

[IT] AGCOM launches procedure to identify positions harmful to pluralism in the online advertising sector

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On 9 September 2019, the Italian Communications Authority (“AGCOM”) published resolution no. 356/19/CONS (“Resolution”) with a view to starting a procedure for identifying the existence of dominant positions or positions that are at any rate harmful to pluralism in the online advertising sector.

More specifically, Article 43, para. 2 of Legislative Decree no. 177/2005 (“the TUSMAR”, or “AVMS Code”) establishes that AGCOM has the power to initiate such a procedure with the goal of verifying the existence of dominant positions (or positions that are at any rate harmful to pluralism) on the basis of specific indices provided by law. The TUSMAR vests in AGCOM such power more broadly in relation to markets falling within the Integrated System of Communications – the so-called *Sistema Integrato delle Comunicazioni* (“SIC”) – which expressly includes online advertising (as spelled out in para. 10 of the same Article 43).

In the event that AGCOM identifies a dominant position, it can enforce measures provided by Article 43, para. 5 of the TUSMAR – i.e. measures that are necessary in order to remove or dominant market positions that are harmful to pluralism . Such measures may be either behavioral or structural (subject to the “proportionality principle”): they may range from simple cease-and-desist orders to divestment or “hold-separate” orders. In particular, AGCOM can intervene to eliminate or prevent the creation of such positions by taking those measures that are most appropriate in the light of the changing characteristics of the markets concerned.

In the event that AGCOM determines the existence of a dominant position or a position that is at any rate harmful to pluralism, it will intervene by initiating an investigation, at the end of which it may adopt the necessary measures. The investigation may be preceded by the issuance of a warning notice – thus giving the undertaking a chance to act spontaneously to remove any cause for concern – in the event that a breach of the ban on creating a dominant position (or at any rate, a position harmful to pluralism) is viewed as a possibility but has not yet been realised (Article 43, para 3 of the TUSMAR). In any case, any action by an undertaking (including concentrations and agreements) necessarily contributing to the creation of a dominant position or a position harmful to pluralism in a market that falls under the Integrated System of Communications shall be deemed null and void under law (Article 43, para. 4 of the TUSMAR).

As provided by Article 1, para. 4 of the Resolution, the procedure launched by AGCOM will end within 180 days of the date of its publication (9 September 2019) on the AGCOM's website.

Autorità per le garanzie nelle comunicazioni, Delibera n. 356/19/CONS, Avvio del procedimento volto all'individuazione del mercato rilevante nonché all'accertamento di posizioni dominanti o comunque lesive del pluralismo nel settore della pubblicità on line, ai sensi dell'art. 43, comma 2, del decreto legislativo 31 luglio 2005, n. 177

<https://www.agcom.it/documents/10179/15576788/Delibera+356-19-CONS/a014d46f-f279-4a53-98da-510d589c2f6b?version=1.0>

