

DELIBERATION NO. 103/20/CONS

**INJUNCTION AGAINST STUBHUB INC. FOR THE
VIOLATION OF ARTICLE 1, PARAGRAPH 545, OF LAW
NO. 232 (2017 BUDGET LAW) OF 11 DECEMBER 2016
(INDICTMENT NO. 3/19/DSD)**

THE AUTHORITY

AT the Council meeting of 16 March 2020;

WHEREAS law no. 249 of 31 July 1997, entailing the "*Institution of the Communications Authority and the regulation of telecommunication and radio-television systems*";

WHEREAS legislative decree no. 259 of 1 August 2003, entailing the "*Electronic communications law*";

WHEREAS law no. 232 of 11 December 2016, entailing the "*National budget law for the financial year 2017 and multi-year budget for the 2017-2019 three-year period*" and, in particular, article 1, paragraph 545, as amended by law no. 145 of 30 December 2018;

WHEREAS, in particular, article 1, paragraph 545, of law no. 232 of 11 December 2016, based on which, "*In order to combat tax evasion and to protect consumers and ensure public order, the sale of tickets or any other kind of placement, granting right of admission to entertainment events by parties other than the Ticket Issuer, including based on separate contracts or agreements, is punished, provided such conduct does not constitute a criminal offence, with the inhibition of such conduct and pecuniary administrative sanctions ranging from € 5,000.00 to € 180,000.00 and, should such conduct be performed by means of electronic networks, in accordance with provisions under paragraph 546, with the removal of the contents or, in the most egregious cases, with the shutdown of the website used to perpetrate the violation, with no prejudice to refunding claims*";

WHEREAS law no. 689 of 24 November 1981, entailing "*Amendments to the criminal law system*";

WHEREAS law no. 241 of 7 August 1990, entailing "*New rules on administrative procedures and right to gain access to administrative documents*";

WHEREAS legislative decree no. 104 of 2 July 2010, entailing "*Enactment of article 44 of law no. 69 of 18 June 2009, entailing delegation to the government on matters concerning the reorganising of the administrative procedure*";

WHEREAS deliberation no. 410/14/CONS of 29 July 2014 and its Attachment A, concerning the "*Procedural regulation for administrative sanctions and commitments and public consultation on the document entailing the 'Guidelines for quantifying pecuniary administrative sanctions imposed by the Communications Authority*", as last amended with deliberation no. 581/15/CONS, hereinafter referred to as the "Regulation";

WHEREAS deliberation no. 265/15/CONS of 28 April 2015, entailing the "*Guidelines for quantifying pecuniary administrative sanctions imposed by the Communications Authority*";

WHEREAS article 2 of Decree-Law no. 162 of 30 December 2019, entailing "*Urgent provisions on the extension of legislative terms, the organisation of public administrations and technological innovation*", pursuant to which, "*Under article 7, paragraph 1, of decree-law no. 104 of 21 September 2019, converted, following amendments, into law no. 132 of 18 November 2019, the wording 'until 31 December 2019' is replaced by 'until 31 March 2020'*";

WHEREAS deliberation no. 223/12/CONS of 27 April 2012, entailing the "*Adoption of a new regulation on the organisation and running of the Communications Authority*", as last amended by deliberation no. 95/19/CONS;

WHEREAS the reports submitted in writing by TicketOne S.p.A., Vertigo S.r.l., Vivo Concerti S.r.l., Friends & Partners S.p.A., Associazione italiana organizzatori e produttori spettacoli di musica dal vivo, Trident Music S.r.l. and Di and Gi. S.r.l., (registered by Agcom under protocol nos. 138266 of 29 March 2019, 163437 of 12 April 2019, 175696 of 19 April 2019, 175815 of 19 April 2019, 184293 of 29 April 2019, 200620 of 10 May 2019, 208321 of 15 May 2019);

WHEREAS the note of *Agenzia delle Entrate* (Italian Revenue Agency) of 31 May 2019 (registered by Agcom under protocol no. 237156)

WHEREAS the note of *Guardia di Finanza – Nucleo Speciale Beni e Servizi* (Finance Police – Special Unit dealing with Goods and Services) of 4 June 2019 (registered by Agcom under protocol no. 242107);

WHEREAS the note of *Polizia Postale e delle Comunicazioni* (Postal Police) of 4 June 2019 (registered by Agcom under protocol no. 241698);

WHEREAS the Report of 10 June 2019, entailing the proposal of starting sanction procedures pursuant to article 3, paragraph 4, of Attachment A of deliberation no. 410/14/CONS (registered by Agcom under protocol no. 251450);

WHEREAS the indictment and investigation notice of the Director of the Network and Digital Services Development Department, no. 3/19/DSD of 2 July 2019, entailing "*the indictment of the company named Stubhub Inc. following the infringement of article 1, paragraph 545 of law no. 232 of 11 December 2016 (Budget law 2017)*";

WHEREAS the notice of 3 July 2019, with which the Director of the Network and Digital Services Development Department submitted to the Ministry of Foreign Affairs – Department for Italians Abroad, Office IV – Section IV notifications – for the purposes of notifying the indictment and investigation notice no. 3/19/DSD titled "*the indictment of the company named Stubhub Inc. following the infringement of article 1, paragraph 545 of law no. 232 of 11 December 2016 (Budget law 2017)*" and subsequent notification to the Company, on 9 August 2019 (registered by Agcom under protocol no. 290404);

WHEREAS the email communication of the Company Stubhub (registered by Agcom under protocol no. 26775 on 21 January 2020);

WHEREAS the company named Stubhub Inc.'s access to the documents on 20 September 2019;

WHEREAS the company named Stubhub Inc.'s information request of 25 September 2019 (registered by Agcom under protocol no. 405185);

WHEREAS the notice of 26 September 2019, entailing "*Notice of procedures leading to sanctions, pursuant to article 1, paragraph 545 of law no. 232 of 11 December 2016 (Budget law 2017), as amended by law no. 145 of 30 December 2018 (Budget law 2018)*" sent to the Competition Authority (registered by Agcom under protocol no. 408005);

WHEREAS the notice with which the company named Stubhub Inc. acknowledged the information request of 25 September 2019 (registered by Agcom under protocol no. 418912 of 3 October 2019);

WHEREAS the notice of 23 October 2019, which, pursuant to article 7, paragraph 5 of Regulation no. 581/15/CONS communicated the stay of sanctions proceedings, as per Agcom document bearing protocol no. 405185 of 25 September 2019 (registered by Agcom under protocol no. 443817);

WHEREAS the notices sent by the company named Stubhub Inc. to submit their defence memorandum (registered by Agcom under protocol nos. 423914, 423921, 423925, 423926, 424925, 424926 e 424927, all dated 7 October 2019);

WHEREAS notice of 16 October 2019, which, pursuant to article 7, paragraph 5 of Regulation no. 581/15/CONS, communicated the stay of sanctions proceedings (registered by Agcom under protocol no. 441887);

WHEREAS the notice of the Postal Police (registered by Agcom under protocol no. 489973, 14 November 2019);

WHEREAS the notice of the Finance Police (registered by Agcom under protocol no. 495010, 18 November 2020);

WHEREAS the notice of 4 December 2019, which, pursuant to article 7, paragraph 5 of Regulation no. 581/15/CONS acknowledged the stay of sanctions proceedings (registered by Agcom under protocol no. 523088);

WHEREAS the notice which, pursuant to article 7, paragraph 1, of Regulation no. 581/15/CONS, requested further information to the company named Stubhub Inc. and, concurrently communicated the stay of proceedings (registered by Agcom under protocol no. 552105 on 23 December 2019);

WHEREAS the company's notice of acknowledgement following the aforesaid information request (registered by Agcom under protocol no. 23777 plus attachments, and protocol no. 23783 plus attachments of 20 January 2020);

WHEREAS the notice of 27 January 2020, which, pursuant to article 7, paragraph 5 of Regulation no. 581/15/CONS, acknowledged the stay of sanctions proceedings (registered by Agcom under protocol no. 36302);

WHEREAS the preliminary investigations (registered by Agcom under protocol no. 48060 of 3 February 2020);

WHEREAS deliberation 31/20/CONS of 13 February 2020, entailing "*The approval of the draft injunction against the company named Stubhub Inc. following the infringement of article 1, paragraph 545 of law no. 232 of 11 December 2016 (Budget law 2017), (Indictment no. 3/19/DSD) and further investigations for the acquisition of the agreement set forth under article 1, paragraph 545 of law no.232/2016, pursuant to article 11, paragraph 1, of the Regulation attached to deliberation no. 581/15/CONS*";

WHEREAS the notice entailing "*Agreement as per article 1, paragraph 545, law no.232/2016: forwarding of the draft injunction to the company named Stubhub Inc. following the infringement of article 1, paragraph 545 of law no. 232 of 11 December 2016 (sanctions procedure started with indictment no. 3/19/DSD)*", sent to the Competition Authority (registered by Agcom under protocol no. 68735 on 14 February 2020);

WHEREAS the notice which, pursuant to article 7, paragraph 5 of Regulation no. 581/15/CONS, notified the deferment of the terms for the sanctions proceedings set forth under deliberation 31/20/CONS to the company (registered by Agcom under protocol no. 70277 on 17 February 2020);

WHEREAS the notice of the Company of 27 February 2020 (registered by Agcom under protocol no. 88703);

WHEREAS the deliberation of the Competition Authority of 6 March 2020, through which Agcm expressed "*pursuant to article 1, paragraph 545, law no. 232/2016, the formal agreement on the draft injunction against the company named Stubhub Inc.,*

submitted to the Communications Authority", (registered by Agcom under protocol no. 112062 on 12 March 2020);

WHEREAS the documents of the proceedings;

CONSIDERING the following:

1. The fact and the indictment

Law no. 232 of 11 December 2016, concerning the "*National budget Law for the financial year 2017 and multi-year budget for the 2017-2019 three-year period*" gave the Communications Authority new powers as regards the sale of tickets/rights to admission for entertainment events, introducing measures that aim to counter the phenomenon known as secondary ticketing (namely, the sale of tickets for entertainment events by subjects other than the owners – including based on specific contracts or agreements – of ticket-issuing systems).

In particular, paragraph 545 of article 1 of the aforesaid law, as amended by law no. 145 of 30 December 2018, establishes that "*In order to combat tax evasion and to protect consumers and ensure public order, the sale of tickets or any other kind of placement, granting right of admission to entertainment events by parties other than the Ticket Issuer, including based on separate contracts or agreements, is punished, provided such conduct does not constitute a criminal offence, with the inhibition of such conduct and pecuniary administrative sanctions ranging from € 5,000.00 to € 180,000.00 and, should such conduct be performed by means of electronic communications networks, in accordance with provisions under paragraph 546, with the removal of the contents or, in the most egregious cases, with the shutdown of the website used to perpetrate the violation, with no prejudice to refunding claims. The Communications Authority, in conjunction with the Competition Authority, carries out the necessary inspections and takes the due measures, acting either at its own initiative or upon notice by any interested party, levying, where due, the pecuniary administrative sanctions provided for hereunder. No penalty is imposed if a natural person occasionally sells, to no commercial end, tickets for entertainment events at a price that is equal to or less than such ticket's face value.*"

In the period running from March to May of 2019, the Communications Authority received a significant number of complaints regarding the stubhub.it website, filed by companies operating in the field of live music event organisation, by musical event primary ticketing companies and by trade associations. Such complaints reported the sale of tickets for live musical events (secondary ticketing) performed by Stubhub Inc. on its website and on social media platforms, violating article 1, paragraph 545 of Budget law 2016.

Following supervisory activity, performed upon receipt of the aforesaid complaints and conducted with the assistance of the Finance Police, the Postal Police and the Revenue Agency, the Director of the Network and Digital Services Development Department – with document no. 3/19/DSD of 2 July 2019, concerning the "*Indictment of the company named Stubhub Inc. for the infringement of article 1, paragraph 545 of law no. 232 of 11 December 2016 (Budget law 2017)*", notified to the party on 9 August 2019 – ascertained that the company named Stubhub Inc. (hereinafter, "Stubhub"):

- 1) via the stubhub.it website, was selling tickets for entertainment events despite not being a registered Ticket Issuing Company;
- 2) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Jack Savoretti* event of 18 April 2019;
- 3) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *The Giornalisti* event of 1 May 2019;
- 4) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Ennio Morricone* event of 18 May 2019;
- 5) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Ennio Morricone* event of 19 May 2019;
- 6) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Elisa* event of 24 May 2019;
- 7) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Elisa* event of 25 May 2019;
- 8) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Elton John* event of 29 May 2019;
- 9) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Elton John* event of 30 May 2019;
- 10) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Vasco Rossi* event of 1 June 2019;

- 11) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Vasco Rossi* event of 6 June 2019;
- 12) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Vasco Rossi* event of 7 June 2019;
- 13) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Vasco Rossi* event of 12 June 2019;
- 14) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Ennio Morricone* event of 15 June 2019;
- 15) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Ennio Morricone* event of 16 June 2019;
- 16) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Ennio Morricone* event of 18 June 2019;
- 17) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Ennio Morricone* event of 19 June 2019;
- 18) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Def Leppard* event of 19 June 2019;
- 19) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Ennio Morricone* event of 21 June 2019;
- 20) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Ennio Morricone* event of 22 June 2019;
- 21) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Ennio Morricone* event of 23 June 2019;
- 22) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Ennio Morricone* event of 28 June 2019;

- 23) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Ennio Morricone* event of 29 June 2019;
- 24) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Jack Savoretti* event of 5 July 2019;
- 25) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Jovanotti* event of 6 July 2019;
- 26) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Elton John* event of 7 July 2019;
- 27) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Laura Pausini and Biagio Antonacci* event of 8 July 2019;
- 28) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Jovanotti* event of 13 July 2019;
- 29) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Jovanotti* event of 16 July 2019;
- 30) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Jovanotti* event of 20 July 2019;
- 31) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Jovanotti* event of 23 July 2019;
- 32) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Jovanotti* event of 27 July 2019;
- 33) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Jovanotti* event of 3 August 2019;
- 34) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Eros Ramazzotti* event of 6 August 2019;

- 35) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *Jovanotti* event of 24 August 2019;
- 36) via the stubhub.it website, was selling tickets at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites, for the *The Giornalisti* event of 7 September 2019;
- 37) was selling, through the social media platform www.facebook.com/stubhub/ linked to the company's website, tickets for events at a greater price than the face value of the same tickets being sold on authorised, primary-ticketing websites.

For each of the ascertained violations leading to indictment, the company was presented with the option of settling upon payment lower fines (pursuant to article 16 of law no. 689/1981). The company declined such an offer.

2. Deductions of the company

The Company submitted its stance via the defence memorandum of 4 October 2019 (registered by Agcom under protocol no. 423926 and others, mentioned above), providing more information and clarifications following the information request of 25 September 2019 (Agcom protocol no. 405185) and of 23 December 2019 (Agcom protocol no. 552105). The Company acknowledged such requests with notices of 3 October 2019 (Agcom protocol no. 418912) and of 20 January 2020 (Agcom protocol nos. 23777, 23783 and attachments).

Prior to that, the company had objected by pointing out Stubhub Inc.'s lack of capacity to be sued since it does not run the stubhub.it platform, which is actually managed by eBay Marketplaces GmbH, based in Switzerland. The company stresses that the indicted website, www.stubhub.it is a top level domain and totally separate from stubhub.com. Indeed, the two websites have a different homepage and are operated by two different companies (stubhub.it by eBay Marketplaces GmbH and stubhub.com by Stubhub.Inc). Hence, according to the party, Stubhub Inc lacks the capacity to be sued.

The company also describes the nature of the service offered on the stubhub.it platform, pointing out that Stubhub is a platform that allows *"users who have purchased tickets for a given event, and who cannot attend it, to meet the demand of other users, who failed to purchase them in time. This provides both users the opportunity to perform the transaction in a simple, user-friendly and safe environment."*

The party also points out that the sale and purchase of tickets on the Stubhub platform is *"entirely carried out and managed by the users"* and that the operating company *"never owns the ticket and under no circumstances does it ever purchase tickets"* and *"it is not aware of, nor does not monitor or control, how such offers come into being and the definition of prices and transactions; it simply hosts these transactions on its platform."*

The platform's legal regime is therefore, according the Company, similar to that of "*online stores, otherwise known as marketplaces*", through which users buy and sell all sorts of services. The Stubhub platform and, consequently, its operator, "*therefore fall within the information-society services definition of a hosting provider*" and are subject to the provisions of the E-commerce directive 2000/31/EC and to legislative decree no. 70 of 2003, "*which envisage and protect, under a regime of mitigated liability, their work, in view of the innovative service provided to the circulation of goods and services in the information society.*" Therefore, the Company that runs the website is not compelled to "*check that the price is established by the user in compliance with the governing laws, just like a platform where users autonomously buy and sell their home is not compelled to verify the correctness and truthfulness of the advertisement, or a platform for photograph-sharing is not compelled to check or monitor the truthfulness of the information concerning photographic copyright.*"

The Company concludes by claiming that the Italian laws make it absolutely legal to make a platform available that allows users to buy and sell tickets for entertainment events and that such a platform cannot be deemed responsible for the possible violations committed by its users, since it plays no part in the transaction concluded by the users buying and selling, nor is it compelled to check the truthfulness or legitimacy of the contents the users upload to it.

Despite the aforesaid premise, the Company declares it still wishes to "*defend itself regarding the merits of the indicted conduct*", claiming that: 1) the indictment concerning the sale of the tickets without being a registered Ticket Issuing Company is based "*on the misunderstanding that the Company is involved in ticket-selling transactions*" when the tickets are actually sold by the platform users, the only legitimate holders or owners of the ticket. Hence, the punishable conduct "*is limited to the user selling the ticket as part of the sale. The law does not set forth provisions entailing sanctions for the operator of the 'website through which the violation is committed' if they are unrelated to the conduct and simply host the contents.*" Indeed, the operator could be sanctioned "*only if they directly sold the tickets, acting as vendors.*" Indeed, the Company "*is under no circumstances the owner of the tickets, has never sold tickets, nor has it ever allowed the sale of tickets that had not been sold before. Its role is limited to providing a platform to be used by third parties to sell tickets previously put up for sale by natural persons, thus fully complying with the current laws.*"

The Company adds that there is no law that punishes the sale at greater prices; the only punishable conduct envisaged pursuant to article 1, paragraph 545, is the sale by parties other than Ticket Issuers, "*solely save for natural persons who are not Ticket Issuers selling non-professionally and occasionally at a lower price compared with face value.*" Consequently, the Authority's indictment with reference to the sale at higher-than-retail price violates the legality principle of administrative sanctions and are groundless, since the Company that operates the website "*never acts as the seller*" and "*under no circumstances sets the sale price, which is defined solely by the seller.*"

In view of such considerations, the Company deems *"totally groundless and misguided the remarks the Postal Police – as mentioned in their report – which state that the Company supposedly applies a 'surcharge with respect to retail price (proposed by the seller and already greater than the price authorised for the primary ticketing market) on various grounds ('pre-sale rights, commissions, shipping expenses, VAT and convenience fees')". Equally groundless are remarks construed by the Postal Police to the effect that the Company favours sales at mark-up prices by either making price recommendations or by way of commissions and other fees withheld by it."*

With reference to the social media channel, the company claims that the Stubhub portal uses Facebook (www.facebook.com/stubhub) to advertise its activities; indeed, all the users that, having viewed Stubhub's Facebook page contents, wish to use its services, must access the relevant website and execute the transaction on the web.

Without prejudice to the above, the Company still believes that if the Authority were to deem grounded the violations listed in the indictment, pursuant to article 11 of law no.689/1981 and the *"Guidelines for quantifying pecuniary administrative sanctions imposed by the Communications Authority"*, approved with Deliberation 265/15/CONS (the *"Guidelines"*), it should come to the conclusion that, in the case in point, there would be *"one, single violation"*, which entails resorting to the so-called cumulative judgement, to be punished with the prescribed minimum sanction.

In the supplementary documents provided by the Company on October 2 following the information request of 25 September 2019, the Company provided the number of tickets sold for each incriminated event, breaking down the amount into individual price items (ticket price and commissions). The Company also provided information on the overall number and value of the transactions referring to all the incriminated events of the relevant period.

The provided data revealed that, with reference to all the incriminated events, [omissis] tickets were sold for 19 events, for an overall amount of Euro [omissis], commissions accounting for Euro [omissis].

Furthermore, by way of the communication of 20 January 2020 sent following the request for information of 23 December 2019, the party provided further information with reference to: 1) all the activities carried out to support clients during the purchase/sale phase, including the warranties to users and sellers and possible limitations; 2) all and any surcharges to ticket retail price; 3) home page organisation and indexing modalities; 4) description of how further advertising/purchase/sale of tickets on the platform works; 5) a percentage breakdown of tickets by type of event; 6) the percentage of tickets sold at prices equal to face value over the relevant period and detailed information concerning the transactions associated with the incriminated events.

The Company also provided balance sheet data for the last reporting period ended prior to the start of the sanctions proceedings.

With reference to the details of the activities carried out to support and guarantee the transactions, the Company pointed out that StubHub does not advise users with reference to the sale or purchase of tickets, nor does it issue price recommendations. When a user puts a ticket up for sale, "*StubHub solely provides the user/seller information concerning any tickets that are available on the platform at that very moment, and the sale price ranges indicated by other sellers (min/max).*"

During the sale process, it supports users through different channels: emails, online contact forms, chat and telephone (outbound only).

In order to ensure that transactions are carried out to everyone's satisfaction, the company has set up a system for the provision of substitute tickets/refunds/credit vouchers against future purchases in the event that any tickets bought are not delivered in time, are not valid for admission or are not those actually purchased. Should the event be held in advance or postponed, the user is offered a refund.

As further insurance, "*the sums paid by the buyer/user are not transferred to seller/user at time of sale but, rather, are withheld in a designated account.*"

The website's terms and conditions require that the user: 1) be at least 18 years old and fully competent; 2) complies with all the applicable laws and local regulations; 3) will only sell valid tickets providing accurate information to that effect.

Should said terms and conditions be violated, the user is denied access to the platform.

As regards the pricing mark-ups, the Company has declared it charges two different commissions: *[omissis]*.

With reference to homepage indexing and organisation, the Company pointed out that the events published on the homepage are shown and indexed based on a specific algorithm, designed in such a way as to show users the most relevant events based on their geographical location. More specifically, the algorithm automatically highlights the events taking place in proximity of the users and that are most popular in terms of tickets sold. The homepage then simply indicates the number of tickets still available on the platform, for each event.

With reference to the way in which the platform's other advertising/purchase/sale function, the Company reasserted that "*tickets can be sold and purchased by users exclusively on the StubHub website*" and that StubHub advertises its platform by means of: 1) search-engine advertising (Google, Bing); 2) affiliate marketing (Tradedoubler,

CJ); 3) social network advertising (Facebook, Instagram); 4) advertising banners (Google Display Network, DV360).

With reference to the percentage breakdown of tickets sold by type of event and ensuing revenues, 2018 data (starting from March) shows that [omissis] of tickets sold are for musical events, [omissis] for theatre shows and [omissis] for sports events. In 2019, musical events accounted for [omissis] of the overall tickets (according to the company's estimate). As for revenues, in 2019 the company expects them to be [omissis] dollars from the sale of theatre show tickets, [omissis] dollars from the sale of tickets for musical events and [omissis] dollars from the sale of tickets for sports events.

Regarding financial data, in 2018 the overall value of the transactions executed on StubHub totalled 4,751,000,000 dollars worldwide, 1,068,000,000 of which were net proceeds from commissions. Additional revenue includes 15 million dollars from advertising sales. In its reply, dated 20 January 2020, the company declared it did not possess the data concerning the activities carried out by Stubhub's Italian website, since the data is processed on a global level. However, it provided an estimate of commission-generated revenues on the stubhub.it website in 2019, namely [omissis] dollars, and it declared that the Italian website [omissis].

Finally, regarding the percentage of tickets sold either at a price equal to or different than face value, the Company declared it did not possess such information since it is "*not aware of the face value on the primary ticketing market.*"

3. Outcome of the preliminary investigations and Authority assessments

In order to correctly assess the Company's deductions it is worth reviewing unlawful conducts as defined pursuant to paragraph 545 of article 1, as amended by law no. 145 of 30 December 2018. To this end, it is necessary to reconstruct the regulatory reference framework, starting from the actual wording of the relevant provisions and then moving on to the *ratio legis*.

The aforesaid law dictates that: "*In order to combat tax evasion and to protect consumers and ensure public order, the sale of tickets or any other kind of placement, granting right of admission to entertainment events by parties other than the Ticket Issuer, including based on separate contracts or agreements, is punished, provided such conduct does not constitute a criminal offence, with the inhibition of such conduct and pecuniary administrative sanctions ranging from € 5,000.00 to € 180,000.00 and, should such conduct be performed by means of electronic communications networks, in accordance with provisions under paragraph 546, with the removal of the contents or, in the most egregious cases, with the shutdown of the website used to perpetrate the violation, with no prejudice to refunding claims. The Communications Authority, in conjunction with the Competition Authority, carries out the necessary inspections and takes the due measures,*

acting either at its own initiative or upon notice by any interested party, levying, where due, the pecuniary administrative sanctions provided for hereunder. No penalty is imposed if a natural person occasionally sells, to no commercial end, tickets for entertainment events at a price that is equal to or less than such ticket's face value." (emphasis added).

The wording of the abovementioned law clearly shows that the illegal conducts punishable by law are:

- 1) the sale or any other form of placement of tickets *carried out by subjects other than Ticket Issuers*;
- 2) selling the ticket at a greater price compared with the face value.

Clear reference to the fact that the aforesaid violations may be also committed through "electronic communications networks" and that "websites" can provide the means by which to perform such conducts as violate the law, clarify – unlike the Company claims – that such subjects can be punished.

Had websites not been included in the law in question, there would no reason to involve and ascribe specific powers to the Communications Authority, whose scope of action has always included the electronic communications sector and any conduct enacted by means of electronic communication networks.

The law in point is therefore consistent and entails continuity with the body of the laws (which, for example, identify the Authority in charge of protecting online copyright), which aims to provide Internet protections with respect to two overriding, yet potentially conflicting, legal priorities: on the one hand, there is the need to facilitate business performance on the services market of the information society; on the other, there is the need to prevent the perpetuation of *large-scale business exploitation practices* that violate sectorial rules, such as the protection of copyright or, in the case in point, the prevention of speculative and inflationary phenomena in the market of secondary-ticketing for theatre and musical shows, in order to "*combat tax evasion and to protect consumers and ensure public order.*" When examining the purpose of the reference law, namely, to "*combat tax evasion and to protect consumers*", it is clear that countermeasures cannot rule out conducts committed via Internet websites, given the increasing relevance of economic transactions performed online in all economic sectors, also including, therefore, the sale of tickets for events.

Indeed, as these assessments will clearly show, the Company – through the websites it operates – has proven to be totally aware that it is subject to national laws, specifically, the prohibition to sell tickets at a price that is greater than the face value, and to consequent inspections by the Authority, as publicly stated by it in the Balance Sheet under the *Risk Factors* chapter (further detailed under paragraph 3.2).

In view of the above, the Authority has made the following assessments, based on what emerged from the inspections carried out, also by means of the Postal Police, from the

preliminary investigations and from the declarations of the Company during the proceedings.

We hereby point out that items 1 and 37 of the indictment, as listed above, have not been taken into consideration for the purposes of determining sanctions. The reasons for that are as follows: regarding item 1 of the indictment, concerning the sale of tickets by parties other than registered Ticket Issuers, this is itself one of the key elements of the incriminated conducts mentioned under subsequent items 2 to 36. As for item 37, we reckon that promoting activity on the page of the social network Facebook, www.facebook.com/stubhub, is not punishable *per se*, it rather supplements an element that can affect damage severity, for it can amplify the spread of sale offers, and this goes for all advertising channels that the Company has admitted using.

Hence, following the preliminary investigations, the Authority has ascertained the existence of infringements violating the law concerning the sale of tickets for 35 events of several artists, as described in the indictment and listed under paragraph 1 of this document.

3.1 Regarding the claim that StubHub Inc. lacks the capacity to be sued

With reference to the claim that StubHub Inc. lacks the capacity to be sued, the following is pointed out.

The Company claims, on the one hand, that StubHub Inc. operates the website www.stubhub.com and not the website www.stubhub.it (operated by eBay Marketplaces GmbH) and, on the other, that the incriminated website, www.stubhub.it "*is a top level domain and is totally separate from stubhub.com. Indeed, the two websites have a different homepage and are operated by two different companies (stubhub.it by eBay Marketplaces GmbH and stubhub.com by Stubhub.Inc).*" That, according to the party, means that StubHub Inc. lacks the capacity to be sued.

Firstly, it should be noted that the notification to the company named Stubhub Inc. was sent following the inspections promptly carried out by the Finance Police, which, on the grounds of specific databases, identified StubHub Inc. as the recipient of the indictment document 3/19/DSD.

In order to verify the parties' deductions, a further investigation was conducted, with the Finance Police and the Postal Police, to ensure the correct identification of the Company. No new elements emerged, compared with what had been previously ascertained, from the activity carried out by the Finance Police.

The Postal Police, in its Report, also confirmed the correct identification of the company named Stubhub Inc., providing significant corroborating technical details to that effect. Firstly, the Postal Police pointed out that, 1) "*the home pages of the websites stubhub.it and stubhub.com are identical*" (emphasis added), the only difference being the Italian language, used for the stubhub.it website; 2) the two websites "*are not separate; on the*

contrary, they are clearly and evidently connected to each other"; 3) the two websites "do not use different platforms" (emphasis added) hence are not subject to different technical rules, since they most likely "draw web information (multimedia content such as the classification of events) from the same servers" (emphasis added).

The Report also states that "*no Internet website can have the same domain name (stubhub) and, concurrently, the same contents, the same graphics, the same services, save for websites belonging to the same entity. In the latter case only is it possible to bear the same domain name (stubhub) albeit with different top level domains (stubhub.it and stubhub.com)*" (emphasis added).

Then again, if – as the Company claims – we were truly in a situation whereby the two websites bearing the same second level domain names (stubhub) but with different top level domain names (stubhub.it and stubhub.com) were operated by two totally separate companies, that would most likely be a violation of copyright by one of the two websites (identical graphics, contents and type of service on two websites operated by different companies), since the domain names and top level domains are registered trademarks.

The Company's claim that the two websites are distinct and separate and subject to different laws is also wrong from a technical standpoint. In fact, analysis of the relevant HTML codes has revealed that the two websites have identical source codes, save for the scripts, which identify the website in Italian (stubhub.it) or English (stubhub.com). Furthermore, the HTML code also shows that the two websites share the same Facebook ID, which means that both pages are linked to the same Facebook page. The Postal Police points out that "*the Facebook ID is unique for every Facebook page, which means that if it were two different websites, or websites subject to different rules, they inevitably would have had a different Facebook IDs*" (emphasis added). Finally, it should be noted that even the StubHub logo is uploaded to the two sites' homepages from the same URL.

Another groundless claim submitted by the Company is that the two websites are operated by different companies (stubhub.it by eBay Marketplaces GmbH and stubhub.com by Stubhub Inc.), since the preliminary investigation has revealed that both websites are allocated in the servers of Akamai Technologies, Inc. US (not in eBay Marketplaces GmbH) and, since the two websites are perfectly complementary, whoever operates one of them, also, technically speaking, operates the other.

Finally, a targeted research revealed that the information contained in the incriminated events on the stubhub.it website is the same as the one contained on the stubhub.com website.

The correct identification of the company named Stubhub Inc. as the recipient of the indictment document was, as a matter of fact, confirmed by the Company itself, which – during the proceedings – delivered a memorandum and answered the Authority's requests, providing detailed information on the activity and on quantitative data (including financial and economic data) concerning the incriminated activities performed on the stubhub.it website, including the number of transactions and the value of the commissions

cached in with the sale of tickets for the events incriminated via document 3/19/DSD. It is clear that if the Company had been unrelated to the management of the website in point, it wouldn't have had access to such information.

All the above shows that – given the answers and the defence memorandum provided by the Party – the notification delivered to StubHub Inc. proved to be totally effective.

3.2 Activity carried out on the stubhub.it website for the marked-up sale of tickets (compared with the face value of the same tickets sold on other authorised, primary-ticketing websites)

With reference to the activities of the Company, the documents of the proceedings clearly reveal the active role of StubHub in selling, on its website, tickets for events at a price that is greater than face value, hence breaching article 1, paragraph 54 of law no. 232/2016.

As for the Company's position and the classification of the performed activity, the documents of the proceedings show that StubHub's activity is not limited to (as stated by the Company in its defence memorandum) bringing together potential sellers and potential buyers, solely to facilitate economic transactions, treating the uploaders' data exclusively in a technical, passive and automatic fashion. On the contrary, StubHub forbids sellers and buyers to get in touch and intervenes, actively and extensively, in all phases of the business transaction, up to its completion, withholding – when the sale actually occurs – a hefty commission, [omissis] of the ticket's final price, and withholding, on one of its bank accounts, the amount paid by the buyer to buy the ticket (and subsequently paying it to the seller following specific checks).

The crucial role played by the Company in ensuring transactions' satisfactory outcome is also clearly indicated in the website sections "*Global user agreement*" and "*Payment services agreement with sellers*": on the one hand, they establish that "*the seller appoints the relevant StubHub entity as its limited payment collection agent*" (added emphasis) and, on the other, they explicitly prohibit sellers from contacting buyers for any reasons other than the shipping of tickets alone. In fact, they explicitly disallow sellers using the website to: "*1) contact other StubHub users; 2) ask other StubHub users to contact you; 3) buy, sell or deliver tickets outside of StubHub.*" Furthermore, the seller "*is not allowed to place in the envelopes*" their contact information, business cards or business reply cards; they can only include "*StubHub merchandise or leaflets.*"

Not allowing the seller to contact the buyer (for reasons other than the delivery of tickets), together with the management of the entire process, including the completion of the transaction as performed by StubHub, is clear evidence contrary to the Company's claims; it is not true that ticket sale and purchase on the StubHub platform is "*entirely carried out and managed by the users*", nor is it true that its activity is comparable – also in terms of the applicable legal regime – to that of "*online stores, otherwise known as marketplaces.*"

If the claims attached to the Company's defence memorandum were true, namely, that they simply act as a "*virtual noticeboard*" (where each advertiser can post an advert and

that piece of data is then treated automatically, technically and passively only, with no intent to sell or to exploit for business on a large scale), the website homepage would appear – just like other websites that are (real) marketplaces for different types of goods – as a list of individual adverts, containing several ticket sale offers, entirely edited by the advertisers and organised on the basis of objective and neutral criteria from a business standpoint, such as – for example – chronological order or value-for-money parameters.

On the contrary, through investigation of the activities performed by StubHub impinging on the several stages of the sale process up to completion, we can see that – ever since the initial stages – the website promotes the presentation of ticket sale offers by displaying pictures and messages that entice the user to buy the ticket for the single event, stressing the event's attractiveness, uniqueness and importance, even in view of the fame of the performing artist. The online pages that precede the conclusion of the business transaction exemplify, by both displaying specific graphics and descriptive messages, the main characteristics of the venues and the sectors within them (for example, floor, stage, *gold*, stands, etc.), in order to classify the characteristics of the available tickets. Hence, the platform's business model chiefly aims to promote the single events, so as to sell as many tickets as possible, as will clearly emerge from the description of the activities below. In fact, from a promotional standpoint, promoting an event has a much stronger emotional impact on the consumer's mind than simply displaying the availability of a single ticket.

That the interest should be to maximise sales is further proven by the Company's fielding of a *massive promotion campaign* towards the sale of tickets by means of a multi-platform strategy, by leveraging – for promotional purposes – several, different advertising and promotion platforms, including the social network Facebook: indeed, the Facebook page www.facebook.com/stubhub provides access to event ticket offers, which can be purchased once the user is rerouted to the website, in order to complete the transaction.

In fact, since the business is based on proceeds from commissions and sales of advertising spaces (which is, in turn, linked to the website's popularity in user terms), it is clear that the Company has an interest in maximising its commissions worth [*omissis*] of the ticket's final sale price and other proceeds stemming from the sale of advertising space on its website, by increasing the final ticket price as much as possible and the number of business transactions.

It is indeed more than certain that the commission cashed in by the platform with each sale, having been calculated in terms of percentage of the final price, is a reason for the platform to make buyers and sellers agree on marked-up ticket prices, which must cost more than the face value, in order to maximise the profit per unit cashed in by the platform for each completed sale. Likewise, the maximisation of the number of transactions increased proceeds from the sale of advertising spaces, which, in 2018, totalled 15 million dollars, compared to net revenues from transactions (namely, the commissions cashed in), which totalled 1,068 million dollars.

Aside from the optimisation and promotion of tickets for events, during the sale, StubHub also promptly provides services that aim to help successfully complete the business

transaction, as declared by the company itself, which clearly stated it provides support to users by means of different modalities: "*email, online contact forms, chat and, in outbound mode, via telephone.*" Besides, "*in order to guarantee the successful outcome of the transaction*" (emphasis added), there is a system providing replacement tickets/refunds/credit vouchers to be used for future purchases should the purchased tickets not be delivered in time, not be valid for admission or not correspond to the items purchased online. Should the event be held in advance or postponed, the user is offered a refund.

In order to ensure all this "*the sums paid by the users purchasing the ticket are not transferred to users selling the ticket but are withheld on a designated account*" of the Company (emphasis added).

The abovementioned services are fundamental elements for executing the sale contract: in fact, the Company is an active and key player in the conclusion of the business transaction, since – as stated by the Company itself – customers are supported via "*email, live chat and telephone*" (emphasis added) and, still as a guarantee for users, the amounts paid by the buyers are withheld on a designated account by the Company and paid out to the seller once ascertained that the transaction has been completed successfully.

Finally, when completing the sale, the company – aside from withholding on its bank account the sum paid by the buyer for the ticket – earns a hefty commission (which factors in the final price of the sale), namely, [*omissis*].

Therefore, all the elements collected throughout the proceeding and thus far described, prove that StubHub's activity does not simply consist in storing the users' data and technically treating them, passively and automatically; it rather consists in a direct intervention – also carried out with the support of staff – which aims to define all the crucial elements of the business transaction, up to the completion of the sale.

In view of the aforesaid elements, what emerges is that StubHub's role not only cannot be deemed passive and merely technical, it actually turns out to be far more relevant than that of simply mediating (meaning 'officially' putting in touch the two parties at each end of the transaction). As stated above, the parties are explicitly forbidden from directly contacting one another, and must report to StubHub throughout the entire transaction. Consequently, StubHub not only acts as an 'agent' for the completion of the payment, but, being the only party legally allowed to send its own promotional material, is the only subject with which buyer and seller liaise throughout the entire sale process, up until its completion.

The relation between the ticket holder and StubHub can, for the abovementioned reasons, be considered a mandate without representation. In fact, the platform (following the seller expressing the will to transfer the ticket) carries out all activities concerning the transaction and aimed at completing and executing the sale: it provides support to seller and buyer (since the two parties cannot contact each other directly, which means that the ticket holder cannot choose who to sell to); it guarantees the payment by the buyer and

the actual paying out of the sum to the seller, transferring the sum to the ticket holder selling it, minus the commission owed to the platform and minus the delivery costs, only once specific inspections are performed (by means of a system devised and implemented by StubHub). Basically, the mandate contract is fulfilled when the ticket holder expresses their intention to sell the ticket through the platform, which to StubHub means it must sell, on behalf of the holder, at given conditions and that it must transfer the outcome of the contract (namely, the price paid) to the holder. In this regard, claiming that the mandate is carried out by means of automatic tools would be untruthful (as proven above) and would anyway be irrelevant, since such tools are chosen, set in place and made operational by the StubHub platform, namely the subject that guarantees completion of sale and manages its execution.

As well as the above, the preliminary investigations also found out that the company's website at no time made any mention or reference as to the impossibility and/or prohibition, imposed by the law, for the seller to sell tickets at a price greater than the face value and that the Company actually supported, in some cases by recommending the price range, the sale price mark-up of the ticket, in violation of the law, despite the Company's full awareness of the offence committed.

In fact, in the 2018 Financial Statement¹, under the Chapter on "Risk factors", the following is explicitly stated: "*Our tickets business is subject to regulatory, competitive and other risks that could harm this business. Our tickets business, which includes StubHub, is subject to numerous risks, including:*

- *Some jurisdictions, in particular jurisdictions outside the United States, prohibit the resale of event tickets (anti-scalping laws) at prices above the face value of the tickets or at all, or highly regulate the resale of tickets, and new laws and regulations or changes to existing laws and regulations imposing these or other restrictions could limit or inhibit our ability to operate, or our users' ability to continue to use, our tickets business.* (emphasis added);
- *Regulatory agencies or courts may claim or hold that we are responsible for ensuring that our users comply with these laws and regulations.*" (emphasis added)

And:

- *Lawsuits alleging a variety of causes of actions have in the past, and may in the future, be filed against StubHub by venue owners, competitors, ticket buyers, and unsuccessful ticket buyers. Such lawsuits could result in significant costs and require us to change our business practices in ways that negatively affect our tickets business"* (emphasis added).

The Company's awareness of the offence committed by reselling tickets at a price above face value is further confirmed in practice by the Company's actions: indeed, the preliminary investigations show that, after the sanctions proceedings were started, the

¹ Annual Report pursuant to section 13 or 15(d) of the securities exchange Act of 1934 for the fiscal year ended December 31, 2018.

Company included, in a sales process screenshot, the following wording: "*pursuant to the Italian legislation, it is forbidden to sell above the ticket's face value.*" However, it should also be pointed out that such piece of information has been placed near the end of selling process, in a position not immediately visible to the seller. We therefore reckon that the inclusion of such communication does not help prevent offences, even because it is an isolated and hardly accessible wording, unlike other indications providing totally different information, including the one clearly visible of the homepage, which reads: "*Set the price: not sure how much they are worth? We'll help you set the price.*"

All the above suggests that the Company, to all intents and purposes, acted in full knowledge of the fact that they were not complying with national legislation.

We can reasonably infer that failure to adjust to the provisions of the law may derive from the Company's business model and from what is stated in the financial statements, where it admitted that "*these or other restrictions could limit or inhibit our ability to operate*" and that "*Lawsuits alleging a variety of causes of actions have in the past, and may in the future, be filed against StubHub by venue owners, competitors, ticket buyers, and unsuccessful ticket buyers. Such lawsuits could result in significant costs and require us to change our business practices in ways that negatively affect our tickets business*" (emphasis added).

This is further proven by the late inclusion, on the stubhub.it website, of the wording "*pursuant to the Italian legislation, it is forbidden to sell above the ticket's face value*", which, however – as indicated above – is placed in a position that is difficult for users to access, therefore failing to clearly and transparently inform the users about the relevant laws.

The Company was indeed capable of informing the users that selling a ticket above face value was in violation of the law, and this is confirmed by the fact that, as reported in the Financial Statements, the Company acknowledges it is subject, in the USA, to specific tracking duties (for tax-related purposes) for specific payments, and must provide user ID numbers and that "*our systems are able to meet these requirements.*" Hence, the Company is fully capable of complying – upon request of relevant Authorities – with specific inspection and traceability duties with reference to the contents conveyed on its website.

3.3 Applicability of total fines

We reckon that the conduct, in violation of the very law, that StubHub can be charged with, should be considered not as one single violation, albeit spread over time (it could be considered so, if linked with the selling of tickets, for different dates, of the same event); rather, it should be considered as a number of actions, reiterated over time and violating the same law, but ascribable to different events and different dates, hence to be considered performed through a number of separate action, as described in the indictment.

This aspect falls under the Authority's Guidelines on the quantification of administrative sanctions (deliberation no. 265/15/CONS), which envisage that "*in order to consider a conduct as a single one, the twofold requisite of concurrence of actions and distinctiveness of the purpose or the effect*" (cf. Attachment A, item 2).

In the case in point, it is certain that the purpose (and effect) of the activities is that of selling even tickets on the secondary-ticketing market, violating the prohibition set forth under article 1, paragraph 545 of law no. 232 of 11 December 2016. However, it is not possible to ignore that the actions of the company StubHub concerned the reselling of (many) tickets for single and separate events (concerts), to be held on different days and, sometimes, at a different time of the day. The violations can therefore clearly be linked to separate and independent conducts – even more so considering that, in the cases in point, the second requisite is not met, and the aforesaid Guidelines consider such requisite (the "*concurrence of actions*") necessary for classifying the conduct as a single one.

In fact, on closer inspection, the sale takes place when the ticket is available (therefore the timing is different) and the tickets are for events that take place on different dates and for which many separate tickets are sold, even months later. Furthermore, in performing such activity, the company carried out several other activities that reveal an autonomous and clear will when it comes to the single conducts violating the laws. Hence, it is correct to proceed separately.

4. Conclusions

In view of all the above, the following conclusions have been reached.

With reference to the incriminations concerning: 1) the reselling on the stubhub.it website of event tickets without owing ticket-issuing systems (charge no.1 of the indictment and inspection document 3/19/DSD) and 2) the reselling, via the link www.facebook.com/stubhub/ to the company's website, of event tickets above the face value of the same tickets sold on primary-ticketing, authorised websites (charge no. 37 of the indictment and inspection document 3/19/DSD), we reckon they should not be taken into consideration when calculating the sanction. In fact, on the one hand, item 1 of the indictment, concerning the selling of tickets without owning their issuing systems is one of the founding elements of the incriminated conducts, mentioned under the subsequent items 2 to 36. On the other hand, regarding item 37 of the indictment, we reckon that promoting activities on the social network page www.facebook.com/stubhub is not punishable per se; it rather is an element that may factor in the extent of the damage, seen as it helps further spread the sale offer.

On the contrary, the violations concerning the selling of such tickets above the face value of the same tickets being sold on primary-ticketing, authorised websites have been ascertained. Such infringement of the law concerns the selling of tickets for 35 events of

different artists, as described under items 2 to 36 of the indictment and inspection document 3/19/DSD and mentioned under paragraph 1 of this document.

What must be taken into account, solely for the purpose of quantifying the sanction, is the company structure and economic status. With reference to the financial statement data, in 2018 the overall value of the transactions performed globally by StubHub totalled 4,751,000,000 dollars, 1,068,000,000 of which were the global net proceeds from commissions. Plus, revenues totalling 15 million dollars from advertisement sales. In its reply of 20 January 2020, the company declared it had no data for the activities performed by StubHub's Italian website, since the data is processed at a global level. However, the company provided an estimate of the revenues generated by the commissions on the stubhub.it website in 2019, which was [omissis] dollars, and it declared that the Italian website [omissis]. Finally, it should be pointed out that, in 2019, Viagogo took over StubHub for more than 4 billion dollars, paid cash².

CONSIDERING that, for the abovementioned reasons, the sanctions proceedings confirmed the violations concerning the selling of tickets above face value for the 35 events listed under items 2 to 36 of the indictment and inspection document 3/19/DSD and mentioned under paragraph 1 of this document;

CONSIDERING that the aforesaid violations are punishable pursuant to article 1, paragraph 545 of law no. 232 of 11 December 2016;

CONSIDERING the following, in terms of quantifying the sanction, pursuant to article 11 of law no. 689/1981:

A. Severity of the violation

The Company was selling tickets, on its website, above face value, infringing article 1, paragraph 545 of law no. 232 of 11 December 2016. As thoroughly described above, the Company was fully aware of what was being sold/purchased on its channels, clearly violating the governing relevant legislation. The severity is even more manifest if we consider that the Company, while having full knowledge of the Italian laws, increased the number of potential users by exploiting several advertising channels, including Facebook, in order to maximise the number of tickets sold.

² Cf. article published on the online edition of the New York Times "StubHub Sold to Smaller Rival Viagogo for Over \$4 Billion", of 25 November 2019, available at: <https://www.nytimes.com/2019/11/25/business/stubhub-viagogo-ebay-sale.html>

B. Actions taken by the defendant to eliminate or attenuate the consequences of the violation

The only measure taken by the Company following the indictment, which was not even communicated to the Authority, was the inclusion, in its selling process, of the wording "*pursuant to the Italian legislation, it is forbidden to sell above the ticket's face value.*" However, we reckon that such piece of information has been placed near the end of selling process, in a position not immediately visible to the seller. We therefore believe that such measure was taken belatedly and that it is not enough to prevent offences, even because the rest of the website immediately and repeatedly shows clear information on the support provided in setting the selling price.

C. Legal personality of the defendant

The Company had an adequate structure that allowed it to duly comply with the provisions set forth under article 1, paragraph 545 of law no. 232 of 11 December 2016.

D. Economic status of the defendant

Considering that the Company declared that the overall, global value of StubHub transactions in 2018 totalled \$ 4,751,000,000, \$ 1,068,000,000 of which proceeding from commissions, plus \$ 15,000,000 from advertising space sales, and that the company could not provide certified data concerning the value of transactions performed on the stubhub.it website, we believe that the economic status of the defendant justifies the overall pecuniary penalty imposed by this action.

HELD that the amount of the pecuniary administrative penalty – which should be € 50,000 (Euro fifty thousand/00) for each of the 35 charges described above, for a total of € 1,750,000 (Euro one million seven hundred and fifty thousand/00) – is sufficiently punishing, with reference to the criteria usually adopted for quantifying the penalty, pursuant to article 11 of law no. 689/1981.

TAKING DUE ACCOUNT OF the report of Commissioner Francesco Posteraro, reporting commissioner pursuant to article 31 of the *Regulation on the organisation and running of the Communications Authority*;

ASCERTAINS

that the company named Stubhub Inc ((US 134689243L), based in the United States of America, 199 Fremont ST STE 300 – 94105-2245 San Francisco, has violated article 1, paragraph 545 of law no. 232 of 11 December 2016 and subsequent amendments and integrations;

ORDERS

said Company to pay the overall sum of € 1,750,000 (Euro one million seven hundred and fifty thousand/00) as a pecuniary administrative penalty for the ascertained violations;

WARNS

said Company not to commit further violations of the provisions in point;

ENJOINS

said Company to pay the aforesaid sum either into postal account no. 871012, beneficiary the "*Sezione di Tesoreria Provinciale dello Stato di Roma*", indicating as reason/description of payment "*Capitolo 2379, capo X, Bilancio di Previsione dello Stato*", or via a bank transfer, using the IBAN code IT54O0100003245348010237900, indicating as reason/description of payment "*Sanzione amministrativa irrogata dall'Autorità per le garanzie nelle comunicazioni ai sensi dell'art.1, comma 545 della legge 11 dicembre 2016, n. 232, con Delibera n. 103/20/CONS*", within thirty days of the present notice; failure to do so will be followed by an enforcement order, in accordance with article 27 of aforesaid law no. 689/81.

Within ten days of the payment, an original copy (or a certified copy) of the payment receipt must be submitted to this Authority, indicating "*Deliberation no. 103/20/CONS*."

The term for submitting an appeal, to the *Tribunale Amministrativo Regionale del Lazio* [Regional Administrative Court of Lazio], against this measure is 60 (sixty) days as of the notification of the measure itself.

This deliberation is notified to the Party and published on the Authority's website.

Rome, 16 March 2020

THE PRESIDENT
Angelo Marcello Cardani

THE REPORTING COMMISSIONER
Francesco Posteraro

Certifying compliance with the deliberation
THE GENERAL SECRETARY *f.f*
Nicola Sansalone