[IT] Referral to CJEU of preliminary questions regarding advertising time limits

IRIS 2021-5:1/2

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On 25 March 2021, the Italian Council of State referred some preliminary questions to the Court of Justice of the European Union about the advertising time limits.

In 2017, Agcom sanctioned three media service providers of the RTI group (“Canale 5”, "Italia 1" and “Rete 4”) for the violation of advertising time limits, pursuant to Article 38, paragraph 2 of the legislative decree 31 July 2005, No. 177 (the Italian media legislation, also known as “TUSMAR”).

According to this provision, self promotion of broadcasters' programs is not included in the hourly limit for advertisements.

The alleged violation comes from the inclusion in that limit of the self-promotion of the programs of "R101", a radio station owned by the RTI group. Agcom argued that the limit was applicable only to the television programs of the broadcaster provider and not also to the radio programs, among others, provided by a different company of the same group.

In 2019, the Regional Administrative Court of Lazio (the Italian Administrative court of first instance) rejected the three complaints agreeing with Agcom's position.

With Ordinance No. 2504/2021 of 25 March 2021, the Council of State referred some preliminary questions to the Court of Justice of the European Union, all aimed at asking about the compatibility of the Italian media legislation with the general relevance for the EU law of the notion of group.

In particular, the Court asked if the notion of group, as generally recognised in the EU antitrust framework as a “single economic entity”, is also applicable to media legislation, considering the convergence process between the various forms of communication. Or, if that framework, including advertising time limits, is part of an independent field of legislation.

It’s important to underline that Directive 2018/1808, amending the Audiovisual Media Services Directive, acknowledges that “many broadcasters are part of larger broadcasting groups and make announcements not only in connection with their own programmes and ancillary products directly derived from those

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programmes, but also in relation to programmes and audiovisual media services from other entities belonging to the same broadcasting group. Transmission time allotted to such announcements should also not be included in the maximum amounts of transmission time that may be allotted to television advertising and teleshopping."

In this context, the Council of State asked if the above mentioned recital shall be considered as an interpretative parameter for the legislation in force at the time of the procedure or if the statement has an innovative capacity only relevant for the future cases.

Consiglio di Stato, Ordinanza n. 2504/2021, 25.03.2021

https://www.giustizia-amministrativa.it/portale/pages/istituzionale/visualizza/?nodeRef=&schema=cds&nrg=201906079&nomeFile=202102504_18.html&subDir=Provvedimenti

Council of State, Ordinance no. 2504/2021 of 25 March 2021

Delibera n. 295/17/CS - Provvedimento nei confronti della società R.t.i. Reti Televisive Italiane S.P.A. (servizio di media audiovisivo in ambito nazionale "Canale 5") per la violazione della disposizione contenuta nell'art. 38, comma 2, del decreto legislativo 31 luglio 2005, n. 177 (Contestazione n. 15/17/DCA - Proc. 2691/MRM)

https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_FnOw5lVOIXoE&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_FnOw5lVOIXoE_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_FnOw5lVOIXoE_assetEntryId=9291830&_101_INSTANCE_FnOw5lVOIXoE_type=document

Resolution no. 295/17/CS

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