[IT] AGCOM concludes four proceedings on the respect for pluralism by companies operating in the media and electronic communications sectors

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With the decisions No. 209/21/CONS and 210/21/CONS published on 28 June and decisions No. 234/21/CONS and 235/21/CONS published on 30 July 2021, AGCOM concluded four proceedings about the respect for pluralism by companies operating in the media and electronic communications sectors.

The proceedings were initiated pursuant to Article 4-bis, paragraph 1, of the Legislative Decree No. 125 of 7 October 2020, the rule which aims to avoid that the presence of the same company in the electronic communications and media sectors, given the convergence between the two fields, could have a distorting effect on media pluralism.

The rule was introduced following the ruling by the Court of Justice of the European Union - Case C-719/18 - which stated that Article 43, paragraph 11, of TUSMAR (Consolidated Law on Media Services) was against the EU principle of freedom of establishment (see IRIS 2020-9/11).

The evaluation of potential risk to media pluralism is therefore no longer linked to exceeding the revenue thresholds (40% of the electronic communication market and 10% of one of the SIC markets), but is based on the analysis of criteria such as revenues, barriers to entry, level of competition (plus other criteria defined by the Authority in each particular case), from which it is possible to determine if the position of the company in both sectors - also through shareholdings capable of determining “significant influence” pursuant to Article 2359 of the Italian civil code - actually implicates distorting effects or harmful consequences on media pluralism.

In case of a positive response, AGCOM shall apply one of the actions set by Article 5 TUSMAR, as the inhibition of the harmful act or operations or the imposition of measures affecting the structure of the company.

All the proceedings ended with a dismissal.

With the decision No. 210/21/CONS, AGCOM established that the position of Sky Italia does not affect media pluralism because, with reference to the electronic communication market, the company is a new entrant with a negligible market share; on the media sector side, despite Sky being an important television

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broadcaster with significant market shares in the pay-TV sector, the Authority verified an important replacement effect of online platforms which acquire the most attractive content for viewers, as shown by the recent bid for Serie A football rights.

The dismissal provided by decision 234/21/CONS on Fininvest- Mediaset (Fininvest group) was taken because the group, with reference to the electronic communication sector, is exclusively active in the national market for terrestrial radio and television broadcasting services which, according to the investigation, are both pluralistic and not concentrated markets. With regard to the media sector, AGCOM shared the same conclusion of the Sky proceedings, acknowledging the increasingly strong competitive pressure on traditional broadcasters by the new online platforms.

With regard to proceeding No. 235/21/CONS against Telecom Italia, AGCOM noted that the company was a leader in various electronic communications markets, especially in broadband and ultra-broadband connectivity and over-IP voice, as well as one of the major mobile operators; however, as far as the media market is concerned, the company offers paid audiovisual media services of third parties and holds a small market share.

Finally, the proceeding No. 209/21/CONS concerned the position of Vivendi with regard to its shareholding in Mediaset and Telecom Italia. The AGCOM investigation established that the presence of Vivendi both in TIM and in Mediaset is sufficient to determine the effects on pluralism because of a series of factors such as: i) the leader position of Telecom in fixed and mobile networks; ii) the relevant Mediaset share of the SIC; iii) the eventual opportunity to offer media/TLC bundled services that could become mutually strategic, with consequent exploitation of the leverage effect in the respective market power. However, according to AGCOM evaluation, the analysed factors could cause only a potential risk: if Vivendi is capable of exercising a “significant influence” in the management of Telecom Italia, the same cannot be said regarding the position of Vivendi in Mediaset. Indeed, the parties signed some agreements that provide a progressive and significant reduction in Vivendi's shareholding in Mediaset and some instant commitments aimed at excluding any active role of Vivendi in the management of Mediaset. For these reasons, AGCOM also dismissed this last proceeding, although specifying that the implementation of the agreements and the commitments taken by the parties will be monitored in order to ensure full compliance with the current framework for the protection of pluralism.

Delibera n. 209/21/CONS Archiviazione del procedimento ai fini delle verifiche di cui all’articolo 4-bis, comma 1, del decreto-legge 7 ottobre 2020, n. 125, come convertito con modificazioni dalla legge 27 novembre 2020, n. 159 (Vivendi S.E.- Telecom Italia S.p.A. - Mediaset S.p.A.)

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Resolution no. 209/21 / CONS Filing of the procedure for the purposes of the checks referred to in Article 4-bis, paragraph 1 of the Decree-law no. 125 of 7 October 2020, as converted with amendments by law no. 159 of 27 November 2020 (Vivendi S.E. - Telecom Italia S.p.A. - Mediaset S.p.A.)

Delibera n. 210/21/CONS Archiviazione del procedimento ai fini delle verifiche di cui all'articolo 4-bis, comma 1, del decreto-legge 7 ottobre 2020, n. 125, come convertito con modificazioni dalla legge 27 novembre 2020, n. 159 (Sky Italian Holdings S.p.A.)

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Resolution no. 209/21 / CONS Filing of the procedure for the purposes of the checks referred to in Article 4-bis, paragraph 1 of the Decree-law no. 125 of 7 October 2020, as converted with amendments by law no. 159 of 27 November 2020 (Sky Italian Holdings S.p.A.)

Delibera n. 234/21/CONS Archiviazione del procedimento ai fini delle verifiche di cui all'articolo 4-bis, comma 1, del decreto-legge 7 ottobre 2020, n. 125, come convertito con modificazioni dalla legge 27 novembre 2020, n. 159 (Fininvest S.p.A.- Mediaset S.p.A.)

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Resolution no. 234/21 / CONS Filing of the procedure for the purposes of the checks referred to in Article 4-bis, paragraph 1 of the Decree-law no. 125 of 7 October 2020, as converted with amendments by law no. 159 of 27 November 2020 (Fininvest S.p.A.- Mediaset S.p.A.)

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