[IT] Italian Broadcaster Rai Must allow Sky Italia to Broadcast its Channels Free-to-Air

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The TAR Lazio, Italian administrative court in Rome, has ruled that the broadcaster RAI violates its public service charter by encrypting its free-to-air (FTA) channels and denying “Sky Italia” the ability to carry the RAI channels.

The satellite provider had filed a suit with the TAR administrative court challenging a 2009 decision by the Italian communications regulator AGCOM that permitted RAI to encrypt some programming. Rai encrypted some of its content on the sky platform, including football matches. When RAI began encrypting its FTA broadcasts, Sky Italia launched its Digital Key DVB-T decoder that plugs into the USB port on its decoders and which incorporated all free DTT channels into Sky’s program guide. RAI’s decision obliged Sky subscribers to purchase a separate decoder for Tivusat, the free satellite platform owned jointly by RAI, Mediaset and Telecom Italia.

In its ruling, TAR ruled AGCOM’s decision as unlawful, stating that public service programming must be “universally accessible via all technology platforms” regardless of who owns them. The only condition is that the platform owners provide users with free access to RAI channels. The gratuitousness of the sale of programming to distribution platforms’ holders becomes in this sense a tool to ensure maximum accessibility of programming and accessibility for free. The sale of public programming from RAI to the distribution platforms might result in the introduction of additional burdens for the end user.

Sky, therefore, as owner of a programming distribution platform via satellite and available for distribution free of charge to the user has the right to supply free programming

The RAI decision reminded that RAI must comply with its public service obligations towards all Italian citizens. With this ruling, the Regional Administrative Court reaffirmed a principle of justice and a principle of non-discrimination towards Sky subscribers who, over the last years, have seen some programs being blacked out on their Sky decoders - as it has recently happened on the occasion of the European Football Championship - even though they pay RAI’s licence fee.

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Moreover the judgment considered the promotion of Tivusat through AGCOM's initial decision as being an effective "state aid" for Tivusat's shareholders. The Tivusat project, was in fact originally developed by Mediaset and Telecom to serve areas of the state not covered by DTT. According to the judges, however, the project has also resulted in an economic advantage for the participants and has also indirectly favored some private television channels on the platform.

Tribunale Amministrativo Regionale per il Lazio (Sezione Terza Ter), n. 6320, 11/07/2012

http://www.giustizia-amministrativa.it/DocumentiGA/Roma/Sezione%203T/2010/201003492/Provvedimenti/201206320_01.XML

TAR Lazio Decision n. 6320, 11 July 2012

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