

PUBLIC

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Decision of the Consumer Authority as referred to in article 2.9 of the Consumer Protection (Enforcement) Act [*Wet handhaving consumentenbescherming*] for the imposition of fines and/or penalty payment.

Summary of the decision

Ryanair offers airline tickets to Dutch consumers through its website www.ryanair.com/nl. The Consumer Authority has inspected the booking process used by the website of Ryanair. The manner in which flights and related services are offered has been checked against article 23 of the European Aviation Regulation and against the legislation concerning unfair commercial practices. Additionally, an assessment has been made of whether Ryanair has fulfilled the information obligations which apply to service providers of an information company (such as offering goods or services through the internet).

The Consumer Authority has come to the conclusion that Ryanair has acted in breach of these regulations. Ryanair has not consistently included in its website all foreseeable and unavoidable costs in the prices presented for airline tickets. In addition, Ryanair only offered its customer services in English without making this sufficiently apparent on the Dutch website. The online booking process of Ryanair fails to provide adequate possibility for consumers to notice and correct any input errors made during booking. Lastly, Ryanair has, in breach of its statutory obligation thereto, not presented an e-mail address on its website. This has made direct communication with Ryanair difficult.

The Consumer Authority imposes fines amounting to a total of EUR 370,000 for the established breaches. In addition, it imposes three penalty payments for the continuing breaches which have become evident to the Consumer Authority.

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1 Reason for the inspection and the course of the procedure

Reason for the inspection

1. The Consumer Authority has since as early as 2007 received indications that Ryanair was not adhering to provisions in the area of consumer regulations. Prior to setting up an inspection of the commercial practices of Ryanair in its offering of airline tickets through its website www.ryanair.com/nl, the Consumer Authority has attempted to deal with the commercial practices of Ryanair through other avenues. Given the fact that Ryanair is an Irish company, the Consumer Authority in the first instance made contact with the Irish 'National Consumer Agency' (NCA); this resulted in an enforcement request addressed to the NCA on the basis of European regulations in 2008. Subsequently, the Consumer Authority, together with the authorities of four other member states of the European Union, once again submitted enforcement requests to the NCA.
2. The Consumer Authority saw the indications that Ryanair was not adhering to provisions in the area of consumer regulations confirmed inter alia by the fact that Ryanair appeared to be involved in the procedures related to consumer regulations. Various authorities established breaches. This happened inter alia in Italy, Denmark and the United Kingdom, but also in the Netherlands at the Advertising Code Committee.
3. The Consumer Authority has established that the enforcement requests addressed to the NCA produced no effect. That is the reason why it conducted an inspection in 2012 in order to be able to establish whether Ryanair was adhering to the provisions in the area of consumer regulations.

Course of the inspection

4. The - mainly digital - inspection, conducted by civil servants of the Supervision Department of the Consumer Authority, was carried out in the period of January up to and including 4 September 2012. In the context of the inspection the civil servants recorded the website of www.ryanair.com/nl seven times, namely on 13 January, 20 January, 27 January, 3 February, 10 February, 27 April and 12 July 2012. Each of the aforesaid visits to the website www.ryanair.com/nl was recorded as a film on CD-ROM and on paper by means of printouts of the visited webpages (screen prints).¹ Each time a single or return journey was selected and a booking process was carried out until the point of payment (and consequently the booking). Once, namely on 10 February 2012, the civil servants actually proceeded with the purchase of an airline ticket.²

¹ See file documents CA/IB/812/5, CA/IB/812/6, CA/IB/812/7, CA/IB/812/8, CA/IB/812/10, CA/IB/812/20 and CA/IB/812/40 for this.

² File document CA/IB/812/25.

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5. Furthermore, on 14 June 2012, a discussion took place within the context of the inspection at the office of the Consumer Authority, between representatives of Ryanair and the civil servants of the Consumer Authority charged with the inspection. In addition, the civil servants charged with the inspection requested information in writing from Ryanair on 24 April 2012 and 26 July 2012. Ryanair has provided the requested information.
6. The suspicion that Ryanair has committed breaches arose from the inspection. Therefore, the Head of Supervision of the Consumer Authority has drawn up a report as referred to in article 5:48 of the General Administrative Law Act [*Algemene wet bestuursrecht*] (hereinafter also referred to as: Awb)³ (hereinafter referred to as the report). On 5 September 2012, the report together with the file (report file) which is the basis thereof, was sent to Ryanair.

Course of the procedure

7. At the same time the report and the report file were sent to Ryanair, the report and the report file were passed on by the Head of Supervision to the Legal Services of the Consumer Authority.
8. Ryanair has in accordance with article 5:33 in conjunction with article 5:50 of the Awb been given the opportunity to present its point of view of the report. Ryanair has for this purpose submitted a point of view in writing, dated 31 October 2012, (hereinafter referred to as: point of view in writing).⁴
9. In addition Ryanair has explained their point of view orally in front of an appeals committee comprising of civil servants employed by the Legal Services of the Consumer Authority at the hearing held for this purpose on 8 November 2012 (hereinafter referred to as: oral point of view). A report has been drawn up of the hearing, which was sent on 29 November 2012 to Ryanair.⁵
10. The report, the report file as well as that which was submitted by Ryanair in its written and oral point of view, constitute the basis of this decision.
11. This decision firstly deals with the company concerned (chapter 2). Subsequently the report (chapter 3) and a description of the facts (chapter 4) are dealt with. Subsequently, the point of view of Ryanair (chapter 5) and the authority of the Consumer Authority (chapter 6) follow. In the following chapter (chapter 7) the legal assessment takes place. In the last part of this decision (chapters 8, 9, 10 and 11) the conclusions are set out and the measures to be imposed are recorded.

³ File document CA/IB/812/62, report of 5 September 2012.

⁴ File document CA/IB/878/6.

⁵ File document CA/IB/878/9. Furthermore, see file document CA/IB/878/8 (Notes of the hearing of the authorised person of Ryanair).

2 The company

12. Ryanair limited company (Ltd.) (hereinafter referred to as: Ryanair or Ryanair Limited) is an Irish "point-to-point" airline company⁶ and is a 100% subsidiary company of Ryanair Holdings public limited company (plc.).⁷
13. Ryanair Ltd. has its registered office in Dublin Airport, Co. Dublin in Ireland, under registration number 104547. Ryanair Holding plc. has its registered office in Dublin Airport, Co. Dublin in Ireland, under registration number 249885.⁸
14. On the website where Ryanair offers airline tickets, www.ryanair.com/nl, are hyperlinks to the General Conditions of Use. It appears from the Conditions of Use for the Ryanair-website that the owner of this website is Ryanair Limited.⁹

3 The report

15. In the report dated 5 September 2012 it is concluded that Ryanair Limited, during the period January 2012 up to and including 12 July 2012, in any event has not complied with:
 - a) Section 8.2 Consumer Protection (Enforcement) Act in conjunction with article 3:15d, first subsection, opening words and under b, of the Dutch Civil Code;
 - b) Article 8.2 Consumer Protection (Enforcement) Act in conjunction with article 6:227c, first subsection, of the Dutch Civil Code;
 - c) Article 8.8 Consumer Protection (Enforcement) Act in conjunction with article 6:193g, opening words and under h, of the Dutch Civil Code;
 - d) Article 8.8 Consumer Protection (Enforcement) Act in conjunction with article 6:193h of the Dutch Civil Code;
 - e) Section 23, first subsection, Regulation (EC) No. 1008/2008 concerning rules for the running of air services in the Community.

4 Factual context; booking process

16. The Consumer Authority will in this chapter provide a succinct representation of the booking process of Ryanair.¹⁰ Where the separate legal assessment in chapter 7 of this decision requires a more extensive representation of the facts this will be included for each assessment.
17. The description of the booking process is based on the recording of the website www.ryanair.com/nl on 13 January 2012.¹¹ The website was similar

⁶ File document CA/IB/812/5, article 17 of the General Terms and Conditions of Ryanair.

⁷ File document CA/IB/812/18, page 31.

⁸ File document CA/IB/812/54, appendix 1B.

⁹ File document CA/IB/812/5, article 1 of the Conditions of Use.

¹⁰The booking process has been recorded during the inspection in various details and included in the inspection file. See for this file documents CA/IB/812/5, CA/IB/812/6, CA/IB/812/7, CA/IB/812/8, CA/IB/812/10, CA/IB/812/20, CA/IB/812/25, CA/IB/812/40 and CA/IB/812/57.

¹¹ File document CA/IB/812/5, recording website www.ryanair.com/nl (13-01-2012).

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during later recordings, but insofar as during the further inspection changes were established this will be expressly indicated at the end of this chapter.

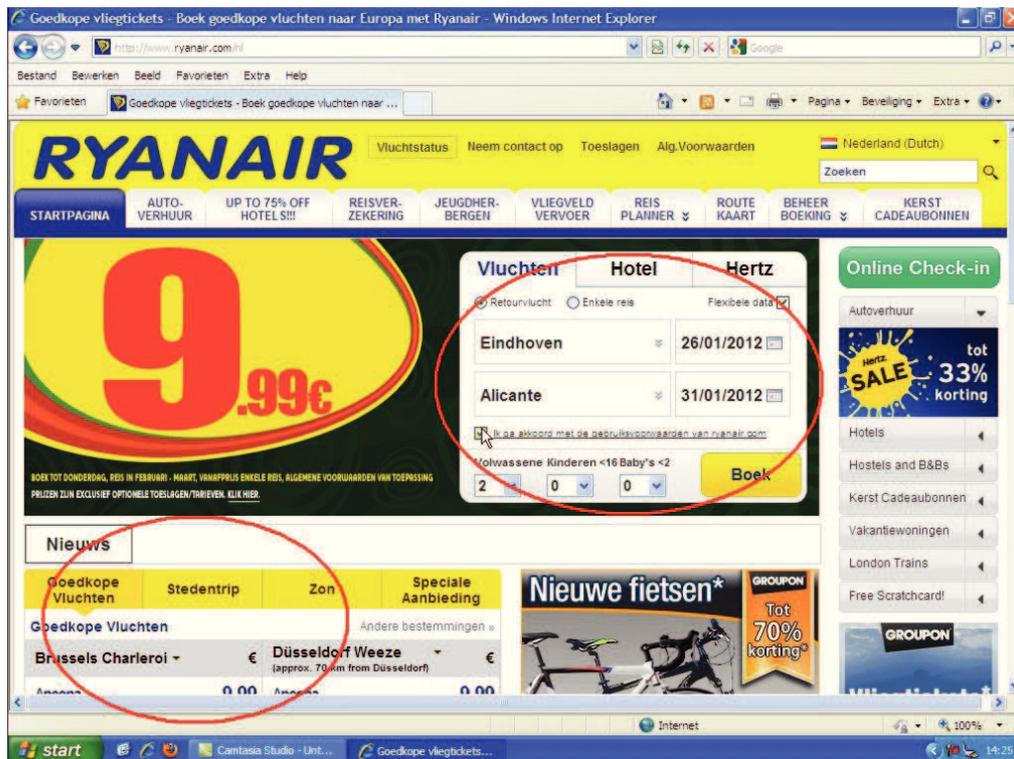
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Booking page 1: Search

18. Ryanair offers through its website www.ryanair.com/nl - inter alia - airline tickets to various European destinations. This website of Ryanair is available in the Dutch language, with which Ryanair focuses on the Dutch market.



Screen print of booking page 1¹²

19. There are two possibilities for the consumer to choose an airline ticket through booking page 1. The consumer can opt for one of the offers under the button 'cheap flights' (see encirclement bottom left side) or the consumer can enter a departure point in order to investigate the offer this way (see encirclement top right hand side).

Booking page 2: Selecting flights

20. The consumer arrives through both of the above possibilities at booking page 2.

¹² File document CA/IB/812/5, screen print 1.

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The screenshot shows the Ryanair website interface in Internet Explorer. The main content area displays flight options for a round trip from Eindhoven to Alicante. A horizontal bar at the top of the flight selection section, labeled 'Heenreis Van Eindhoven - Alicante', contains several date and price tabs. The tab for Thursday, 26 January 2012, at 31.99 EUR is highlighted with a red circle. Below this bar, a detailed price breakdown is shown for the selected flight. This breakdown is also circled in red and includes the following items:

- Standaard tarief: 63,98 EUR
- Online inchecken: 12,00 EUR
- EU261 heffing: 4,00 EUR
- Belastingen? (Koeslath): 68,98 EUR
- Belasting en toeslagen: 56,00 EUR
- Aviation Insurance/PRM Levy: 12,98 EUR
- Totale prijs: 148,96 EUR

The right side of the page features several promotional banners for Alicante flights, such as 'Vlucht Alicante €119 rt' and 'Goedkope Alicante Vlucht?'. The browser's address bar shows the URL 'http://www.bookryanair.com/SkySales/FRSelect.aspx'.

Screen print of booking page 2 (outward journey)¹³

21. On booking page 2 there is a horizontal bar visible with *flexi search tabs* (see encirclement at the top in the centre), on which available flights and various dates with accompanying prices are visible. As soon as a choice is made with a mouse click for one of the flights presented in the *flexi search tabs*, a column appears on the right hand side under the horizontal bar with *flexi search tabs* with further information about the composition of the price forming part of the chosen flight (see encirclement on the right). In this overview details about the departure and arrival (place and time), the number of persons and the rate can be found. In addition the following price elements are specified in the overview: 'online check in', 'EU261 duty', 'ETS duty' and 'Taxes/Surcharges'. By clicking on the last item a more detailed specification becomes visible. In addition to 'Taxes/Surcharges' there is also the item 'Aviation Insurance/PRM Levy' included in the more detailed specification. The overview ends with a total price for the flight.
22. For example, in the recording of 13 January 2012, a journey from Eindhoven to Alicante vv was chosen. The choice was made for an outward flight from the *flexi search tabs* on Thursday 26 January for the price of EUR 31.99. By clicking on the *flexi search tab* for this outward flight the overview with the more detailed information about the composition of the price becomes visible. The price of tickets for two persons is EUR 63.98 (2 x EUR 31.99). Added to this are the costs as indicated in the specification in the column, resulting in the total price for two persons for the outward journey of EUR 148.96. Instead

¹³ File document CA/IB/812/5, screen print 2.

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of EUR 31.99 per person (as stated in the *flexi search tabs*), the consumer is paying EUR 74.48 per person for the outward journey (EUR 148.96/2).

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23. Subsequently, the consumer can still make a choice at booking page 2 for a return journey, with a similar horizontal bar with *flexi search tabs* with various details and prices. After selecting a flight, an overview with more detailed information about the composition of the price appears here also. The price is again specified in this overview in the following items: 'online check in', 'EU261 duty', 'ETS duty' and 'Taxes/Surcharges'. This overview also ends with a total price for the return journey.

24. In the recording of 13 January 2012, a choice is made for the return journey by clicking on one of the *flexi search tabs*. It concerns a flight on 31 January 2012 for a price of EUR 32.99. For two persons, the consumer would expect a total price of EUR 65.98 (2x EUR 32.99) for the return journey. Analogous to the situation for the outward journey described previously in marginal number 22, the costs here are also added as described in the specification column. The total price for two persons amounts to EUR 81.98 as a result of this. Instead of the price presented in the *flexi search tab* of EUR 32.99 per person, the consumer will therefore owe EUR 40.99 per person.

The screenshot shows the Ryanair booking interface in Internet Explorer. The main content area displays flight options for a return journey from Alicante to Eindhoven. A flight on 31 January 2012 is selected, priced at 32,99 EUR per person. Below this, a detailed price breakdown is shown:

2 x Volvassene	65,98 EUR
Tarief	65,98 EUR
Online inchecken	12,00 EUR
EU261 heffing	4,00 EUR
Belastingen / toeslagen	0,00 EUR
Totale prijs	81,98 EUR

At the bottom of the page, a red circle highlights the total price for the entire booking: **Totaal 230,94 EUR**. Below this, a note states: "Optionele kosten zoals administratiekosten en toeslagen voor ingecheckte bagage zijn niet opgenomen. Klik hier voor meer informatie".

Screen print of booking page 2 (return journey)¹⁴

25. Now that the choice for the return flight is made, the total price for the selected outward and return flight is presented halfway down booking page 2 (see screen print above). Under the presented total price is the text 'Optional costs such as administrative costs and surcharges for checked in baggage are not included. Click here for more information'. When one clicks on the link

¹⁴ File document CA/IB/812/5, screen print 3.

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'Click here for more information' a page from the Ryanair website opens at the subject that deals with optional costs, displaying the general transport conditions. Under the total price is a link 'select and continue'.

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26. On the basis of the aforesaid example, the Consumer Authority establishes that the journey from Eindhoven to Alicante vv is presented to the consumer with the *flexi search tabs* at a price of EUR 129.96 for two persons (EUR 64.98 per person) for the outward and return journey. In reality the total price, including the additional costs as specified in the column on the right of the webpage, amounted to EUR 230.94 for two persons (EUR 115.47 per person), as shown in the above screen print. The difference amounts to a total of EUR 100.98 for two persons (EUR 50.49 per person).

Booking page 3: Selecting services

27. To continue with the booking process, the consumer must click on the link 'select and continue' at the bottom of booking page 2. After this, booking page 3 opens. At the top of booking page 3 the consumer must fill in the personal details of the passengers. One must also indicate if one wants to avoid queues by either selecting or not selecting 'priority boarding'

The screenshot shows the Ryanair website interface in Internet Explorer. The main content area is titled 'Passagiersgegevens - Alle passagiersnamen moeten overeenkomen met de namen in het paspoort/geaccepteerde reisdocument'. It lists two passengers, each with a name field, a dropdown for '0 koffers', and a price of '0,00 EUR'. Below this is a section for 'Kies uw Reisverzekering' with two options: 'REISVERZEKERING' and 'REISVERZEKERING PLUS'. The 'REISVERZEKERING PLUS' option is selected. Below this is a section for 'Kies hier uw dekking' with two dropdown menus for 'Passagier 1' and 'Passagier 2'. On the right side, there is a column titled 'vvluchten' showing flight details for 'Eindhoven - Alicante' and 'Alicante - Eindhoven'. It lists various costs: '2 x Volwassene' (63,9), 'Belasting/toeslagen' (68,9), 'EU261 heffing' (4,0), and '2 x Inchecken web' (12,0). The total cost is shown as 'Totale kosten 230,9'.

Screen print of booking page 3 (left hand side)¹⁵

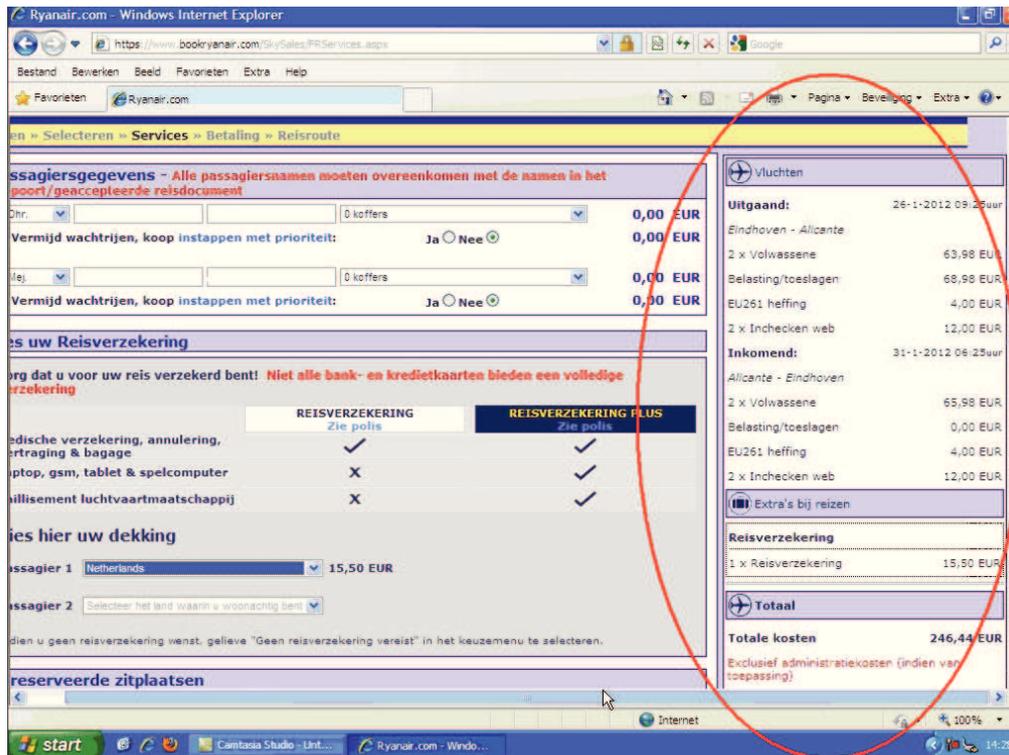
28. On the right hand side of booking page 3 a column is visible with an overview of the selected flights with the accompanying costs (see encirclement at the bottom of screen print). At the bottom of this column the total costs of the

¹⁵ File document CA/IB/812/5, screen print 4.

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booking are stated along with this text below: 'excluding administrative costs (if applicable).'

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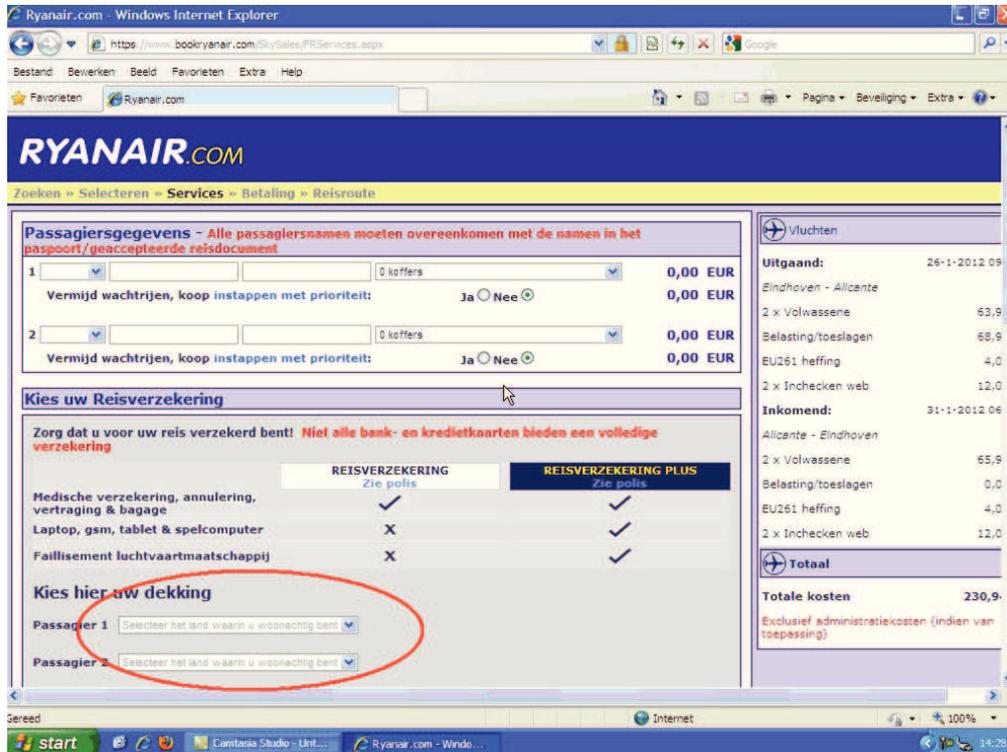
Screen print of booking page 3 (right hand side)¹⁶

Travel insurances

29. Under the passengers details is a bar with the title 'Choose your Travel Insurance'. After an explanation of the cover of the travel insurance and the travel insurance plus, the consumer can choose the cover of the travel insurance per passenger by means of a drop-down menu. The drop-down menu states the following text in grey letters: 'select the country where you live' (see encirclement at the screen print below). Under the drop-down menu the following is stated in small print: 'If you do not want travel insurance, please select 'No travel insurance required' in the option menu' (for the representation of this text: see the screen print on page 13).

¹⁶ File document CA/IB/812/5, screen print 6.

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Screen print of booking page 3¹⁷

30. When the consumer chooses the option 'Netherlands' in the price overview in the right hand column on the page under the heading 'Travel insurance', an amount of EURO 15.50 appears with the travel costs (see encirclement in screen print below). If the consumer selects the option 'No travel insurance needed' in the drop-down menu, the travel insurance and the accompanying costs disappear from the overview in the right hand column on the page.

¹⁷ File document CA/IB/812/5, screen print 4.

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The screenshot shows the Ryanair booking interface in Internet Explorer. The browser address bar displays 'https://www.bookryanair.com/SkySales/PCServices.aspx'. The page title is 'Ryanair.com - Windows Internet Explorer'. The navigation bar includes 'Zoeken > Selecteren > Services > Betaling > Reisroute'. The main content area is divided into several sections:

- Passagiersgegevens**: A table for two passengers. Each row has a dropdown menu, a '0 koffers' field, and a price of '0,00 EUR'. Below each row is a checkbox for 'Vermijd wachtrijen, koop instappen met prioriteit' with 'Ja' selected and 'Nee' unselected.
- Kies uw Reisverzekering**: A section with a warning: 'Zorg dat u voor uw reis verzekerd bent! Niet alle bank- en kredietkaarten bieden een volledige verzekering'. It compares two options: 'REISVERZEKERING' (with a 'Zie polis' link) and 'REISVERZEKERING PLUS' (with a 'Zie polis' link). A table lists coverage for 'Medische verzekering, annulering, vertraging & bagage', 'Laptop, gsm, tablet & spelcomputer', and 'Faillissement luchtvaartmaatschappij'. Below this is a section 'Kies hier uw dekking' with a dropdown menu for 'Passagier 1' set to 'Nederlands' and a price of '15,50 EUR'. A red circle highlights this dropdown menu.
- Gereserveerde zitplaatsen**: A section at the bottom of the main content area.
- Summary on the right**: A sidebar with 'vvluchten' (flights) and 'Totaal' (total) sections. The 'vvluchten' section shows 'Uitgaand: 26-1-2012 09' and 'Inkomend: 31-1-2012 06'. The 'Totaal' section shows 'Totale kosten 246,4'.

Screen print of booking page 3¹⁸

31. Furthermore, on booking page 3 (consecutive when the consumer scrolls down) the following is visible. Firstly, the consumer is offered the option to reserve seats in advance under the heading 'Reserved seats'. Secondly, the heading 'SMS confirmation with reservation number and flight details' becomes visible. The consumer can make the choice here of whether or not to receive an SMS-message containing the booking details. The third heading that becomes visible is 'hand baggage bag approved by Ryanair'. Here the consumer must choose one of three options (solid suitcase, soft suitcase or none).
32. Subsequently, the following headings appear in succession 'Sport items/ musical instrument/children's items' where the box must be ticked if the consumer wants to bring such items, and the heading 'Special assistance' where the box must be ticked in the event that the consumer needs special assistance at the airport.
33. Lastly, a white box appears at the bottom of booking page 3 with the text: 'Important - select the box to continue'. In the text that is visible here are items in bold which serve as hyperlinks to, respectively, the general transport conditions, the conditions of use of the website, the privacy policy and the reservation centre.

¹⁸ File document CA/IB/812/5, screen print 5.

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Booking page 3A: pop-up window

34. At the bottom of booking page 3 one can click on the button 'Continue'. The overview of the selected flights with the accompanying costs in the right hand column of the page as described in marginal number 28 is no longer visible after this step.
35. If, under the heading 'Choose your travel insurance', the consumer has chosen the option 'No insurance required' for both passengers and has clicked 'Continue', then a *pop-up* window (see screen print below) appears. This *pop-up* (booking page 3A) shows an 'important message' with information about the necessity of travel insurance. To be able to continue with the booking process the consumer must make a choice between 'no thank you, I will take the risk' (represented in grey letters against a white background) or 'Yes, add to my booking' (represented in white letters against a bright green background).



Screen print of booking page 3A¹⁹

36. After the option 'no thank you, I will take the risk' is selected a page opens in which a Hertz rental car is offered (booking page 3B²⁰). At the bottom of the page one can click on a link 'no, thank you' or the selected car can be added.

Booking page 4: Payment

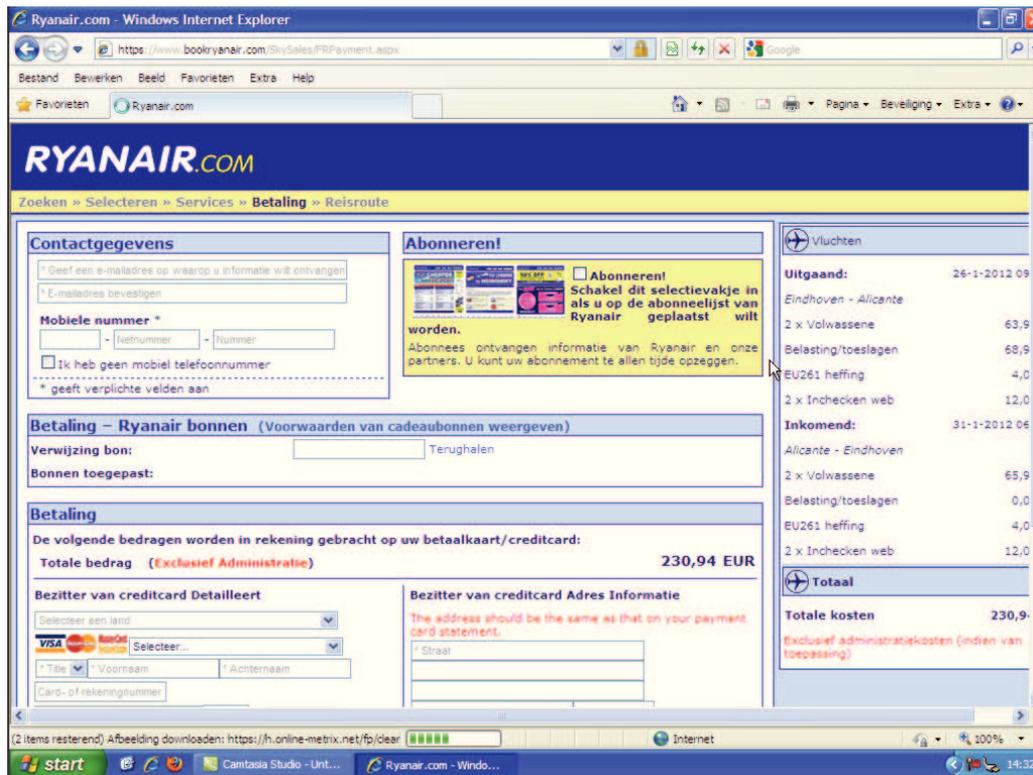
¹⁹ File document CA/IB/812/5, screen print 14.

²⁰ File document CA/IB/812/5, screen prints 15 and 16.

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37. Subsequently a new page opens, booking page 4, in which contact details must be filled in. On the right hand side of booking page 4 there is - again - the overview of the chosen flights with accompanying costs visible in a column. At the bottom of this column are the total costs of the booking stated with the following text below: 'Excluding administrative costs. (if applicable)'.

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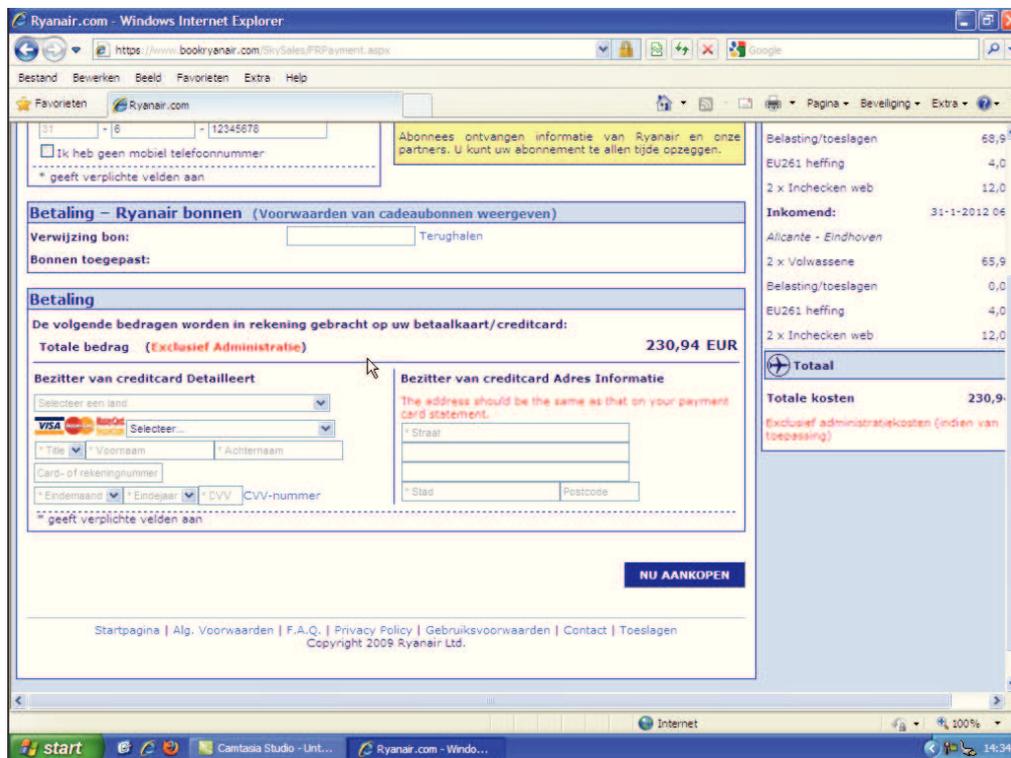


Screen print of booking page 4 (top side)²¹

²¹ File document CA/IB/812/5, screen prints 17 and 18.

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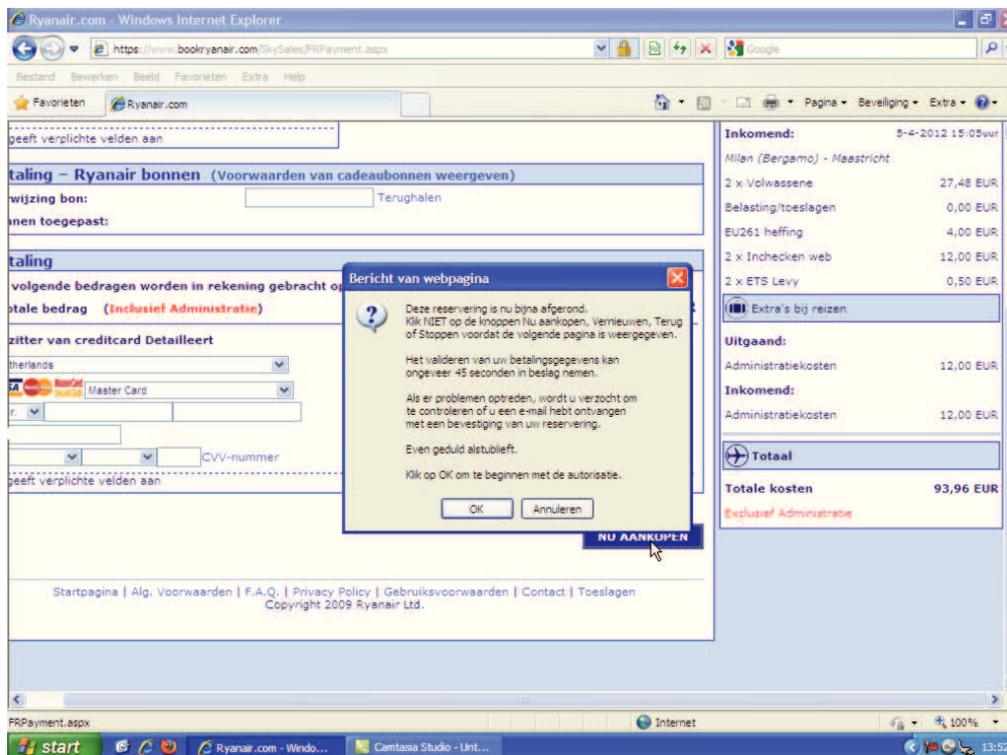


Screen print of booking page 4 (bottom side)²²

38. At the bottom of booking page 4 the heading 'Payment' is visible. Here, the consumer must select a country as well as the type of credit card he wants to pay with.
39. The consumer can choose from twelve different payment methods: Ryanair Mastercard, Ryanair Visa, Vouchers paid in advance from 3V Visa, Visa Connect, Visa Debit/Delta, ELV, Laser, Master Card, Mastercard Prepaid, Ryanair Cash Passport, Visa Electron and Visa. EURO 6.- administrative costs are charged per person for all payment methods for each flight, except when paying with Mastercard Prepaid or a Ryanair Cash Passport.
40. When the consumer selects a payment method and subsequently clicks on the button 'Buy now', a dialogue window appears (booking page 4A) in which the request is made to click on 'OK' to commence with the authorisation.

²² File document CA/IB/812/5, screen prints 17 and 18.

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Screen print of booking page 4A²³

41. After the consumer clicks on 'OK' a dialogue window appears which states: 'Thank you. We are processing your request'.

Booking page 5: Travel route

42. Shortly after this, a page opens, booking page 5, in which the flight reservation number, the status and the journey details are listed. At the bottom of the page is a button 'Print', which can be clicked on if the consumer wishes to print out the journey route.

²³ See file document CA/IB/812/25, screen print 45. This recording took place on 10 February 2012, in the course of which the supervisors of the Consumer Authority concluded the booking.

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UW BOEKING IS NIET BEVESTIGD TOTDAT U EEN REISOVERZICHT PER E-MAIL ONTVANGT

Vind binnen de beste vakantie uur Milan! **Boek nu**

Budgetaccommodatie - Milan vanaf €12 **BOOK NOW**

Vergeet niet online in te checken vanaf 15 dagen tot 4 uur voor het geplande vertrek van uw vlucht.

Details van heenreis - Alle tijden zijn lokaal
Van **Maastricht (MST)** naar **Milan (Bergamo) (BGY)** Gratis online inchecken
za, mrt 31 Vlucht **8752**
Vertrek **Maastricht (MST)** **12:45**
Aankomst **Milan (Bergamo) (BGY)** **14:30**

Details van terugreis - Alle tijden zijn lokaal
Van **Milan (Bergamo) (BGY)** naar **Maastricht (MST)** Geen Belasting
do, apr 05 Vlucht **8751**
Vertrek **Milan (Bergamo) (BGY)** **15:05**
Aankomst **Maastricht (MST)** **16:50**

In geval van schemaveranderingen of vlucht annulatie wordt u per e-mail gecontacteerd via het e-mail adres dat u opgaf bij uw reservering. Zorg ervoor dat u uw spam/junk email folder checkt, want soms kunnen bevestigingsmails in uw spam folder terechtkomen. Daarnaast zorg ervoor dat u de juiste instellingen heeft van uw spam filter om mail te ontvangen van itinerary@ryanair.com. Indien u Ryanair niet hebt voorzien van een geldig e-mail adres dient u uw reservering online te herzien of uw call center te bellen minimaal 24 en maximaal 72 uur voor vertrek. **U bent zelf verantwoordelijk voor het informeren van Ryanair in geval van verandering van uw contactgegevens, inclusief uw e-mail adres.**

Prijsinformatie **Passagiersgegevens**

Prijsinformatie

Maastricht (MST) naar Milan (Bergamo) (BGY)	25,98 EUR
EU261 heffing	4,00 EUR
Milan (Bergamo) (BGY) naar Maastricht (MST)	27,48 EUR
EU261 heffing	4,00 EUR

Toeslagen, services en reisverzekering

2 x (ETS Levy)	0,50 EUR
2 x (Gratis inchecken web)	0,00 EUR
2 x (Inchecken web)	12,00 EUR
Administratiekosten	24,00 EUR

Totaal

Origineel totaal	93,96 EUR
Totale factuurbedrag	93,96 EUR
Inclusief administratiekosten	93,96 EUR
Uitstaand totaal	0,00 EUR

Betaling 1: bevestigd

Naam van cardhouder	
Cardnummer MC:	
Betalingsbedrag	93,96 EUR
Exchange rate 1,00000	
Betaald bedrag	93,96 EUR

Passagiersgegevens

2 Passagiers

- Gratis inchecken web
 - 0 ingecheckte tassen
- Gratis inchecken web
 - 0 ingecheckte tassen

Belangrijke informatie

Al het reis aanbod is in overeenstemming met de Algemene Vervoersvoorwaarden van Ryanair.

Alle passagiers moeten online inchecken en hun geprinte boardingkaart meebrengen naar de luchthaven.

Vluchtdata en -tijden, bestemmingen en passagiersnamen kunnen worden veranderd tegen de van toepassing zijnde kosten zie voor deze onderwerpen het reglement van Ryanair zoals bijgevoegd bij de Algemene Vervoersvoorwaarden.

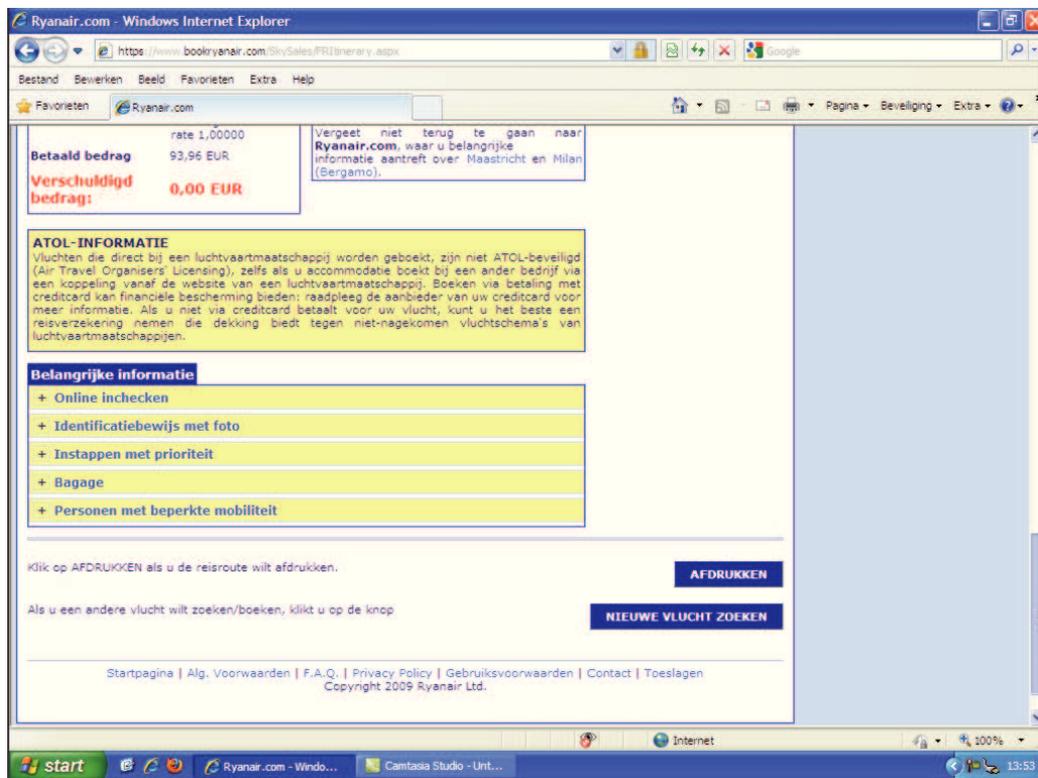
Vluchttarieven, luchthavenbelasting en kosten worden niet terugbetaald. Voor niet gebruikte vluchten worden enkel de door de overheid geheven belastingen terugbetaald na aftrek van redelijke administratiekosten.

Uw bestemmingen

Vergeet niet terug te gaan naar **Ryanair.com**, waar u belangrijke informatie aantreft over Maastricht en Milan (Bergamo).

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Screen prints at booking page 5 (top side, middle and bottom side)²⁴

43. Lastly, the booking is confirmed by Ryanair by e-mail by sending a journey overview to the e-mail address provided.

Changes in the booking process

44. During the inspection, at the time the website www.ryanair.com/nl was recorded some changes in the booking process were established after 13 January 2012.

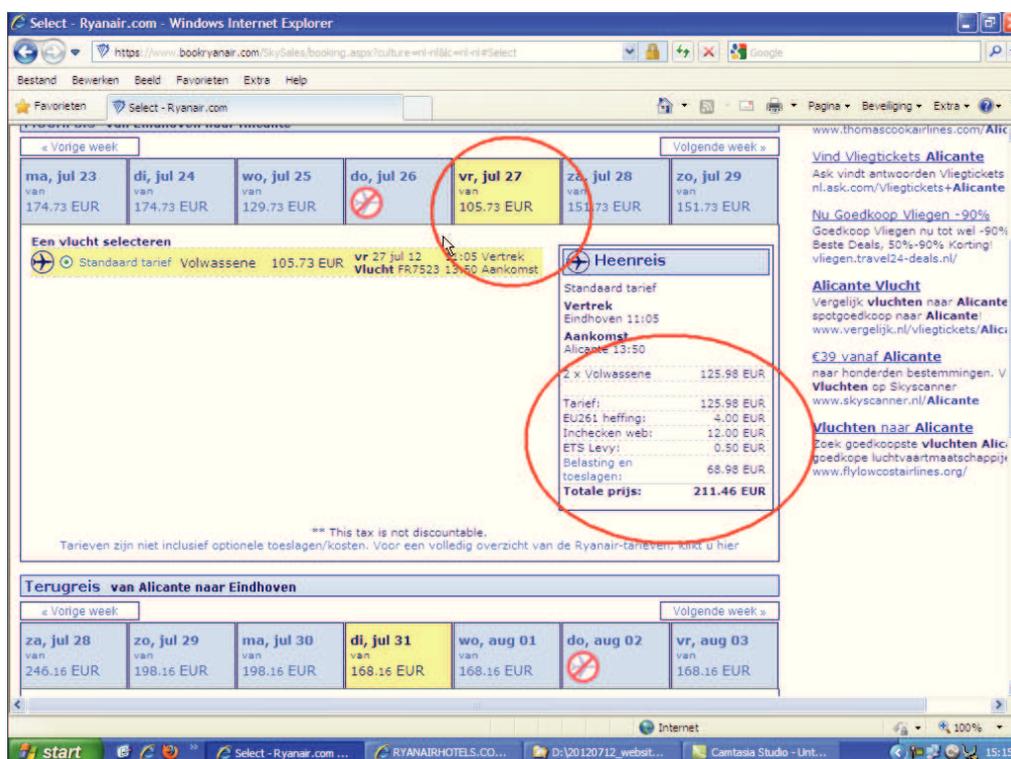
²⁴ File document CA/IB/812/25, screen prints 49, 50 and 51. This recording took place on 10 February 2012, in the course of which the supervisors of the Consumer Authority concluded the booking.

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Booking page 2

45. At the recording of the booking process on 12 July 2012, the supervisors of the Consumer Authority established changes to booking page 2, vis-à-vis that which is stated in the marginal numbers 20 up to and including 26.²⁵
46. It has been established during the recording that Ryanair has adjusted its website in such a manner that the costs for online check-in, the EU261 duties and taxes are now included in the prices in the *flexi search tabs*.²⁶



Screen prints of booking page 2

47. As can be seen in the above screen print, the flight from Eindhoven to Alicante is offered in the *flexi search tabs* for EUR 105.73 per person. The total price for two persons is EUR 211.46 in this example, which is indeed not more than EUR 105.73 per person. The price stated in the *flexi search tabs* is therefore equal to the total price.
48. In addition to the information as stated in marginal number 21 of this decision, the following text was visible during the recording on 12 July 2012, under the more detailed information about the composition of the price: 'Rates do not include optional surcharges/costs. For a complete overview of Ryanair-rates, please click here'²⁷.

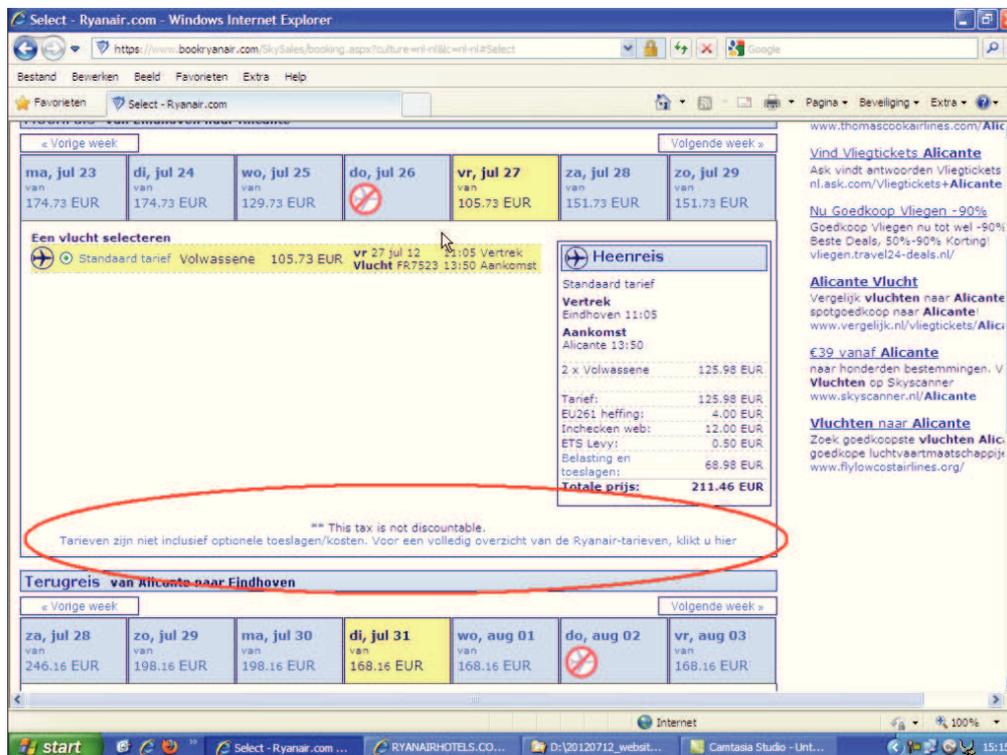
²⁵ File document CA/IB/812/40.

²⁶ File document CA/IB/812/40, screen print 4.

²⁷ File document CA/IB/812/40, screen print 4.

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Screen prints of booking page 2

Booking page 3

49. At the recording of the website on 27 January 2012²⁸ and at the recordings after that, the supervisors of the Consumer Authority have established that the presentation of the information about the travel insurance was changed vis-à-vis that which is stated in marginal numbers 29 and 30. Firstly, the heading of this part has been changed from 'Choose your Travel insurance' to 'Buy your travel insurance'. Secondly, it has now been added to the screen that more than EUR 18,000.- can be saved with travel insurance in the event of medical costs and repatriation. Lastly, it now states in the drop-down menu in small print, (i.e. in smaller letters than the rest of the text) 'In the event that you already have travel insurance, select 'do not insure me' in the drop-down menu.' If the consumer now selects 'Do not insure me' from the drop-down menu, the travel insurance and the accompanying costs disappear from the overview in the right hand column on this page. The Consumer Authority notes that the option 'do not insure me' is the only option not included in alphabetical order in the list.²⁹

²⁸ File document CA/IB/812/7, screen print 5.

²⁹The option 'do not insure me' can be found in the list between 'Latvia' and 'Lithuania'. File document CA/IB/812/20, screen print 8.

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The screenshot shows the Ryanair booking interface in Internet Explorer. The browser address bar displays 'https://www.bookryanair.com/SkySales/PRServices.aspx'. The page is titled 'Passagiersgegevens' and includes a warning: 'Alle passagiersnamen moeten overeenkomen met de namen in het paspoort/geaccepteerde reisdokument'. There are two passenger entries, each with a dropdown for '0 koffers' and a price of '0,00 EUR'. Below this is the 'Koop uw Reisverzekering' section, which compares 'REISVERZEKERING' and 'REISVERZEKERING PLUS'. A red circle highlights a note: 'In het geval u al een verzekering heeft, selecteer "verzeker me niet" in het drop-down menu.' The right sidebar shows flight details: 'Uitgaand: 9-2-2012 09', route 'Eindhoven - Alicante', and a list of charges including '2 x Volwassene' (56,0), 'Belasting/toeslagen' (68,9), 'EU261 heffing' (4,0), '2 x Inchecken web' (12,0), and '2 x ETS Levy' (0,5). The total cost is listed as '281,6-'. The Windows taskbar at the bottom shows the Start button and open applications like 'Ryanair.com - Windo...' and 'Camtasia Studio - Unt...'. The system clock shows '13:40'.

Screen prints of booking page 3

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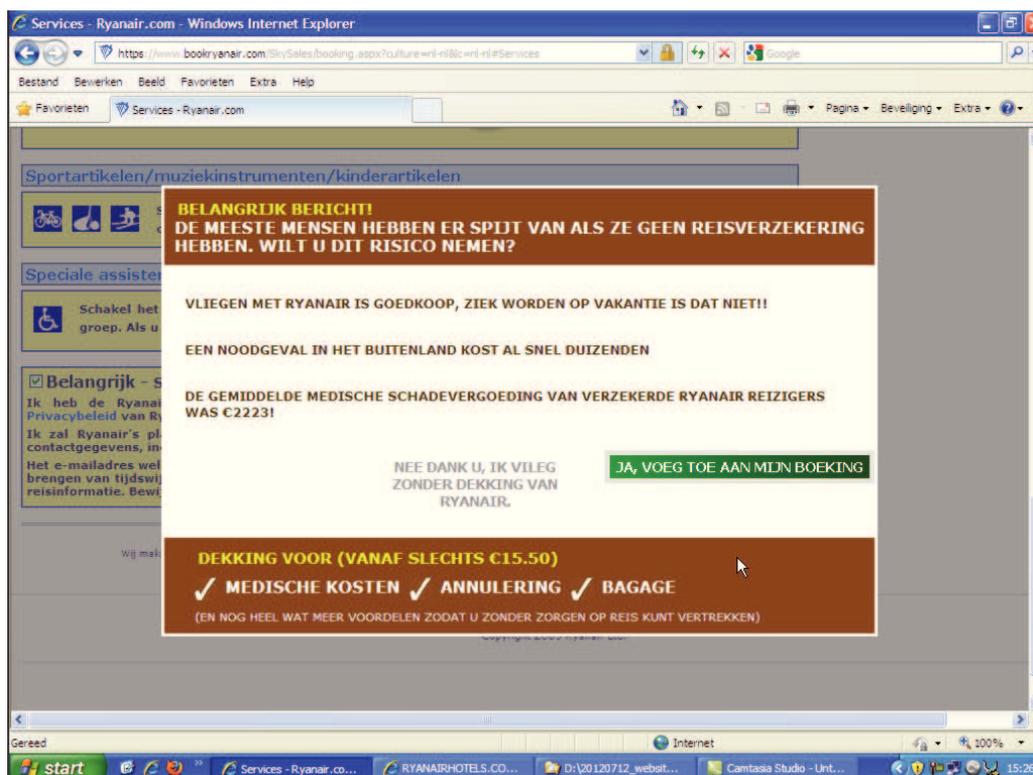
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Booking page 3A

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50. During the recording of 12 July 2012 it was established that the text 'No thank you, I will take the risk', in the *pop-up* on the booking page 3A (see marginal number 35 of this decision), had been replaced by the text 'No thank you, I will fly without cover from Ryanair'.³⁰



Screen prints of booking page 3A

5 Point of view

51. Ryanair has taken the opportunity to present its point of view in writing as well as orally with regard to the report dated 5 September 2012. Firstly, the established breaches by Ryanair are disputed. For a more extensive representation of its point of view for each established breach, as well as the discussion thereto, reference is made to the assessment of the body of facts which is represented for each breach in chapter 7 of this decision. In addition Ryanair has submitted some marginal notes, which the Consumer Authority will deal with directly in this article. From its point of view, Ryanair's arguments can be summarised as follows.

³⁰ File document CA/IB/812/40, screen print 34.

Tone of report

52. Ryanair objects to the fact that the report creates the impression that it had already been written to several times by the Consumer Authority, or been warned about possible issues. It emphasises that the first contact between the Consumer Authority and Ryanair was the letter of 24 April 2012, which upon its request resulted in the discussion between both parties on 14 June 2012.
53. As far as it is concerned, the report provides a one-sided picture of the reality. Therefore, as far as it is concerned, reference is made unjustly to complaints against it submitted to the Advertising Code Committee. In half of the cases these complaints were rejected. It also considers references to other authorities to be misleading. The case before the Italian Consumer Authority concerned other subjects than those which the Consumer Authority is focussing on. In addition, Ryan Air was fined several times, but only once: by the Danish Consumer Authority in 2006 in a matter concerning comparative advertising. The Consumer Authority also ignores the arrangements which Ryanair has made with the UK Civil Aviation Authority, in the course of which it carried out, in consultation, various modifications.

Response of the Consumer Authority

54. The Consumer Authority takes note of the position of Ryanair, as described previously. At the drawing up of this decision - insofar as of importance - that which was advanced by Ryanair was taken into consideration.

Cooperative attitude of Ryanair

55. Ryanair states that in the past it has modified its working method on various points. Also during the discussion dated 14 June 2012 with the supervisors of the Consumer Authority it showed itself prepared to meet the objections of the Consumer Authority. Ryanair in its own words has taken a cooperative position. Ryanair also actually met the most important objections, but, from their view point, this is - unjustly - insufficiently mentioned in the report.

Response of the Consumer Authority

56. The Consumer Authority once again takes note of the position of Ryanair with regard to its cooperative attitude during the inspection. Insofar as of importance, Ryanair's point of view will be included in determining the level of the financial penalty.

Unique business model

57. Ryanair points to its deviating business model in comparison with regular airline companies. It argues that this must be included in the assessment of the manner in which it offers its services. It follows from the business model that Ryanair generates more than 20% of its turnover by means of supplementary revenue. The website is set out in such a manner that consumers have the possibility to purchase, or not, supplementary services. In its opinion the report insufficiently takes this fact into consideration.

Response of the Consumer Authority

58. The Consumer Authority is aware that it is possible that Ryanair, because it applies another business model than other airline companies, has a different website layout than other airline companies. However, the Consumer Authority

will assess the commercial practices in this decision in the entire context within which they have taken place. The Consumer Authority takes as its starting point that companies - and therefore also Ryanair - regardless of the business model that they apply, are obliged to comply with the applicable legislation and regulations. It has not appeared to the Consumer Authority that the recordings, as these have been included in the file, do not provide a complete and objective representation of the commercial practices of Ryanair.

No complaints known to Ryanair

59. Insofar as Ryanair is aware, there are no known complaints from consumers with regard to the suspected breaches. It also does not appear otherwise from the report.

Response of the Consumer Authority

60. The Consumer Authority, on the basis of its supervisory duties, set up a discretionary authority to carry out an inspection of the conduct of a specified company. As stated in chapter 1 of this decision, the Consumer Authority had indications that Ryanair did not comply with provisions in the area of consumer regulations and saw these indications confirmed because Ryanair appeared to be involved in the procedures surrounding consumer regulations. This is the reason the inspection of Ryanair was carried out. The fact that no complaints were known to Ryanair and that no complaints are included in the report files does not mean that the Consumer Authority should not act in an enforcing manner.³¹

6 Authority

61. The Consumer Authority is burdened on the basis of article 2.2 of the Consumer Protection (Enforcement) Act with the enforcement of the statutory provisions referred to in parts a and b of the schedule to the Consumer Protection (Enforcement) Act. The breaches established in the report are stated in part b of the schedule to the Consumer Protection (Enforcement) Act, which provisions the Consumer Authority can enforce under administrative law.

62. The Consumer Authority can act when there is an act or omission which causes, or can cause, damage to the collective interests of consumers. Ryanair offers through its website www.ryanair.com/nl - inter alia - airline tickets to various European destinations. This website for Ryanair is available in Dutch, with which Ryanair focuses on the Dutch market. The commercial practice of Ryanair, where consumers can book airline tickets over the internet, has the characteristic that consumers are or can be damaged in the same manner, as a result of which there is a possible infringement of the collective interests of consumers.

7 Legal assessment

³¹The report file does refer to complaints which have been submitted to the Advertising Code Committee, a forum where consumers can bring their complaints. It appears to the Consumer Authority that Dutch consumers are also affected by the commercial practices of Ryanair.

7.1. Section 23, first subsection, Regulation (EC) No. 1008/2008 concerning communal rules for the running of air services in the Community

Statutory Context

63. On 1 November 2008, Regulation (EC) no. 1008/2008 of the European Parliament and Council of the European Union of 24 September 2008 concerning communal rules for the running of air services in the Community (Official Journal of the European Union L 2008) came into force (hereinafter referred to as: The Aviation Regulation). In recital 16 of the opening words of the Aviation Regulation it is stated that customers must be given the opportunity to actually compare the rates for air services of different airline companies.
64. Section 23, of the Aviation Regulation reads as follows:
1. The passengers and aviation rates available for the general public, in whatsoever form, for example on the internet, that are offered or publicised for air services from an airport in the territory of a member state to which the Treaty applies, will also contain the applicable conditions. The definitive price will always be publicised and will contain the applicable passenger or aviation rates and all applicable taxes and duties, surcharges and payments which are foreseeable and unavoidable at the time of publication. Apart from the publication of the definitive price the following will at least be specified:
 - a. The passenger or aviation rates;
 - b. Taxes;
 - c. Airport charges, and
 - d. Other duties, surcharges or payments such as for security or fuel;The elements stated under (b), (c) and (d) are added to the passenger or aviation rate. Optional price surcharges will be notified in a clear, transparent and unambiguous manner at the beginning of each booking process and must be accepted by the passenger on the basis of "opt-in".
65. Since 1 June 2011, the Consumer Authority has been appointed to supervise the compliance with article 23 of the Aviation Regulation. This provision has been included in part b of the schedule to the Consumer Protection (Enforcement) Act.

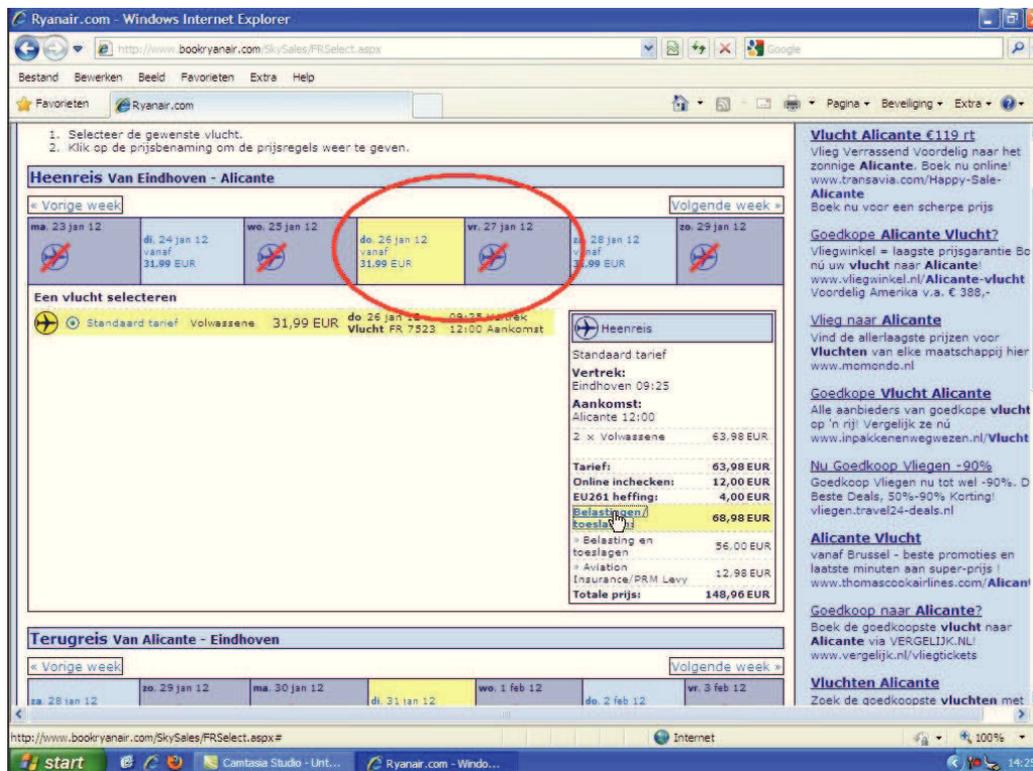
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7.1.1. Additional duties, surcharges, etc.

Ryanair's working method

66. Reference is made to chapter 4 of this decision for a complete representation of the booking process. The Consumer Authority thinks it suffices here to provide a representation of the relevant parts - for this assessment - of the booking process.

67. The consumer arrives by means of the homepage www.ryanair.com/nl at booking page 2 (see screen print below).



Screen prints of booking page 2

68. On booking page 2, a horizontal bar is visible with *flexi search tabs* (see encirclement in the screen print above), on which the prices are visible for the available flights on various dates. By making a choice for an outward journey, an overview appears under the horizontal bar with flexi search tabs in a right hand side column, which provides further information about the composition of the price belonging to the chosen flight. In this overview, details about the departure and arrival (place and time), the number of persons and the rate can be found. In addition, the following price elements are specified in the overview: 'online check in', 'EU261 duty', 'ETS duty' and 'Taxes/Surcharges'. By clicking on the last item a more detailed specification becomes visible. In addition to 'Taxes/Surcharges', the item 'Aviation Insurance/PRM Levy' is also

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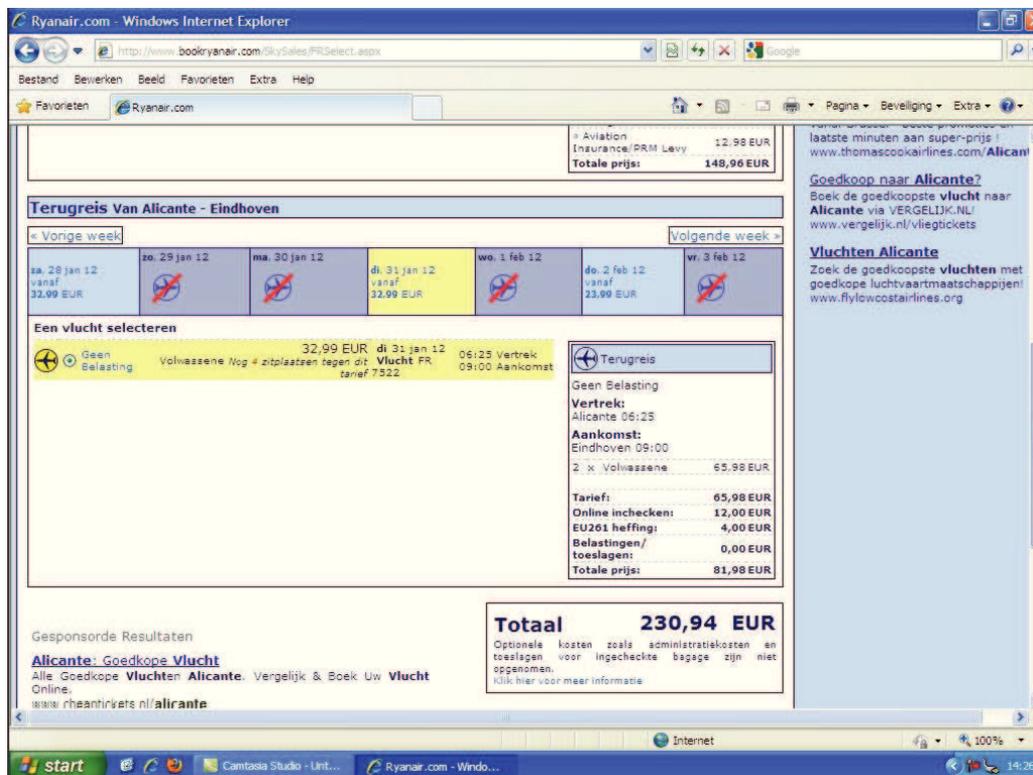
included in the more detailed specification. The overview ends with a total price for the outward journey.³²

69. For example, in the recording of 13 January 2012, a flight from Eindhoven to Alicante was chosen. Through the *flexi search tabs*, an outward flight on Thursday 26 January was chosen for the price of EUR 31.99. By clicking on this outward flight, the overview with the more detailed information about the composition of the price becomes visible. The ticket price for two persons is EUR 63.98 (2 x EUR 31.99). However, there are additional costs, as a result of which the total price for two persons for the outward journey amounts to EUR 148.96. Instead of EUR 31.99 per person (as stated in the *flexi search tabs*), the consumer is paying EUR 74.48 per person for the outward journey (EUR 148.96/2).
70. Subsequently, still on booking's page 2, the consumer can choose a return journey, through a similar horizontal bar with *flexi search tabs* that shows various details and prices. An overview with more detailed information about the composition of the price also appears here after selecting a flight. The price is again specified in this overview in the following items: 'online check in', 'EU261 duty', 'ETS duty' and 'Taxes/Surcharges'. This overview also ends with a total price for the return journey
71. In the recording of 13 January 2012, a return journey is chosen by clicking on the *flexi search tabs*. It concerns a flight on 31 January 2012 for a price of EUR 32.99. The consumer would expect for two persons a total price for the return journey of EUR 65.98 (2x EUR 32.99). However, there are also additional costs in this case, as a result of which the total price for two persons amounts to EUR 81.98. Instead of the initial price of EUR 32.99 per person, the consumer will, because of this, owe EUR 40.99 per person.

³² File document CA/IB/812/5, screen print 2.

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Screen print of booking page 2³³

72. Halfway down booking page 2, the total price for the selected flights is visible (see screen print above). Below the total price, the text '*Optional costs such as administrative costs and surcharges for checked in baggage are not included. Click here for more information*' is visible. By clicking on the link 'Click here for more information', a Ryanair web page opens where the general transport conditions are located directly displaying the subject that deals with optional costs. Below the total price is a link 'select and continue'.
73. In the example of the journey from Eindhoven to Alicante, the consumer would on the basis of the prices represented in the *flexi search tabs* expect a total price for both flights of EUR 129.96 for two persons (EUR 64.98 per person). However, as can be seen in the screen print above, the total price for these flights is EUR 230.94 for two persons (EUR 115.47 per person). It concerns a difference of in total EUR 100.98 for two persons (EUR 50.49 per person).

³³ File document CA/IB/812/5, screen print 3.

Point of view of Ryanair

74. Ryanair advances³⁴ that the discussion about the additional prices only relates to the state of affairs up to 18 May 2012. Since then, the prices including unavoidable costs have been presented straight away.
75. Ryanair is also of the opinion that in the situation prior to 18 May 2012 there was no conflict with article 23 of the Aviation Regulation. Ryanair emphasises that even in the old system the final ticket prices including unavoidable costs were stated on the website and other media. The objection of the Consumer Authority, according to Ryanair, therefore only concerns the presentation of the prices on booking page 2, when the consumer personally searches for tickets on a specific date. However, Ryanair states regarding this that the consumer could indeed see the total price – i.e. the price including the unavoidable costs – at a single glance: namely, at the bottom of the same page. According to Ryanair, the situation was not misleading or confusing. Ryanair disputes that it would be 'luring' consumers by advertising low prices. The prices that are stated in the offers were always the final prices, i.e. including unavoidable costs.
76. Lastly, Ryanair states that it is not for the Consumer Authority to give an opinion about the nature of the additional costs, or to bring the imposition of specified costs into doubt.³⁵

Assessment by the Consumer Authority

77. Ryanair offers flights through its website (mainly) within Europe. It is therefore bound by the aforesaid Aviation Regulation. Ryanair, on the basis of article 23 of the Aviation Regulation is obliged to represent its definitive prices including the foreseeable and unavoidable taxes, duties, surcharges and payments.
78. Ryanair, from its point of view, states that the objection of the Consumer Authority can only concern the situation until 18 May 2012. From that date, the prices in the *flexi search tabs* would represent a definitive price, including all fixed and unavoidable costs. The Consumer Authority finds as follows about this. On 12 July 2012, it was recorded by the Supervision department that the prices in the *flexi search tabs* – in contradiction to the preceding recordings – were presented including fixed and unavoidable costs. Although this recording only took place on 12 July 2012, the Consumer Authority assumes that the change in the booking process had taken place on 18 May 2012, as is stated by Ryanair.
79. From its point of view, Ryanair also states that the objection of the Consumer Authority only concerns the prices that were not related to action rates. Ryanair states not to charge additional costs for special action rates (represented on the homepage of Ryanair).

³⁴ File document CA/IB/878/8, marginal numbers 16 up to and including 23.

³⁵ File document CA/IB/878/6, marginal numbers 70 up to and including 72.

Interim conclusion of the Consumer Authority

80. The Consumer Authority concludes that Ryanair is bound by article 23 of the Aviation Regulation and is consequently obliged to state its final prices including foreseeable and unavoidable costs. At the assessment of the suspected breach of article 23 of the Aviation Regulation, the Consumer Authority will proceed from the situation from January 2012 until 18 May 2012, now that Ryanair has made it plausible that from that time it fulfilled the obligation under article 23 of the Aviation Regulation.

81. Furthermore, the assessment of this suspected breach only concerns the prices in the *flexi search tabs* insofar as it does not involve special action rates. Ryanair has made it plausible that in the cases of special action rates (such as, for example, presented in the homepage of Ryanair) no further costs are added for consumers in the further booking process. This has also been established by the supervisors of the Consumer Authority during the recording of the booking process.

Further assessment by the Consumer Authority

82. It has appeared from the recording of the booking process that in all events in the period from January 2012 until 18 May 2012, costs were added to the amount which was stated at first instance as the price for a flight. In the case of Ryanair, this concerns mostly costs for 'online check in', EU261 duty, 'ETS duty' and Taxes/Surcharges'. There is a description below for each item that the costs relate to. The Consumer Authority will not form an opinion about the duties as such, but will only assess whether it concerns fixed and unavoidable costs within the meaning of article 23 of the Aviation Regulation.

Online check in

83. It has appeared from the inspection that all passengers travelling with Ryanair are supposed to check in online, as is evident from the 'rate rules' stated on the website. When flights are concerned that are not subject to special action rates, additional costs are charged invariably for checking in online.

EU261 duty

84. According to the information on Ryanair's website, this duty is implemented due to 'the non-recoverable costs of care for passengers and compensation costs incurred through delayed or cancelled flights due to 'force majeure' events such as closing of air space because of volcanic ash, unfavourable weather circumstances, strike by air traffic controllers, failure of the airport infrastructure, unexpected technical problems etc.' This duty is always charged in case of flights to which no special action rate applies.

ETS duty

85. Ryanair applies an ETS duty (Emission Trading Scheme) of EUR 0.25 per person/per flight, to finance the costs that are imposed by the European Union under the 2012 Emissions Trading Regulation. This duty is always charged in case of flights to which no special action rate applies.

Taxes/Surcharges

86. According to the information on www.ryanair.com/nl Ryanair has implemented the Aviation Insurance (flight insurance surcharge) after the terrorist attack on

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11 September 2001. The costs amount to EUR 5.99 per passenger/per flight. In addition, a PLM (passengers with limited mobility) duty applies of EUR 0.50 per passenger/per flight for the purchase of special assistance at the airports for passengers with limited mobility. The stated costs are always charged for flights to which no special action rate applies.

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Interim conclusion of the Consumer Authority

87. The Consumer Authority is of the opinion that the costs described above qualify as fixed and unavoidable costs, considering that these costs were established in advance and were always charged in addition to the costs visible in the *flexi search tabs*. This is the reason why the costs on the basis of article 23 of the Aviation Regulation have to be included in the prices in the *flexi search tabs*. The Consumer Authority concludes that Ryanair has not always stated the final price of its offered flights, but an amount that is still to be increased by other costs.

Further assessment by the Consumer Authority

88. The argument of Ryanair that it concerns *avoidable* costs, because the costs in case of action rates are not being charged, does not hold. The fact that the costs in limited cases (namely in case of action rates) are not charged, does not in the opinion of the Consumer Authority make those costs avoidable. Since in practice consumers will not always opt for an offer. And in those cases to which no special action rate applies, the price must at the start - i.e. in the *flexi search tabs* - already include all fixed and unavoidable costs.

89. Ryanair also advances that the total price (including all fixed and unavoidable costs) is indeed visible at a single glance for the consumer, since the total price of the booking is shown at the bottom of booking page 2. This, in the opinion of the Consumer Authority, does not affect the established breach. The obligation ensuing from article 23 of the Aviation Regulation is to state a final price for each offer from an airline company that includes all fixed and unavoidable costs. Ryanair has failed to do so by not stating a final price in the *flexi search tabs*. The fact that a total price was visible at the bottom of the page does not affect this. In addition, prior to the consumer receiving a total price on screen he must first make a choice from one of the offered flights. Only after this is the total price calculated and visible.

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Needless to say

90. The Consumer Authority notes the following about the additional costs. If the consumer relies on the price presented by Ryanair, the ultimate price for the tickets can increase considerably (by many scores of Euros per person) due to the additional costs discussed above. For example, Ryanair already charges for online check-in a rate of EUR 6.00 per person/per single flight for bookings that are made through its website and EUR 12.00 per person/per single flight for bookings which are made through its call centre or at the airport. Since considerable amounts are concerned, certainly in relation to the price which is stated at first instance, it is difficult for consumers to compare prices prior to purchase.

Consumer Authority Conclusion

91. On the basis of the aforesaid, the Consumer Authority reaches the conclusion that Ryanair has failed to represent its final prices including fixed and unavoidable costs from 13 January 2012 until 18 May 2012 (more than four months). In this period, Ryanair has presented flight prices to consumers excluding airport charges, duties and surcharges. In doing so, Ryanair has breached the obligation under article 23 of the Aviation Regulation.

7.1.2. Administrative costs for payment of the booking

Working method of Ryanair

92. The payment of the booking is dealt with in booking page 4, as stated in marginal number 37 et seq. of this decision.

93. The consumer has the choice from twelve different payment methods: Ryanair Mastercard, Ryanair Visa, Vouchers paid in advance from 3V Visa, Visa Connect, Visa Debit/Delta, ELV, Laser, Master Card, Mastercard Prepaid, Ryanair Cash Passport, Visa Electron and Visa. Euro 6.00 administrative costs are charged per person for all payment methods for each flight, except in case of payment with Mastercard Prepaid or a Ryanair Cash Passport.

94. The Ryanair Cash Passport is only available to consumers from the United Kingdom, Italy, Germany and Ireland. The Mastercard Prepaid is indeed available to consumers from other countries. For Dutch consumers this means that the only way they do not have to pay administrative costs is if they make use of the Mastercard Prepaid. In case of a prepaid card consumers transfer an amount to the card for use. Consumers can then make purchases for this amount, just like with a credit card.

95. The report qualifies these commercial practices as a breach of article 23 of the Aviation Regulation.

Point of view of Ryanair

96. Ryanair states that it charges its administrative costs during the settlement of a booking, which consumers can avoid by paying with a Prepaid Master Card.³⁶ According to Ryanair, this also concerns avoidable costs, which are for this reason not included in the presented ticket prices. It refers thereby to a CPC-report³⁷ in which the costs for payment with a credit card are stated as an example of an avoidable item³⁸, if one or more of the payment methods do not result in extra costs.
97. According to Ryanair the Consumer Authority unjustly emphasises the number of Dutch citizens who make use of this payment method, by arguing that this is not a usual payment method. Firstly, it advances that the number of users of the card has not been recorded. Secondly, it states that the focus must be on the availability of the card and not on the number of users, especially as this is a relatively new payment method.³⁹
98. In addition, Ryanair deems it in addition incorrect that the reports of official act, as included in the report file, there is stated at the description of the booking process that possibly there are further administrative costs charged when one would continue with the booking process. Since the supervisors (in most cases) did not proceed with a purchase, they have not been able to record this. In the event that the supervisors did proceed with a purchase, it therefore appeared that no further administrative costs were charged.⁴⁰

Assessment by the Consumer Authority

99. On the basis of article 23 of the Aviation Regulation the advertised prices of an airline company must include all fixed and unavoidable costs. If costs are unavoidable, but variable, for example because the level thereof depends on the choices of the consumer in the booking process, it is sufficient if the offer states that the costs are still to be added without including these costs in the advertised price. If costs are avoidable, i.e. the costs do not apply to all consumers, they do not have to be included in the advertised price.
100. The consumer can choose from twelve different payment options in the booking process on www.ryanair.com/nl. For ten of these payment options EUR 6.- is charged per person per flight for administrative costs. For two payment options, i.e. in case of payment with a Mastercard Prepaid or a Ryanair Cash Passport, no administrative costs are charged.
101. The Ryanair Cash Passport is only available to consumers from the United Kingdom, Italy, Germany and Ireland. The Mastercard Prepaid is, however, available to consumers from other countries. This means for Dutch consumers

³⁶ File document CA/IB/878/8, marginal number 27.

³⁷ File document CA/IB/812/38, appendix X with the letter dated 9 July 2012. The report with regard to additional costs in the aviation sector in an initiative of the CPC-network (Consumer Protection Cooperation) in which European consumer supervisors work together.

³⁸ File document CA/IB/878/6, marginal number 75.

³⁹ File document CA/IB/878/8, marginal numbers 28 up to and including 31.

⁴⁰ File document CA/IB/878/8, marginal numbers 24 up to and including 26.

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that the administrative costs can only be avoided if they make use of the Mastercard Prepaid.

102. Ryanair is of the opinion that, since there is one payment option for Dutch consumers for which no administrative costs are charged, these costs are optional and avoidable. By its own account, it is not obliged to include the costs in the advertised price because of this. It refers to the earlier mentioned CPC report in which its position is underlined.
103. The question that the Consumer Authority must answer regarding this is if the availability of this one free payment method makes the administrative costs avoidable, as Ryanair argues. The Consumer Authority is of the opinion that this is not the case. It finds as follows for this purpose.
104. Ryanair offers twelve payment methods on its website. For two of these payment methods, no administrative costs are charged. Only one of the payment methods is available for Dutch consumers, i.e. the Mastercard Prepaid. In the opinion of the Consumer Authority, it is not the case that the sole existence of one possibility to avoid the administrative costs means that the costs can be avoided. On the contrary, the Consumer Authority deems it also of importance to assess to what extent a realistic possibility exists to avoid the costs.
105. As stated, Dutch consumers can only avoid the administrative costs by means of payment with the Mastercard Prepaid. The Mastercard Prepaid can be applied for by the consumer through a link on Ryanair's website of. In case of such a Prepaid card, the consumer transfers a required amount, following which the consumer can make purchases for that amount with the card. The card is issued by a third party, Moneybookers. The consumer must first open an account with Moneybookers before they can proceed to purchase the card. This process (as well as the general terms and conditions belonging to this account) takes place in English. The consumer pays EUR 10. - per year for the use of the card.
106. The Nederlandse Bank regularly analyses the payment transactions of the Netherlands and publicises its findings on its website. In the overview of payment methods⁴¹ used by Dutch consumers, Moneybookers Mastercard Prepaid does not appear. The Consumer Authority deduces from this that this payment method is hardly ever used by Dutch consumers.
107. In the CPC report to which Ryanair refers in its point of view as an example of an avoidable cost item, the situation is stated in which a payment option exists where no costs are charged. However, the Consumer Authority is of the opinion that it nevertheless rightfully takes into consideration that it must concern a realistic possibility for the consumer to actually avoid these costs. The example stated in the CPC report does not prevent the Consumer Authority from assessing this per case.

⁴¹ <http://www.statistics.dnb.nl/index.cgi?lang=nl&todo=BetVerk>

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108. On 9 June 2011, the Advertising Code Committee also reached such an opinion with regard to a similar payment method, namely the MasterCard Prepaid Debit Card.⁴² The Committee held that this one payment method could not be considered to be a realistic alternative for the other payment methods where no administrative costs were charged. The costs for payment were for this reason qualified as fixed and unavoidable.

109. The Mastercard Payment can, in the opinion of the Consumer Authority, not be considered to be a realistic possibility for Dutch consumers to avoid the payment of the administrative costs. Taking the above into consideration, the Consumer Authority reaches the conclusion that Ryanair must include the administrative costs, which it charges for the payment of the booking, within the advertised price, since these costs are fixed and unavoidable.

Needless to say

110. The Consumer Authority still notes the following about the administrative costs. The administrative costs are presented as if they are connected to the payment method chosen by the consumer. In view of this presentation in connection to the chosen payment method, it is to be expected that the administrative costs are charged per transaction. Nevertheless, Ryanair charges the administrative costs per person per flight. The costs for the consumer are considerably increased because of this.

Conclusion of the Consumer Authority

111. With regard to the aforesaid, the Consumer Authority concludes that Ryanair has breached the regulations of article 23, first subsection, of the Aviation Regulation by not including the fixed and unavoidable administrative costs that it charges within the advertised prices. With regard to the administrative costs, Ryanair has stated that as from 1 December 2012 a change will be implemented in the booking system. The Consumer Authority notes regarding this that Ryanair has not exactly stated which modifications it will carry out. The Consumer Authority cannot, within the context of this procedure, assess if the modifications will be sufficient in order to effectively terminate the breach. The Consumer Authority holds that the breach, which was first established on 13 January 2012, in any event has lasted until 1 December 2012 (almost 11 months), but is possibly still continuing to this date.

7.2. Aggressive commercial practice (article 8.8 Consumer Protection (Enforcement) Act in conjunction with article 6:193h of the Civil Code)

112. The report has recorded that Ryanair has carried out unfair commercial practices, as referred to in Article 6: 193b of the Dutch Civil Code. More specifically, an aggressive commercial practice was concerned (unsuitable influencing), as referred to in article 6: 193h of the Dutch Civil Code.

⁴² See the judgement of the Appeals Board of the Advertising Code Committee dated 9 June 2011, file number 2011/00073. The judgement can be found on the website www.reclamecode.nl. See also for the judgement of a German judge in a similar case file document CA/IB/812/41, appendix 7.

Statutory context

113. Article 6:193a, first subsection opening words and under h, Dutch Civil Code, reads: in this article, with unsuitable influencing is meant: (...) exploiting a position of power vis-à-vis the consumer, even without use of threats or physical violence, to exercise pressure in a manner that considerably restricts the ability of the consumer to make an informed decision.
114. Insofar as relevant, article 6:193b Dutch Civil Code reads:
2. A commercial practice is unfair if a trader acts:
 - a. in breach of the requirements of professional dedication, and
 - b. noticeably restricts, or can restrict, the ability of the average consumer to make an informed decision, as a result of which the average consumer makes, or can make, a decision about an agreement that he otherwise would not have made.
 3. A commercial practice is in particular unfair if a trader:
 - a. carries out a misleading commercial practice as referred to in article 193c up to and including 193g, or
 - b. carries out aggressive commercial practice as referred to in article 193h and 193i.
115. Article 6:193h, first subsection, Dutch Civil Code reads: A commercial practice is in its actual context, taking all its characteristics and circumstances into consideration, aggressive if, by intimidation, force, including the use of physical violence, or unsuitable influencing, the freedom of choice or the freedom to act in the way of the average consumer is considerably restricted or can be restricted with regard to the product, as a result of which the average consumer makes, or can make, a decision that he otherwise would not have made.
116. The second subsection of article 6:193h Dutch Civil Code insofar as relevant reads: For the determination of a commercial practice as aggressive, the following is taken into consideration:
- a. the point in time, the place, the nature and the persistency which is demonstrated during the commercial practice;
 - b. the use of threatening conduct or threatening or abusive language;
- (...)
117. Article 8.8 Consumer Protection (Enforcement) Act reads: The trader is not permitted to carry out unfair commercial practices as referred to in article 3A of Title s of Book 6 of the Civil Code.

Working method of Ryanair

118. In the booking process, after the consumer has answered the questions on booking page 3 about the personal details of the passengers as well as the questions with regard to the number of suitcases to be brought and with regard to priority boarding, arrives at the screen entitled "*Buy your travel*

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insurance".⁴³ On this screen, the cover offered by the two varieties of travel insurance ("*Travel insurance*" and "*Travel insurance Plus*") is presented in a summarised manner. Below this, each passenger for whom a ticket will be booked is presented in the *drop-down menu*.

119. In the *drop-down menu* the following text is shown: "*Select the country where you live*". Under the *drop-down menu*(*'s*) small letters state "*If you already have travel insurance, select 'do not insure me' in the drop-down menu*".
120. In the *drop-down menu*, 21 countries are presented in alphabetical order. Only the options: "*No travel insurance needed*" or "*Do not insure me*" are shown in an arbitrary place in the otherwise alphabetical order of the represented list of countries.⁴⁴
121. By clicking the country where the passenger concerned lives, travel insurance is bought for that passenger. Travel insurance costs EUR 15.50 per passenger. If the option "*No travel insurance*" or "*Do not insure me*" is selected, no travel insurance is purchased.
122. If the consumer has opted for "*No travel insurance needed*" or "*Do not insure me*", he has to go through all other options on booking page 3⁴⁵ and has to click at the bottom of booking page 3 on the button "*Continue*" to continue with the booking process, and a window (booking page 3A) is automatically shown. The window (booking page 3A) contains the following text: "*IMPORTANT MESSAGE! MOST PEOPLE REGRET NOT HAVING TRAVEL INSURANCE. DO YOU WANT TO TAKE THIS RISK? and FLYING WITH RYANAIR IS CHEAPER, BUT FALLING ILL ON HOLIDAY IS NOT!! AN EMERGENCY ABROAD CAN EASILY COST THOUSANDS. THE AVERAGE MEDICAL CLAIM OF INSURED RYANAIR TRAVELLERS WAS €2223.*" There are two buttons under these texts: "*NO THANK YOU I WILL TAKE THE RISK*"⁴⁶ (in grey against a

⁴³ Recordings of 27 January 2012 and later. At the earlier recordings on 13 January 2012 and 20 January 2012, the heading read: "Choose your travel insurance".

⁴⁴In its letter of 9 July 2012 Ryanair announced they were changing the text "Do not insure me" into "Travel uninsured" and were going to place this text in alphabetical order in the list of countries. In its point of view in writing (file document CA/IB/878/6, marginal number 122) Ryanair has pointed out that it has implemented this change.

⁴⁵ In the continuation of the webpage the consumer has to make choices (each time by means of clicking the required option) for "Reserved seats", "SMS confirmation with reservation number and flight details", "Ryanair approved hand baggage bag", "Sport items / musical instruments / children's items" and "Special assistance". Lastly, the consumer must by ticking a selection box at the bottom of the webpage declare to have read and understood and agreed to "Ryanair's General Transport Conditions", the "Conditions of Use of the website" and the "Privacy Policy of Ryanair". Furthermore, the consumer hereby states to inform Ryanair of any changes in their contact details. With the "Continue" button it is possible to continue to the next webpage in the ordering process.

⁴⁶ Ryanair has in its point of view in writing (file document CA/IB/878/6, marginal number 121) stated that by reason of the discussion with the employees of the Consumer Authority on 14 June 2012 to have changed this text to "No thank you, I will fly without cover from Ryanair".

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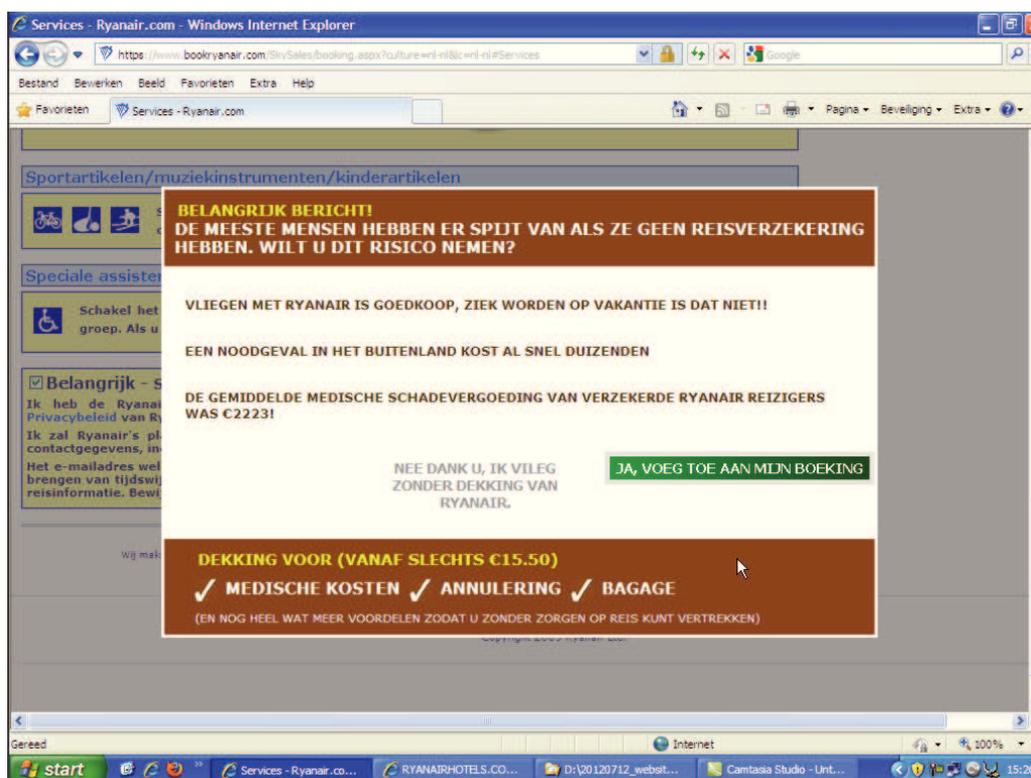
white background) and "YES ADD TO MY BOOKING" (green button) (see screen print below).

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Screen print of booking page 3A⁴⁷

123. Ryanair has not disputed the facts represented above. The report qualified the aforesaid manner of offering a travel insurance as aggressive commercial practice as referred to in article 6:193h, first and second subsection of the Dutch Civil Code, Ryanair has challenged this qualification in its point of view in writing and orally. The Consumer Authority will assess and qualify the body of facts below.

Assessment by the Consumer Authority

124. The Consumer Authority concludes after the assessment of the body of facts that an aggressive commercial practice has taken place through unsuitable influencing as referred to in 6:193h, first and second subsection, Dutch Civil Code in conjunction with article 6:193a, first subsection opening words and under h, Dutch Civil Code. The Consumer Authority thinks that the abuse of a dominant position in order to exercise pressure in such a manner that the ability of the consumer to make an informed decision is considerably restricted is insufficiently evident from the body of facts.⁴⁸

⁴⁷ File document CA/IB/812/5, screen print 14.

⁴⁸ All this as set out in article 6:193a first subsection under h, Civil Code.

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125. Nevertheless, the consumer's ability to make an informed decision is indeed restricted by the manner in which Ryanair offers the travel insurance. The Consumer Authority finds the manner in which Ryanair offers the travel insurance misleading and in conflict with professional dedication. The Consumer Authority therefore considers the following for this purpose.
126. The consumer who books airline tickets enters into the agreement concerning the travel insurance by answering a general question stated in a fill-in field "*Select the country where you live*" with the aid of the *drop down menu*. The consumer makes the choice for entering into an agreement for travel insurance by answering the question about which country he resides in. However, in its content this question is not aimed at concluding travel insurance. With regard to the context in which the question is put - the booking of an (international) flight - the question about the country where the passenger resides is nevertheless legitimate or in any event not illogical. In the opinion of the Consumer Authority this is unnecessarily confusing for the consumer because with the question about which country the passenger resides, Ryanair actually intends to ask something else, namely if travel insurance must be concluded for the passenger to be insured. The consumer can interpret the terms of reference of Ryanair differently. For example, he may think that it is necessary to state in which country the passenger resides, in order to book the ticket as such.
127. The Consumer Authority adds to the aforesaid that by means of the *drop down menu* there is a restrictive series of answers. This series comprises a list of countries represented in alphabetical order and the answer "*do not insure me*" is included at an arbitrary place in that series (or at least not in alphabetical order). By placing the only possibility for the consumer to turn down travel insurance in an arbitrary place in the list of countries, Ryanair has actually hidden, or at least made hard to find, the possibility for the consumer to not accept the offer of travel insurance. The Consumer Authority finds this too an element which contributes to the confusing manner in which the offer of travel insurance is presented by Ryanair.
128. The Consumer Authority finds the manner of offering the travel insurance misleading and in conflict with professional dedication. The Consumer Authority also took into consideration that the consumer is primarily busy with booking a journey by air on the booking page. The booking process is, (precisely) due to the many options which are offered, relatively complex. Consequently it is plausible that (also) the reasonably informed, alert and cautious consumer does not see that by answering the question about which country the passenger resides in, he is taking out travel insurance.
129. It can further be deduced from the body of facts that after the consumer has made the choice on booking page 3 in the *drop-down menu* for "*do not insure me*" (and has gone through the rest of the fields to be filled in on booking page 3) and clicks on "*Continue*" at the bottom of booking page 3, Ryanair still urges the consumer to purchase travel insurance. This takes place in those cases by the automatic *pop up* screen (booking page 3A) "*IMPORTANT*

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*MESSAGE!... etc.*⁴⁹ being shown. In this *pop up window*, Ryanair points out the risks of travelling uninsured and Ryanair states that falling ill during holiday and claimed loss items cost thousands of euros. Ryanair once again gives the consumer the opportunity in this *pop up* screen (booking page 3A) to take out travel insurance with the buttons "*NO THANK YOU, I WILL TAKE THE RISK*" and "*YES, ADD TO MY BOOKING*".

130. The Consumer Authority establishes that Ryanair uses disturbing announcements to the consumer to persuade the consumer to purchase travel insurance on the booking page of Ryanair. Presenting the button "*NO THANK YOU, I WILL TAKE THE RISK*" suggests that the traveller takes a risk by not purchasing the travel insurance offered by Ryanair. This distracts the consumer from the fact that travel insurance can also be concluded with other providers. The Consumer Authority does not accept Ryanair's position that it only points out the importance of travel insurance to the consumer. During the presentation, in the opinion of the Consumer Authority, the general importance of travel insurance is not so much the priority, but rather the commercial interest of Ryanair to sell as much travel insurance as possible.

131. The Consumer Authority deems the unnecessary disturbing announcements which Ryanair uses to be in conflict with professional dedication.

⁴⁹ Described in marginal number 122 above.

Conclusion of the Consumer Authority

132. With regard to the aforesaid, the Consumer Authority finds this manner of offering travel insurance misleading and in conflict with professional dedication. However, no aggressive commercial practice has taken place - as concluded in the report. Since the Consumer Authority qualifies the conduct of Ryanair with regard to the offering of the travel insurance different from that which takes place in the report, the Consumer Authority does not (formally) establish a breach in this matter. Accordingly the Consumer Authority can also not impose a fine or penalty payment for this conduct.

7.3. Misleading commercial practice (article 8.8 Consumer Protection (Enforcement) Act in conjunction with article 6:193g, opening words and under h, of the Dutch Civil Code)

133. The report has established that Ryanair has carried out a second unfair commercial practice as referred to in article 6: 193b Dutch Civil Code. This case concerns a misleading commercial practice as referred to in 6:193g, opening words and under h, Dutch Civil Code.

Statutory context

134. Insofar as relevant, article 6:193b Dutch Civil Code reads:

2. A commercial practice is unfair if a trader acts:

- a. in breach of the requirements of professional dedication, and
- b. noticeably restricts, or can restrict, the ability of the average consumer to make an informed decision, as a result of which the average consumer makes, or can make, a decision about an agreement, that he otherwise would not have made.

3. A commercial practice is particularly unfair if a trader:

- a. carries out a misleading commercial practice as referred to in articles 193c up to and including 193g, or
- b. carries out an aggressive commercial practice as referred to in article 193h and 193i.

135. Section 6:193g, opening words and under h, of the Dutch Civil Code reads:

The following commercial practices are under all circumstances misleading:

(...)

h. the consumer with whom the trader prior to the transaction has communicated in a language which is not the official language of the member state where the trader is established, promises to render a customer service and subsequently this service is only made available in another language without making this clear to the consumer prior to the consumer entering into the agreement.

(...)

136. Section 8.8 Consumer Protection (Enforcement) Act reads: The trader is not permitted to carry out unfair commercial practices as referred to in article 3A of Title s of Book 6 of the Dutch Civil Code.

Working method of Ryanair

137. Ryanair offers airline tickets through its Dutch website in the Dutch language.

The booking process for airline tickets which can be followed on the Ryanair website is entirely in Dutch. It is also stated in Dutch on the website how Ryanair can be contacted. Ryanair provides telephone numbers on the contact page which can be phoned from the Netherlands; when stating the telephone numbers Ryanair states that callers will be answered in English. Furthermore, it appears from the contact form (also on the contact page) that direct communication with Ryanair will take place in English. Consequently, it only appears from the contact page on the Ryanair website- and not from the pages of the booking process - that any direct communication with Ryanair can only take place in English.

138. Ryanair has not disputed the facts. It appears from the report that Ryanair has informed the Consumer Authority in writing that it has modified its website as from 1 August 2012.⁵⁰ The modification consists of an express statement on the booking pages that the after-sales service provision of Ryanair is in English.

Assessment by the Consumer Authority

139. The Consumer Authority firstly states that on the Ryanair website, communication consistently takes place in Dutch, also during the booking of airline tickets. Ryanair has its registered office in Ireland where Dutch is not the official language. Furthermore, it is relevant that Ryanair does not state expressly on the website (in any event until 1 August 2012) that the consumer, if he wants to make direct contact with Ryanair, will be answered in English, except for on the webpage (contact page) containing telephone contact details and the contact form. This contact page, however, is usually not consulted by the consumer until they seek to contact Ryanair; in most cases this will be after the consumer has booked an airline ticket. In the opinion of the Consumer Authority, the Ryanair website, which is virtually entirely set up in Dutch, provided the impression up to 1 August 2012 that it was possible to communicate with Ryanair in the Dutch language, also when contacting Ryanair employees directly. At least nothing appears from the booking process of Ryanair that this could be otherwise. Until 1 August 2012, the consumer usually did not find out until after the time that he had booked an airline ticket and wanted to make use of the after-sales services of Ryanair that the after-sales service provision was only provided in English.

140. Despite that which Ryanair has argued in its point of view, the Consumer Authority is of the opinion that the Dutch website with booking options in Dutch certainly delivered the promise that (also) the after-sales service provision would be available in Dutch. Of decisive importance is that it does not appear in the booking process that (a part) of the service provision will take place in another language. The Consumer Authority deems the after-sales service provision of Ryanair to form an integral part of the flight journeys which Ryanair offers. The after-sales service provision must therefore be

⁵⁰ File document CA/IB/812/62, marginal number 156.

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considered to be (part of) "the service provision" as referred to in article 6:193g, opening words and under h, of the Dutch Civil Code.

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141. Ryanair has also advanced in this context that its marketing in Dutch is not (specifically) focussed on the after-sales service provision. Nevertheless the Consumer Authority does not deem this of importance. As set out above, the after-sales service provision must be viewed to form an integral part of the offered flight journeys and Ryanair has given the consumer the impression that communication can take place in Dutch. These - and not so much the marketing of Ryanair - are the elements on the basis of which the Consumer Authority can establish whether Ryanair has carried out the commercial practice as referred to in article 6:193g, opening words and under h, of the Civil Code.

142. Also the circumstance advanced by Ryanair that a large part of Dutch consumers can speak English to a more or lesser extent and that English is the working language in air traffic, cannot affect the fact that the consumer is given the impression that one can communicate in Dutch with Ryanair, while this is not in fact the case. Herewith Ryanair has carried out the misleading commercial practice as referred to in article 6:193g, opening words and under h, Civil Code.

Conclusion of the Consumer Authority

143. On the basis of the aforesaid the Consumer Authority is of the opinion that Ryanair, with its registered office in the Irish member state, prior to the transactions with Dutch consumers, communicates (by means of its website and booking process) in a language (Dutch) which is not the official language of Ireland, all this as referred to in article 6:193g, opening words and under h, of the Dutch Civil Code. Ryanair thus has implicitly given the impression to Dutch consumers that also any direct communication with Ryanair would be able to take place in Dutch and has made it insufficiently clear that a part of the service (after-sales) would be provided in English. Ryanair provides its after-sales service provision solely in English. This is a misleading commercial practice on the basis of article 6:193g, opening words and under h, of the Dutch Civil Code. The breach was first established on 13 January 2012 and was terminated as from 1 August 2012. The duration of the breach amounts to more than six months.

7.4. Means of taking note of and remedy of unintended actions (article 8.2 Consumer Protection (Enforcement) Act in conjunction with article 6:227c, first subsection, of the Dutch Civil Code)

144. The report has recorded that Ryanair has not fulfilled its obligations in the capacity of service provider of an information company. Firstly, this concerns the obligation to offer means of taking note and remedy of unintended actions, on the basis of article 6:227C, first subsection, of the Dutch Civil Code. Secondly this concerns the obligation on the basis of article 3:15d, first subsection, opening words and under b, of the Dutch Civil Code to state an e-mail address on its website (see paragraph 7.5).

Statutory context

145. Article 6:227c, first subsection, of the Dutch Civil Code provides: "1. Those who provide a service of an information company as referred to in article 15d subsection 3 of Book 3, will make suitable, effective and accessible means available to the other party with which the other party prior to the acceptance of the agreement can be informed about unintended actions and with which he can remedy these. (...)"

146. The Explanatory Memorandum⁵¹ to this article states that the article aims to protect consumers against unintended operational actions. The article therefore imposes a responsibility on the provider of services to set up its website in such a manner that the consumer can notice and remedy any unintended operational actions prior to an agreement actually coming into effect.

Working method of Ryanair

147. Reference is made to chapter 4 of this decision for an extended representation of the entire booking process. The Consumer Authority thinks it suffices here - for the assessment of this breach - to state the relevant facts.

148. On 10 February 2012, supervisors of the Consumer Authority have recorded the booking process on www.ryanair.com/nl, in the course of which they also proceeded with the purchase of a ticket. During the booking process it was recorded if and how the consumer, during the booking process on www.ryanair.com/nl, has the opportunity to notice and remedy unintended operational actions before an agreement actually comes into effect.⁵²

149. At first instance, it was established by the supervisors (the Consumer Authority refers for this to the booking process as recorded on DVD, see file document CA/IB/812/25) that, although the consumer, can return to the earlier screen with the return button of the browser used⁵³, the details that the consumer has filled in on the pages concerned are lost during this and must be filled in once again. The exact same applies to any selections for which the consumer has chosen in the booking process, such as travel insurance, *priority boarding*, reserved seats, an SMS confirmation with reservation number and flight details, hand luggage approved by Ryanair, the possibility to bring sport items, musical instruments and children's items and the possibility to ask for special assistance.

150. In the recording of 12 July 2012⁵⁴, it appeared that a change in the booking process of Ryanair had been implemented. Supervisors have established that contrary to the earlier described situation, the personal details were now retained when using the return button of the browser. Any selections made

⁵¹ House of Representatives, session year 2001-2002, 28 197, no. 3, pages 57 and 58.

⁵² File document CA/IB/812/25.

⁵³ Return button: the button of the browser used with which you can normally return to the previous page in your browser can.

⁵⁴ File document CA/IB/812/40.

are lost if the consumer returns to earlier screens and these must again be selected.

Point of view of Ryanair

151. In its oral point of view and in writing⁵⁵ Ryanair refers to two points related to this breach. Firstly, it advances that, after the switch to the new booking system (dated 18 May 2012), it is possible for consumers to return to previous screens, for example to check personal details and possibly to correct those. It also states that during the booking process the consumer can always see on the right hand side what the contents of his booking are (it concerns particularly the details with regard to the flight, the destination, the time, and all options which were chosen during the booking process).

152. Generally, Ryanair is of the opinion that it has acted entirely in accordance with the rationale of the article concerned. Insofar as specified details are lost during returning to earlier pages, it states that consumers have not found this a hindrance. In addition, it emphasises that Ryanair does not charge extra costs if it concerns typographic errors in the booking process. It refers to the documents that it already submitted on 9 July 2012.⁵⁶

Assessment by the Consumer Authority

153. Ryanair's obligation on the basis of article 6:227c of the Dutch Civil Code is to set up its website in such a manner that the consumer can notice and remedy any unintended operational actions, such as for example type and spelling errors or unintended selected options, prior to the agreement coming into effect. The Consumer Authority has therefore assessed to what extent the possibility exists for the consumer to check, and if necessary remedy, his filled in personal details and the contents of his booking. The responsibility rests on Ryanair to set up the website in such a manner that this remedying possibility is provided. For example, by offering the consumer an overview of all filled in details and selected options prior to making the booking definitive or by offering the possibility to leaf back through earlier pages during the booking process so as to be able to check the filled in details and options in this manner. The Consumer Authority is of the opinion that the booking process of Ryanair does not fulfil this. It finds as follows for this purpose.

154. The consumer goes through the booking process as described in chapter 4 of this decision. During the steps in the booking process, there is a view of the contents of the agreement that the consumer (until that time) has opted for in the right hand column on the screen, on booking pages 3 and 4. It concerns details with regard to the flight, the departure point, the final destination, the number of persons and any chosen options. In order to be able to check personal details, the consumer, with the aid of the return button of the browser, must leaf back through earlier pages in the booking process. In the situation until 18 May 2012, any filled in personal details and any selections made are lost when doing so, and the consumer must once again fill in or select these. The booking process does not provide a total overview of the

⁵⁵ File documents CA/IB/878/6, marginal numbers 43 up to and including 56 and CA/IB/878/8, marginal numbers 36 up to and including 39.

⁵⁶ File document CA/IB/812/32, appendices 7 and 8.

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filled in personal details and the contents of the agreement before the consumer agrees to concluding the agreement.

155. After the modifications on 18 May 2012, the filled in personal details do remain when leaving back with the browser used, but each time any selections made are still lost. During the hearing dated 8 November 2012, Ryanair confirmed that in the situation after 18 May 2012 any chosen selections, just as in the situation prior to 18 May 2012, disappear if the consumer returns to earlier filled in pages in the booking process.
156. On the basis of the above, in the opinion of the Consumer Authority, it can also not be said of the situation after 18 May 2012 that Ryanair has set up its website in such a manner that the consumer has the possibility to - adequately - notice and remedy unintended operational actions prior to the agreement actually coming into effect. Since there was no possibility on the website to return to earlier pages to check filled in details. The booking process also did not provide an overview of all filled in details prior to the consumer agreeing to the concluding of the agreement. The fact that a possibility exists to leaf back to earlier screens with the return button of the browser used does not change this. It has certainly now appeared that (in any event until 18 May 2012) during the use of this option all filled in details were lost. It is therefore not an effective possibility. Although in the right hand side of the screen during the booking process (pages 3 and 4), specified details of the booking were indeed visible, the filled in personal details of the consumer could not be found and therefore could not be checked or remedied.
157. The Consumer Authority thereby takes into consideration that the booking process could for the consumer, as is also stated by Ryanair⁵⁷, be a complicated matter which demanded the full attention of the consumer. The possibility to check once again, and easily adjust filled in details and selections, or to remedy these is therefore of the utmost importance, precisely due to this fact.
158. That Ryanair, as it states, does not in practice charge any costs for the correcting of type and spelling errors in personal details, so that consumers consequently in its opinion do not experience any disadvantage of the absence of a possibility to check or remedy filled in details and chosen options, does not affect the obligation that rests on Ryanair to set up its booking process in such a manner that the consumer has a rectification possibility to notice unintended actions and to correct these.⁵⁸
159. The Consumer Authority emphasises that in the case in question not only wrongly filled in personal details are concerned, but also the chosen selections such as for example a travel insurance, *priority boarding*, reserved seats, an SMS confirmation with reservation number and flight details, hand luggage approved by Ryanair, which certainly in case of bookings for several persons can increase in amount. In addition, an amount of EUR 100 for changing personal details (for example if the entire first or surname has been entered

⁵⁷ File document 812/33, report of the hearing dated 14 June 2012, page 11.

⁵⁸ File document CA/IB/878/6, appendix 5, "Name Change scenarios".

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incorrectly) can in the opinion of the Consumer Authority not be called minor and this results in direct damage or loss for the consumer due to Ryanair not setting up its booking process in conformity with article 6:227c of the Dutch Civil Code.

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160. It continues to be impossible for the consumer in the booking process of Ryanair, also in the situation after 18 May 2012, to adequately notice and remedy operational actions before concluding the agreement, since this is not provided for in the booking process of Ryanair itself and selections are lost when leaving back with the browser, as a result of which the chance continues to exist that the consumer again makes errors in the booking.

Conclusion of the Consumer Authority

161. With regard to the aforesaid, the Consumer Authority concludes that Ryanair has not adhered to the regulations of article 6:227c, first subsection, of the Dutch Civil Code and that it therewith has acted in breach of article 8.2 of the Consumer Protection (Enforcement) Act. The Consumer Authority establishes on the basis of the report file that this breach was first recorded on 13 January 2012. Ryanair has not stated that its conduct being dealt with here is or has been ceased. The Consumer Authority therefore assumes that the breach currently still continues. The duration of the breach is therefore (more than) thirteen months.

7.5. Stating an e-mail address (article 8.2 Consumer Protection (Enforcement) Act in conjunction with article 3:15, first subsection, opening words and under b, of the Dutch Civil Code)

162. In the report it has been established that Ryanair has not fulfilled its obligations in the capacity of a service provider of an information company. Firstly this concerns the obligation to offer means of taking note and remedy of unintended actions, on the basis of article 6:227C, first subsection, of the Dutch Civil Code (See paragraph 7.4). Secondly this concerns the obligation on the basis of article 3:15d, first subsection, opening words and under b, of the Dutch Civil Code to state an e-mail address on its website.

Statutory context

163. Section 3:15, first subsection, of the Dutch Civil Code reads insofar as of importance here that those who provide the service of an information company, must make the following details easily, directly and permanently accessible for those who make use of this service, in the particular to acquire or to make information accessible:

(...)

b. details which makes fast contact and direct and effective communication possible with him, including his electronic postal address.

(...)

Working method of Ryanair

164. Supervisors of the Consumer Authority have inspected whether, and if so, how Ryanair has provided its contact details on its website. For this purpose

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they searched the Ryanair's website (www.ryanair.com/nl) on 27 April 2012 for an electronic postal address (hereinafter referred to as: e-mail address) that consumers can use to make contact with Ryanair.⁵⁹ During the visit to the website www.ryanair.com/nl, they searched the homepage for an e-mail address or a reference or concept where an e-mail address logically could be placed under (for example 'contact'). The search questions 'e-mail', 'mail' and 'contact' in the search fields did not result in an e-mail address.

165. Two links on the homepage, both called "Make contact" both led to a webpage named "Contact". Two links were shown on the contact webpage, namely "Frequently asked questions" and "Contact form". The webpage "Contact" did not show an e-mail address. On the basis of the aforesaid, the supervisors concluded that Ryanair did not provide an e-mail address on its website.
166. In the hearing on 8 November 2012, Ryanair set out in its point of view in writing as well as in its oral point of view that it did not provide an e-mail address on its website. As Ryanair said, it does not provide an e-mail address because it would otherwise be confronted with spam, which would prevent them from adequately dealing with e-mails from consumers. Ryanair has not stated that as a result of this procedure it would in time still provide an e-mail address.

⁵⁹ File document CA/IB/812/19.

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Electronic contact form

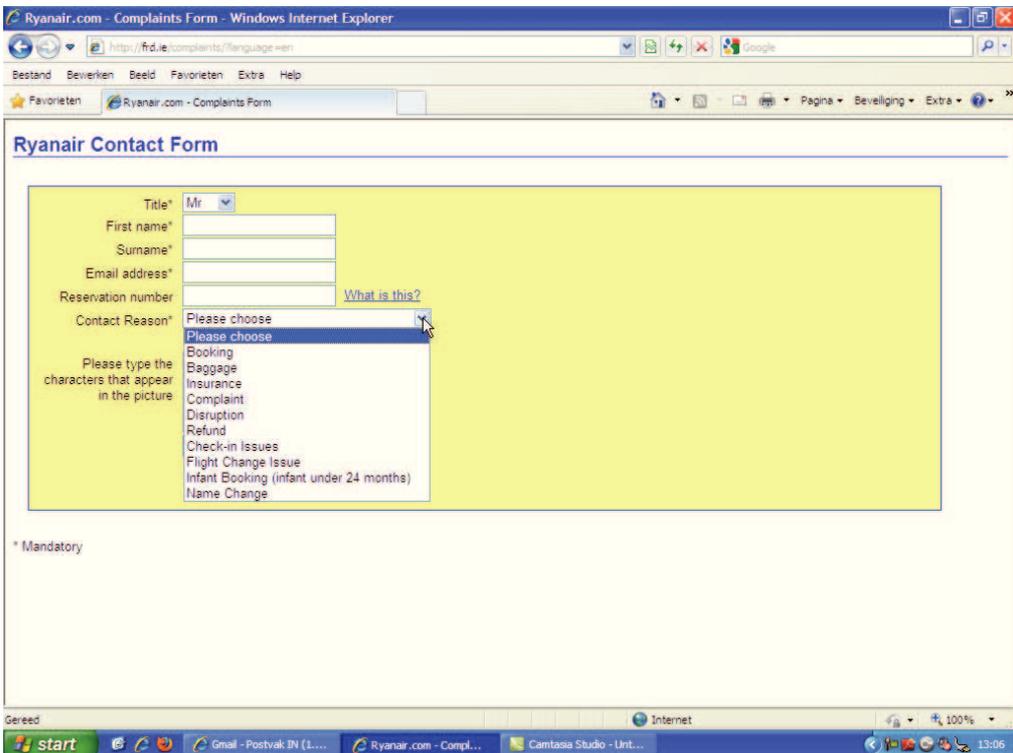
167. In the context of the inspection of Ryanair, research took place into the manner communication with Ryanair takes place after a contact form is filled in and sent. When <Contact form> was selected on the 'Contact' page, a page in English appeared called <Ryanair Contact Form> with an electronic contact form in English. The consumer must fill in his name and e-mail address in this contact form and choose from a list of subjects in the choice menu called 'Contact reason' (see screen print below)

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(CA/IB/812/19 screen print 18)

168. The consumer has no possibility in the contact form to explain his question or complaint, unless the consumer (by chance) chooses for the subject 'Complaint' in the same choice menu. In that case a field called 'Comments' appears where the consumer can fill in a text. It is not clear to the consumer from the start that when choosing the subject 'Complaint' an open space will appear where he can enter a text.

169. The consumer receives a confirmation e-mail from Ryanair after sending an electronic contact form. The contents of the confirmation e-mail depend on the 'Contact reason' chosen. If 'Complaint' was chosen, a reference number can be found in the e-mail from Ryanair along with a message that Ryanair will respond as soon as possible. If another subject was chosen in the choice menu, Ryanair suffices with a reference (by means of a link) to the part of the website with 'frequently asked questions' with regard to that subject for the answer to its website by means of a link. Ryanair does not refer in either e-mail to an e-mail address the consumer can use to communicate with Ryanair.

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The original question or complaint that was filled in the field 'Comments' cannot be read again in the confirmation e-mail that the consumer receives from Ryanair.

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170. The recipient of the e-mail is requested in two ways not to reply or, in other words, not to make use of the 'reply' button: the e-mail address is 'donotreply@ryanair.com' and at the bottom of the e-mail the text 'Please do not reply to this e-mail' is shown. If the consumer wants to respond, then he must again visit the website of Ryanair and fill in the contact form on the website.⁶⁰

Changes

171. On 9 July 2012, Ryanair stated that two changes concerning the confirmation e-mail and contact form had taken place.⁶¹ Firstly, Ryanair recapitulates the original question or complaint in the confirmation e-mail. Secondly, the wording 'Complaints' in the contact form prior to the appearance of the text field changed to 'General queries and complaints'. With regard to the second change, the Consumer Authority (still) finds that only if the consumer clicks on 'General queries and complaints' the open field to be filled in is shown and that when choosing for one of the other subjects there is only a reference to information on the 'frequently asked questions' page on the website.

172. Ryanair also stated during the hearing of 8 November 2012 that the contact form had been made more accessible on the Ryanair's website, because there are more to the contact form, so that the consumer can arrive at the electronic contact form through several methods.⁶²

Contact by telephone

173. The Consumer Authority has, on the basis of the file,⁶³ established that Ryanair furthermore states telephone numbers on its website - in English - through which contact can be made with the reservation centre.

Point of view of Ryanair

174. Ryanair does not dispute that it does not provide any e-mail address on its website and views the contact form as a suitable alternative for providing an e-mail address for a number of reasons. It is of the opinion that it can be deduced from the wording of the legislation and from the explanatory memorandum that the legislator wished to provide, through the requirement of an electronic postal address, an electronic, direct and effective contact possibility. In its opinion, Ryanair provides this by offering an electronic contact form.⁶⁴

175. Ryanair further argues that the contact form has the same form and objective as an e-mail address. In addition it finds a web form safer and more time and cost efficient than an e-mail address, as the form saves Ryanair's clients the

⁶⁰ File document CA/IB/878/10, page 13.

⁶¹ File document CA/IB/812/38, page 13.

⁶² File document CA/IB/878/8, marginal number 35, page 6.

⁶³ File document CA/IB/812/5.

⁶⁴ File document CA/IB/878/6, marginal numbers 30 and 31.

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effort of logging in to their e-mail account to send their question and it prevents failure of electronic communication from Ryanair with their clients due to e-mail spam.⁶⁵

176. According to Ryanair using a contact form fulfils the teleological interpretation of article 3:15d of the Dutch Civil Code.⁶⁶ According to Ryanair, with regard to functionality, the electronic contact form actually does not differ from an e-mail address since the client is given the space to express their question or complaint and this goes directly in an e-mail to Ryanair. In addition, it states that it is common practice for companies who operate online to use a web form as an e-mail address.

177. Ryanair refers to the judgement of the European Court of Justice from which it deduces that the offering of a contact form is a suitable alternative for communication to an e-mail address.⁶⁷

Assessment by the Consumer Authority

178. Ryanair sells online airline tickets and consequently provides the service of an information company as referred to in article 3:15d third subsection of the Dutch Civil Code. According to article 3:15d, first subsection, opening words and under b Civil Code, those who provide the service of an information company, i.e. Ryanair in the case in question, must make details that makes fast contact and direct and effective communication with them possible, including their electronic postal address, easy, direct and permanently accessible. Ryanair offers a contact form on its website as well as a telephone number so that the consumer can make contact with (employees of) Ryanair.

Not stating an electronic postal address

179. The Consumer Authority has not found any electronic postal address on Ryanair's website. Consequently, Ryanair does not provide those details that are required for direct and effective communication in accordance with the legislation and therefore does not comply with article 3:15d, first subsection, opening words and under b of the Dutch Civil Code.

Electronic contact form

180. For contact with Ryanair, the consumer is referred to the electronic contact form in an electronic manner. Contrary to Ryanair arguments, the electronic contact form as used by Ryanair cannot be simply compared to the (direct) communication which arises through e-mail traffic. The Consumer Authority will deal with the point of view of Ryanair in the following.

181. E-mail traffic has the characteristic of direct back and forth communication through electronic means. Such direct communication is not possible with the contact form on the website of Ryanair. This way the consumer cannot, as is the case with e-mail traffic, directly respond to the confirmation or answer e-mail sent by Ryanair in answer to the sent contact form. The consumer does

⁶⁵ File document CA/IB/878/6, marginal number 37.

⁶⁶ File document CA/IB/878/6, marginal number 38.

⁶⁷ ECJ 16 October 2008, no. C-289/07 (Bundesverband/Deutsche Internetversicherung).

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not have the opportunity to ask a further question, and must instead again fill in and send a contact form through the Ryanair website.

182. The consumer is furthermore, when making use of the contact form, bound to fixed choice menus with subjects (such as: 'Baggage', 'Booking' and 'Complaints'). Only when the consumer chooses 'Complaints'⁶⁸, does an open field appear where the consumer can type in his question or complaint. In case of all other options, Ryanair suffices with a standard response with a link to the 'frequently asked questions' page. In contrast to e-mail traffic, the consumer cannot in these cases personally describe his question or problem and he does not receive an answer to his specific question. The Consumer Authority deems it also of importance that it is made known to the consumer in advance that only through the 'Complaints' option a will field appear that can be filled in.

183. In addition, the consumer has, in contrast to the use of the electronic contact form, the possibility to add files with e-mail traffic. This can be required when the consumer wants to add something for clarification. This can also later be of benefit to the consumer if he needs to prove his case.

184. Ryanair states that in the judgement of the European Court of Justice⁶⁹ it is acknowledged that a contact form is a direct and effective means of communication.⁷⁰ In the opinion of the Consumer Authority it cannot be deduced from this judgement that a contact form can replace providing an e-mail address. The Consumer Authority points out that in the abovementioned case an e-mail address was already provided by the company. The question in this case was, whether in addition to providing an electronic postal address a contact form as a second means of communication was sufficient. The Court declared that, other than providing an e-mail address – something Ryanair omits – a service provider is obliged to make further information available to the customers of the service on the basis of which contact can be made quickly and directly making effective communication possible, such as for example an electronic contact form.

⁶⁸ From 9 July 2012: 'General queries and complaints'.

⁶⁹ ECJ 16 October 2008, no. C-289/07 (Bundesverband/Deutsche Internetversicherung).

⁷⁰ File document CA/IB/878/9, page 12.

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185. Prior to 9 July 2012, after receiving the contact form Ryanair sent a confirmation form without noting or repeating the original question or complaint⁷¹. The recipient therefore could not demonstrate when he had submitted which question or complaint to Ryanair and what his question or complaint comprised of, this in contrast to the use of an e-mail address.

Conclusion of the Consumer Authority

186. On the basis of the aforesaid the Consumer Authority reaches the conclusion that Ryanair has omitted to state an e-mail address on its website on the basis of article 3:15d, first subsection opening words and under b, of the Dutch Civil Code. In the opinion of the Consumer Authority, the use of an electronic contact form on the website of Ryanair is not the same as regular e-mail traffic. The Consumer Authority for this reason considers the contact form not to be the same or similar to e providing an e-mail address. This results in a breach of article 8.2 first subsection Consumer Protection (Enforcement) Act. This breach was for the first time recorded on 27 April 2012 and still continues. The duration of the breach amounts therefore to ten months.

8 Conclusions

187. The Consumer Authority concludes that Ryanair Limited has acted in breach of:

- a) Article 23, first subsection, Regulation (EC) No. 1008/2008 concerning communal rules for the running of air services in the Community, from 13 January 2012 to in any event 1 December 2012 (almost eleven months);
- b) Article 8.8 Consumer Protection (Enforcement) Act in conjunction with article 6:193g, opening words and under h, of the Dutch Civil Code, from 13 January 2012 until 1 August 2012 (more than six months);
- c) Article 8.2 Consumer Protection (Enforcement) Act in conjunction with article 6:227c, first subsection, of the Dutch Civil Code, from 13 January 2012 until in any case 26 February 2013 (more than thirteen months); and
- d) Article 8.2 Consumer Protection (Enforcement) Act in conjunction with article 3:15d, first subsection, opening words and under b, of the Dutch Civil Code, from 27 April 2012 until in any event 26 February 2013 (ten months).

9 Measures

188. If the Consumer Authority is of the opinion that a breach has taken place then it can, on the basis of article 2.9, first subsection, Consumer Protection (Enforcement) Act, impose an administrative fine and/or penalty payment on the offender.

189. The Consumer Authority ascertained that with regard to the breaches stated in chapter 7, there is not a situation in which no fine can be imposed as referred to in articles 5:5 and 5:6 General Administrative Law Act and articles 5:41 up to and including 5:44 General Administrative Law Act.

⁷¹ Since then Ryanair has adjusted this, see for this file document CA/IB/812/38, page 13.

190. In this case, the Consumer Authority is of the opinion that it is suitable to impose a fine for the breaches of:

- a) Article 23, first subsection, Regulation (EC) No. 1008/2008 concerning communal rules for the running of air services in the Community;
- b) Article 8.8 Consumer Protection (Enforcement) Act in conjunction with article 6:193g, opening words and under h, of the Dutch Civil Code;
- c) Article 8.2 Consumer Protection (Enforcement) Act in conjunction with article 6:227c, first subsection, of the Dutch Civil Code; and
- d) Article 8.2 Consumer Protection (Enforcement) Act in conjunction with article 3:15d, first subsection, opening words and under b, of the Dutch Civil Code.

10 Attribution of the breaches

191. The breaches established in chapter 7 of this decision have their basis in actual actions which have been carried out on the website of www.ryanair.com. It has been recorded in the report that it appears from the Conditions of Use for the website www.ryanair.com that Ryanair Limited is the owner of the website www.ryanair.com.

192. With regard to this, Ryanair Limited must be held responsible for the resolution of breaches in this decision. Ryanair Limited has not disputed that it can be held responsible for the conduct that is the basis of the recorded breaches.

193. Furthermore, there are no facts or circumstances known to the Consumer Authority from which it would have to be concluded that Ryanair Limited cannot be held responsible for the recorded breaches.

194. With regard to the aforesaid, the Consumer Authority therefore attributes the recorded breaches to Ryanair Limited.

11 Administrative fine

195. On the basis of article 2.15, first subsection, of the Consumer Protection (Enforcement) Act an administrative fine to be imposed by the Consumer Authority, within the meaning of article 2.9, first subsection, of the Consumer Protection (Enforcement) Act amounts per breach to no more than the amount of the fifth category, as referred to in article 23 of the Dutch Penal Code. Commencing on 1 January 2012, the amount of the fifth category financial penalty was set at EUR 78,000. When it concerns a breach of article 8.8 of the Consumer Protection (Enforcement) Act, the Consumer Authority is authorised to impose a fine which amounts pursuant to article 2.15, second subsection of the Consumer Protection (Enforcement) Act to no more than EUR 450,000 per breach.

196. At the determination of the level of the fine, the Consumer Authority takes into consideration, in accordance with the provisions of articles 5:46, second subsection, of the General Administrative Law Act (*Algemene wet bestuursrecht (Awb)*), in all events, the seriousness of the breach and the

extent to which the offender can be blamed for this. The Consumer Authority, if necessary, takes into consideration the circumstances in which the breach was committed.

197. Pursuant to article 3:4, second subsection, of the General Administrative Law Act the Consumer Authority observes the principle of proportionality during the determination of the level of the fine. On the basis of this provision the detrimental consequences of the decision for one or more interested parties may not be out of proportion to the objectives to be achieved by this decision. As general standard applies that the level of the fine must be such that the offender is discouraged from new breaches (special prevention) and also in general terms has a deterrent effect for other (potential) offenders (general prevention).

11.1. Determination of fine

198. The Consumer Authority firstly sets a base fine in the context of setting fines. The base fine is determined with due regard to the maximum fine level provided by statute (EUR 78,000 for breaches of article 8.2 of the Consumer Protection (Enforcement) Act and article 23 of the Aviation Regulation (*Luchtvaartverordening*) and EUR 450,000 for breaches of article 8.8 of the Consumer Protection (Enforcement) Act) as well as (1) the seriousness of the conduct, (2) the degree of blame, (3) circumstances in which the breach is committed and (4) the circumstances in which the offender is situated. Lastly, the ultimate fine is set by determining if there are additional circumstances which justify an increase or decrease of the base fine.

11.2. Determination of the base fine

11.2.1. Article 23, first subsection, of the Aviation Regulation

199. Article 23 of the Aviation Regulation has the objective that in case of advertising of flight journeys the rate is stated which the consumer must at least pay if he makes use of the offer. In this way, consumers are prevented from unexpectedly being confronted with unavoidable additional costs such as (fuel) surcharges, airport taxes and suchlike. If consumers are regularly confronted with such unexpected extra costs, then this can have detrimental consequences for consumer confidence. The provisions of the Aviation Regulation do not prevent the business model of Ryanair, which comprises 'basic' flight rates where the consumer can 'buy extra' provision of service, such as transport of baggage. Breach of article 23 of the Aviation Regulation is finable by a fine not exceeding EUR 78,000.

200. With regard to the breach of article 23, first subsection, of the Aviation Regulation the Consumer Authority notes that this breach comprises (1) the stating of rates without unavoidable costs in the *flexi search tabs* and (2) the failure to state the administrative costs of EUR 6 per journey per person, while these administrative costs qualify as unavoidable costs.

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201. With regard to the presentation of rates excluding unavoidable costs in the *flexi search tabs*, the Consumer Authority takes into consideration that as soon as the consumer makes a choice for a flight by clicking on a *flexi search tab*, the unavoidable costs (apart from the administrative costs) are also stated in the right hand column of the pages of the booking process. Furthermore, it must be taken into consideration that in offers for "cheap flights" on the homepage of www.ryanair.com, the flight prices are indeed stated including the unavoidable costs (apart from the administrative costs). Thus the consumer can, when making use of the *flexi search tabs*, become informed, early on in the booking process, about the level of unavoidable additional costs (apart from the administrative costs). It must be assumed however, that the consumer would have already made the choice to book his flight journey with Ryanair, essentially on the basis of an incomplete price quotation, at the moment he is first informed about the additional costs, and would have already started the booking process. As from 18 May 2012, Ryanair has adjusted the *flexi search tabs*; this conduct has therefore lasted approximately 4 months. With regard to the aforesaid, the Consumer Authority qualifies this part of the breach as serious.

202. The breach concerning the failure to state the administrative costs concerns all rates presented by Ryanair. This means that the consumer is (virtually) always confronted with a higher flight price than advertised by Ryanair. In determining the seriousness of this part of the breach, the Consumer Authority finds it furthermore of importance that with regard to the presentation of all this the administrative costs are directly related to the payment method; since Ryanair makes it appear that it depends on the payment method whether or not administrative costs are owed. It is to be expected, due to the connection between the administrative costs and the payment method, that the administrative costs (payment) are owed per booking and not, as is the case, per single journey per person. Because the administrative costs are calculated per single journey per person, these unavoidable and foreseeable costs are increased considerably. The Consumer Authority deems this behaviour by Ryanair to be very damaging to consumer confidence. For this reason, this part of the breach qualifies as very serious. The Consumer Authority takes a duration of eleven months into consideration for this conduct.

203. Taking the aforesaid into consideration, the Consumer Authority assesses the breach of article 23, first subsection, of the Aviation Regulation as very serious.

204. The Consumer Authority has not become aware, from the file and on the basis of that which Ryanair has advanced in its oral point of view and point of view in writing, of circumstances on the basis of which it can be concluded that the breach in question cannot be attributed to Ryanair. Neither has the Consumer Authority become aware of circumstances in which the breach was committed or circumstances in which Ryanair is situated, which can influence the setting of the base fine.

205. With regard to the aforesaid the base fine is set at EUR 70,000.

11.2.2. Misleading commercial practice (article 8.8 Consumer Protection (Enforcement) Act in conjunction with article 6:193g, opening words and under h, of the Dutch Civil Code)

206. Article 8.8 Consumer Protection (Enforcement) Act prohibits traders from carrying out unfair commercial practices as referred to in Book 6, Title 3A of the Dutch Civil Code (article 6:193a up to and including 6:193i). With the aforesaid provisions concerning unfair commercial practices the European Directive on unfair commercial practices has been implemented.⁷² The objective of this Directive is to prevent unfair commercial practices with a high level of legal protection because these commercial practices undermine consumer confidence in the market and prevent making good choices.⁷³ The breach of the prohibition of carrying out unfair commercial practices in itself already forms a very serious violation of consumer confidence. Violations comprising unfair commercial practices that - as is the case here - are on the blacklists (articles 6:193g and 6:193i Dutch Civil Code) have in particular a very considerable negative impact on consumer confidence and must therefore in principle be fined more severely than other unfair commercial practices. Breach of article 8.8 Consumer Protection (Enforcement) Act is finable by a fine not exceeding EUR 450,000.

207. The following factors are deemed to be relevant by the Consumer Authority in the assessment of the seriousness of the breach of article 8.8 Consumer Protection (Enforcement) Act in conjunction with seriousness 6:193g, opening words and under h, Dutch Civil Code. Ryanair has offered its services in Dutch to Dutch consumers, without making it clear that if direct contact with Ryanair is required - through the contact form or by telephone - this will only take place in English. The Consumer Authority takes into consideration that the impossibility for Dutch consumers to communicate directly with Ryanair in their own language, while on the basis of the booking process the expectation exists that this should indeed be possible, causes serious damage to consumer confidence. With regard to the argument of Ryanair that many Dutch consumers speak English well, the Consumer Authority finds the following. Many Dutch consumers speak English up to a certain level. This does not alter the fact that the average Dutch consumer, when confronted with an employee of Ryanair whose mother tongue is English, is at a disadvantageous position vis-à-vis (this employee of) Ryanair. The Consumer Authority furthermore takes the duration of the breach of six months into consideration.

208. Taking the aforesaid into consideration, the Consumer Authority qualifies the breach of article 8.8 Consumer Protection (Enforcement) Act in conjunction with article 6:193g, under h, of the Dutch Civil Code as serious.

209. The Consumer Authority has not become aware, from the file and on the basis of that which Ryanair has advanced in its oral point of view and point of view in writing, of circumstances on the basis of which it can be concluded that the breach in question cannot be attributed to Ryanair. Neither has the Consumer Authority become aware of circumstances in which the breach was

⁷² Directive 2005/29/EC, 11 May 2005, Official Journal of the European Union L 149.

⁷³ Parliamentary Papers II 2006/2007, 30 928, no. 3, page 1 (Explanatory Memorandum).

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committed nor circumstances in which Ryanair is situated, which can influence the setting of the base fine.

210. The Consumer Authority, having regard to the aforesaid, deems a base fine of EUR 180,000 suitable.

11.2.3. Means of taking note of and remedy of unintended actions (article 8.2 Consumer Protection (Enforcement) Act in conjunction with article 6:227c, first subsection, of the Dutch Civil Code)

211. With regard to the breach of the standards of article 8.2, Consumer Protection (Enforcement) Act in conjunction with article 6:227c, first subsection, Dutch Civil Code, the Consumer Authority first of all notes that article 6:227c, first subsection, Dutch Civil Code is part of the implementation of the European Directive concerning electronic trade.⁷⁴ The objective of this Directive is to safeguard confidence in electronic trade. In this context, the Directive provides that - also given the fact that at the concluding of the agreement there is no direct contact between the provider and the consumer - providers of services of an information company make suitable, effective and accessible means available through which the consumer can become informed of any unintended actions and through which he can remedy these prior to the agreement coming into effect. Breach of article 8.2 Consumer Protection (Enforcement) Act can be fined by a fine not exceeding EUR 78,000.-.

212. The Consumer Authority notes that, with regard to the present case, the consumer enters details in an automated programme during the booking process, without there being any direct contact with Ryanair. An unintended click with the mouse or a typing error is easily made and can have consequences for consumers that vary from inconvenience to financial damage. That is the reason why the Consumer Authority finds it of great importance that providers of a service of an information company comply with article 8.2 Consumer Protection (Enforcement) Act article 6:227c, first subsection, Dutch Civil Code. This applies in the present case all the more because the business model of Ryanair (unbundling of the fare) is such that the consumer is offered many options. In addition, also during the booking process, services (travel insurance, rental car) and products (hand baggage suitcases) are offered which in essence are separate from the booking of airline tickets as such. This makes the booking process on the Ryanair website relatively complex, considerably increasing the chance of unintended operational actions.

213. With regard to offering the possibility of discovering unintended operational actions, the Consumer Authority takes into consideration that Ryanair during a large part of the booking process, including also from the end of the booking process, shows a specification of the costs. In this specification - in addition to foreseeable, unavoidable costs such as surcharges - extra costs are also presented which are related to choices the consumer has made during the booking, for example with regard to the transport of baggage or priority boarding. On the basis of the specification, the consumer can discover any

⁷⁴ Directive 2000/31/EC, OJEU L 178.

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unwanted choices. Nevertheless, Ryanair omits to show the entered personal details of the passenger in addition to the costs specification, so that any typographical errors cannot (easily) be noticed. The Consumer Authority emphasises in this context that it is essential for airline tickets to have the correct personal details stated on them.

214. With regard to the possibility to be able to remedy unintended actions prior to the booking being completed, the Consumer Authority finds that Ryanair does not at all offer any suitable and effective means. Since the consumer only has the possibility available to return with the "return-button" of his browser to the previous webpage (webpages). The details originally filled in on the previous webpage(s) are consequently (for the most part) lost so that the consumer has to (virtually) go through the entire booking process all over again, and must enter all required details and options again. Again - also with regard to the complexity of the booking process - the possibility exists that the consumer makes mistakes. In the opinion of the Consumer Authority these shortcomings can have a detrimental impact on consumer confidence with regard to electronic trade.
215. Ryanair has, during the course of the inspection, carried out modifications of the booking process that enable the consumer to call back the previous webpage(s) with the "Return-button" of his browser(s) saving the details entered earlier. From that which has been stated by Ryanair at the hearing, the Consumer Authority nevertheless deduces that only the personal details, but not the entered selections (options) are saved. Furthermore, it has been found above in marginal numbers 155 and 156 that this modification does not suffice to undo the breach. The breach is therefore deemed to not yet have been terminated since its (first) recording on 13 January 2012. The Consumer Authority takes into consideration for the fining that the breach lasted for thirteen months.
216. Taking the aforesaid into consideration the Consumer Authority qualifies the breach of article 8.2 Consumer Protection (Enforcement) Act, in conjunction with article 6:227c of the first subsection of the Dutch Civil Code, as serious.
217. The Consumer Authority has not become aware, from the file and on the basis of that which Ryanair has advanced in its oral point of view and point of view in writing, of circumstances on the basis of which it can be concluded that the breach in question cannot be attributed to Ryanair. Neither has the Consumer Authority become aware of circumstances in which the breach was committed or circumstances in which Ryanair is situated, which can influence the setting of the base fine.
218. The Consumer Authority sets the base fine at EUR 60,000.

11.2.4. Providing an e-mail address (article 8.2 Consumer Protection (Enforcement) Act in conjunction with article 3:15d, first subsection, opening words and under b, of the Dutch Civil Code)

219. Prior to giving an opinion on the seriousness of the conduct of Ryanair resulting in the breach of article 8.2 Consumer Protection (Enforcement) Act in conjunction with article 3:15d, first subsection, opening words and under b Dutch Civil Code, the Consumer Authority will first elaborate on the breached standards. Article 3:15d Civil Code is part of the implementation of the European Directive concerning electronic trade.⁷⁵ The objective of this Directive is to safeguard confidence in electronic trade. In this context the European legislator has taken into consideration that in case of electronic trade an agreement between the consumer and the trader comes into effect without any direct contact. It is therefore of importance for the consumer that he knows with whom he deals and that he, if required, can easily make contact with the trader. For this reason the (European) legislator has found it necessary to stipulate that the provider of a service of an information company makes his e-mail address available to consumers and in addition provides other details that make fast contact and direct and effective communication possible. Breach of article 8.2 Consumer Protection (Enforcement) Act is finable by a fine not exceeding EUR 78,000.

220. With regard to the seriousness of the conduct of Ryanair concerning the failure to provide an e-mail address on the website www.ryanair.com, the Consumer Authority takes the following into consideration. The Consumer Authority also notes that in the case in question there is electronic trade in the course of which an agreement comes into effect along an electronic route without any direct contact between the provider (Ryanair) and the consumer. As already found above, it is of great importance that consumers in such cases can easily make contact with Ryanair and thereupon can communicate directly and effectively with Ryanair in the context of after care. Since Ryanair - other than is described in article 3:15d Civil Code - does not make its e-mail address apparent on its website, Ryanair creates an obstacle for the consumer to communicate directly and effectively with Ryanair. The Consumer Authority notes that particularly in case of electronic trade e-mail correspondence is a designated means of communication.

221. In the context of the assessment of the seriousness of this breach, it must nevertheless be taken into consideration - to the advantage of Ryanair - that Ryanair has enabled the consumer to make contact and communicate with Ryanair by offering on the website a contact form and by making telephone numbers available.

222. The Consumer Authority furthermore takes into consideration that the breach was recorded for the first time on 27 April 2012 and - with regard to that which Ryanair has stated - currently still continues. Consequently, the duration of the breach is ten months

⁷⁵ Directive 2000/31/EC, OJEU L 178.

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223. Taking the aforesaid into consideration, the Consumer Authority is of the opinion that the breach of article 8.2 Consumer Protection (Enforcement) Act in conjunction with article 3:15d, first subsection, opening words and under b, Dutch Civil Code qualifies as serious.

224. The Consumer Authority has not become aware, from the file and on the basis of that which Ryanair has advanced in its oral point of view and point of view in writing, of circumstances on the basis of which it can be concluded that the breach in question cannot be attributed to Ryanair. The Consumer Authority has not become aware of circumstances in which the breach was committed nor of circumstances in which Ryanair finds itself that can influence the setting of the base fine.

225. The Consumer Authority sets the base fine with regard to the aforesaid at EUR 60,000.

226. With regard to the aforesaid, the Consumer Authority sets the base fines per breach at:

- EUR 70,000 (article 23, first subsection, Aviation Regulation)
- EUR 180,000 (article 8.8 Consumer Protection (Enforcement) Act in conjunction with article 6:193g, opening words and under h, Dutch Civil Code)
- EUR 60,000 (article 8.2 Consumer Protection (Enforcement) Act in conjunction with article 6:227c, first subsection Dutch Civil Code)
- EUR 60,000 (article 8.2 Consumer Protection (Enforcement) Act in conjunction with article 3:15d, first subsection opening words and under b, Dutch Civil Code).

11.3. Additional circumstances; setting of the fine

227. The fine amounts per fine are set after the Consumer Authority has checked if there are additional circumstances which justify an increase or decrease with regard to the base fine. An increase of the base fine can for example be designated if there is recidivism or obstruction of the inspection. The base fine can be reduced for example in the event of an offender having extended far-reaching cooperation with the inspection, and the inspection by the Consumer Authority was expedited as a result of this.

228. In this context it is of importance that Ryanair has stated to have taken a cooperative attitude. The Consumer Authority finds in this respect that if an offender wants to be eligible for a reduction of fine on the basis of far-reaching cooperation, then in general the cooperation must have gone considerably further than what could be required from the offender on the basis of the law. Another criterion that plays a role in the assessment of far-reaching cooperation is that the inspection by the CA is noticeably simplified as a result of cooperation.

229. In the opinion of the Consumer Authority the cooperation Ryanair provided to the inspection did not go beyond that which could be required on the basis of the law. The cooperation did also not noticeably simplify the inspection by the Consumer Authority.

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230. For the remaining, the Consumer Authority is not aware of additional circumstances that justify an increase or decrease with regard to the base fines. The Consumer Authority therefore sets the fines as follows:

- EUR 70,000 (article 23, first subsection, Aviation Regulation)
- EUR 180,000 (article 8.8 Consumer Protection (Enforcement) Act in conjunction with article 6:193g, opening words and under h, Dutch Civil Code)
- EUR 60,000 (article 8.2 Consumer Protection (Enforcement) Act in conjunction with article 6:227c, first subsection Dutch Civil Code)
- EUR 60,000 (article 8.2 Consumer Protection (Enforcement) Act in conjunction with article 3:15d, first subsection opening words and under b, Dutch Civil Code)

231. Consequently, the total of the fines imposed comes to an amount of EUR 370,000.

11.4. Penalty payment

Introduction

232. The Consumer Authority is authorised on the basis of article 2.9, opening words and under a, of the Consumer Protection (Enforcement) Act to impose a penalty payment. Pursuant to article 2.10, first subsection, of the Consumer Protection (Enforcement) Act articles 5:32, second subsection, up to and including 5:39 of the General Administrative Law Act apply to the imposition of a fixed penalty payment. Articles 5:48 up to and including 5:51 of the General Administrative Law Act and article 51 of the Penal Code apply *mutatis mutandis*.

233. On the basis of article 5:32, third subsection, of the General Administrative Law Act the level of the penalty payment is thereby in reasonable proportion to the seriousness of the interest breached and the intended working of the penalty.

Termination and non-termination of the breaches.

234. With regard to the breach of article 8.2 Consumer Protection (Enforcement) Act in conjunction with article 6:227c, first subsection, Dutch Civil Code and article 8.2 Consumer Protection (Enforcement) Act in conjunction with article 3:15d, first subsection opening words and under b, Dutch Civil Code the Consumer Authority has established that Ryanair has not adjusted its commercial practices and that it consequently still acts in breach of the law.

235. With regard to the breach of article 23 of the Aviation Regulation. The Consumer Authority has established that Ryanair has meanwhile set up its website in such a manner that the prices presented in the *flexi search tabs* contain the fixed unavoidable costs. To that extent the breach has ceased. The Consumer Authority nevertheless establishes that at the time of the drawing up of the report, the breach, insofar as this concerns the administrative costs related to the payment method, was still not terminated. At the hearing on 8 November 2012 Ryanair did indeed state that it would modify its website with regard to the administrative costs as from 1 December 2012, but it has not specified what these modifications would comprise. Therefore, one must take into consideration that the proposed modifications as from 1 December 2012 -

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also if one assumes that they have been implemented - are insufficient to deem (this part of) the breach as ceased. For this reason the Consumer Authority deems it justified to impose a penalty payment on Ryanair with regard to the breach of article 23 of the Aviation Regulation.

236. Ryanair has announced by letter dated 9 July 2012 that it will modify its commercial practices in such a manner that the breach of article 8.8 Consumer Protection (Enforcement) Act in conjunction with article 6:193g, opening words and under h, Dutch Civil Code (misleading commercial practices; language of the *after-sales* provision of service) will be ceased.⁷⁶ At the hearing of 8 November 2012, Ryanair stated that on every page of the booking process it is stated that the *after-sales* service provision is only available in the English language. To prove this, it submitted some screen prints at the hearing. Since this makes it clear to consumers during the booking process that customer services are only available in the English language, the Consumer Authority establishes that the breach of article 8.8 Consumer Protection (Enforcement) Act in conjunction with article 6:193g, opening words and under h, Dutch Civil Code has ceased.

237. With regard to the aforesaid, the Consumer Authority deems it appropriate to impose orders subject to penalty payment with regard to the breaches of:

- article 23, first subsection, Aviation Regulation;
- article 8.2 Consumer Protection (Enforcement) Act in conjunction with article 6:227c, first subsection, Dutch Civil Code;
- article 8.2 Consumer Protection (Enforcement) Act in conjunction with article 3:15d, first subsection opening words and under b, Dutch Civil Code.

Contents of the orders

Order 1 with regard to the breach of article 23 of the Aviation Regulation.

238. The Consumer Authority hereby orders Ryanair, under penalty of a fine, to bring its website www.ryanair.com/nl in accordance with article 23 of the Aviation Regulation. For this purpose Ryanair must always state the final flight price including the administrative costs that are actually foreseeable and unavoidable and must include these administrative costs in the specification of the flight price.

239. Ryanair must comply with aforesaid order under penalty of a fine of EUR 20,000 for each calendar month (including a part of each calendar month) it has not complied with the order. The maximum penalty payment to be incurred amounts to EUR 240,000.

Order 2 with regard to article 6:227c, first subsection, of the Dutch Civil Code:

240. The Consumer Authority orders Ryanair under penalty of a fine to bring its website www.ryanair.com/nl in accordance with article 6:227c, first subsection of the Dutch Civil Code. For this purpose, Ryanair must set up its booking process on its website www.ryanair.com/nl in such a manner that the

⁷⁶ File document CA/IB/812/38, page 8 and appendix (xiii).

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consumer, prior to proceeding with the purchase of airline tickets, (1) can check the details entered by him in order to become informed about unintended actions and (2) to adjust any unintended actions performed by him.

241. Ryanair must comply with aforesaid on penalty of a fine of EUR 20,000 for each calendar month (including a part of each calendar month) it has not complied with the order. The maximum penalty payment to be incurred amounts to EUR 240,000.

Order 3 with regard to article 3:15d, first subsection, under b, of the Dutch Civil Code:

242. The Consumer Authority orders Ryanair under penalty of a fine, to adjust its website www.ryanair.com/nl so that it complies with the requirements of article 3:15d, first subsection, under b, of the Dutch Civil Code. For this purpose Ryanair must (1) provide an e-mail address on its website in such a manner that the e-mail address is easily, directly and permanently accessible and enables the consumer to be able to directly communicate with Ryanair, or (2) Ryanair must adjust the procedure following the receipt by Ryanair of a contact form, in such a manner that direct communication between the consumer and Ryanair can take place in a manner equal to communication by e-mail.

243. Ryanair must comply with aforesaid order under penalty of a fine of EUR 20,000. - for each calendar month (including a part of each calendar month) it has not complied with the order. The maximum penalty payment to be incurred amounts to EUR 240,000.

Compliance period

244. The Consumer Authority gives Ryanair a period of time to comply with the orders 1 up to and including 3 without a penalty payment being incurred. When determining this compliance period, the Consumer Authority on the one hand takes into consideration the position of Ryanair that the modification of its website - and in particular the booking process - will take some time. On the other hand, the Consumer Authority also thinks it is important that Ryanair has already been aware for some time about the breaches recorded in the report and that breaches must be ceased in the shortest possible period of time.

245. The compliance period amounts to thirteen weeks. The compliance period commences on the day of the notification of this decision.

246. The Consumer Authority strongly advises Ryanair to inform the Consumer Authority prior to the end of the compliance period about the modifications that it has implemented to comply with the imposed orders.

DECISION

The Consumer Authority:

- a) establishes that Ryanair Limited has committed breaches of
1. Article 23, first subsection, Regulation (EC) no. 1008/2008 concerning communal rules for the running of air services in the Community;
 2. Article 8.8 Consumer Protection (Enforcement) Act in conjunction with article 6:193g, opening words and under h, Dutch Civil Code;
 3. Article 8.2 Consumer Protection (Enforcement) Act in conjunction with article 6:227c, first subsection, Dutch Civil Code; and
 4. Article 8.2 Consumer Protection (Enforcement) Act in conjunction with article 3:15d, first subsection, opening words and under b, Dutch Civil Code.
- b) hereby attributes the aforesaid established breaches to Ryanair Limited, with its registered office in Dublin;
- c) imposes on Ryanair Limited for the established breaches mentioned under a the following fines:
1. EUR 70,000 with regard to the breach of article 23, first subsection, Regulation (EC) no. 1008/2008 concerning communal rules for the running of air services in the Community);
 2. EUR 180,000 with regard to the breach of article 882 Consumer Protection (Enforcement) Act in conjunction with article 6:193g, opening words and under h, Dutch Civil Code.
 3. EUR 60,000 with regard to the breach of article 8.2 Consumer Protection (Enforcement) Act in conjunction with article 6:227c, first subsection Dutch Civil Code; and
 4. EUR 60,000 with regard to the breach of article 8.2 Consumer Protection (Enforcement) Act in conjunction with article 3:15d, first subsection, opening words and under b, of the Dutch Civil Code.
- d) orders Ryanair under penalty of a fine to bring its website www.ryanair.com/nl in accordance with article 23 of the Aviation Regulation. For this purpose, Ryanair must always state the final flight price including the administrative costs that are actually foreseeable and unavoidable and must include these administrative costs in the specification of the flight price. Ryanair must comply, no later than thirteen weeks from the notification of this decision, with aforesaid order under penalty of a fine of EUR 20,000 for each calendar month (including a part of each calendar month) it has not complied with the order. The maximum fine to be incurred amounts to EUR 240,000;
- e) orders Ryanair under penalty of a fine to bring its website www.ryanair.com/nl in accordance with article 6:227c, first subsection of the Dutch Civil Code. For this purpose, Ryanair must, no later than thirteen weeks from the notification of this decision, set up its booking process on its website www.ryanair.com/nl in such a manner that the consumer prior to proceeding with the purchase of airline tickets (1) can check the details entered by him in order to become informed about unintended actions and (2) to adjust any acts not wanted by him. Ryanair must, no later than thirteen weeks from the notification of this

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decision, comply with the order under penalty of a fine of EUR 20,000 for each calendar month (including a part of each calendar month) it has not complied with the order. The maximum fine to be incurred amounts to EUR 240,000;

- f) orders Ryanair under penalty of a fine, to adjust its website www.ryanair.com/nl so that it will comply with the requirements of article 3:15d, first subsection, under b, of the Dutch Civil Code. For this purpose Ryanair must (1) state an e-mail address on its website in such a manner that the e-mail address is easily, directly and permanently accessible and enables the consumer to be able to directly communicate with Ryanair, or (2) Ryanair must adjust the procedure following the receipt by Ryanair of a contact form, in such a manner that direct communication between the consumer and Ryanair can take place in a manner equal to communication by e-mail. Ryanair must, no later than thirteen weeks from the notification of this decision, comply with the aforesaid order under penalty of a fine of EUR 20,000 for each calendar month (including a part of each calendar month) it has not complied with the order. The maximum fine to be incurred amounts to EUR 240,000.

This decision is addressed to Ryanair Limited.

The Hague, 26 February 2013

signed, Ms B.C.M. van Buchem LL.M,
the Consumer Authority

Those whose interest is directly involved in this decision can, within six weeks from the day of the notification of this decision, submit a notice of objection supported by reasons to the Consumer Authority, Legal Services, P.O. box 16759, 2500 BT, The Hague, the Netherlands.

The fines must, within 6 weeks after the decision has been notified in the manner described in article 3:42 of the General Administrative Law Act, be paid or transferred to bank account number 569.993.962 in the name of the Consumer Authority, Postbus 16759, 2500 BT The Hague, the Netherlands, stating the reference of this decision. After this period of time has expired, the financial penalty will be increased by the statutory interest.