PROTECTION OF CONSUMERS' DREAM HOLIDAYS: UCPS IN THE TRAVEL PACKAGE SERVICES

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1 INTRODUCTION

The tourist sector is an important part of the EU’s economy. The Internet and the rise of low-cost flights, such as their liberalisation, and travel packages have changed consumer behaviour patterns.

Today consumers’ dream holidays are focused on looking for all inclusive trips, last minute special offers through e-couponing websites, as well as short breaks for travelling.

The Directive on package travel (hereinafter PTD) has granted consumers numerous rights, in particular with regards to pre-contractual information. However, as it dates back to 1990, it covers only traditional, pre-arranged packages when the travel market was much simpler than today and the Internet was not so prevalent.

Since then, however, due to the transition to a digital economy and the emergence of the low-cost airline sector, consumer behaviour patterns have changed.  

The PTD was transposed into Italian law in the Legislative Decree No. 79 of 23 May 2011 (Code of tourism – The Italian Tourism Act).

The Italian Competition Authority (ICA) has investigated Unfair Commercial Practices (hereinafter UCPS) of travel agencies in the online tourism package industry. The ICA's resolutions on tourism and holiday packages are based on the Italian Consumer Code and on the principles of the Code of

1 Italian Competition Authority.


3 Bringing the EU Package Travel Rules into the Digital Age, COM (2013) 513 final, 9 July 2013, p. 5.


5 Legislative Decree No. 206 of 5 September 2005.
Tourism. Online Travel agencies are obliged to give clear information in all essential elements and economic terms of the tourism contract.

According to the Consumer Code, the information on travel packages is based on a general principle of correct and transparent practice by travel agencies.

The ICA’s experience has shown that, in tourism contracts, many travel operators report the rules of the code of Tourism in an incomplete or distorted way.

2 PRICING POLICY AND CONSUMERS’ RIGHTS IN TRAVEL PACKAGES

The ICA’s investigations on travel and holiday packages were launched following a large number of complaints on the economic conditions of tourism services. In particular, the ICA’s main activity focused on advertising prices of holiday packages, purchased on the websites of tourism agencies.

Specifically, in line with the ICA’s resolution, it has been established that advertised prices must include all extra costs, such as taxes, fees and fuel or credit card surcharges.

The first group of decisions concerned several websites of tourist agencies offering holiday packages with a price that at the end of the booking procedure was much higher than the price advertised. The original price claimed on the home page of the online agency did not include other hidden costs such as taxes and insurance. The total travel price was discovered by consumers only at the end of the online booking (Opodo, Expedia, Edreams).

On the basis of the Legislative Decree on electronic commerce and the UCPs law combined with the Code of Tourism, the ICA established that the website of the online agency is easy to access and

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6 Legislative Decree No. 79 of 11 May 2011.

7 The contract must have specific items of information regarding:
- the price paid for the trip and the review mode, means of transport, the name of the air carrier, terms, etc. (Article 36, Code of Tourism);
- a brochure with information relevant to the purchase of a weighted, for example the means and class of transportation used, the deposit to be paid, deadlines, procedures to exercise the withdrawal (art.38, Code of Tourism);
- clear information on the revision of the total price of the cruise to the increase in the cost of the fuel (Article 40, paragraph 2, Code of Tourism) and the significant modification of one or more elements of the contract (Article 41, paragraph 1, Code of Tourism);
- the withdrawal is acknowledged for the revision of the price (an increase of over 10%) and for the significant modification of one or more elements of the contract. Exceptionally, refund must be carried out within seven days from withdrawal (Article 42, Code of Tourism).

8 Legislative Decree No. 70 of 9 April 2003 on electronic commerce. The purpose of this Decree is to prescribe the matters delegated by the Act on the Consumer Protection in the Electronic Commerce Transaction, etc. and the particulars necessary for its enforcement.
therefore must give complete, transparent and clear information to the tourist from the very first commercial contact.

Furthermore, the ICA in its resolutions stated that the price of goods or services must be shown all inclusive of the costs that can be calculated before publishing the ads on the internet.

Another investigation concerned the systematic anticipation and delay of flights scheduled by a tour operator (Blu Vacanze). The tourist Law establishes that tour operators can change travel plans only in case of extraordinary and exceptional needs, and consumers can rescind contracts without penalties and will be refunded.\(^9\) The high administrative Court confirmed this resolution.\(^10\)

In the cruises sector, the ICA’s investigation focused on two aspects (MSC Cruises, Costa Cruises):

1) transparent pricing, as cruise companies used to advertise the price of the cruises online without adding extra costs (such as insurance, fees, units of service, fuel surcharge, etc.)\(^11\) and including the cost of a pre-selected insurance from which consumers had to “opt out.”\(^12\) Claiming that the cruise is “free” for children and yet asking service and tax surcharges for kids was also assessed as misleading.

2) consumer rights as reported in the cruise contract were not clear on the right of withdrawal; moreover, in the Terms and Conditions there was a distinction between significant and non-significant elements of the contract, and only the change of the first ones entitled passengers to terminate the contract and to be refunded. The Tourist Code does not contemplate the abovementioned distinction.

In line with EU and national law on package travel, the ICA’s principles on the basis of UCPs concerning cruises were: 1) on price, the total effective price of the cruise should be advertised and immediately perceived by the consumer, including any added costs known by the trader before the purchase by the consumer;\(^13\) 2) on consumers rights information, the trader cannot «cherry pick» consumer’s rights at personal advantage and must show the full content of relevant applicable rules, as the national law does not distinguish between significant and non-significant elements of the tourist contract.

The principles set by the ICA in these resolutions can be a general guideline for the holiday package business.

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\(^9\) Article 41, paragraph 1, Code of Tourism.

\(^10\) Administrative High Court of State Judgment No. 209 of 19 January 2012.

\(^11\) During the purchase process, online add cost items not included in the base advertised price are omitted. Only at the end of the e-booking procedure customers are informed about the total price.

\(^12\) A pre-flag option for the insurance with small characters and only shown at the end of the e-booking procedure.

\(^13\) When the price cannot reasonably be calculated in advance, the trader has to explain how the price is calculated, as well as, where appropriate, all additional costs, insurance, charges.
Another group of the ICA’s resolutions concerned the e-couponing travelling sector (Groupalia and the travel partner Liu Travel).

The investigation was launched by the ICA based on several complaints from consumers and consumer associations that reported the misleading information on the price and discounts of goods and services, their real availability and also refund for the incomplete transactions and the inadequate Customer Service.\(^{14}\)

The case was closed with commitments from the two companies without imposing fines.

Both companies committed to give clear and complete financial indications on the commercial offers and special discounts\(^{15}\) and to publish on the website a special Service Chart on consumer rights.\(^{16}\) In the travel industry, consumers can check the availability of the tourist offers over the holiday period in which they are interested before the purchase of the holiday voucher. More controls will be undertaken before and after publishing the deals on their partners.

In December 2013, the ICA opened a new procedure against the Groupon Company, in order to investigate the same kind of practices.\(^{17}\)

The new way of purchasing can allow, on one hand, greater visibility for small entrepreneurs, and on the other hand it can make the economic choices of the customers much easier. In any case, companies must divulge correct and clear commercial indications.

The last group of the ICA’s resolutions was lunched after the Sweep procedure which took place in summer 2013\(^{18}\) on checked websites selling air travel and hotel accommodation, including websites of both traders and intermediaries.\(^{19}\) The main problems found were focused on the lack of clear

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\(^{14}\) Several complaints concerned: 1) advertising of goods and tourist services untruthful on the real availability in terms of advertised price and discount percentage applied; 2) the pay back of sums wrongly received or withheld by the availability of the customer in a transaction not completed successfully, and carried through payment cards; 3) customer service, included the holiday and travel services lacking and inadequate.

\(^{15}\) Discounts shown only in case of a certain reference price, i.e. price list, officials tariffs.

\(^{16}\) The Service Card rules the submission of complaints, the requests for refund with the relative timing of management and customer service.


\(^{18}\) A "sweep" is an EU-wide screening of websites to identify breaches of consumer law and to subsequently ensure its enforcement. The sweep is coordinated by the European Commission and run simultaneously by national enforcement authorities. The Travel Services Sweep took place in 27 EU Member States, Norway and Iceland in June 2013.

\(^{19}\) European Commission MEMO/14/292 14/04/2014, IP/14/436, http://ec.europa.eu/consumers/enforcement/sweep/online_travel_booking/. SWEEP focused on:

1) lack of mandatory information on traders' identity, in particular email addresses, depriving consumers from an effective contact channel. 162 websites did not contain this information.

2) lack of clear instructions on how to complain. 157 websites did not provide this information.
information on financial and tour operators’ identities and on the presence, extent and nature of any additional charges as regards customers’ credit cards (Atrapalo.It, Airtickets, Volo24.it, Tripsta, Tui.it, Credit Card Surcharge).

3 NEW RULES ON TRAVEL PACKAGES

The national law which transposed the Directive on Consumer Rights for long distance contracts\(^{20}\) excludes tourist contracts.\(^{21}\) There is a special rule for Travel packages.\(^{22}\)

A modernization of the PTD 90/314/EEC is required for the tourist industry as well as consumer organisation (hereinafter Proposal).\(^{23}\)

The Proposal seeks to add value to the Internal Market and to achieve a higher level of consumer protection.\(^{24}\)

The Proposal is complementary to an existing EU law\(^{25}\) and complies with the subsidiarity\(^{26}\) and proportionality\(^{27}\) principles. It is based, inter alia, on a lists of specific pre-contractual information

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3) Optional price supplements, such as baggage fee, insurance fee, priority boarding, are not on an “opt-in” basis. This problem occurred with 133 websites.

4) The total price of the service is not indicated up-front when the main elements of the booking are first displayed. 112 websites failed to give this information.

20 Legislative Decree No. 21 of 21 February 2014. The Directive on consumer rights establishes an exclusion for the long distance tourist contracts, because these are ruled by the Legislative Decree No. 79/2011 on Tourist Code (Article 47, par. 1, let. G)

21 Art. 47, par. 1, let. G, of Legislative Decree no. 21/2014.


23 The Proposal consists of 29 articles and two annexes.


25 The goal is to improve the functioning of the internal market, by removing differences among the laws of the Member States and improving consumers' access to services from other Member States cannot be sufficiently achieved by the Member States acting in an un-coordinated manner.
which tour operators (organisers and retailers) must provide to tourists. These requirements apply in addition to information required by the other travel directives or regulations.\textsuperscript{28}

The main amendments included in the Proposal concern the changes of contract terms before the start of the package.\textsuperscript{29} Specifically, starting from the principle that agreed prices are binding, the proposal gives the possibility of price changes, because the package contracts are often concluded far in advance. However, the conditions for changing the package costs are based on the fact that these may not be increased by more than 10\% of the price of the package (related to cost of fuel, taxes and exchange rate fluctuations).

Compared to the previous PTD (90/314/EEC), the Proposal envisages different rules for insignificant and significant changes of the tourist contracts.\textsuperscript{30}

Among other things, the proposal amends Directive 2011/83\textsuperscript{31} on consumer rights to ensure that it applies fully to assisted travel arrangements and that certain general consumer rights apply also to packages.\textsuperscript{32} The latter provision substantially changes the current Directive on consumer rights and consequently it will imply changes of the national law on travelers’ rights.\textsuperscript{33}

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\textsuperscript{27} The proposal will enable the Member States to implement the most appropriate means of enforcement and the necessary sanctions for breaches of its rules. In certain areas the proposal gives Member States the possibility to impose stricter rules.

\textsuperscript{28} Articles 4-6, of Proposal.

\textsuperscript{29} Articles 7-10, of the Proposal.

\textsuperscript{30} Article 9, p. 1 and 2, of Proposal.


\textsuperscript{32} Art. 25, p 2.

\textsuperscript{33} Sebastio F., \textit{Protection of consumers’ dream holidays: UCPS in the travel package services}. DOI: 10.12870/iar-10203}