[IT] Rules Governing Teleshopping Amended

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According to the Television Without Frontiers Directive (Directive 89/552/EEC, as amended by Directive 97/36/EC), teleshopping comes in the form of either teleshopping spots or teleshopping windows: the former are subject to an hourly 12-minute limit, whereas the latter are required to be longer than 15 minutes. Conversely, under Italian law prior to November 2007, teleshopping was required to have a minimum duration of 3 minutes and was not subject to the hourly 12-minute limit, which only applied to advertising spots.

This was one of the reasons which led the European Commission toinitiate a number of infringement procedures against Italy. In particular, procedure no. 2007/2110 was based on the findings of the "Audimetriereport", a survey conducted by independent experts who had monitored the conduct of major Italian broadcasters from February 2005 through to July 2006, revealing a number of violations of the TWF Directive. Accordingly, the Commission issued a pre-infringement letter, dated 16 March 2007 (no. D(2007) 809549), whereby it held that the Italian rules governing teleshopping windows were at variance with the minimum duration requirement set out in Article 18a of the TWF Directive.

In order to ensure compliance with EC law, the Italian Communications Authority, in its *Delibera n. 162/07/CSP* (Deliberation of 8 November 2007 no. 162/07/CSP), amended its *Regolamento in materia di pubblicità radiotelevisiva e televendite* (Regulation concerning television advertising and teleshopping) by inserting a proviso which expressly laid down a 15-minute minimum duration requirement for teleshopping windows.

On 11 January 2008, however, the Italian major commercial broadcaster RTIinstituted proceedings before the Regional Administrative Court for Latium, seeking to obtain annulment, following suspension of its effects, of Deliberation 162/07/CSP. By its Order of 31 January 2008, no. 138/2008, the Italian court granted RTI's application for interim relief and ordered suspension of the impugned Deliberation.

Turning to teleshopping spots and the attendant hourly 12-minute limit, the inconsistency between the Italian legislation and the requirements set forth in the TWF Directive was clearly pointed out by the Commission in its letter of formal notice of 12 December 2007. Hence, on 31 January 2008, the Italian

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Communications Authority adopted *Delibera n. 12/08/CSP* (Deliberation no. 12/08/CSP), which further amended the Regulation concerning television advertising and teleshopping, by inserting a sentence whereby teleshopping spots are brought within the scope of the hourly and daily limits applying to television advertising. To date, Deliberation no. 12/08/CSP has not been impugned.

Therefore, although the Italian rules governing teleshopping spots and windows had been amended in order to bring them into line with the TWF Directive requirements, Deliberation no. 162/07/CSP amending the provisions on teleshopping windows was suspended by the Latium Regional Administrative Court.

Apparently, however, the principles laid down in the impugned Deliberation (and in the TWF Directive) had been incorporated into the Italian legal order at an earlier stage, i.e. when the 1998 Protocol to the European Convention on Cross-border Television entered into force. The wording of the said Protocol, indeed, matches that of the TWF Directive, as amended in 1997, insofar as they both provide for a 15-minute minimum duration for teleshopping windows.

Thus, Deliberation no. 162/07/CSP was adopted due only to considerations of legal certainty, as its preamble duly clarifies. It follows that, although such a Deliberation has been suspended by the Italian courts, the principles set forth therein are arguably still in force.

Delibera n. 162/07/CSP "Modifiche al Regolamento in materia di pubblicità radiotelevisiva e televendite di cui alla delibera n. 538/01/CSP del 26 luglio 2001"

http://www.agcom.it/provv/d_162_07_CSP.htm

Deliberation no. 162/07/CSP "Amending the Regulation concerning television advertising and teleshopping

Delibera n. 12/08/CSP "Modifiche al Regolamento in materia di pubblicità radiotelevisiva e televendite di cui alla delibera n. 538/01/CSP del 26 luglio 2001"

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http://www.agcom.it/provv/d_538_01_CSP_Reg_coordinato.htm

Regulation concerning television advertising and teleshopping, official consolidated version

Tribunale Amministrativo Regionale del Lazio, Sezione terza ter, Ordinanza del 31 Gennaio 2008, RTI c. AGCom, n. 138/08

Latium Regional Administrative Court, RTI v AGCom, Order of 31 January 2008 no. 138/2008

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