[IT] AGCOM adopts new regulation on transfer of ownership and enforcement of concentration limits in the media sector

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On 17 July 2014, the *Autorità per le garanzie nelle comunicazioni* (Italian media regulation authority - AGCOM) adopted a new regulation concerning the notification of transfers of ownership, mergers, and agreements in the broadcasting sector, as well as the enforcement of the concentration limits set out in the Consolidated Law on Audiovisual and Radio Media Services (CLARMS). The regulation, which consists of six chapters, replaces and repeals an earlier regulation attached to AGCOM Decision no. 646/06/CONS.

The regulation first deals with the notification requirement for transfers of ownership of undertakings engaging in radio and television broadcasting. The notion of “transfer of ownership” includes every act, regardless of its form, leading to the acquisition of control or dominant influence on an undertaking. As per section 3(1) of the regulation, AGCOM must be notified of transfers of ownership within fifteen days of their execution. Failure to do so may result in a fine.

The regulation also requires notification of concentrations and agreements involving undertakings operating in the Integrated Communication System (ICS). The ICS is a statutory “relevant market” defined by the CLARMS as including, *inter alia*, the press, publishing, television and radio broadcasting, cinema, and outdoor advertising. Concentrations and agreements meeting the criteria set out in section 4 of the regulation are subject to an ex ante notification requirement. Operations that fail to meet those criteria must be notified within fifteen days of their consummation. If operations involving undertakings operating in the ICS also entail a transfer of ownership, only one notification is required. Concentrations and agreements between undertakings belonging to the same corporate group are expressly exempted from notification under section 4(11) of the regulation. As in the case of ownership transfers, failure to notify a concentration or agreement may result in a fine.

The regulation devotes an entire chapter to the detection and removal of dominant positions and situations harmful to media pluralism. AGCOM initiates that procedure either ex officio or upon a request by any interested party and must complete it within 180 days. First, AGCOM defines the relevant market and

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submits its findings to a public consultation. Second, AGCOM determines whether dominant positions or situations harmful to media pluralism exist in that market and, if so, what steps must be taken to eliminate them. Also that decision is subject to a public consultation open to all stakeholders.

The following chapter of the regulation concerns the enforcement of the concentration limits set out in the CLARMS. If AGCOM deems that an undertaking active in the ICS has exceeded those limits, it notifies that undertaking of the opening of an investigation. The undertaking concerned, as well as all other interested parties, may submit observations and request a hearing with the case-handler. The latter may request the disclosure of relevant documents and information as well as on-the-spot inspections of the business premises of the undertaking concerned. Failure to disclose such information or the provision of incorrect data may result in a fine. The investigation must be closed within 120 days. AGCOM adopts a draft decision setting out, if need be, the appropriate remedies to enforce the concentration limits and submits it to a public consultation for thirty days, after which it adopts the final decision and publishes it in AGCOM's website.

Delibera n. 368/14/CONS, Regolamento recante la disciplina dei procedimenti in materia di autorizzazione ai trasferimenti di proprietà, delle società radiotelevisive e dei procedimenti di cui all'articolo 43 del decreto legislativo 31 luglio 2005, n. 177

http://www.agcom.it/documents/10179/1623228/Delibera+368-14-CONS/d2aaf69c-c160-4a4d-8056-d685e4fa2e54?version=1.0

Decision no. 368/14/CONS of 17 July 2014, Regulation on the procedure for the authorization of ownership transfers in the broadcasting sector and on the procedures under Section 45 of Legislative Decree 31 July 2005, no. 177

Allegato A. alla Delibera n. 368/14/CONS

Annex A to Decision no. 368/14/CONS

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