VIEW OF THE GUARANTOR AUTHORITY FOR COMMUNICATIONS

84. Since the commercial practice to which the present order relates has been divulged through Internet, on 19 November 2014 a request was made for the Guarantor Authority for Communications to express its view¹⁷⁵, in terms of art. 27(6) of the Consumer Code, as subsequently supplemented on 20 November 2014¹⁷⁶.

85. Pursuant to its view expressed on 18 December 2014, the aforesaid Authority has held that the commercial practice under examination was unfair in terms of articles 20, 21 and 22 of the Consumer Code, on the basis of the following considerations:

¹⁷² See document no. 211– attachment 1, pp. 35 and 36.

¹⁷³ See document no.211 – attachment 1, p. 25.

¹⁷⁴ The professional asserts that the service provider of the information company is not juridically obliged to impose on the addressees the public utilization of their real names.

¹⁷⁵ See document no.209.

¹⁷⁶ See document no. 210.

- Tripadvisor, through its own review portal, is capable of conditioning the consumers' choices in a clear and tangible manner;
- the economic conduct of the consumer might be altered by the presence of untruthful information on a site which, by posing as the largest community of travellers, is expected to provide an utterly impartial and reliable service.

V. CONCLUSIVE ASSESSMENTS

86. The conduct described under point II of the present order, consisting in the dissemination of misleading information on the sources of the published reviews, when brought into relation with the inadequacy of the tools and procedures adopted by the professional with a view to combating the phenomenon of fake reviews, altogether configures an unfair commercial practice.

87. As regards the objection raised by TripAdvisor concerning its status as professional, it is sufficient to emphasize that the service it provides to consumers consists in placing tourist information at their disposal. Such a service is offered by placing at the users' disposal a database of hospitality facilities which can be consulted free of charge by having recourse to various search criteria, one where the conclusion of agreements for the sale of advertising spaces to the advertisers and the stipulation of contracts for the activation of business profiles represent the professional's remuneration.

88. Accordingly, Tripadvisor, by acting within the framework of its peculiar commercial activity, is definable as a professional, in terms of article 18(b) of the Consumer Code, and carries out the commercial practice under examination which is capable of influencing the determinations of a wide array of consumers¹⁷⁷.

89. Having said that, TripAdvisor offers consumers a comparison service on tourist facilities, which it promotes via recourse to slogans aimed at enhancing the level of reliability and trustworthiness of the reviews published on the www.tripadvisor.it site. The claims objected to,¹⁷⁸ in fact, adumbrate the fact that consumers can trust the reviews on hotels, restaurants and attractions published on the site, in that the same are true and authentic and correspond to the most sincere views of millions of travellers. Truthfulness and authenticity are stressed quite often by the professional, which asserts

¹⁷⁷ Suffice to think that, in 2013, according to what is alleged by the professional, the site hosted more than 260 million unique visitors per month.

¹⁷⁸ See section II, paragraph 9.

that it is offering reliable travel advices, while specifying that the same are published by real travellers. TripAdvisor's conduct and commercial communications accordingly take on a central role in the consumers' decisions, given that, by relying on their alleged genuine and authentic character, they use them in directing their own preferences and in choosing one of the services offered by the tourist facilities included in the database.

90. In reality, as examined hereunder, the professional, while equipping itself with a structured system of review control and measures to combat the activities associated with the issue of fake reviews, is unable to effectively and efficaciously evaluate either the authenticity of the information content or the dependability of the overall assessment which is thereby allocated to the facilities.

91. In particular, it has emerged from the verifications undertaken that the professional is never effectively capable of ascertaining the truthfulness of the information included in the reviews, inasmuch as the monitoring system it has equipped itself with does not allow it to establish whether the same are the fruit of a genuine tourist experience or the outcome of fraudulent or suspicious activities¹⁷⁹.

92. On this point, in fact, TripAdvisor expressly states¹⁸⁰ that it does not carry out any check on the facts set out in the reviews, given that such a pursuit is rendered impossible by the very large number of reviews issued by the users (the professional speaks of one review every second). It follows that such allegations as, for instance, *"It matters not whether you prefer hotel chains or niche hotels: on TripAdvisor you can find several true and authentic reviews which you can trust. Millions of travellers have published online their most sincere views on hotels, beds & breakfast, pensions and much more still"*, are misleading, since TripAdvisor's monitoring system is not intrinsically geared to the realization of such an ascertainment.

93. The monitoring of reviews carried out by TripAdvisor, unfolds itself, in the light of the findings of the investigation, between an automatic monitoring system and a manual one¹⁸¹, both prior and subsequently to the publication of the reviews, [omitted].

94. [omitted]¹⁸², [omitted]

¹⁷⁹ The said activities are traceable to the following types: i) boosting: insertion of fake positive reviews about a facility; ii) vandalism: insertion of fake negative reviews about a competitor's facility with the aim of damaging its online reputation; iii) optimization: systematic publication of fraudulent reviews, generally at the hand of third party companies in exchange for a consideration; iv) incentives/discounts/free treatments: issue of fake positive reviews associated with the offer by facilities of discounts, reductions, vouchers or other types of incentives on the users' behalf.

¹⁸⁰ See paragraph 48.

¹⁸¹ Moreover, the manual ascertainment prior to publication is only activated when the filter system deems the review to be fake or suspicious.

¹⁸² [omitted]

95. It should be further noted that the human resources which TripAdvisor earmarks for the implementation of such activity are quite limited, inasmuch as the investigation team for Europe consists of 5 employees, only 1 of whom knows Italian¹⁸³.

96. [omitted]¹⁸⁴

97. All the reviews published on the site, included the fake ones and those deemed by the professional to be “concocted” or issued “in jest”¹⁸⁵, have a direct impact, both on the ranking of the facilities and the overall rating which contributes to the determination of the facilities’ position within the popularity index, and, for this reason, the fake ones alter the consumers’ choices. [omitted]. More precisely, it is worth noting that TripAdvisor, with regard to the penalization of the facilities involved in fraudulent activities, asserts that when, inside a given geographical area, there are many structures with similar and mutually approximate scores in the popularity index, even a slight decrease in the overall score might impact on its position vis-à-vis those of the other facilities¹⁸⁶. That being the case, it is reasonable to believe that the same alteration in terms of rating and ranking would occur also in the event of publication of a few fake reviews.

98. It further emerged from the findings of the investigation that issuing of fake reviews proves to be very easy, given the simplicity characterising the user registration procedure. In that regard, it was ascertained that the professional does not use such tools as *captcha*, [omitted]. TripAdvisor, moreover, enables the issue of anonymous reviews through mere recourse to a nickname. Such a *modus operandi*, by increasing both the number of reviews and the number of site visitors¹⁸⁷, proves to be instrumental to the system of remunerating TripAdvisor’s activity.

99. Not even the control allegedly exercised by TripAdvisor over the already published reviews – [omitted]¹⁸⁸ – proves effective to the goal of empowering a conscious and informed choice on the part of consumers. The operational mechanisms of the database¹⁸⁹, in fact, enable a rapid and hypertrophic dissemination of the information, including untruthful one, among a wide array of consumers, which contrast with the unforeseeable time frames and the possibility of controls carried out by the professional¹⁹⁰. Even when such reviews only stay in the database for a short period of time,

¹⁸³ See document no. 145 attachment n. 2, pag. 23.

¹⁸⁴ [omitted]

¹⁸⁵ See paragraphs 70 to 72.

¹⁸⁶ See document no. 145 - attachment 2, p. 22. [omitted]

¹⁸⁷ TripAdvisor has stated that it receives nearly 260 million unique visitors per month and that it comprises more than 150 million reviews and opinions pertaining to more than 4 million facilities. [omitted]

¹⁸⁸ [omitted]

¹⁸⁹ See paragraphs 31 to 45.

¹⁹⁰ See paragraphs 58 and 59.

they would still be able to influence the consumers' choices at once.

100. Lastly, it should be considered that, as regards the reviews published by the users, the professional grants the official representatives of the facilities the right of reply, which is however only informative in nature and neither impacts on the effects produced by the published reviews upon the popularity index nor automatically determines the removal of the fake review by the professional. The said right of reply is moreover fully irrelevant where the profile of the facility is not managed by an official representative, being incapacitated from intervening in the reviews¹⁹¹.

101. Accordingly, TripAdvisor, in divulging the disputed claims, conveys to the consumers information of a deceitful nature, inasmuch as the structured system of review control it resorts to does not enable the ascertainment of the genuine and truthful character of the reviews.

102. Contrary to what is alleged by the professional, who deems the consumers to be implicitly aware of fake reviews and sufficiently experienced to recognize them, it should be noted that the propagation of the commercial practice by Internet reinforces the deceitful character of information disseminated by the professional, in that the same is susceptible of affecting a vast range of consumers, not all of whom are necessarily acquainted with the phenomenon of fake reviews, and, therefore, capable of consciously orientating their own consumer choices in the face of an altered information framework.

103. After all, the assertiveness of the professional's commercial communications makes it impossible for consumers to decipher the message differently. The selfsame consumers, faced with the slogans under examination, some of which are already present on the homepage of the Internet site, hence at the stage of the first contract that is established between the consumers and TripAdvisor, cannot but view the reviews published on the database as reliable. In this sense, one can think of the effects of the positive reviews acquired by the facilities and included in the database, with the aim of raising the popularity index, the information content and truthfulness of which are something the consumer would have no reason to doubt¹⁹².

104. In conclusion, the conduct by TripAdvisor that is objected to configures, in respect of the dissemination of information pertaining to the authentic, truthful and genuine character of the reviews published on its site¹⁹³, an unfair commercial practice in breach of articles 20, 21 and 22 of

¹⁹¹ See paragraphs 31 and 39.

¹⁹² See paragraph 69.

¹⁹³ See paragraph 9.

the Consumer Code, being in fact capable of inducing a vast range of consumers into error as regards the nature and main characteristics of the product and of altering their economic conduct. In particular, the consumers entrust their own economic determinations to a comparative site based on allegedly truthful, genuine and authentic judgments about the tourist facilities for which they are sought, against the background of a systemic monitoring apparatus that is ineffective for the task of satisfying the consumers' expectations, raised precisely by the claims published on the *www.tripadvisor.it* website.

105. As regards, in particular, the aspect of contrariness to the tenets of professional diligence, one cannot in the specific case detect in the professional the normal degree of attention one might reasonably expect, having regard to the quality and characteristics of the activity undertaken. The contrariness to the tenets of professional diligence is especially discernible in the fact that the professional, though aware of the operation of its own review monitoring system and of its intrinsic limits, given the choice it made at source when viewed against the type of business model adopted, has failed to comply with the obligation of placing at the consumers' disposal, since the very first contact, a clear, exhaustive and truthful information framework with regard to the promotion of services underpinning the conduct objected to.

106. Lastly, the alleged status of hosting provider which the professional attributes to itself so as to exclude its own responsibility for the conduct complained of and to valorize the voluntary nature of the checks undertaken, is found to be irrelevant. The professional does not content itself with memorizing the information but, due to the business model developed by it, it also and in fact mainly performs an activity of classification and systematization of the information.

107. Having stated all of that in the premises, the practice under examination is found to be patently in conflict with the duties of professional diligence laid down by the Consumer Code, in terms of article 20(2), upon every economic operator with regard to the methods of implementing or promoting its own commercial activity vis-à-vis the consumers. Compliance with such duties is all the more relevant in the case of services that can be utilized online, on account of the extremely vast range of consumers who are potentially involved.

VI. QUANTIFICATION OF THE SANCTION

108. In terms of art. 27(9) of the Consumer Code, when issuing an order interdicting an unfair commercial practice, the Authority inflicts an administrative sanction ranging from 5.000 to 5.000.000 Euros, having regard to the seriousness and length of the infringement.

109. With regard to the quantification of the sanction, effect should be given, so long as they are applicable, to the criteria identified by art. 11 of Law No. 689/81, by virtue of what is recalled by art. 27(13) of the Consumer Code: in particular, the seriousness of the infringement, the steps taken by the business in order to eliminate or mitigate the infringement, the personality of the agent, as well as the economic circumstances of the business itself.

110. As for the seriousness of the infringement, regard should be paid in this specific case to TripAdvisor's importance, given that it is one of the main operators worldwide in the online review market. It is likewise relevant to consider, for the sake of appreciating the seriousness of the criticized conduct, the extreme diffusion of the practice and its capacity, even by virtue of the communication means utilized, to reach a vast number of consumers.

111. As for the duration of the infringement, it appears from the available elements that the commercial practice has been continuously enacted since at least 2011 and is currently underway.

112. On the basis of those elements, it is deemed fit to determine the amount of the pecuniary administrative sanction applicable to TripAdvisor LLC and TripAdvisor Italy S.r.l. in a sum of € 500.000 (*five hundred thousand Euros*).

HAVING accordingly HELD, in conformity with the view of the Authority for Communications Guarantees, and on the basis of the aforesaid observations, that the commercial practice under examination is unfair in terms of articles 20, 21 and 22 of the Consumer Code, being in conflict with the tenets of professional diligence and capable, through the dissemination of misleading information on the sources of the reviews published on the Internet site www.tripadvisor.it, by virtue of the inadequacy of the tools and procedures adopted by TripAdvisor to combat the phenomenon of fake reviews, of significantly falsifying the average consumer's economic conduct with regard to the services promoted by the professional;

IT HEREBY RESOLVES UPON THE FOLLOWING:

a) Holding that the commercial practice described under point II of the present order, engaged in by TripAdvisor LLC and TripAdvisor Italy S.r.l., represents, due to the reasons and within the limits set out in the motivation section hereof, an unfair commercial practice in terms of articles 20, 21 and 22 of the Consumer Code, and interdicting its dissemination or continuation;

b) Inflicting on TripAdvisor LLC and on TripAdvisor Italy S.r.l., jointly and severally, a pecuniary administrative sanction of € 500.000 (*five hundred thousand Euros*);

c) Ordering that the professionals communicate to the Authority, within the time limit of 90 days from date of notification of the present order, the initiatives adopted so as to comply with the terms of the injunction order set out under point a), which are fit to remove the deceptiveness of the information, divulged through the site, by which the truthfulness and reliability of the consumers' reviews are emphasized.

The administrative sanction referred to under the preceding letter *b)* shall have to be paid within the deadline of thirty days from date of notification of the present order, by utilizing the attached F24 module with identifying elements, as referred to in Legislative Decree No. 241/1997. The said module might be submitted in paper form to the counters of banks, the Italian Post Office (Poste Italiane S.p.A.) and Collection Agencies. Alternatively, the module might be submitted online, by debiting its own current bank account or postal account, either through the home-banking and Interbank Corporate Banking (ICB) services placed at the disposal by the banks or by the Italian Post Office (Poste Italiane S.p.A.), or by utilizing the online services of the Tax Agency, available on the Internet site www.agenziaentrate.gov.it.

In terms of article 37(49) of Decree-Law No.223/2006, the subjects registered with VAT are obliged to submit the F24 module online.

Upon the expiry of the aforesaid term, interest *ex mora* shall be charged at the legal rate for a delay which is less than six months,

from the day subsequent to the expiry of the term of payment until date of payment. In the event of an additional delay in making compliance, in terms of article 27(6) of Law No. 689/81, the sum owed for the inflicted sanction shall be increased by one-tenth per semester, from the day subsequent to the expiry of the term of payment until the day on which the role is transmitted to the agent for collection; in that event, the majority shall absorb the interest ex mora accrued during the same period.

Notification of the actual payment shall have to be given at once to the Authority by sending a copy of the module attesting the payment.

The present order shall be notified to the interested subjects and published in the Bulletin of the Guarantor Authority of Competition and Market.

THE GENERAL SECRETARY
Roberto Chieppa

THE PRESIDENT
Giovanni Pitruzzella