[IT] AGCOM orders Vivendi to comply with a statutory ban to simultaneously hold qualified minority stakes in Telecom and Mediaset

IRIS 2017-6:1/24

Ernesto Apa, Enzo Marasà
Portolano Cavallo Studio Legale

On 18 April 2017, the Autorità per le garanzie nelle comunicazioni (the Italian Communications Authority - AGCOM) issued a decision by which - for the first time ever - it has applied the ban set forth in Article 43, paragraph 11, of the Italian Code on Audiovisual Media Services (CAMS). That provision was introduced in 2004, and applies to undertakings that achieve a turnover exceeding 40% of the overall combined sales in the electronic communications services markets. The provision prevents such undertakings from holding either a controlling stake or a qualified minority stake (a “collegamento”) in undertakings which achieve a turnover exceeding 10% of the overall combined sales in the media, advertising, and publishing markets (Integrated System of Communications or SIC). Telecom Italian SpA and Mediaset SpA, which are both publicly listed on the Italian Stock Exchange (Borsa Italiana), fall within the former and latter categories of undertakings respectively.

On 21 December 21 2016, AGCOM began an investigation after Vivendi SA, which was already holding a 23.94% (subsequently raised to 24.68%) stake in Telecom, acquired a 25.75% (subsequently raised to a 29.9%) stake in Mediaset through a hostile takeover. In particular, the issue AGCOM had to decide on was twofold: first, whether Vivendi’s stakes in Telecom and Mediaset gave Vivendi de facto “control” (i.e. to have a “decisive” or “dominant” influence over) over any of the two companies or, rather, conferred a mere “collegamento” (i.e. a “material influence”, which under Italian law is presumed if the minority stake is of at least 10%) over the same two companies. Second, AGCOM had to decide whether Article 43(11) of the CAMS can be interpreted as prohibiting a company from just holding a “collegamento” in both Telecom and Mediaset or, rather, controlling at least one of the two companies can be deemed indispensable to trigger the prohibition of having a “collegamento” with the other.

In its decision, AGCOM has affirmed that Vivendi’s stakes confer a mere “collegamento” in the form of “material influence”, pursuant to Article 2359 of the Civil Code, over both Telecom and Mediaset, as there is insufficient evidence to substantiate a control in the form of “dominant influence” pursuant to the same provision of the Civil Code. Notably, AGCOM held that, in matters pertaining to Article 43(11) of the CAMS, only Article 2359 of the Civil Code is applicable to the notions of control and “collegamento”. Nonetheless, AGCOM has held that Vivendi

© European Audiovisual Observatory (Council of Europe) 2026

has breached Article 43(11), since the ban set forth therein also applies to a company holding a mere “material influence” over both Telecom and Mediaset. As a consequence, AGCOM has ordered Vivendi to comply with the ban set forth in Article 43(11) within 12 months, and to report to AGCOM a detailed action plan for that purpose within 60 days. Vivendi has announced that is appealing the decision.

Autorità per le Garanzie nelle Comunicazioni, Delibera N. 178/17/CONS del 18 aprile 2017, ACCERTAMENTO DELLA VIOLAZIONE DELL’ART. 43, COMMA 11, DEL DECRETO LEGISLATIVO 31 LUGLIO 2005, N. 177

https://www.agcom.it/documents/10179/7421815/Delibera+178-17-CONS/bb20ae9f-21eb-4d39-baf9-ee3fc9d8737a?version=1.0

Italian Authority for Communications, Resolution N. 178/17/CONS of 18 April 2017, assessing infringement of Article 43, para. 11, of Legislative Decree 31 July 2007, n. 177

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026