[IT] AGCOM Measures to Protect Pluralism in Digital Terrestrial Broadcasting Lifted, but then Temporarily Restored

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In its Decision of 16 February 2011, No 70/11/CONS, the Autorità per le garanzie nelle comunicazioni (Italian Communications Authority - Agcom) surveyed the measures to protect pluralism set out in Decision 136/05/CONS and repealed the obligation imposed on RTI to rely upon an advertising agency other than Publitalia for the sale of advertising for its digital terrestrial transmissions.

According to Agcom, RTI has fulfilled that obligation by establishing Digitalia and entrusting to that company the sale of advertising for pay-TV programmes broadcast on digital terrestrial networks. The sale of advertising for free-to-air digital terrestrial transmissions, instead, remains the prerogative of Publitalia. In Agcom's view, this solution is consistent with the aims pursued by Decision 136/05/CONS and is without prejudice to other transparency and non-discrimination obligations imposed on Publitalia in that decision.

However, RTI's competitor Sky Italia promptly brought an action before the Latium Regional Administrative Court seeking to obtain the annulment, following the suspension of its effects, of Decision 70/11/CONS. In its Order of 13 July 2011, the Second Chamber of the Latium Regional Administrative Court suspended the effects of Decision 70/11/CONS. In particular, the Court held that the impugned measure was prima facie unlawful because, in spite of its appearance as a merely confirmatory measure, it substantially modified the obligations set out in Decision 136/05/CONS. The Court also stated that Decision 70/05/CONS was liable to cause serious and irreparable harm to the advertising market.

Following the order of the Latium Administrative Court, the full effectiveness of the obligations imposed on RTI in Decision 136/05/CONS has been restored until the Court delivers its judgment on Decision 70/11/CONS.

Agcom, Delibera 70/11/CONS del 16 febbraio 2011, Ricognizione delle misure stabilite dalla delibera n. 136/05/CONS del 2 marzo 2005 recante "Interventi a tutela del pluralismo ai sensi della legge 3 maggio 2004, n. 112", in Gazzetta Ufficiale 55 dell'8 marzo 2011

http://www.agcom.it/Default.aspx?message=visualizzadocument&DocID=5820

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AGCOM Decision of 16 February 2011, No 70/11/CONS, survey of the measures established by Decision of 2 March 2005 No. 136/05/CONS on "Measures to protect pluralism under Law of 3 May 2004, No 112", Official Journal of the Italian Republic, 8 March 2011, No. 55

TAR Lazio (Seconda Sezione), Ordinanza 13 Luglio 2011, Sky Italia Srl c. AGCom, Ricorso n. 3441/2011

Latium Administrative Court (Second Chamber), Order of 13 July 2011, Sky Italy Srl v. AGCom, Application No. 3441/2011

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