

[IT] Agcom has found breach of principles of transparency and non-discrimination of the RAI Public Service Contract

IRIS 2020-5:1/13

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On 13 February 2020, the Italian Communications Authority (Agcom) established Rai's failure to comply with the principles of transparency and non-discrimination provided for in the 2018/2022 Service Contract (IRIS 2020-4:1/21). During the proceeding which was launched on 2 August 2019, it was found that the pricing policy adopted by Rai in the previous years was incompatible with the current negotiating provision that binds the public service broadcaster to adopt transparent practices in the sale of advertising space.

Agcom found that it was impossible to identify *ex ante* the procedure applied by Rai in establishing the prices of advertising for its clients, which resulted in differing practices such as offering discounts to some clients, establishing different prices in relation to the offer, and so on. This, in Agcom's opinion, constituted a potentially discriminatory and non-transparent approach which was contrary to the Service Contract. In addition, given that it was impossible to analyse how price lists were established and to evaluate the dynamics of the process of calculating prices, Agcom was unable to exert its regulatory control.

The Authority has therefore found a violation of Article 25 of the Service Contract - signed between Rai and the Ministry for Economic Development (MISE) - which sets down the broadcaster's specific obligations. In particular, pursuant to paragraph 1, point s) of the aforementioned Article 25 with regard to advertising, Rai is required to guarantee "the conclusion of advertising contracts based on the principles of competition, transparency and non-discrimination in order to guarantee a correct market structure. The competent sector authorities, also on the basis of the data provided by Rai relating to the sales prices of the advertising spaces actually applied net of the discounts applied with respect to the sales lists, annually verify compliance with the aforementioned principles."

Agcom warned Rai to immediately stop the above practice and to ensure compliance with the principles of non-discrimination and transparency when concluding advertising contracts. This is also to allow the Authority to verify the correct use of public resources aimed at financing activities and public service programming.

To this end, Rai shall, within thirty days, provide the Authority with evidence of the measures taken in the first instance to execute the warning, specifically:

- prepare a price list proposal that provides reasonable evidence of the construction methods used to calculate the sale prices of advertising spaces and the price reductions (so-called discounts) actually applied in compliance with the obligation to ensure the correct use of the public service fee;
- produce a report template, to be sent periodically to the Authority, on the advertising space sold, indicating the original price lists and the relative theoretical "full price" revenues, the maximum applicable discount and the corresponding actual revenues achieved (differentiating by channel or structure/competent cost centre) with the consequent allocation;
- identify measures and make proposals, including those of an organisational nature, aimed at ensuring that the commercial strategies adopted in the collection of advertising resources are not detrimental to the better performance of the public services granted and contribute to balanced corporate management. These measures must allow for periodic monitoring by the Authority.

In case of non-compliance with the aforementioned warning, the Authority will apply an administrative fine of up to 3% of the turnover. In the event of repeated non-compliance, Agcom may order the suspension of Rai's business activity for up to 90 days.

Delibera N. 61/20/Cons, Agcom

<https://www.agcom.it/documents/10179/17669619/Delibera+61-20-CONS/bc54004d-7f96-4cf4-bf5c-c16b8328ccf3?version=1.0>

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