[IT] The AGCOM Logical Channel Numbering Plan Declared Void

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The logical channel numbering plan (LCN) for digital terrestrial television adopted by AGCOM - Autorità per le garanzie nelle comunicazioni (the Italian Communication Authority) has been declared void by four judgments (no. 04658/2012, no. 04659/2012, no. 04660/2012, no. 04661/2012) of the Consiglio di Stato (the Italian High Administrative Court) published on 31 August 2012. The LCN plan was adopted with AGCOM resolution no 366/10/CONS of 15 July 2010 pursuant to Article 32 of the Italian AVMS Code after a public consultation and a specific survey on the preferences and behaviours of viewers.

The plan establishes a numbering classification based on ten blocks of a hundred numbers each with a distinction based on the genre of programming. The most valuable positions from no. 1 to no. 9 are assigned to the traditional national analogue broadcasters, the positions from no. 10 to no. 19 are assigned to the main local broadcasters of any Region and the positions from no. 20 to no. 70 are reserved to national semi-generalist and thematic broadcasters ranked among the following genres: children, news, culture, sport, music and teleshopping.

The Administrative Court judged that both formal and substantive errors affected the AGCOM decision.

The formal error consists in the shorter term given by AGCOM for comments to be delivered within the public consultation (i.e., a-15 day period instead of the usual 30-day period). The Court observed that the shorter term was not supported by any urgency.

The substantive errors are mainly related to the criteria adopted by AGCOM for assigning positions to the local channels. In the first place, the Court deemed that criteria adopted for ranking listed by the Regional Committees for the assignment of the positions from 10 to 19 did not properly reflect the qualitative and geographical requirements set by the law for the definition of “the most valuable local broadcasters”.

Secondly, the Court’s decision argued that the criteria adopted by AGCOM to assign the positions no. 8 and no. 9 did not satisfy the main legal criteria provided for a broadcaster to be defined as a “traditional national analogue broadcaster” and held that the habits and preferences of users had not been properly

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evaluated by the Ministry in assigning position no. 9 to a national broadcaster rather than to a local broadcaster, as 51% of the users had expressed during the survey carried out after the public consultation.

Finally, since the Court intended to avoid situations of legal uncertainty before the adoption of the new plan, it allowed AGCOM to temporarily confirm the effects of the existing LCN plan.

The new LCN plan will be adopted after conducting a new survey on the habits and preferences of viewers and a new public consultation to be launched by 4 October 2012, and for these purposes the effects of the existing LCN plan have been prolonged until the entry into force of the new Plan.

Delibera n. 391/12/CONS, Proroga, in via d'urgenza, del piano di numerazione automatica dei canali della televisione digitale terrestre, in chiaro e a pagamento

http://www.agcom.it/default.aspx?DocID=9382

Decision no. 391/12/CONS Provisional renewal of the Logical Channel Numbering (LCN) Plan

Delibera no. 366/10/CONS, Piano di numerazione automatico dei canali della televisione digitale terrestre in chiaro e a pagamento

http://www.agcom.it/default.aspx?DocID=4719

Decision n.366/10/CONS, Logical Channel Numbering (LCN)

Consiglio di Stato

http://www.giustizia-amministrativa.it/webcds/frmRicercaSentenza.asp

Judgments of the Consiglio di Stato

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