[IT] “Russian-Doll Programmes” Outlawed by the Italian Communications Authority

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At the end of 2006, the Italian Communications Authority (AGCOM) adopted two decisions (no.169/06/CSP and no.170/06/CSP) imposing fines on two Italian commercial television broadcasters, Retequattro and Italia 1, which were found to have acted in breach of the rules governing the number of advertising breaks allowed in the course of audiovisual works. To this effect, Article 37(4) of the Italian Broadcasting Code (Legislative Decree, 31 July 2005, no. 177) transposes Article 11(3) of the Television Without Frontiers Directive insofar as it stipulates that audiovisual works such as feature films and films made for television (excluding series, serials, light entertainment programmes and documentaries) of at least 45 minutes may be interrupted by advertising breaks once for each period of 45 minutes, plus one extra break if the work is at least 20 minutes longer than two or more complete periods of 45 minutes.

The main focus of the decisions in question was the practice of these Italian broadcasters of broadcasting so-called “Russian-doll programmes”. Just like a Matryoshka doll, a “Russian-doll programme” consists of a main broadcast (such as a film) and a number of smaller broadcasts (e.g. the news, the weather forecast, etc.) that are inserted within the main programme; one or more advertising breaks are broadcast between these smaller programmes. According to the two Italian broadcasters, for the purposes of the rules on the number of advertising breaks allowed in the course of audiovisual works, the advertising breaks inserted between the smaller programmes should be related to, and calculated on the basis these short broadcasts, rather than to the main programme. As a result, in the course of a film of e.g. 100 minutes the Italian broadcasters would show two advertising breaks during the film - which is in accordance with Article 37(4) of the Italian Broadcasting Code, as this programme comprises two complete periods of 45 minutes - and one or more advertising breaks between the smaller programmes that are broadcast during the film.

Contrary to the broadcasters’ view, however, in 2003 the Italian Supreme Administrative Court (*Consiglio di Stato,* Sixth Ordinary Chamber, Judgment no. 2949/2003) had ruled that “the circumstance that a film is interrupted by a short programme cannot justify [...] the exceeding of the maximum allowed number of advertising breaks” thus implying that, irrespective of the interruption by the smaller programmes, all advertising breaks that are broadcast between the

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beginning and the end of a film must be calculated with relation to the film itself for the purposes of Article 37(4) of the Italian Broadcasting Code.

Likewise, in the present case AGCOM took the view that inserting in a film an artificial interval composed of short programmes and advertising breaks entails, as a 'direct and immediate consequence', the violation of Article 37(4) of the Italian Broadcasting Code. Accordingly, the Italian Communications Authority established a total of 68 infringements of the rule on the number of advertising breaks and imposed fines on the two Italian broadcasters.

It must be observed, however, that the two decisions in question are but the last of a series of measures of analogous content aimed at curbing the practice of broadcasting "Russian-doll programmes". Indeed, Retequattro and Italia 1 had already been cautioned against engaging in such a practice in 2004 and 2005 (Decision no. 276/04/CSP and no. 165/04/CSP) and in early 2006 the channels were even subjected to fines of EUR 15,000 and EUR 35,000, respectively (Decision no. 67/06/CSP and no. 68/06/CSP). Most recently, the European Commission issued a pre-infringement letter concerning, *inter alia* , the Italian government's alleged failure to ensure compliance with the provisions on the number of advertising breaks laid down in Article 11(3) of the Television Without Frontiers Directive.

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http://www.agcom.it/provv/CSP/d_169_06_CSP.pdf

AGCOM Decision no. 169/06/CSP

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http://www.agcom.it/provv/CSP/d_170_06_CSP.pdf

AGCOM Decision no. 170/06/CSP

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http://www.agcom.it/provv/CSP/d_276_04_CSP.pdf

AGCOM Decision no. 276/04/CSP

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http://www.agcom.it/provv/CSP/d_165_05_CSP.pdf

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AGCOM Decision no. 165/04/CSP

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http://www.agcom.it/provv/CSP/d_067_06_CSP.pdf

AGCOM Decision no. 67/06/CSP

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http://www.agcom.it/provv/CSP/d_068_06_CSP.pdf

AGCOM Decision no. 68/06/CSP

Decreto legislativo 31 luglio 2005, n. 177: Testo unico della radiotelevisione

http://www.agcom.it/L_naz/dl177_05.htm

Legislative Decree of 31 July 2005, no. 177, establishing the Code for radio and television

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