

DELIBERATION NO. 104/20/CONS

**INJUNCTION AGAINST THE COMPANY VIAGOGO AG FOR THE
VIOLATION OF ARTICLE 1, PARAGRAPH 545, OF LAW NO. 232 (2017
BUDGET LAW) OF 11 DECEMBER 2016
(INDICTMENT NO. 2/19/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., Amica – Associazione musicisti italiani Codacons per l'arte, 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, 149391 of 4 April 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. 2/19/DSD of 2 July 2019, entailing "the indictment of the company Viagogo AG. following the infringement of article 1, paragraph 545 of law no. 232 of 11 December 2016 (Budget law 2017)";

WHEREAS the note of 3 July 2019 (registered by Agcom under protocol no. 290297), 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. 2/19/DSD titled "the indictment of the company Viagogo AG. 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 15 July 2019;

WHEREAS the company Viagogo AG's access to the documents on 9 September 2019;

WHEREAS the note with which the company Viagogo AG submitted its defence memorandum, asking to be heard (registered by Agcom under protocol no. 391493 on 17 September 2019);

WHEREAS the note of 25 September 2019, which summoned the company Viagogo AG to hearing (registered by Agcom under protocol no. 405237), held on 2 October 2019;

WHEREAS the information request sent to the company Viagogo AG on 25 September 2019 (registered by Agcom under protocol no. 405211);

WHEREAS the note, registered by Agcom under protocol no. 408005 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 2019)" sent to the Competition Authority;

WHEREAS the note with which the company Viagogo AG requested the postponement of the deadline for the acknowledgment of the information request of 25 September 2019 (registered by Agcom under protocol no. 416274 of 1 October 2019);

TAKING DUE ACCOUNT of the company Viagogo AG's stance at the hearing of 2 October 2019;

WHEREAS the note of 3 October 2019 which accepted the aforesaid postponement request (registered by Agcom under protocol no. 419413);

WHEREAS the note with which the company Viagogo AG acknowledged the information request of 25 September (registered by Agcom under protocol no. 425933 of 8 October 2019);

WHEREAS the note with which the company Viagogo AG acknowledged the information request as per the minutes of the hearing held on 2 October 2019 (registered by Agcom under protocol no. 440103 of 16 October 2019);

WHEREAS the note with which the company Viagogo AG notified an *erratum* with reference to Agcom protocol no. 425933 of 8 October 2019 (registered by Agcom under protocol no. 440793 of 16 October 2019);

WHEREAS the note 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. 405211 of 25 September 2019 and the minutes of the hearing of the company Viagogo AG of 2 October 2019 (registered by Agcom under protocol no. 443814);

WHEREAS the note with 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. 523125 of 4 December 2019);

WHEREAS the note which, pursuant to article 7, paragraph 1, of Regulation no. 581/15/CONS, requested further information to the company Viagogo AG and, concurrently communicated the stay of proceedings (registered by Agcom under protocol no. 552131 on 23 December 2019);

WHEREAS the company Viagogo AG's notice of acknowledgement of the aforesaid information request (registered by Agcom under protocol no. 23864 of 20 January 2020);

WHEREAS the note of 27 January 2020, which, pursuant to article 7, paragraph 5 of Regulation no. 581/15/CONS, acknowledged the stay of the sanctions proceedings set forth under Agcom protocol no. 552131 of 23 December 2019 (registered by Agcom under protocol no. 36222);

WHEREAS the preliminary investigations (registered by Agcom under protocol no. 47994 of 3 February 2020);

WHEREAS deliberation 32/20/CONS of 13 February 2020, entailing "The approval of the draft injunction against the company Viagogo AG following the infringement of article 1, paragraph 545 of law no. 232 of 11 December 2016 (Budget law 2017), (Indictment no. 2/19/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 note 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 32/20/CONS to the company (registered by Agcom under protocol no. 70326 of 17 February 2020);

WHEREAS the notice entailing "Agreement as per article 1, paragraph 545, law no.232/2016: forwarding of the draft injunction to the company Viagogo AG following the infringement of article 1, paragraph 545 of law no. 232 of 11 December 2016 (sanctions procedure started with indictment no. 2/19/DSD)", sent to the Competition Authority (registered by Agcom under protocol no. 84637 on 25 February 2020);

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 Viagogo AG, submitted to the Communications Authority", (registered by Agcom under protocol no. 112159 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 or allocation 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 "viagogo.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 selling of tickets for live musical events (secondary ticketing) performed by Viagogo AG.

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. 2/19/DSD of 2 July 2019, concerning the "Indictment of the company Viagogo AG for the infringement of article 1, paragraph 545 of law no. 232 of 11 December 2016 (Budget law 2017)", notified to the party on 15 July 2019 – ascertained that the company Viagogo SA (hereinafter, "Viagogo"):

- 1) was selling tickets for entertainment events despite not being a registered Ticket Issuing Company;
- 2) via the viagogo.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 Maurizio Battista event of 29 March 2019;
- 3) via the viagogo.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;
- 4) via the viagogo.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;
- 5) via the viagogo.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 Maurizio Battista event of 12 May 2019;
- 6) via the viagogo.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;
- 7) via the viagogo.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;
- 8) via the viagogo.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;
- 9) via the viagogo.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;
- 10) via the viagogo.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;

- 11) via the viagogo.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;
- 12) via the viagogo.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;
- 13) via the viagogo.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;
- 14) via the viagogo.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;
- 15) via the viagogo.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;
- 16) via the viagogo.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;
- 17) via the viagogo.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;
- 18) via the viagogo.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;
- 19) via the viagogo.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;
- 20) via the viagogo.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;
- 21) via the viagogo.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;
- 22) via the viagogo.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;

- 23) via the viagogo.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;
- 24) via the viagogo.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;
- 25) via the viagogo.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;
- 26) via the viagogo.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;
- 27) via the viagogo.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;
- 28) via the viagogo.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;
- 29) via the viagogo.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;
- 30) via the viagogo.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;
- 31) via the viagogo.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;
- 32) via the viagogo.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;
- 33) via the viagogo.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;
- 34) via the viagogo.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;

- 35) via the viagogo.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;
- 36) via the viagogo.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;
- 37) via the viagogo.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 31 August 2019;
- 38) via the viagogo.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;
- 39) was selling, through the social media platform www.facebook.com/viagogo 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 with the defence memorandum of 16 September 2019 (registered by Agcom under protocol no. 0391493), highlighting the reasons why it deems the incriminations groundless. The company also provided information and clarifications following the information request of 25 September 2019 (Agcom protocol no. 405211) and of 23 December 2019 (Agcom protocol no. 425933) and of 16 October 2019 (Agcom protocol no. 440103), as well as the note of 17 January 2020 (Agcom protocol no. 0023864). The company's stance was also acknowledged at the hearing held on 2 October 2019.

Viagogo, with its defence memorandum, submitted its counter-deductions concerning the Authority's indictment, with reference to both the *de facto* situation and to the legal framework applied for the case in point.

Prior to that, the company pointed out it was the most successful, globally active Internet platform providing online services of secondary-ticketing for events. According to the company, the secondary-ticketing market features, on the supply side, any subject that holds a ticket and wants to sell, with the exception of event organisers or primary-ticketing sellers. The company stresses that "*while primary-ticketing market operators sell tickets at the price set by the promoter, anyone selling a ticket on the secondary-*

ticketing market does so at the price they deem most fit, within the limits established by the law”.

The company claims that, from its standpoint, the law does not forbid secondary-ticketing activities. On the contrary, the full legitimacy of and even the need for a secondary-ticketing market for events are confirmed by the prediction that compels primary-ticketing market operators – namely, registered ticket-issuing companies – to provide to the parties the service for name-changing on the ticket, so as to allow the primary buyer to sell their ticket and the secondary buyer to access the event (article 1, paragraph 545-quater of the law). Hence, it reckons that the secondary-ticketing market is lawful, just as the provision of services to subjects that participate in said secondary-ticketing market, which allow anyone who wishes to sell a ticket to easily find a buyer by turning to an audience of interested subjects that is much vaster than the one they could reach without an online marketplace.

Regarding the counter-deductions concerning the *de facto* elements, Viagogo first of all declares they are not sellers, rather an intermediary party in the ticket-selling process. Furthermore, they point out that the sale, on the secondary-ticketing market, by non professional subjects is legitimate, and that the illegal component is exclusively linked to the sale at a price that is greater than the ticket’s face value. Since the selling price is freely determined by the user/seller, the latter is the one committing an offence, should they overprice the ticket. The user/seller are accountable for the offence and by no means should Viagogo, which is totally unrelated to the offence, be held accountable for it.

Substantially, Viagogo describes its activity as a “virtual noticeboard” where all advertisers are free to post their listings, which are uploaded and stored on the platform without the operator knowing about or controlling them. Basically, according to the company, the platform supposedly treats the data input by the advertisers merely technically, automatically and passively. Given this factual context, Viagogo points out that the success of its platform is due to its “multi-jurisdictional” nature, meaning that it acts as a safe marketplace, for it provides a set of clear and adequate rules and guarantees for users all over the world. Such a global marketplace facilitates an efficient meeting of demand and supply on the secondary-ticketing market, on a transnational level.

With reference to the specific incrimination concerning the sale, through the social media page www.facebook.com/viagogo linked to the company’s website, of tickets for events at a price greater than the ticket’s face value on primary, authorised websites, the Company claims that, in this case too, there are *de facto* no grounds for enforcing the sanctions owing to the selling of tickets by Viagogo. To this matter, it points out that the Viagogo facebook page has shown “*no more posts linked to the Viagogo website since 2014*”, while the indictment mentions a more recent period.

On point of law, all the main reasons set forth by the company converge on the legal classification of its activity, which consists in making an Internet space available to its users, hence it can be intended as a service provider in information society, specifically a “passive hosting provider”, which non-labile, pursuant to articles 14 and 15 of the e-Commerce Directive, transposed into the Italian laws through articles 16-17 of Legislative Decree no. 70 of 9 April 2003. In view of the platform’s ‘passive’ role, Viagogo cannot be aware of law infringements occurring on its platform. The company may come to know that a transaction is illegal only by checking the face value of the ticket, an activity that would entail an *ex ante* check that is not compatible with the legal system of hosting platforms envisaged by the regulations of the e-Commerce Directive, nor with the entrepreneurial nature of Viagogo’s activity. On top of the observations concerning the liability regime that is applicable to it, Viagogo claims that, on a legal level, it “*is never a party in the ticket sale contract*”, hence the platform is not related to the sale contract that comes about between the ticket advertiser and the buyer of the ticket.

Finally, the Company stresses that the calculation criterion for the overall sanction that emerges from the indictment is not consistent with the criteria provided for by law no. 689/81 and by the Authority’s Guidelines (Attachment A, Deliberation no. 265/15/CONS, section 2) concerning the total fines. In particular, according to the company, all the events included in the indictment should be considered as one single conduct, in view of the “unitary” genesis of Viagogo’s corporate strategy and the indivisibility of the activity that apparently sparked a number of offences. In view of this, the company requests the application of total fines rather than cumulative judgment. Furthermore, the company points out that, unlike what is stated in the indictment, in particular under item 32) of the list of incriminated events¹, the tickets for the Jovanotti event of 27 July 2019 were not put up for sale on the platform.

In the additional documents provided by the company on 8 October 2019 and integrated with the subsequent communication of 16 October 2019, following the information request of 25 September 2019, the company disclosed the number of tickets sold per each, individual incriminated event, including the amount, broken down into items (ticket price and commission). The Company also provided data concerning the number and overall value of transactions associated with all the incriminated events of the relevant period. Such data revealed that, with reference to the incriminated period, [omissis] tickets were sold, for 36 events – one less compared with the incriminated ones – and that such tickets were purchased in about [omissis] transactions, for an overall amount of € [omissis], € [omissis] of which were proceeds deriving from commissions.

Moreover, with the communications of 16 October 2019 and 17 January 2020, submitted following the information requests of 2 October and 24 December 2019, the party provided further information concerning: 1) the client-supporting activities carried out

¹ Event listed under item 33, paragraph 1, of this document.

during the buying/selling phase, including the guarantees provided to users and sellers and possible restrictions; 2) overpricing of the ticket, for any reason; 3) home page organisation and indexing; 4) description of how other ticket advertising/purchase/sale channels of the platform operate; 5) percentage of tickets per type of event; 6) percentage of tickets sold at face value in the relevant period and detailed information on the transactions associated with the incriminated events.

With reference to the detailed information on the activities supporting and guaranteeing the transactions, the company pointed out that the price suggested by Viagogo does not derive from the use of an algorithm; rather, it is calculated by a proprietary software, whose basic function is to automatically tell the seller the cheapest price on the platform for that event. Such suggested price is updated in real time, based on the offers uploaded by other advertisers and the purpose is that of preventing the advertiser from having to go back to the event page. From an operational standpoint, during the sale process Viagogo provides support to its clients both via telephone and via email. In order to ensure a successful outcome of the transaction, the company undertakes to make sure that the buyers receive the tickets in time, and should that not happen, the company undertakes to find replacement tickets or fully refund the buyer. Should relevant problems concerning the tickets emerge before the event takes place, the buyer has ten days to notify such issues to Viagogo, otherwise they shall lose the right to a refund. Finally, regarding sellers, the company makes sure that the seller collects the amount due to them, as long as the seller provides tickets that correspond to the description. In order to ensure all this *“the amounts paid by the buying users are not transferred to the sellers exactly when the ticket is sold but are withheld on a specific bank account”* under the name of the company.

With reference to service access restrictions, the company stressed that the “Terms and conditions” for using the website envisage that the users declare that: 1) they cannot enter into legally-binding contracts; 2) they are at least 18 years old; 3) they shall comply with local, regional, national and international laws concerning the use of the website and the sale of tickets. Besides, the company pointed out that it does not use automatic filters for selecting the users to be accepted on the platform. Nevertheless, Viagogo *“requests that all sellers provide their credit card data to protect itself from potential frauds”* and, regarding purchases, stolen credit cards may not be used. All transactions are checked by means of entirely automatic tools, within the antifraud system. Regarding overpricing, the company declared it applies two types of additional costs: a commission, which is [omissis] (including VAT) to cover *“taxes and booking costs”* and fixed sums to cover delivery and management costs. Such costs total € [omissis] per e-ticket, range from € [omissis] to € [omissis] for national courier deliveries and € [omissis] for international courier deliveries.

As for homepage organisation and indexing activities, the company stressed that the content of the home page is static, *“save for the visualised events”*, which are chosen based on the website sales. Regarding the use of the platform’s other ticket

advertising/purchase/sale channels, the company pointed out that uses several online advertising channels, including:

- Bing ads;
- Google search ads;
- Google Display Network ads (currently not operational);
- Facebook Ads (this means includes the entire Facebook advertising network, including Facebook itself, Instagram, Messenger and any other Facebook platform that features advertisements);
- Facebook posts (on Viagogo's page);
- Instagram posts (on Viagogo's page);
- Twitter posts (on Viagogo's page).

Regarding the percentage of tickets sold per type of event, the data from 1 March 2019 to 31 May 2019 revealed that [omissis] of the tickets sold were for festivals, [omissis] for concerts, [omissis] for sport events, [omissis] for theatre shows. Regarding the percentage of tickets sold at a price equal to or other than face value, the company declared it does not possess such information "for it is not aware of the primary-ticketing market face value".

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 be 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." Even when examining the purpose of the reference law, namely, to "combat tax evasion and to protect consumers and ensure public order", 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.

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 39 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 38. As for item 39 of the indictment, we reckon that promoting activity on the page of the social network Facebook, www.facebook.com/viagogo, is not punishable per se, it rather supplements an element that can affect damage severity, for it can amplify the spread of sale offers. Regarding the company's claim that, according to them, tickets for the Jovanotti event of 27 July 2019

were not sold on its website, we reckon that such claim cannot be duly confirmed. In fact, the screens displayed following a title search conducted by the reporting parties, the investigations conducted ex officio (included in the minutes of 6 June 2019) and the report of the Postal Police confirm the presence of such event on the Viagogo platform.

Hence, following the preliminary investigations, the Authority has ascertained the existence of infringements violating the law concerning the sale of tickets for 37 events of several artists, as described in the indictment and listed under paragraph 1 of this document.

3.1 Activity carried out by Viagogo 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 Viagogo's active role 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. Such conclusion is based on the fact that Viagogo, using both human and technical resources: a) provides assistance in optimising ticket supply, b) deals with the promotion of such supply on a vast scale, c) crucially takes part in defining all the major legal and economic parameters of the transaction, including the delivery terms and price, and d) deals with the operational management and completes the transaction.

As for the Company's position and the classification of the performed activity, the documents of the proceedings show that Viagogo's activity is not limited to 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, Viagogo 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*] (including VAT) of the ticket's final price, making the buyer pay for the delivery costs 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).

Zeroing in on the activities carried out by Viagogo, the Postal Police report and the declarations of the company itself reveal that the company optimises the advertisers' offer of tickets, presenting and organising it as if it were part of an 'event', not as individual tickets. This aspect, which may, at a first glance, seem to be secondary, actually sheds light on the vast-scale business approach of the company's selling strategy: the platform Viagogo.it homepage actively organises and optimises the single ticket offers, mainly promoting *the events*. In fact, from a promotional standpoint, the emotional impact on the general public is much stronger if you make the potential clients feel they are part of an event, rather than having access to one single ticket. The company itself, in its reply to the Authority's information request (Agcom protocol 440103 of 16 October 2019)

claimed that “*the homepage displays the events that, based on the users’ declarations, are the ones selling most in that moment*”.

In view of the above, it is clear that the platform’s business model is not that of a simply and neutral virtual noticeboard for selling individual tickets; it rather promotes events, aiming to maximise the number of tickets sold, therefore competing with primary-ticketing market operators and event organisers.

Such a circumstance is unequivocally confirmed by the company’s will to intervene in the editing of the advertisers’ posts.

If the claims attached to the Company were true, namely, that they simply act as a "virtual noticeboard", where each advertiser can post a listing 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 marketplaces for different types of goods – as a list of individual listings, 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, the listings are entirely written, modified and adjusted by Viagogo, as the proved by the excerpt of article 2.4, “Terms and Conditions” on Viagogo’s homepage, which – referring to the advertiser – state “*You also grant Us a non-exclusive, transferable, worldwide, paid-up, royalty-free right and license to reproduce, modify, adapt, publish and display on the Site and on the sites of our marketing partners your descriptions of tickets listed for sale. This is so we can promote the sale of tickets and items that You list for sale*” (added emphasis).²

Furthermore, the platform’s optimisation activity also goes for the packaging of ticket sales. For example, the “Terms and Conditions for sellers” specify that each listing must sell single tickets or tickets with consecutive seats, and that one single listing cannot include so-called piggyback tickets, which are tickets for seats that are directly behind each other³.

Aside from the ticket offer ad optimisation, the platform’s active role is also to be seen in the event promotion it performs by sequencing the several screens that precede the conclusion of the business transaction. According to Postal Police report and the evidence it provides, the first screens that appear – once the purchase procedure has begun – describe, including by displaying specific graphics, the main characteristics of the venues and of the available ticket sectors within them (for example, floor, stage, gold, stands, etc.), stressing some relevant physical characteristics, such as visibility, how much demand there is for that type of ticket, the possibility of keeping the physical ticket as a

² Art. 2.4, “Listing”, Terms and conditions for buyers, available at <https://www.viagogo.it/Aiuto/Buyer/11>

³ *Ibidem*.

souvenir, etc... and indicating the number of tickets still available for each sector. Moreover, in the following screens that appear as the transaction is being completed, the promotional message is further enhanced by describing the beauty, the uniqueness, the amazingness and the importance of each event, as well as the specific location where it is held.

On top of the offer optimisation service, the company also fields a “*massive promotional activity*” (emphasis added) for the sale of tickets via a multi-platform strategy. Such activity is proven, above all, by the use, for promotional purposes, of the social network Facebook, via the page www.facebook.com/viagogo.

In fact, unlike the company claims in its communication of 17 September 2019, with reference to the fact that Viagogo’s Facebook page has not been updated since 2014, we found out that if you type www.facebook.com/viagogo you shall be automatically redirected to the webpage “Ticket.viagogo”, which, through the button “BookNow”, redirects the user to the homepage of the *viagogo.co.uk* website, making the purchase possible from the English website. Furthermore, in its reply of 16 October 2019 to the Authority’s information request, the company itself admitted it uses several channels to advertise Viagogo services among Italian users, such as:

- “- Bing ads;
- Google Search ads;
- Google Display Network ads (currently not operational);
- Facebook Ads (this means includes the entire Facebook advertising network, including, aside from Facebook itself, Instagram, Messenger and any other Facebook platform which provides commercial ads);
- Facebook posts (on Viagogo’s page);
- Instagram posts (on Viagogo’s page);
- Twitter posts (on Viagogo’s page)”.

Aside from the optimisation and promotion of tickets for events, throughout the entire sale process, Viagogo also provides a range of services that aim to help successfully complete the business transaction, as declared by the company itself, which clearly stated, under the “About Viagogo” section on its homepage, that “*Once Buyer and Seller have entered into a transaction, all transactions are covered by the Viagogo Guarantee*” (emphasis added).⁴

Even according to the Postal Police report, Viagogo deals with all phases of the transaction, up to the very completion: it makes buyers and advertisers sign in, it obtains the payment authorisation via debit or credit card as soon as the buyer submits an offer,

⁴ Cf. art. 1.2 of the Terms and Conditions for sellers, available at <https://www.viagogo.it/Aiuto/Seller/11>

it checks the existence of a bank account, should the payment be made via wire transfer, it notifies and confirms the purchase offer to the advertiser. As of the notification, the advertiser has 48 hours to either confirm and complete the transaction or modify it. In the meantime, Viagogo collects the buyer's payment and withholds the paid sum on an account under the company's name.

It is therefore hard to deny the platform's active role, considering that the payment not only transits and is held on a bank account of the company, but is transferred to the seller only once the correctness of the transaction has been verified and the ticket delivered.

Throughout the sale transaction, platform users are actively supported by a help centre/customer support by means of a network of call centres that are directly operated by the company or by business partners. *“Customer support is provided by human resources, specifically Italian mother-tongue operators, during regular working hours, six days a week”* (emphasis added). In its reply to the Authority's information request of 16 October 2019, the company claims that should the buyer have problems at the event, they may get in touch with the company via telephone or email, and should there be further hindrances or errors, the company undertakes to find replacement tickets or provide a voucher to make further purchases on the platform. All these services, which are largely provided by human resources and which, in the case of vouchers, are very similar to the ones provided by primary-ticketing operators or event organisers, confirm the platform's active role.

From the elements set forth above, it can be inferred that Viagogo is also responsible for providing guarantees to both parties. Lastly, it is once again Viagogo that sets the standards and conditions for delivery services, which in Italy are performed by a courier that regularly works with the company. Indeed, the moment the buyer purchases the ticket, Viagogo obtains the payment for the *“delivery and handling”* costs – as it admitted itself – and it charges the buyer with delivery costs, namely € [omissis] per e-ticket, from € [omissis] to € [omissis] for national couriers and € [omissis] for international couriers.

Therefore, all the elements collected throughout the proceeding and thus far described, prove that Viagogo's activity is not limited to 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 key elements of the business transaction, up to the completion of the sale.

Furthermore, all the elements illustrated above reveal that the company was aware of the individual pieces of data uploaded by the users and it was aware of their treatment. In fact, the Postal Police states, leaving no room for doubts (this is also confirmed from what emerged during the preliminary investigations) that the website in point *“is perfectly aware of what is being bought and sold and at what price, clearly violating the current laws on the subject-matter”* (emphasis added) and adds that *“the website never mentions/points out that it is illegal for advertisers to sell above face value”* (emphasis added).

The company's awareness is proven by the fact that it is the company itself that helps set the final price of the transaction, via the function "*suggested price*", by displaying a message that reads "*in order to sell your tickets more quickly, we suggest you sell them at a price of [...] per ticket*" (emphasis added). Such message, showing a "suggested price", is displayed in the pages that precede the listing being posted on the website. Moreover, with reference to the company claiming is not aware of a ticket's face value, such claim is overridden by the fact that, in any case, company has no interest in disclosing the face value, nor in warning that selling above face value is illegal; on the contrary it has an interest in maximising the final selling price and the amount of transactions, considering its [omissis] commission that it withholds from the final price of the ticket, as well as other charges and the revenues from advertising spaces, which depend on a website's success, in terms of number of users and visualisations. It is indeed clear that the commission the platform collects from each sale, calculated in terms of percentage of the final price, encourages it to make sellers and buyers agree on a marked-up price, greater than the ticket's face value, so as to maximise the revenue per unit collected by the platform for every transaction concluded.

Finally, from a legal standpoint, it is worth stressing that Viagogo's role, with reference to advertisers, is actually a real mandate for selling tickets, rather than mere intermediation. This is confirmed by the fact that, under article 4.3 of the Terms and Conditions available on the homepage, the company points out that sellers must agree "*not to separately contact the Buyer at any time for any reason*" (emphasis added) and that "*[...] payment may be withheld if you violate this clause*" (emphasis added). Furthermore, article 4.3 specifies that the seller agrees "*[...] not to include in your delivery to the Buyer any promotional or other commercial material that is not provided or approved by viagogo, other than a VAT invoice if relevant and if requested by the Buyer and viagogo. This includes, without limitation, material that announces a website or invites the Buyer to visit a website other than viagogo, catalogues, business cards, business reply cards, bookmarks, coupons, flyers, solicitations or other marketing or advertising material. Including any such items constitutes a material breach of these terms and conditions*" (emphasis added).⁵

In view of the aforesaid elements, what emerges is that Viagogo's role not only cannot be considered 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), regardless of the company's objection, which claims that "Viagogo is not a party of the ticket sale contract" (defence memorandum of 17 September 2019).

The relation between the ticket seller and Viagogo can legally be defined as a mandate without representation. In fact, the platform (following the seller expressing their will to sell the ticket at a given price) carries out all transaction-related activities aimed at completing the sale: it provides support to buyer and seller (since they cannot contact

⁵ Cf. <https://www.viagogo.it/Aiuto/Seller/11> ;

each other and since the seller cannot choose the buyer); it ensures the buyer's payment and that the paid amount actually corresponds to the seller's price, transferring the sum to the seller, minus the percentage owed to the platform itself and the delivery costs, but only following specific checks (via a mechanism set up and implemented by Viagogo). Basically, the mandate contract is perfected when the ticket holder expresses their will to sell the ticket via the platform, which compels Viagogo to sell, on behalf of the ticket-holder, at certain conditions and to transfer the outcome of the contract (namely, the price paid) to the seller. To this regard, even if the claim were to be that the mandate is carried out by means of automatic tools, such a circumstance – aside from being false, as proven above – would still be irrelevant, since such tools are all chosen, prearranged and made operational by the Viagogo platform, which is the subject that ensures the conclusion of the sale and deals with the relevant execution.

Finally, it should be noted that the company has not submitted to the Authority the data on the overall turnover generated in the financial year that ended before the sanctions proceedings were started, not the profit and loss figures for the same financial year, claiming that *“should such data be requested to quantify the amount of the penalty, that would be pertinent; yet there seems to be no need for it, since the Authority can still quantify the penalty without such piece of data, if necessary by coming to conclusions that are less favourable to the company owing to the fact that such piece of data was not provided”*. In any case, some indications on the economic status and assets of the company can be inferred from international press news: in November 2019 the Company announced the takeover of the operator StubHub for 4.05 billion dollars, cash, in order to create a global market player⁶ with a consolidated turnover of 15 billion dollars in 2020⁷.

3.2 Applicability of total fines

We reckon that the conduct, in violation of the very law, that Viagogo 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.

⁶ Viagogo operates in 70 countries with a strong presence in continental Europe and in the United Kingdom, while StubHub operates in 44 countries, with a particularly strong presence in the United States.

⁷ Cf. the online article 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>

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 Viagogo 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 several 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 viagogo.it website of event tickets without owing ticket-issuing systems (charge no.1 of the indictment and inspection document 2/19/DSD) and 2) the reselling, via the link www.facebook.com/viagogo/ to the company's website, of event tickets above the face value of the same tickets sold on primary-ticketing, authorised websites (charge no. 39 of the indictment and inspection document 2/19/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 38. On the other hand, regarding item 39 of the indictment, we reckon that promoting activities on the social network page www.facebook.com/viagogo 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 37 events of

different artists, as described under items 2 to 38 of the indictment and inspection document 2/19/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. To this end, the company failed to provide data concerning the turnover of the last financial year that ended before the sanctions proceedings started, as well as the profit and loss for the same financial year, claiming that *“should such data be requested to quantify the amount of the penalty, that would be pertinent; yet there seems to be no need for it, since the Authority can still quantify the penalty without such piece of data, if necessary by coming to conclusions that are less favourable to the company owing to the fact that such piece of data was not provided”*. However, some indications on the economic status and assets of the company can be inferred from international press news: in November 2019 the Company announced the takeover of the operator StubHub for 4.05 billion dollars, cash, in order to create a global market player⁸ with a consolidated turnover of 15 billion dollars in 2020⁹.

CONSIDERING that, for the abovementioned reasons, the sanctions proceedings confirmed the violations concerning the selling of tickets above face value for the 37 events listed under items 2 to 38 of the indictment and inspection document 2/19/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

⁸ Viagogo operates in 70 countries with a strong presence in continental Europe and in the United Kingdom, while StubHub operates in 44 countries, with a particularly strong presence in the United States.

⁹ Cf. the online article 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>

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 possessing all the means to inform the users about the prohibition set by the law, not only never mentioned or pointed out, on its website, the fact that selling tickets above face value was illegal, pursuant to article 1, paragraph 545 of law no. 232/2016, it actually increased the number of potential users by exploiting several advertising channels, including Facebook, in order to maximise the number of tickets sold. With particular reference to the Facebook channel, it has emerged that the latter is still operational, unlike the company declared in its communication of 17 September 2019.

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

The company took no measures, during the proceedings, for eliminating or attenuating the consequences of the infringement. On the contrary, it refused to provide the data requested, concerning the overall turnover of the last financial year that ended before the sanctions proceedings started, as well as the profit and loss data for the same financial year.

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 provided no data on its financial situation, international press news revealed that, in November 2019, the company announced the takeover of StubHub for 4.05 billion dollars, in order to create a global market player with a consolidated turnover of 15 billion dollars in 2020, we reckon that the economic status of the defendant justifies the overall pecuniary penalty established with this indictment.

HELD that the amount of the pecuniary administrative penalty – which should be € 100,000 (Euro one hundred thousand/00) for each of the 37 charges described above, for a total of € 3,700,000 (Euro three million seven hundred 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 Viagogo AG (CHE-247.099.716), based in Switzerland – Rue du Commerce 4, Geneva, at the company “GENEVA RHONE 8 SARL – CHE 456.718.175, 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 € 3,700,000 (Euro three million seven hundred thousand/00) for the infringement of article 1, paragraph 545 of law no. 232 of 11 December 2016;

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 IT5400100003245348010237900, 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. 104/20/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. 104/20/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