[IT] Communications Act Declared Partly Unconstitutional

IRIS 2003-3:1/23

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On 20 November 2002, the Corte costituzionale (Constitutional Court) decided in a preliminary ruling on questions raised on 31 January 2001 by the Tribunale amministrativo regionale del Lazio (Regional Administrative Tribunal of Lazio) concerning article 3 para. 7, of law no. 249/1997 adopting the Communications Act. This provision states that, considering the consistent and effective development in the number of viewers of cable and satellite television, the Autorità per le garanzie nelle comunicazioni (Italian Communications Authority) has to establish the date, on which channels that are only allowed as a transitional measure to provide terrestrial analogue broadcasting, will have to leave terrestrial frequencies.

Pursuant to the new frequency plan adopted in 1998 (see IRIS 1998-10: 12 and IRIS 1999-8: 8), the number of releasable concessions has been reduced from 12 to 11. As a consequence, two already active television channels (namely Retequattro owned by Mediaset and Telepiù Nero owned by Groupe Canal Plus) now exceed the antitrust limits imposed by the Communications Act of a maximum of 20% of concentration of available frequencies in the hands of the same operator (see IRIS Special "Television and Media Concentration" 2001, page 47). At the same time that the new concessions were released (28 July 1999), these two channels were allowed to continue to transmit on their formerly assigned frequencies on the basis of an interim ministerial authorisation. As the so-called "exceeding channels" employ frequencies that should be granted to the new concessionaires, the Communications Act allows them only as a transitional measure to transmit (on their existing frequencies) and provided that they do this in simulcast both on analogue terrestrial and on cable or satellite frequencies, while awaiting the development of alternative technical means of transmission.

The transitory period as envisaged by article 3 para 7 of the Act has been considered acceptable by the Court, due to the fact that at the time that the Act was adopted - 1997alternative means of transmission in Italy could not yet be considered competitive when compared to traditional analogue broadcasting. Hence the need for a transitional period in order to let digital broadcasting develop properly. What has been declared unconstitutional is the lack of a certain and defined date for the expiry of the transitional period. With reference to the technical outcome of decision no. 346/2001 of the Communications Authority, which had analysed the number of cable and satellite television viewers in Italy,

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the Constitutional Court has held 31 December 2003 to be a reasonable date for the expiry of the transitional period. In the meantime, the Parliament has been requested to define how the two broadcasters will have to leave the terrestrial frequencies.

Corte costituzionale, sentenza 20 novembre 2002 n. 466, Giudizio di legittimità costituzionale in via incidentale

http://www.cortecostituzionale.it/ita/attivitacorte/pronunceemassime/pronunce/schedaDec.asp?Comando=LET&NoDec=466&AnnoDec=2002&TrmD=&TrmM=

Constitutional Court, judgement no. 466, of 20 November 2002

Delibera no. 346 of 6 August 2001, Termini e criteri di attuazione delle disposizioni di cui all'art. 3, commi 6, 7, 9, 11, della legge 31 luglio 1997, n. 249

http://www.agcom.it/provv/d_346_01_CONS.htm

Decision no. 346 of 6 August 2001, Criteria for the implementation of the provisions at article 3, paragraphs 6, 7, 9, 11, of the law of 31 July 1997, no. 249

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