[IT] TV Channels Exceeding Media Concentration Rules Temporarily Authorised to Continue Broadcasting

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On 24 December 2003, the Italian Government approved decree-law no. 352, introducing urgent provisions concerning the transition period accorded to analogue terrestrial TV channels exceeding the media concentration rules (RaiTre and Rete4), established by the 1997 Communications Act (see IRIS 1997-8: 10 and IRIS Special "Television and Media Concentration" 2001, page 47).

The decree-law intervenes as a step in the legislative process leading to the approval of a new Media Act. This process was interrupted on 15 December 2003, when the President of the Republic rejected parts of the Government's bill (see IRIS 2002-10: 10), which had been definitively approved by both chambers of Parliament on 2 December 2003, on the grounds that it was not in line with the judgment of the Constitutional Court that had declared the Communications Act partly unconstitutional (see IRIS 2003-3: 13).

The Italian Constitution provides the President of the Republic with the power to reject a law already approved by both chambers of Parliament if the law appears to be unconstitutional: in that case, the Parliament has to revise the text, and once approved and even if it remains identical to that which had been rejected, the law is definitive.

The new Media Act had, inter alia, charged the Autorità per le garanzie nelle comunicazioni (the Communications Authority - AGCOM) with verifying within 31 December 2004 whether the transition process towards digital terrestrial broadcasting was effectively increasing the level of pluralism in Italy, linking this analysis to three factors: the proportion of population that is reached by the new DTT networks, the presence on the market of decoders at accessible prices and the effective offer to the public of programmes differing from those that are broadcast on analogue networks.

In this regard, the President of the Republic claimed that the time frame for the analysis was too long, that no sanction was provided for in case of a negative outcome and that no final date had been indicated for the conclusion of the transitory period granted to RaiTre and Rete4.

Accordingly, the decree-law approved by the Government shortens the term from 31 December 2004 to 30 April 2004 and charges AGCOM with reporting its

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findings to the Parliament within 31 May 2004. Should the report prove that the above-mentioned criteria have not been satisfied, AGCOM may order the sale of parts of the undertakings or of their assets (see IRIS 2000-7: 7) or, alternatively, adopt the provisions defined by the Communications Act, i.e. RaiTre deprived of advertising incomes and Rete4 transferred to satellite. As a result, the channels exceeding media concentration rules have been allowed to continue broadcasting until 31 May 2004, when AGCOM will have to report to the Parliament.

As the Constitutional Court had established that exceeding TV channels could not continue broadcasting after 31 December 2003 unless there had been relevant technological changes, such as the diffusion of digital terrestrial broadcasting, and that the Parliament had to establish the means to free the frequencies occupied by those channels, the Government had to approve urgent provisions in order to respect that term.

The decree-law was converted into law on 20 February 2004, when it was specified that the three conditions have to be satisfied at the same time taking into account existing market trends, that the coverage of digital terrestrial networks has to be at least 50% of the population and the decoder market to consider is the national one.

Decree law of 24 December 2003, no. 352, Urgent provisions relating to the final termination of the transitional arrangements of law no. 249 of 31 July 1997, published in the Official Gazette of the Italian Republic no. 300 of 29 December 2003

Amendments approved in the conversion law of the Statutory Instrument of 24 Dcember 2003

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