[IT] Vivendi submits to AGCOM its plan to remove the position in breach of concentration limits

IRIS 2017-9:1/24

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On 13 September 2017, the Italian Communications Authority (AGCOM) was notified with compliance measures submitted by Vivendi SA pursuant to Resolution no. 178/17/CONS (see IRIS 2017-6/24). Under this Resolution, AGCOM found Vivendi to be in breach of Article 43, paragraph 11 of Legislative Decree 177/2005 by exceeding the concentration limits within the Integrated System of Communications (SIC), as a consequence of the shares owned in Telecom Italia S.p.A. and Mediaset S.p.A. Vivendi was thus ordered to take appropriate steps to get themselves out of this situation, namely by disinvesting part of its holding either in Mediaset or in Telecom Italia within the following 12 months.

First of all, the plan aims at laying down the criteria for determining the independent professional trustee, subject to AGCOM's approval, to which Vivendi shall transfer its shares in Mediaset for a portion representing a number of voting rights in the shareholders general meeting exceeding the threshold of one tenth of the total amount. The shares to be transferred correspond to 19.19% of the capital shares of Mediaset, and amount to 19.95% of the voting rights in the shareholders general meeting.

The independent trustee must be a professional subject that meets the following requirements: (1) It must not own, directly or indirectly, stakes in any of the pool of relevant companies (including Vivendi, Mediaset, Telecom Italia and the respective parent companies, subsidiaries and "sisters"); (2) None of the companies included in the same pool must own stakes, directly or indirectly, in the independent trustee for an amount higher than 2% of the shares provided with voting rights; (3) The independent trustee shall have no agreement or mandate or commercial relationship with any of the companies of the pool that may prejudice its independency. The same requirements shall apply to the relevant parent companies, if any, of the independent trustee.

With respect to the management of the administrative rights related to the shares subject to transfer, the independent trustee will be entitled, first of all, to take part at its discretion and in an autonomous manner in the shareholders general meetings of Mediaset. Likewise, the independent trustee shall exercise at its discretion and in an autonomous manner the voting rights relating to the transferred shares with a view to safeguarding their commercial value.

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Also, the following specific restriction applies: the trustee shall not vote lists of candidates presented by Vivendi for the appointment of the members of Mediaset's board of directors and supervisory board. No instruction from Vivendi shall be accepted or solicited by the trustee in respect of the exercise of the said rights.

As to economic rights, Vivendi shall maintain the right to receive profits or any other amount to be paid to shareholders relating to the stake subject to transfer. Also, it shall maintain the options rights relating to capital increases that may be carried out, as well as the right to give instructions to the independent trustee in respect of the total or partial sale of the transferred shares or in respect of third parties rights on the same.

The appointment of an independent trustee will be effective for the duration of the commitments taken in accordance with AGCOM Resolution no. 178/17/CONS. An independent trustee can be replaced only by another subject that meets the same requirements above.

Notably, the document clarifies that, even before the entry into force of these measures, Vivendi shall refrain from exercising voting rights for a portion corresponding to, or higher than 10% of the total voting rights. In any event, Vivendi shall refrain from exercising by any means a significant influence on Mediaset, pursuant to Article 2359 of the Civil Code. Vivendi shall also have the right to sell the relevant capital shares, among others, to any buyer other than Telecom Italia and Telecom Italia's and Vivendi's parent companies, subsidiaries or sister companies.

Misure di ottemperanza alla Delibera n. 178/17/CONS, 13 settembre 2017

https://www.agcom.it/documents/10179/8475084/Documento+generico+13-09-2017/1b4efc69-3f74-4c2c-b7ef-ea058323cf59?version=1.0

Measures to comply with Resolution no. 178/17/CONS, 13 September 2017

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