[IT] AGCOM resolution on relevant markets in audiovisual media services sector

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On 9 March 2017, the Autorità per le garanzie nelle comunicazioni (the Italian Communications Authority - AGCOM), released Decision No. 41/17/CONS concerning "Recognition of relevant markets in audiovisual media services sector, in accordance with Article 43, paragraph 2, of Legislative decree 31 July 2015, no. 177". The Decision represents the end of the first phase of a complicated administrative procedure that began with Decision No. 286/15/CONS (siehe IRIS 2015-7/21), aimed at recognising the relevant markets in the audiovisual media services (AVMS) sector and at understanding whether there are some players in a dominant position in breach of the pluralism principle.

According to AGCOM, the procedure was started in light of several changes which had occurred in recent years and which had modified the audiovisual media sector with respect to the previous procedure completed in 2010 (Decision n. 555/10/CONS). The main changes refer to the following issues: (i) the conclusion of partnerships and mergers between media services players themselves and between broadcasters and operators in different sectors, including telecommunications; (ii) the evolution of the audiovisual market, which seems to be increasingly aimed at aggregation and content distribution.

In this first phase, AGCOM had identified the relevant markets by the typical antitrust parameters: Article 43 of Legislative decree 31 July 2005, No. 177 (the Italian Audiovisual media services Code) states that the Authority shall follow the principles set out by Articles 15 and 16 of EU Directive 2002/21/EC, and shall take into account such elements as revenues; the level of competition within the system and the entry barriers; the size of the enterprise economic efficiency; as well as quantitative indexes related to the diffusion of radio and television programmes, publishing products and cinematographic or phonographic works. After the investigation, the Authority carried out a public consultation (Decision No. 342/16/CONS) in which three relevant markets were identified: (a) national free AVMS market; (b) local free AVMS market; and (c) national pay AVMS market. However, the Authority has specified that the second phase will not take the local free AVMS market into consideration because (after the entry into force of Decree Law No. 145/2013, converted with modification by Law No. 9/14) this specific sector has undergone several changes because of the need to reorganise the set of terrestrial frequencies.

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As regards online content, AGCOM has distinguished two kinds of operators: the players that provide a streaming or downloading service for remuneration, and the players that distribute free content. The former have been included in the pay AVMS market, because this kind of service could be considered as being similar to and replaceable with the traditional pay TV/pay-per-view broadcasters since both provide attractive or premium content for a subscription or a transaction.

Regarding free content on the Internet, this has been excluded from the analysis because it is outside the product perimeter for two main reasons: first, some of these services cannot be considered as AVMS according to Article 2, lecter a) of the Italian AVMS code. Secondly, free content that could be compared to free television seems to be more in competition with all the other internet players than with the traditional free broadcasters, considering that it is enhanced through online advertising. However, AGCOM has revealed that online services have an impact on the competition inside the so-called integrated communications system (SIC - the economic sector consisting of daily and periodic press; annual and electronic publishing, including through the Internet; audiovisual media services and radio services; cinema; external advertising; initiatives of communications of products and services; and sponsoring). For this reason, the free online audiovisual media services could be evaluated in the second phase.

Delibera n. 41/17/CONS, recante "Individuazione nei mercati rilevanti nel settore dei servizi di media audiovisivi, ai sensi dell'art. 43, comma 2, del decreto legislativo 31 luglio 2005, n. 177 (Fase 1)"

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Decision No. 41/17/CONS on "Recognition of relevant markets in audiovisual media services sector, in accordance with article 43, paragraph 2, of Legislative decree 31 July 2005, no. 177 (Phase 1)"

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