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# "PRINCIPLES GOVERNING THE BROADCASTING SYSTEM AND RAI-RADIOTELEVISIONE ITALIANA Spa, AND THE AUTHORITY DELEGATED TO THE GOVERNMENT TO ISSUE THE CONSOLIDATED LEGISLATION ON TELEVISION BROADCASTING"

## ("GASPARRI LAW")

## ANALYSIS AND REVIEW

**by**

**Mr Karol JAKUBOWICZ**
**(Expert, Poland)**

**Mr David WARD**
**(Expert, United Kingdom)**

## I. FOREWORD

Law No. 112 of 3 May 2004 "Principles governing the broadcasting system and RAI-Radiotelevisione italiana Spa, and the authority delegated to the Government to issue the consolidated legislation on television broadcasting" (widely known as the Gasparri Law) follows a long list of earlier Italian broadcasting statutes, all or most of which remain in force [1] (see the Appendix for a list set of amendments to earlier statutes contained in the present law).

Article 1 describes the scope and purpose of this law as follows: "The present law sets out the general principles governing the national, regional and local radio and television broadcasting system and adapts it to the advent of digital technology and the convergence of radio and television broadcasting with other sectors of interpersonal and mass communications, such as telecommunications, publishing, including electronic publishing, and the INTERNET in all its applications. The present law covers broadcasts of television, radio and data programmes, including conditional access programmes, and the provision of associated interactive services and conditional access services, on terrestrial frequencies, by cable and satellite".

The law consists of five main parts:

1. General Principles (Chapter I).
2. Legislative Authority and Consolidated Broadcasting Legislation (Chapter III).
3. Media Concentrations and Pluralism (Chapter II).
4. Public Broadcasting Service (Chapter IV); and
5. Digital Terrestrial Broadcasting (Chapter V).

The law also serves to transpose some provisions of the package of European Union directives on electronic communications of 2002. Thus, its scope is in fact broader than suggested by Article 1.

Below, an attempt will be made, where possible, to separate information about the contents of particular parts from analysis of their provisions in a broader context, and finally from comments and assessment of them.

## II. BACKGROUND

The situation in Italian broadcasting in general [2], and the Gasparri Law in particular, have attracted considerable attention and have been the subject to wide-ranging debate in Europe. A number of European institutions and organisations have expressed their views on the subject, including:

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[1] *A list of some of these statutes can be found on the website of the parliamentary commission for the general direction and surveillance of radio-TV services*
*http://www.parlamento.it/Bicamerali/6/643/658/paginabicamerali.htm*

[2] *For a general overview of the broadcasting scene in Italy see Autorità per le garanzie nelle comunicazioni, Annual Report on Activities Carried Out and Work Programme, Roma, June 30th 2003*
*http://www.agcom.it/rel_03/eng/Relaz_eng_part02.pdf.*

- The European Parliament's Report of 5 April 2004 on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights) (2003/2237(INI); A5-0230/2004 FINAL);
- Resolution 1387 (2004) "Monopolisation of the electronic media and possible abuse of power in Italy", and a Report under the same title adopted by the Council of Europe's Parliamentary Assembly on 3 June 2004;
- Crisis in Italian Media: How Poor Politics and Flawed Legislation Put Journalism Under Pressure. Report of the IFJ/EFJ Mission to Italy, 6-8 November 2003;
- Italy. A Media Conflict of Interest: Anomaly In Italy**.** Investigation by Soria Blatmann. Paris: Reporters sans frontières, April 2003.

## III. GENERAL ASSESSMENT AND COMMENTS

The present law is not a complete or comprehensive new Broadcasting Act, but an attempt to regulate selected aspects of the broadcasting system and amend selected provisions of earlier laws, often with a view to liberalising them. A full analysis of its provisions and of its place in the Italian legal framework in relation to broadcasting would require a study of an extensive body of legislation adopted over a period of a few decades.

### Public Service Broadcasting

**1.** The present law creates a mechanism for the continuation of a public broadcasting service after the expiry of a 12-year franchise for RAI, but does not fully guarantee it.

**2.** The present law does not call for, nor does it require or guarantee full institutional independence and autonomy of the public service broadcasting organisation. On the contrary, it introduces no changes (save for those resulting from the eventual privatisation of RAI) in a situation where various State authorities have wide-ranging and direct involvement in the affairs of the public broadcasting service licensee.

**3.** The privatisation of RAI could be described as amounting to its partial re-nationalisation for an unforeseeable period of time. For as long as the present government stays in office, the Prime Minister will directly or indirectly control all major national television channels. The Italian situation is not, strictly speaking, a television monopoly, but there is sufficient evidence to show that both commercial and public national television channels (and in RAI's case, also radio channels) are controlled by one person to such an extent that a real threat of monopolisation clearly exists. The present law may change this eventually, but only gradually and potentially only after a considerable period of time.

### Media Concentration

1. The framework for regulating the basic principles of media pluralism are set out in this law and normatively are aimed to protect media diversity to ensure that the radio and television sectors are plural.
2. The framework to guarantee these principles, however, is essentially aimed to retain the current level of media concentration of the media sector (specifically in the television market as the radio and press sectors demonstrate a high degree of pluralism). The provision that a broadcaster may not operate more than 20 percent of national radio and television channels, once the digital plan has become fully operational in 2006, may be unsuitable in a digital environment with the introduction of a range of niche channels that enjoy very small audience shares.

3. The concept of the integrated communications system devised in this law to establish a maximum threshold for share of revenues is also inadequate to clearly assess market pluralism in any one market and abandons the concept of "relevant market". That is an essential tool for providing competition analysis.
4. The Law facilitates greater scope for cross media ownership. Although there is a period where broadcasters are not allowed to enter the press market, once this period has expired the strong financial position of television broadcasters in the overall communications sector may lead to television companies building a strong position in related media markets.
5. The status quo will be maintained until digital switch over is achieved. And it is unlikely that the provisions in this law will alter the present levels of concentration.

**Provisions for Migration from Analogue to Digital Transmission**

1. Many of the central provisions of Section V support and extend the provisions of Law 66/2001 and Autorità per le garanzie nelle comunicazioni (AGCOM) Regulation and act to extend deadlines and therefore the continuation of the present conditions for the migration of broadcasters between frequencies.

2. The main tools to support digital rollout are a mix of 1) State subsidies to promote the diffusion of hardware into households as well as indirect subsidies in terms of the allocation of a minimum amount of the State advertising budget to the print sector; 2) public policy deadlines that oblige RAI to meet coverage deadlines and thresholds set for operators to apply for licences and authorisations on local, national and regional levels; 3) free market mechanisms i.e. spectrum trading between operators and a reconfiguration of the categories for licensing purposes.

3. There are also transitional limits on channel share established to protect a degree of pluralism in the migration period. Many of these features are established in Law 66/2001 and AGCOM's Regulation.

## IV. GENERAL PRINCIPLES (CHAPTER I)

This chapter contains a number of provisions that outline the aims of public broadcasting policy and the principles to be honoured in the broadcasting field. Provisions, which are unobjectionable, are left out of consideration here.

**Article 2** contains definitions of terms, many of them referring to electronic communications networks and services. A number of definitions deserve special attention.

**Article 2 (1a)** appears to be reflective of a technology neutral approach to broadcasting, whereby "programmes" mean "all content provided under a single editorial trade mark for broadcasting to the public on television or radio, respectively, by any means". Thus, broadcasting is not defined here by the technology it uses to deliver the signal.

**Article 2 (1b)** introduces the term "data programmes", referring to "information services consisting of electronic publishing products broadcast by television networks, other than television programmes, not supplied on individual request, including teletext information pages and data pages".

**Article 2 (1g)** defines an "integrated communications system" as "the economic sector comprising the following activities: daily newspapers and periodicals; annuals and electronic

publishing including publishing on the INTERNET; radio and television; cinema; advertising; information on products and services; sponsorship". This is to serve as a frame of reference for analysing media concentration and pluralism.

**Article 2 (1h)** refers to "general public television broadcasting service" as a "public service performed under franchise in the television broadcasting sector by means of the full range of programmes, including programmes other than information programmes, provided by the company holding the franchise in accordance with the detailed rules and within the limits specified in the present law and the other measures referred to". As shown below in Section 3, this means that the public service remit can, in theory, be entrusted to any broadcaster.

**Article 3** seeks to define "Fundamental principles". What should be remarked on here is the fact that one important element has been left out of what is essentially a quotation from Article 10 of the European Convention of Human Rights: "to protect the freedom of expression of each individual, including freedom of opinion and freedom to receive or communicate information or ideas without limits imposed by frontiers [regardless of frontiers]", whereas in fact the pertinent provision of Article 10 reads as follows: "to receive and impart information and ideas without interference by public authority and regardless of frontiers".

**Article 4** lays down guarantees for listeners and viewers that the Italian broadcasting system will be governed by generally accepted rules and standards of broadcasting in Europe.

**Article 5 and Article 7** are discussed below, in the part dealing with Chapter II.

**Article 6** regulates services in the general interest in broadcasting in relation to (i) all broadcasters, and (ii) to the public broadcasting service licensee (see below, Chapter IV).

Pursuant to this article, provision of information by any broadcaster is defined as a service of general interest. As such, it must comply with the following principles, among others:

a) Truthful presentation of facts and events, so as to encourage opinions to be formed freely, with no sponsorship of news bulletins.
b) Access for all political persons to information, election and party political broadcasts, on fair and equal terms, in the forms and in accordance with the rules prescribed by law.
c) Transmission of announcements and official statements by constitutional bodies prescribed by law.

Thus, any broadcaster who carries news programmes is under an obligation to "transmit announcements and official statements by constitutional bodies".

The article authorises AGCOM to lay down further rules for national television broadcasters to ensure that information and current affairs programmes comply with the principles contained in this chapter.

**Article 6 (5)** puts the public broadcasting service licensee under an obligation to use the licence fee revenue exclusively to perform the general public service duties entrusted to that company, with regular audits and without upsetting the balance of trade and competition in the European Community.

**Article 8** refers to "interconnected broadcasts" which most likely means effective networking of radio or television stations by broadcasting the same programming simultaneously. It liberalises some provisions (e.g. allowing longer periods of "interconnection" for television stations), regulates networked programming and requires broadcasters wishing to network their programming to apply for an authorisation from the Ministry of Communications.

**Article 10** deals with protection of minors in television programming. It reinforces the protection of minors by prohibiting the employment of minors less than 14 years old in advertising. Fines for breaching provisions on the protection of minors are increased to a range between EUR 25,000-350,000. AGCOM is entrusted with the duty to ensure respect for fundamental rights and to report to Parliament every year on the protection of minors.

**Article 12** seeks to safeguard efficient use of the electromagnetic spectrum. To this end, AGCOM has been put in charge of the adoption and implementation of the national frequency plan. AGCOM will both encourage experimentation and safeguard existing broadcast services. During the transition to digital, current broadcasters will continue their analogue transmissions while they invest in digital frequencies – obtaining them by purchase from other broadcasters. It is expected that frequency trading will be the main method for the acquisition of new frequencies (see Section V). AGCOM will monitor the correct allocation of spectrum. The Authority will issue its own regulation, defining the general criteria for establishing electronic communications networks. Where new networks cannot be established, the Authority will establish rules for sharing infrastructures, broadcasting stations and network facilities.

## V. LEGISLATIVE AUTHORITY AND CONSOLIDATED BROADCASTING LEGISLATION (CHAPTER III)

**Article 16 (1)** authorises government to issue consolidated broadcasting legislation "coordinating the current rules, integrating them and introducing the amendments and repeals required in order to coordinate them or to ensure that they are as effective as possible". **Article 16 (3)** describes the various consultation procedures that the resulting Legislative Decree must undergo before it takes effect.

**Article 16 (2)** defines legislative and administrative powers conferred on, respectively, provincial, regional and local bodies, regarding:

**16 (2a)** frequency bands for regional or provincial digital television programmes

**16 (2b)** the issue of permits, authorisations and franchises required for access to the sites set aside in the national plan for the allocation of frequencies.

**16 (2c)** the issue of authorisations to content providers or to providers of associated interactive services or conditional access services for broadcasts at regional or provincial level respectively.

**16 (2e)** the definition of specific public service duties that the company holding the general public broadcasting service franchise is required to perform within the programming schedule and network for broadcasting content at regional level.

**16 (2f)** the conclusion, in the case of the regions and the autonomous provinces of Trento and Bolzano, and with the agreement of the Ministry of Communications, of specific service contracts with the company holding the general public broadcasting service franchise, defining the obligations referred to in subparagraph *e)* with due regard to the

right of the company holding the franchise to take economic decisions, including decisions as to the organisation of the firm; further fundamental principles relating to the specific sector of regional or provincial broadcasting may be covered by the legislative provisions in force on the date on which the present law enters into force with respect to local television broadcasting, having due regard to the legal and economic unity of the State and ensuring that services relating to civil and social rights are maintained at the necessary level and that public safety and security are protected.

**ANALYSIS**

These provisions are consistent with the constitutional system of Italy, as defined in **Article 5** of the Constitution: "The Republic, one and indivisible, recognises and promotes local autonomies; implements in those services which depend on the State the fullest measure of administrative decentralisation; accords the principles and methods of its legislation to the requirements of autonomy and decentralisation".

**Article 114** of the Constitution states that "Municipalities, Provinces, Metropolitan Cities and Regions are autonomous entities with their own Statutes, powers and functions according to the principles laid down in the Constitution". Finally, **Article 117** provides that "Legislative power shall be exercised by the State and by the Regions in accordance with the Constitution and within the limits set by European Union law and international obligations".

With the State retaining sole legislative power on major issues, Chapter III is designed to give effect to these constitutional principles by defining the relative legislative and administrative powers of central State authorities on the one hand, and of regional, provincial and local authorities on the other.

## VI. MEDIA CONCENTRATION ISSUES (CHAPTERS I AND II)

### 1. Provisions protecting media pluralism

Many of the provisions in the Gasparri Law are already provided for pursuant to Law 66/2001 and AGCOM's Regulation of November 2001, Title 5 (Articles 24-29), which contains provisions aimed at safeguarding pluralism and transparency in the digital television market. The present Law therefore seeks to adopt these instruments as well as to introduce a new element to the regulations pertaining to media concentration (discussed below). The following measures are set out in AGCOM's regulation:

- One third of digital terrestrial transmission capacity is reserved for local content providers (Article 24(1a)).

- No subject is allowed to hold authorisations as a content provider that enable them to broadcast more than 20 percent of the total number of television channels (free-to-air or pay-TV) available via DTT at national level (Article 24(1b)).

- No subject can be holder of authorisations for content provider at national and local level at the same time (Article 24(2)).

- Transparency requirements for content providers include a requirement to maintain separate accounting systems for holders of more than one authorisation as content provider for each authorisation they hold, which also applies to holders of an authorisation as content and as service provider (Article 25).

- Transparency requirements for the network operators include a requirement for local network operators who are also content providers to maintain separate accounting systems which is also applicable to companies that qualify as a national network operator who are also content providers (Article 27).

**Basic principles (Articles 3, 4 and 5)**

In reference to media pluralism, the Law's objectives are principally set out in **Article 3, 4 and 5** that establish the fundamental principles of the Law.

Article 4 (a) also guarantees access to a "number of national and local operators"…… In conditions of pluralism and free competition" (Article 4 (a)). Article 5 (1a) also guarantees competition in media markets and furthermore guarantees that either the creation or maintenance of dominant positions that are damaging to pluralism will not be allowed.

A number of Articles are dedicated to the question of media pluralism and concentration of ownership. The general principles are established in **Articles 3(1), 4(1a), 5, 12(3), 24(1b), 25(1), 25(11)** and extend the concept set out in Articles 3, 4 and 5 to the digital terrestrial platform on national and local levels. The provisions also cover radio and cross media ownership.

2.

The Law proposes two extremely radical changes in the legal framework that will bring about fundamental changes to the shape of previous anti-concentration measures, especially the ones pertaining to the national broadcast media. The two principal changes that affect media pluralism are:

- The introduction of a maximum threshold of 20 percent of national channels that a broadcaster is allowed to operate pursuant to **Article 15 (1)**.
- The introduction of the concept of an *integrated communications system* used to establish financial thresholds across electronic and print media sectors pursuant to **Article 15(2).**

Concentration thresholds for national television broadcasters

| | |
|---|---|
| Not allowed to have local and national licence | Article. 5 (d) |
| Max 20% channel share of terrestrial digital channels once frequency plan is finalised | Article 15 (1) |
| Max 20% of revenue share of the integrated communications system | |
| Until 2010 a company with more than one national TV network cannot own a newspaper | Article 15 (2) |
| | Article 15 (6) |

3.

Article **15 (1)** establishes limits on market share for national radio and television broadcasters once the frequency plan for digital terrestrial television has become operational.

The framework for establishing the 20 percent limit of market share is (in the translation that we have used) ambiguous. **Article 15(1)** rules that a content provider may not hold authorisations allowing them to broadcast more than 20 percent of all television programmes or more than 20 percent of radio programmes that may be broadcast on terrestrial frequencies at the national level through the networks provided for in the plan.

**Article 25(8),** which rules for the transitory period, affirms that until the complete implementation of the plan for the assignment of digital television frequencies, the overall number of programmes for each subject is limited to 20 percent and is calculated on the overall number of television programmes authorised or aired at the national level on either analogue or digital terrestrial frequencies, as under Article 23 (1).

On the basis of Article **15(1)**, the most likely interpretation is that the 20 percent limit is calculated on the total number of channels that it is possible to broadcast via DTT at national level, according to the technical plan, whereas, on the basis of Article 25(8), the 20 percent limit is calculated on the overall number of television programmes available (aired or authorised) at the national level. This seems to be more logical and also in line with what is ruled by **Article 24(1b)** of AGCOM's DTT regulation of 2001. Here it is ruled that no subject is allowed to hold authorisations as a content provider that enable them to broadcast more than 20 percent of the total number of television channels (free-to-air or pay-TV) available via DTT at national level. Also in this case, therefore, the 20 percent limit is calculated on the overall number of television programmes aired at the national level.

4.

Complementing Article 15(1) is **Article 15(2)** that sets out the concept of the integrated communications system that establishes a threshold for market share based on revenue share.

The umbrella term integrated communications system has been devised to establish a revenue threshold and is calculated to include a wide range of media pursuant to Article 15 (3): 1) national and local broadcasting including broadcasters funded by pay-per-view, advertising, licence fees, sponsorship and teleshopping revenue streams; 2) any type of publishing (newspapers, magazines, books, electronic publishing); 3) cinema, television and music production and distribution; and 4) any form of advertising (including outdoor advertising) as well as revenues from the Internet.

Pursuant to Article 15 (2) any one company may not earn more than 20 percent of revenues enjoyed by the whole media sector that is included in the concept of integrated communications system.

5.

Local broadcasting has been granted a significant place in the television sector and one third of spectrum capacity allocated to television is reserved for local television. Significantly the ban on national broadcasters owning a local broadcaster pursuant to **Article 5 (d)** has remained. The measures that affect local television broadcasters are stricter than the ones that have been devised for national broadcasters and they are set out in **Article 7 (2,3,4).**

Concentration thresholds for local broadcasters

| | |
|---|---|
| Reserved third of the broadcasting capacity | Article 7 (2) |
| One person may not hold more than three franchises within each local area | Article 7 (3) |
| One person may not hold more than six franchises for each regional area. Max limit of six franchises | Article 7 (3) |
| Until the national plan for the allocation of digital radio and television frequencies is fully operational, local television broadcasters may broadcast programmes for no more than a quarter of the daily transmission time for the various areas comprising the user area for which the franchise or authorisation has been issued | Article 7 (4) |
| Not allowed to have local and national licence | Article 5 (d) |

6.

Pursuant to **Article 15 (1)** the national radio sector comes under the same rules as the television sector in that national radio broadcasters are restricted to 20 percent of the number of national channels, and pursuant to Article 15 (2) 20 percent of the overall revenues of the integrated communications system.

Concentration thresholds for radio broadcasters

| | |
|---|---|
| Max 20% channel share of terrestrial digital channels once frequency plan is finalised | Article 15 (1) |
| Max 20% of revenue share of the integrated communications system | Article 15 (2) |

7.

Cross media provisions are contained in **Article 5 (g1 and g2) and Article 15 (4 and 6)**. Pursuant to Article 15 (6) there is a restriction on television broadcasters who operate more than one national network owning shares of newspaper companies until the end of 2010. Newspaper publishers will be allowed to enter the television market with the introduction of the Law.

Article 15 (4) also restricts telecommunications operators with earnings that exceed 40 percent of revenues in the telecommunications sector from earning more than 10 percent of earnings in the integrated communications system.

Cross-media thresholds

| | |
|---|---|
| A national content provider that is also a service provider must keep separate accounts | Article 5 (g1) |
| "a national television network operator who is also a content provider and an interactive or conditional access service provider shall be required to maintain separate companies" (not cable, local or sat) | Article 5 (g2) |
| "Restricts telecommunications operators with earnings that exceed 40 percent of revenues in the telecommunications sector from earning more than 10 percent of earnings in the integrated communications system." | Article 15 (4) |
| Ban on national TV company owning a newspaper until 2010 | Article 15 (6) |

**Article 5 (g1 and g2)** sets out that where a national content provider is also either a service provider, or a national network operator is either a content provider or conditional access system provider, then separate accounts for the different services must be maintained.

**ANALYSIS**

The concept of the integrated communications system defined in Article 2 (g), and set out in Articles 15 (2) and (3) is unique in terms of the collapse of hitherto separate media markets for the purposes of media concentration measures. The activities included in the integrated communications system can only really be understood as belonging to the same market within an extremely broad definition of the media market that is unprecedented in Europe.

The concept of an integrated communications system as an economic indicator of market share considerably dilutes the effectiveness of instruments to protect pluralism based on share of revenues on individual markets. An individual company could enjoy extremely high degrees of revenue shares in individual markets, whilst at the same time remaining below the 20 percent threshold for the whole sector.

The convergence of the different markets in the Italian media sector for the purposes of anti-concentration measures through the introduction of the concept of an integrated communications system also appears to be at odds with the definition of media markets that the European Commission has employed in its competition related decisions involving the television sector. In a number of competition cases involving the media sector[3] the European Commission has distinguished between different markets (including Pay-TV and free-to air television markets) based on different kinds of revenue streams and types of services supplied by operators. The "relevant markets" have been abandoned to some extent in the new law. However, general anti-trust measures presumably will remain applicable, despite the redefinition of "relevant markets", or more accurately perhaps the lack of a "relevant market" definition.

The concept makes no such distinction between markets and the revenue threshold indicates that it is perceived to be one sector. Such a model does not appear to be suitable for setting a threshold that protects the individual sectors from a dominant position by one individual actor and it is unclear what kind of restriction this actually represents. At some future point in time these markets may converge to form a single market, but this is far from certain, and it is highly unlikely that these markets will entirely converge in the foreseeable future.

Examples in other European countries of digitalisation suggest that many more channels will come on stream (although Sky Italia has signed an agreement with the EC not to move to the DTT platform as a condition of its clearance). The DTT platform, however, is planned to carry, according to the National Frequency Plan 12 multiplexes for national broadcasting each of them carrying from four to six channels (some of these channels are /will be used for radio broadcasting and interactive applications).

[3] *Inter alia* Commission of the European Communities. (2000). *Case No. COMP/ JV.37-BskyB/ Kirch Pay TV. Regulation (EEC) No. 4064/ 89 Merger Procedure 21/03/2000*. Commission of the European Communities. (2003). *Case No. COMP/ M.2876-NEWSCORP/TELEPIU. Regulation (EEC) No. 4064/ 89 Merger Procedure 2/04/2003*.

It is not set out in this law whether national digital radio stations will be allowed to own local ones. I assume it is allowed, given that it is not included in the Articles of this law. The framework would allow a great deal of consolidation in the sector.

Local and regional broadcasting is protected due to the generous threshold of the frequency allocated to local and regional channels and the fact that there is a disqualification placed on national broadcasters operating local and regional channels. This might encourage newspapers to invest in the local television sector.

**COMMENTS AND ASSESSMENT**

1.

The Charter of Fundamental Rights of the European Union Article 11 (2) recognises that media pluralism is a central part of the rights of European citizenship and the European Parliament has also stressed the importance of maintaining media pluralism in the European Union by guaranteeing a diverse television sector. In 2004 a resolution passed by the European Parliament on " the risks of violation, in the EU and especially Italy, of freedom of expression and information (Article 11 (2) of the Charter of Fundamental Rights 2004 (0373). The European Parliament called on the Member States and the European Commission " to safeguard pluralism in the media and to ensure, in accordance with their powers, that the media in all Member States are free, independent and plural" (EP, 2004 (0373)).

The Council of Europe's Recommendation No. R (99) 1 on measures to promote media pluralism also recognises the importance of pluralism both in terms of the multiplicity of outlets and open access where bottlenecks form. The European Convention on Transfrontier Television also reaffirms in its preamble "the importance of broadcasting for the development of culture and the free formation of opinions in conditions safeguarding pluralism and equality of opportunity among all democratic groups and political parties;" and "Article 10*bis* The Parties, in the spirit of co-operation and mutual assistance which underlies this Convention, shall endeavour to avoid that programme services transmitted or retransmitted by a broadcaster or any other legal or natural persons within their jurisdiction, within the meaning of Article 3, endanger media pluralism".

The COE Recommendation (99) 1 on measures to promote media pluralism calls on all Member States to consider introducing measures to protect media pluralism and establish a clear and coherent framework to guarantee the pluralism of the media. A range of measures are recommended by the COE to this end, although it is the right of the Member States to establish a system to protect pluralism and select a suitable range of instruments catering to the specificities of the national market.

2.

Given the structure of the new regulatory regime for the regulation of media concentration set out in this law and the wide definition of the media market, together with the notion that pluralism can be measured through a quantitative assessment of total channels this law is unlikely to radically change the current dominance of the television market by the Mediaset/RAI channels. Indeed given that the concept of an integrated communications system has been devised to regulate financial share of the sector, companies can be expected to expand into new markets. The Law appears to support the present situation, rather than attempt to promote pluralism in the Italian media sector. This suggests the Law has been modified to suit the situation in Italy.

3.

The threshold protecting media pluralism, as measured by 20 percent of channels, is not a clear indicator of market share as many of these channels are likely to have very small audience shares, but with similar amounts of output. It is certainly not an indicator of balance and pluralism in the television market as a whole. Larger companies will enjoy greater purchasing power in a wide range of activities such as programme acquisitions and will enjoy significant advantages over other national content providers. They can also enjoy an unlimited share of the audience if this scheme is put in place. The channel share threshold is also insufficient as an indicator of both market power and pluralism in the television and radio sectors.

The model is ill suited in terms of protecting pluralism as the digital plan foresees a significant growth of channels. This will inevitably lead to growth in channels and output on a national level, but it does not mean that growth in output and channels will lead to an acceptable degree of pluralism. Ultimately, the measure of concentration based on share of channels or programme output cannot account for market power or in assessing the position of a company in the national radio and television markets. Without an audience share threshold and relevant market indicator this threshold is largely redundant as an indicator of diversity.

Even in terms of competition policy that does not have specific media-based measures the framework provides little as an instrument to provide a framework for ensuring competition and pluralism in the national radio and television markets. The combined effect of the new framework set out in Article 15 (1) and (2) provide for liberalising the previous anti-concentration rules that were surpassed both by Mediaset and RAI. They seem to be designed to accept this dominance of two companies in the television sector and rather than seek to resolve this level of concentration support the transference of this dominance to digital platforms.

4.

The development of digital terrestrial television in Italy is also, at the present time slow, though industry forecasts suggest DTT could experience rapid diffusion into households over the next five years. The fact that the Law will not become fully applicable in reference to media pluralism and concentration until AGCOM has achieved the full frequency plan for switchover is a matter of concern. Another central issue is that the Law does not deal with the question of concentration today. The approach is one of attempting to hold back on finding a real solution to the problem of media concentration in the television market to some future point in time and it relies heavily on the point when digitalisation will come to full fruition. Ultimately, it means that the status quo will be continued and Mediaset and RAI will remain the dominant actors in Italian television.

5.

The law liberalises the rules on cross media ownership considerably. This is a concern because of the dominant position of television in the Italian media market overall. The radio sector is highly fragmented and thus vulnerable to consolidation and concentration. The press sector also performs below the average across similar sized markets in Europe and the readership rates are considerably lower than other EU countries.

The requirement placed on AGCOM to assess concentration in the media sector pursuant to **Article 14 (2)** to ensure that dominant positions do not arise in the media sector is seriously hindered by the framework set out by the concept of the integrated communications system. A dominant position (presumably) will only occur in situations whereby the thresholds set out in

**Article 15** are surpassed by a company or related companies. This does not adequately provide for pluralism in the individual media sectors themselves. That, both in terms of markets and services, even when digitalisation is achieved, may not converge to the extent suggested by the framework set out by these thresholds. It would suggest that levels of concentration in the national television market would, to a large extent be transferred to digital platforms. As a consequence the duopoly of Mediaset and RAI will continue in the digital television sector, though with the changes brought about in this Law this will be within the legal parameters set. Indeed with the relaxation of cross-ownership rules Mediaset could expand into other sectors to increase it presence across different media markets.

The law facilitates high levels of concentration in individual media sectors; most notably in the national television sector, but it also considerably liberalises other parts of the media sector and in this respect it is extremely debatable whether it meets international standards that attempt to safeguard media pluralism.

## VII. PUBLIC BROADCASTING SERVICE (CHAPTER IV)

### 1. Provision of a public broadcasting service

**Article 2 (1h)** defines "general public television [4] broadcasting service" as a "public service performed under franchise [licence [5]] in the television broadcasting sector" (see also **Article 6(4))**. **Article 17** adds that "the general public television broadcasting service shall be entrusted by franchise to a joint-stock company [public limited company], which shall perform the service on the basis of a national service contract signed with the Ministry of Communications, regional service contracts and, in the case of the autonomous provinces of Trento and Bolzano, provincial service contracts, which shall define the rights and obligations of the company holding the franchise. The contracts shall be renewed every three years". **Article 20** names RAI-Radiotelevisione italiana Spa as the company to which "the general public television broadcasting service franchise shall be granted to for a period of 12 years" – i.e. until 2016.

**Article 19** entrusts AGCOM with the task of "verifying that the general public television broadcasting service is effectively provided in accordance with the provisions contained in the present law, the national service contract and the specific service contracts […], with due regard also to the parameters of service quality and indications of user satisfaction". It lays down requisite procedures of verification and gives AGCOM the powers needed for execution of this task, including that of imposing fines for non-compliance with the remit and programme obligations. In the event of repeated failure to comply, the AGCOM may order the holder of the general public broadcasting service franchise to cease trading for up to 90 days.

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*[4] This reference to "public television broadcasting" (in this article and in all other articles) is a mistranslation. The original Italian text refers to "public radio and television broadcasting". Thus, the law covers a public broadcasting service provided via both radio and television.*

*[5] Additions in square brackets provide alternative translations of terms used in the law.*

**ANALYSIS**

1.

Under this law, performance of a public broadcasting service remains formally dissociated from any specific broadcasting organisation. The public broadcasting franchise may be awarded to any broadcasting organisation (which, however, has to have the legal form of a joint-stock company). It will perform it on the basis of the provisions of the law itself (see below), as well as of national, provincial and regional public service contracts, renewable every three years.

RAI has so far been the sole public service licensee by virtue of a series of conventions with the Italian Government. The latest convention of 1994 has a duration of 20 years, i.e. it will expire in 2014, two years before the expiry of the new franchise. The present law does not appear to affect this state of affairs, nor does it mention the existence of such a convention.

**Article 2** of the Law no 223 of 6 August 1990 ("Mammi Law") has specified that the franchise may be awarded only to a wholly publicly-owned company, which in reality meant RAI. This provision has now been removed, meaning that – formally speaking – the franchise may be awarded to any broadcasting joint-stock company. As we will see below, RAI is to be privatised.

This raises, first of all, a number of formal and procedural questions: the present Law now awards the franchise, to RAI. Will another law have to be adopted to grant the franchise, once the present one has expired? And if not, who will be responsible for awarding the franchise when the current one expires, and by what procedure (a contest, tender, auction, other)? What criteria will be applied in selecting from among candidates? Why can the franchise be awarded only to joint stock companies?

2.

As already noted, RAI has had a series of conventions with the government. It also has to conclude a national service contract with the Ministry of Communications, regional service contracts and, in the case of the autonomous provinces of Trento and Bolzano, provincial service contracts. The national service contract has to be approved by the President of the Republic. The Director General of RAI is appointed by the Chairman of the Board and the Minister of Economic Affairs.

In addition, the public broadcaster is subject to control by a parliamentary commission for the general direction and surveillance of radio-TV services. The commission has, and looks set to retain, extensive powers and competencies vis-à-vis RAI, including some decision-making powers concerning programming and finance [6].

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[6] *Under Article 4 of the Law No. 103, 14 April 1975 (as amended)***,** *the parliamentary commission* **"***formulates the general directions for the execution of the principles mentioned in art. 1, the arrangement of programmes and their equal distribution in the time available; it checks that the directions are being respected and rapidly adopts the necessary decrees to ensure they are observed; establishes […] the regulations to guarantee access to radio-TV […]; indicates the general criteria for the creation of annual plans and those lasting several years for expenditure and investment by referring to the prescription of the concessionary act; approves the maximum plans for annual programming and those lasting several years and watches over their execution; it receives*

Pursuant to **Article 17 (4),** guidelines on the content of obligations incumbent on the general public television broadcasting service "shall be laid down by decision to be adopted in agreement with the Autorità per le garanzie nelle comunicazioni and the Minister for Communications prior to each 3-yearly renewal of the national service contract" . These guidelines are to be "defined in relation to market developments, technological advances and changes in local and national cultural requirements".

Law No. 249 of July 31st 1997 on AGCOM and the regulations for telecommunications and radio and television broadcasting systems, provides in **Article 1 (6.b.10)** that AGCOM "proposes arrangements to the Ministry of Communications to be introduced for the agreement on the concession [franchise, licence] of the public radio-television service". This can be taken to mean that AGCOM mediates between the broadcaster holding the general public broadcasting service franchise and the Ministry of Communications in the conclusion of the service contract. As noted above, it is also involved in adopting the guidelines for the content of such a contract.

All this provides evidence of considerable and direct involvement of various State authorities in the affairs of the public broadcasting service licensee. More evidence of this is added below.

3.

The remit and programme obligations of the public broadcasting service are defined in **Article 17** of the law and, more extensively in the public service contracts [7]. Two things merit attention:

- the involvement of a government department (Ministry of Communications) first in defining – together with the independent broadcasting regulatory authority (AGCOM) – guidelines for the service contract, and then in negotiating and signing it on behalf of the government;
- the provision of **Article 17 (1g)** calling on the public broadcasting service to provide "free broadcasts of messages of social utility or public interest, requested by the Presidency of the Council of Ministers", counterbalanced by the provision of **Article 17 (1d)** to provide "access to programming […] for parties and groups represented in Parliament and in regional assemblies and councils, organisations associated with local authorities, national trade unions, religious denominations, political movements, political and cultural bodies and associations, legally recognised national associations of the cooperative movement, social welfare associations entered in the national and regional registers, ethnic and language groups and such other groups of substantial social interest as may request access".

Two tendencies are evident here:

1. Potential abuse by the government of the right to obtain free air time on request could turn the public broadcaster into a mouthpiece of the government.

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*reports on programmes broadcast by the provider company's administrative council and ascertains compliance with the general directions formulated […]".*

*[7] The current national service contract is available at the following address: http://www.segretariatosociale.rai.it/INGLESE/regolamenti/indice_regolE.html.*

2. On the other hand, public access to airtime serves democracy, provided, of course, that it is granted in an appropriate manner [8].

**COMMENTS AND ASSESSMENT**

1.

The present law creates a mechanism for the continuation of a public broadcasting services after the expiry of a 12-year franchise for RAI, but does not fully guarantee it. As a matter of the Italian State's general broadcasting policy, and of the future of the dual broadcasting system, the question is what would happen if no broadcaster applied for the franchise after the expiry of the current one (and the expiry of the convention between RAI and the Italian Government)?

In Recommendation No. R (96) 10 on the Guarantee of the Independence of Public Service Broadcasting, the Council of Europe Committee of Ministers recommended that Member States "include in their domestic law or in instruments governing public service broadcasting organisations provisions guaranteeing their independence". An Appendix to this recommendation, adds that the legal framework governing public service broadcasting organisations should clearly stipulate their editorial independence and institutional autonomy. **Article 16 (2f)** notes, in the context of the public broadcasting licensee's service contracts at the regional and provincial level, that due regard should be given in such contracts to "the right of the company holding the franchise to take economic decisions, including decisions as to the organisation of the firm". Presumably, the same applies in the case of the national service contracts. Still, the present law does not call for, nor does it require or guarantee full institutional independence and autonomy of the public service broadcasting organisation.

The Appendix stresses that this is especially important in areas such as: the definition of programme schedules; the conception and production of programmes; the editing and presentation of news and current affairs programmes; the organisation of the activities of the service; recruitment, employment and staff management within the service; the purchase, hire, sale and use of goods and services; the management of financial resources; the preparation and execution of the budget; the negotiation, preparation and signature of legal acts relating to the operation of the service; the representation of the service in legal proceedings as well as with respect to third parties. Compared with this list, the two instances mentioned above (economic decisions and organisation of the firm) where external authorities are barred from interfering with the autonomy of the public broadcasting licensee can offer only very limited protection of PSB independence.

2.

The role of the parliamentary commission in programme matters and the manner of developing the service contracts, with strong government participation, can hardly be described as compatible with Recommendation No. R (96) 10 on the Guarantee of the Independence of Public Service Broadcasting of the Council of Europe Committee of Ministers referred to above. This should also be considered in terms of Article 10 of ECHR: "Everyone has the right to freedom of expression. This right shall include freedom to hold

[8] *This may not be the case, however. The European Parliament noted in its Report of 5 April 2004 on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights) (2003/2237(INI); A5-0230/2004 FINAL) that „ broadcasters […] continue to grant access to the national television medium in an essentially arbitrary manner, even during electoral campaigns" (emphasis addend – KJ).*

opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers".

**2. Legal form, governance and funding of RAI**

1.

RAI has so far been a publicly-owned company, governed by a five member Board, appointed by the Speakers of the Chamber of Deputies and of the Senate (three from the governing coalition and two from the opposition). As noted above, the Director General of RAI is now appointed by the Chairman of the Board and the Minister of Economic Affairs.

**Article 21** of the present law provides for:

- The incorporation of RAI-Radiotelevisione italiana Spa in RAI-Holding Spa (the licences, authorisations and franchises held by RAI-Radiotelevisione italiana Spa have been transferred automatically to the incorporating company), and
- Sale of State shares in the company. A proportion of the shares is to be reserved for persons attending the sale who produce evidence that they have paid the licence fee (without the right to sell them within 18 months of the date on which they were purchased). An upper limit of one percent on shareholdings carrying voting rights has been imposed. Voting pacts between syndicates or block votes are prohibited, as are agreements made through controlled, controlling or linked persons, between persons whose total holdings exceed the limit of two percent on shareholding, with respect to shares carrying voting rights, or joint presentation of lists by persons in that position.

2.

The law provides for two methods of appointing the nine member RAI Board of Governors [Directors], to be applied before and after the sale of at least 10 percent of RAI's capital.

- In the first case, seven members of the Board will be designated by the parliamentary commission for the general direction and surveillance of radio-TV services and two (including the chairman) by the majority shareholder, i.e. the Minister of Economic Affairs. The appointment of the chairman must be endorsed by a two-thirds majority in the parliamentary commission.
- In the second case, the Board will be elected by the general meeting of shareholders, with each shareholder holding at least 0.5 percent of shares entitled to present a list of candidates. Until the State has sold all its shares, the Minister of Economic Affairs will continue to present a list of candidates (drawn up by the parliamentary commission) indicating the maximum number of candidates in proportion to the number of shares held by the State. The voting method is designed to some extent to favour, in some cases, candidates proposed by shareholders holding fewer shares [9].

[9] *Art. 20, 6 states: "Save as otherwise provided in this article in respect of the maximum number of candidates on the list presented by the Ministry of Economic Affairs and Finance, each list shall contain a number of candidates equal to the number of board members to be elected. Each shareholder with a right to vote may vote for one list only. Should more than one list be presented, the votes cast for each list shall be divided by whole numbers from one to the number of candidates to be elected; the resulting quotients shall be allocated progressively to the candidates on each list, in the order in which they appear on the list, to form a single graded list on which candidates are placed on the basis of the quotient obtained. Those obtaining the highest quotients shall be elected. Should candidates have equal quotients, the candidate on the list presented by the shareholder holding fewer shares shall be elected. The procedures referred to in this paragraph shall also apply to the election of the trade union college [board of auditors]" (Emphasis added – K.J.).*

Election of the chairman will still have to be endorsed by a two-thirds majority in the parliamentary commission. The Board of Governors [Directors] has a three-year term of office.

3.

Pursuant to **Article 18**, the holder of the general public broadcasting franchise is funded by i.a.licence fees whose amount is set so as to enable the company to cover the costs associated with the public broadcasting service. Pursuant to **Article 6 (5)**, the company may sign contracts or agreements with public authorities for paid services, but may not receive any other form of public funding. **Article 17 (5)** authorises the company to pursue commercial activities, provided that they are not detrimental to its public service remit. This includes advertising, sponsorship and teleshopping, which are regulated elsewhere. An official auditor appointed by RAI and approved by AGCOM will supervise the yearly budget.

**ANALYSIS**

1.

The success of the move to privatise RAI will depend on its attractiveness for potential shareholders, given that no single entity may hold more than one percent of shares. If, as some observers predict, interest in the purchase of shares will be low, this would effectively leave the Minister of Economy in control. However, that remains to be seen.

2.

For the time being (until the sale of at least 10 percent of RAI shares), the change of rules on RAI governance means that the effect of the reform law of 1975, placing RAI under the control of parliament, and not of government (as before), is partly reversed. The parliamentary commission will continue to designate seven of the nine members of the Board of Directors, but the system appears to be designed to give the governing party/coalition a built-in majority [10]. When more than 10 percent of the shares have been sold, the Minister of Economic Affairs may continue to maintain a powerful position in the general meeting for a considerable time as the largest shareholder, whereas all other shareholders will have only 1 percent of the shares and cannot, formally speaking, combine their voting power. Even when all the shares have been sold, the appointment of the chairman of the Board of Directors will still have to be approved by a two-thirds majority of the parliamentary commission, giving the ruling party/coalition an effective veto over his/her election. Even if shares are sold quickly, the first Board of Directors with a government majority will serve out its term of three years.

3.

Methods of funding RAI (setting the level of the licence fee for only a year; possible contracts with public authorities for paid services) are not fully consistent with Recommendation No. R(96) 10 on the Guarantee of the Independence of Public Service Broadcasting of the Council of Europe Committee of Ministers, which says in its Appendix that:

- The decision-making power of authorities regarding funding should not be used to exert,

[10] *See Christopher Sverige ("Italy's new media law tailor-made for Berlusconi", 10 September 2003, http://www.wsws.org/articles/2003/sep2003/ital-s10.shtml).*

directly or indirectly, any influence over the editorial independence and institutional autonomy of the PSB organisation.

- Payment of the contribution or licence fee should be made in a way which guarantees the continuity of the activities of the public service broadcasting organisation and which allows it to engage in long-term planning.
- The use of the contribution or licence fee by the public service broadcasting organisation should respect the principle of independence and autonomy.

**COMMENTS AND ASSESSMENT**

Change at RAI could be described as amounting to its partial re-nationalisation for an unforeseeable period of time. For as long as the present government stays in office, the Prime Minister will directly or indirectly control all major national television channels. In the cases of *Radio ABC v. Austria* and *Informationsverein Lentia and others v. Austria*, the European Court of Human Rights ruled that the state monopoly on broadcasting constituted an unnecessary interference with freedom of expression. The Italian situation is not, strictly speaking, a monopoly, but there is sufficient evidence to suggest that both commercial and public national television channels (and in RAI's case, also radio channels) are controlled by one person to such an extent that a real threat of monopolisation clearly exists. The present Law may change this eventually, but only gradually and potentially only after a considerable period of time.

## VII. SWITCHOVER TO DIGITAL TERRESTRIAL TRANSMISSION (CHAPTER V)

Section V covers the transitional phase between analogue and digital terrestrial distribution. It aims to provide a legal framework for the gradual move of existing, and where relevant new network operators and radio and television broadcasters, to digital terrestrial delivery.[11] The essential provisions are contained in Law n.66 of 20 March 2001, AGCOM Resolution n.435/01/CONS of 15 November 2001 (Regulation on terrestrial television broadcasting by digital technology) and Law n.112 of 3 May 2004.

### 1. Background

The legal framework for the transition to digital broadcasting was first established by **Law 66/2001** that set out some of the basic principles that are reaffirmed and extended in the Gasparri Law that are invoked on completion of the transition from analogue to digital broadcasting. These include a distinction between providers:

- Network operators
- Content providers

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[11] *There are some infelicities in the translation of this Law- infact that are quite a few that make it very confusing. For instance, Article 23 (6) refers to "television channel operator licence" and is unclear whether it refers to the role of "network operator" or that of "content provider". Terminology referring to the different qualifying titles that enable broadcasters to operate is misleading. In the Italian version you have three different types of qualifying titles: "concessione", "licenza" and "autorizzazione" and they refer to:*

- *"concessione" is the title that is held by a national and, sometimes, local analogue broadcaster. "franchise" .*
- *"licenza" is the title that will be awarded to network operators when digital transmissions will be fully implemented. "Licence".*
- *"autorizzazione" is the title that it will be hold by content providers for digital television. "Authorisation". Presently also some analogue local broadcasters qualify to transmit by virtue of an authorisation.*

- Service providers

The distinction is based upon the different activities undertaken by the operators and is designed to replace the existing analogue system categories. In the new system there will be two types of licences issued to operators. The first is "authorisations" (content and service providers) and the second are "licences" (network operators).[12]

2.

Prior to analogue switch off, Law 66/2001 provides (Article 2-bis (1)) for a transitory phase during which "in order to promote the roll out of the DTT market, subjects who legitimately operate as broadcasters (via analogue terrestrial, cable and satellite) are qualified to experiment with television transmissions and Information Society services by digital technology." This "authorisation for the experimentation of digital terrestrial broadcasts" is valid only for network operators as content providers are awarded authorisation directly without intermediary passages.

Law 66/2001 also prescribes that holders of more than one analogue terrestrial television franchise which are awarded "authorisation for the experimentation of digital terrestrial broadcasts" must reserve at least 40 percent of transmission capacity, for each digital multiplex they operate, to independent content providers at fair and no-discriminatory conditions (Article 2-bis (1) and two multiplexes must be reserved for RAI on which it must provide free-to-air programming (Article 2-bis (9)).

3.

Law 66/2001 also obliged AGCOM to adopt, by 30 June 2001, a regulation detailing, among other things, criteria and requirements for issuing licences and authorisations, application procedures and deadlines, obligations imposed on content providers, service providers and network operators, and provisions for the transitory period and rules to safeguard pluralism, competition and transparency. AGCOM adopted such regulation in November 2001, with Resolution n. 435/01/CONS. AGCOM's DTT Regulation establishes the following phases, before analogue switch off:

1. Market start-up phase: the period of time between the coming into force of AGCOM's Regulation (December 2001) and the termination of analogue terrestrial television franchises.

[12] *Authorisations for content providers run for 12 years and are renewable (Article 4(1)). National and local content providers are subjected to all obligations concerning editorial content imposed on analogue terrestrial broadcasters (national and local respectively), in matters of the right of reply (Article 7(1)), advertising, sponsorship and telesales (Article 8), programming and production quotas (Article 9), promotion of European audiovisual works (Article 10), protection of minors and disabled members of the public (Article 11).*
*Conditional access service providers must abide to technical standards (Article 12(3a)) and must submit to AGCOM a "Service Charter" that must be singed by third parties who are in contractual agreements with them as providers, on their behalf, of services to final users (Article 12(4)). Licences for network operators run for 12 years and are renewable (Article 23(1)). National and local network operators are subjected to all obligations concerning the transmitting activities imposed on analogue terrestrial broadcasters (radio electrical and technological projects, functioning of transmitters, sharing of infrastructure, transmission plants and network equipment, minimal investment thresholds for the construction of transmission plants etc., observance of health and environmental legislation etc.).*

2. Transitory phase: the period of time between the coming into force of the AGCOM's Regulation (December 2001) and the switch off of analogue transmissions (i.e. December 2006, as prescribed by Article 2-bis (5) of Law 66/2001).

Pursuant to Article 2-bis (1) of Law 66/2001, Article 32 of the Regulation states that subjects who legitimately operate as broadcasters (via analogue terrestrial, cable and satellite) are allowed to request an "authorisation for the experimentation of digital terrestrial broadcasts" until 30 March 2004. The length of the "authorisation for the experimentation of digital terrestrial broadcasts" cannot exceed 25 July 2005. In substance this authorisation replaces the licence that network operators are required to hold in order to continue their activities once digital transmissions is fully available.

Article 35 of the Regulation states that, "starting from 31 March 2004 and, in any case, subsequently to the adoption by AGCOM of the measures prescribed by Article 29 of the present Regulation, subjects who have qualified for digital experimentation can apply to the Ministry of Communications for the award of licence for network operator for the service area they have been qualified to experiment" (see also Article 13(1)).

In short, Law 66/2001, as interpreted and implemented by AGCOM's Regulation of November 2001, envisages gradual implementation of the dual regime based on licences for network operators and authorisations for content providers, by introducing a transitory qualification ("authorisation for the experimentation of digital terrestrial broadcasts") valid for future licensed network operators.

**ANALYSIS**

**1. Provisions for digital migration**

**Article 22, 23, 24 and 25** are concerned with the roll out of digital terrestrial television broadcasting and switch off of analogue frequencies to establish full conversion of the current system. It is important to put the Gasparri Law into context of the provisions established in Law n.66 of 20 March 2001, AGCOM Resolution n.435/01/CONS of 15 November 2001 (Regulation on terrestrial television broadcasting by digital technology) and Law n.112 of 3 May 2004.

2.

**Article 22 (1)** obliges AGCOM to "prepare a programme for the implementation of the nation plan for the allocation of digital frequencies" The Article therefore extends the principles set out in Law 66/2001 and continues to oblige AGCOM to set out a detailed plan for the migration of services. This plan was approved by AGCOM on 29 of January 2003 (resolution n. 15/03/CONS). This is the so-called "first Level Plan" (it has allocated frequencies for national channels and regional channels). On 12 of November 2003 AGCOM approved the so-called "Integrated Plan" (Resolution. 399/03/CONS), which integrates the "First Level Plan" with a "Second Level Plan" (which allocates frequencies for local channels). Previously, on 15 of November 2001, AGCOM approved the regulation (Regolamento) for awarding licences and authorisations to digital terrestrial operators (Resolution n. 435/01/CONS). In this plan AGCOM must encourage experimentation and safeguard existing services. At the current time, as we understand the situation, there are five digital multiplexes covering over 50 percent of the population. These are allocated as follows:

| Content provider | Multiplexes | New channels available 6. 2004 |
|---|---|---|
| RAI | 2 | 5 |
| Mediaset (RTI) | 1 | 5 |
| Telecom Italia Media | 1 | |
| D-Free | 1 | 1 |
| | | Others in negotiation stage |

Source: Mediaset 2004

Until the implementation of the plan content providers (national and local) that qualify for authorisation can experiment (either run an existing service on digital or apply for a licence to operate a digital channel) pursuant to **Article 23 (1)** until full switch over, which is planned for December 2006. This provision basically extends the previous provisions established in Law 66/2001 and in AGCOM's Regulation that state the current regime for experimentation of digital terrestrial broadcasting ended 25 July 2005.

3.

**Article 23(1)** also rules that subjects who qualify to experiment with digital terrestrial broadcasting can apply for a licence or authorisation to launch digital terrestrial broadcasting services as of the date the Law comes into force. Article 35 of AGCOM Regulation of November 2001 also stated that starting from 31 March 2004 and, in any case, subsequently to the adoption by AGCOM of the measures prescribed by Article 29 of that Regulation (not yet adopted), subjects who qualify for digital experimentation could apply to the Ministry of Communications for a licence as a network operator for the service area they have been qualified to experiment.

**Article 23 (3)** also extends the practice of "spectrum trading", which is a central innovation introduced in Law 66/2001 (Article 2-bis (2)). The system was introduced in order to promote the roll out of the market, given the lack of terrestrial frequencies available to transmit via digital technology. The "frequency trading" system was allowed for a period of three years starting from the coming into force of Law 66/2001 (i.e. until March 2004). However, the Gasparri Law reaffirms the validity of this system without, apparently, temporary limitations (Article 23(3)). From the second half of 2003 RAI and Mediaset have been acquiring frequencies from local television broadcasters. The system allows entities that are legitimately undertaking television activities to transfer transmitters or company branches in order to set up digital networks, provided that the acquisitions are used for digital broadcasting.

**Article 23 (5)** a network operator licence is issued, on request, to subjects that legitimately exercise television broadcasting activities, provided they cover an area of no less than 50 percent of the population or of the local service area they serve. There is a temporary exemption for local operators (Article 25(11)) who are also allowed to apply for a national network operator licence, provided they satisfy certain requirements and commit to certain target in terms of coverage (Article 23 (7)).

**Article 23 (7)** applications for a national network operator licence can also be made by subjects legitimately operating at local level that can prove they satisfy all the requirements for a national operator licence and declare their intention to cover, within six months of the application, an

area of no less than 50 percent of the population, renouncing any right they may hold for local television broadcasting[13].

4.

**Article 24** deals with the introduction of digital radio services and AGCOM are obliged to provide a national strategy to manage the migration of radio analogue broadcasters to digital delivery. The plan, in parallel to the television plan has already been approved by AGCOM and in this sense Article 24 refers to the draft of AGCOM's regulation. The plan is based on, *inter alia*, the following principles of development from analogue to digital: Article 24 (b) pluralism of programmes and services and a balance between national and local; Article 24 (c) defining the phases of development and the role of RAI in supporting roll out; Article 24 (g) setting out the limits of frequency assignment and radio programmes owned by individual companies; and, Article 24 (2) establishes the right for a support plan to be put in place after an industry hearing to assist the roll out of digital radio services.

5.

**Article 25 (1)** establishes that digital terrestrial television has been introduced to promote pluralism in the television sector.

The law adopts a two-step approach for the migration from analogue to digital frequencies, with a special set of obligations for RAI. The two initial phases are envisaged as:

- DTT should cover 50 percent of the population by 1st January 2004.
- DTT should cover 70 percent of the population by 1st January 2005.

During the transitional period there are therefore certain obligations placed on the "company holding the general public broadcasting licence" (RAI) to achieve strategic thresholds in coverage of its DTT services set out in **Article 25 (2)**. These are coverage of: 50 percent of the population from 1 January 2004, and 70 % of the population by 1 January 2005. AGCOM is (was) required by the law to assess the development of digital terrestrial television based on three principles pursuant to **Article 25 (3)** based on:

- DTT coverage of at least 50 percent of the population.
- Affordable availability of decoders.
- Satisfactory range of programmes different to those broadcast on analogue.

In May 2004 AGCOM provided a positive assessment that these goals had been fulfilled with the caveat that the high degree of concentration of financial resources in the sector might act as a threat to media pluralism. This allowed the gradual migration process to continue and existing analogue broadcasters to continue transmissions. AGCOM did not draw upon the provisions indicated in Article 2 (7) of Law no 249 of 31 July 1997 based on **Article 25 (4)** as the conditions have been met.

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[13] *The distinction between network provider and content provider was first introduced by Law n.66 of 20th March 2001. Network operators are subject to the authorisation regime whereas content providers are subject to a licence regime (see above). Network operators are in charge of the transmission network; content providers are in charge of editing a television or radio channel.*

**Article 25 (5)** obliges RAI to consult with the Ministry of Communications to identify either an area or areas that have problems receiving analogue signals in order to begin a process of full migration to digital by January 2005. Regardless of the provisions of Article 25 (5) RAI must ensure, under the provisions of Article 25 (6), that three free-to-air analogue television channels and three digital television channels (Article 25 (6)) on the basis of the coverage set out in Article 25 (2) during the switch over period.

**Article 25 (6)** also has a provision to protect the publishing industry. Support for the press industry is set out in the Law under Article 25 (6). Article 25(6) states: "at least 60 percent of the overall budget set aside by a public administration office or public body or public limited company for the purchase of advertising space for institutional communication on means of mass communication, each financial year, must be used for daily newspapers and magazines".

There are also provisions in the Law to encourage the purchase of set top boxes that include financial subsidies for households set out in **Article 25 (7)**. There is a clause stating that this should only be introduced after the proceeds of the privatisation of RAI are collected pursuant to Article 21 (3). Public subsides for DTT receivers have also been approved by the Annual Budget Law 2003 ("Legge Finanziaria").

As the conditions set out in **Article 25 (3 and 4)** have been achieved (coverage and conditions of the assessment) a provisional transitional measure is established according to Article 25 (8) that restricts market share based on the number of national terrestrial channels (analogue and digital) during the transitional phase. Each broadcaster is limited to a maximum of 20 percent share of channels based on the total number of television channels until the digitalisation of networks, according to the plan, is fully implemented. This includes national channels of experimental nature and/or simultaneous/repeat programming (under Article 23 (1)) regardless of analogue or digital delivery form. However, pursuant to **Article 25 (9)** these conditions are only applicable to broadcasters that have coverage over 50 percent of the population (companies with a national multiplex). RAI is excluded from the threshold, apart from for purposes of calculating the limit of 20 percent. In this respect, RAI channels contribute to the total number of channels available (this was also the system adopted by Law 259 / 1997 for analogue terrestrial television).

With the positive evaluation of AGCOM of the conditions set out in Article 25 (1 and 3) according to **Article 25 (11)** the licences for analogue transmissions are extended on request to the date of final switch over. A request may be submitted either by an incumbent transmitting in digital or a national digital broadcaster (with services above 50 percent of the population). A request can also be submitted by broadcasters who are transmitting on digital frequencies. In the case of national digital broadcasters they must reach over 50 percent of the population. Local broadcasters who intend to apply for a local network operator licence (for DTT), as an exception to the provisions of 23 (5), can request one if they reach just 20 percent (instead of 50 percent) of the analogue coverage. Therefore if a network operator (until the frequency plan is fulfilled) can demonstrate that they have coverage of 20 percent through digital frequencies they can apply to operate as a local digital operator on the condition that they commit to invest, within a five year period, a minimum sum of €1 mil in each region covered by that said licence. Furthermore, there is a reduction to € 500,000 where licences are restricted to areas smaller than the region[14] (and for cases where an "additional licence for further broadcasting activities" are carried out within that said region € 250,000).

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*[14] Italy is divided into three main administrative levels: regions (20 overall e.g. Tuscany, Sicily, Lombardia, Lazio, Piemonte etc.), provinces (approx. 100 provinces including cities and their surrounding areas) and towns (more than 1000 towns are both big cities such as Rome, Florence, Milan and very small towns).*

**ASSESSMENT AND COMMENTS**

The provisions set down in Section V for the migration of radio and television broadcasters from analogue to digital frequencies establishes an extraordinary rate of migration according to the deadlines set for switch off and full migration.

Many of the central provisions of Section V support and extend the provisions of Law 66/2001 and it acts to extend deadlines and therefore the continuation of the present conditions for the migration of broadcasters between frequencies. The main tool are a mix of 1) State subsidies to promote the diffusion of hardware into households as well as indirect subsidies in terms of the allocation of a minimum amount of the State advertising budget to the print sector, 2) public policy deadlines that oblige RAI to meet coverage deadlines and thresholds set for operators to apply for licences and authorisations on local, national and regional levels, 3) free market mechanisms i.e. spectrum trading between operators. There is also a reconfiguration of the categories for licensing purposes and transitional limits on channel share established to protect a degree of pluralism in the migration period. Many of these features were previously established in Law 66/2001 and AGCOM's Regulation.

AGCOM is key to the transitional measures set out in this section and although it has been obliged to set certain parameters some of these measures have, as yet, not been adopted by AGCOM. For example Article 29 of the Regulation states that AGCOM, in order to promote diversity of information and pluralism, adopts, by 31 March 2004, a measure containing provisions in matters of agreements between network operators and content providers, in order to guarantee, in particular access to networks for independent content providers of particular value. This measure was adopted on 12 August 2004 with resolution 253/04.

In accordance with Law 66/2001, AGCOM's Regulation contemplates a transitory phase during which the licence regime for network operators does not apply and it sets out the steps in order to complete the transition from the regime for individual permits valid for analogue broadcasting, to the dual regime (authorisations for content provider and licences for network operator) envisaged by Law 66/2001 in a fully digitalised television environment.

Council of Europe Recommendation (2003) 9 requests the Member States to "create adequate legal and economic conditions for the development of digital broadcasting that guarantee the pluralism of broadcasting services and public access to an enlarged choice and variety of quality programmes" (COE 2003 (9) a). As well also to "protect and, if necessary, take positive measures to safeguard and promote media pluralism, in order to counterbalance the increasing concentration in the sector".

Given that this Law appears to simply accommodate the conditions in the analogue market and transfer these to the nascent digital market the present conditions are not fundamentally altered by this Law. It is highly questionable that an enlarged choice will be achieved through digitalisation in terms of the range of operators at national level, though some new operators can be anticipated. The fundamental issues of economies of scale and high costs of television production will work to favour the incumbents.

**APPENDIX**[15]

Law n. 66 of 20 March 2001

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| Article 1 | Postponement of the deadlines for the prosecution of analogue local television broadcasting and radio broadcasting |
| Article 2 | Transfer and renewal of transmission networks |
| Article 2-bis | Digital terrestrial radio and television |
| Article 3 | Entry into force |

**Key Provisions**

- Article 2-bis (1) In order to promote the roll out of the DTT market, subjects who legitimately operate as broadcasters (via analogue terrestrial, cable and satellite) are qualified to experiment with television transmissions and Information Society services by digital technology.

- Article 2-bis (1) holders of more than one analogue terrestrial television franchise must reserve at least 40 percent of transmission capacity, for each digital multiplex they operate, to independent content providers at fair and no-discriminatory conditions.

- Article 2-bis (2) "frequency trading" is allowed in order to promote the roll out of the market. It is permitted for a period of three years starting from the coming into force of the present Law (i.e. until March 2004).

- Article 2-bis (5) analogue switch-off by 31 December 2006.

- Article 2-bis (7) obligation placed on AGCOM for the adoption, by 30 June 2001, of a detailed regulation on DTT (see AGCOM Resolution n. 435/01). Such regulation must include *inter alia*: a distinction between content providers (holders of authorisation) and network operators (holders of licences); provisions for the transitory period; rules safeguarding pluralism, competition, transparency etc.

- Article 2-bis (9) the company holding the general public broadcasting service licence (RAI) is reserved one multiplex for radio broadcasting and one multiplex for television broadcasting. The channels and services offered by RAI must be free-to-air. RAI's multiplexes must remain separate from those of the others operators.

[15] *The experts would like to acknowledge the assistance of Alessandro D'Arma who collected and translated these provisions and subsequently provided comments.*

AGCOM Resolution n. n.435/01/CONS of 15 November 2001

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| Title 1 (Article 1) | Definitions |
| Title 2 (Article 2-11) | Authorisations for content providers |
| Title 3 (Article 12) | Authorisations for service providers (i.e. interactive services) |
| Title 4 (Article 13-23) | Licenses for network operators |
| Title 5 (Article 24-29) | Rules for the safeguard of diversity of information, transparency, competition and no-discrimination |
| Title 6 (Article 30-31) | Provisions on radio broadcasting |
| Title 7 (Article 32-37) | Provisions for the transitory regime of terrestrial television broadcasting |
| Title 8 (Article 38-39) | Provisions for the company holding the general public broadcasting service license (RAI) |

**Key provisions**

- Article 13(1) licences for network operators are awarded from 31 March 2004 and, in any case, subsequently to the adoption by AGCOM of the measures indicated in Article 29 of the present Regulation.

- Article 15(3) licences for national network operators are awarded to holders of a franchise for analogue terrestrial television, provided they are up to date with the payment of franchise fees and they have not revoked their franchise.

- Article 24(1a) 1/3 of digital terrestrial transmission capacity is reserved to local content providers.

- Article 24(1b) no subject is allowed to be holder of authorisations as a content provider that enable them to broadcast more than 20 percent of the total number of television channels (free-to-air or pay) available via DTT at national level.

- Article 24(2) no subject can be holder of authorisations for content provider at national and local level at the same time.

- Article 25 transparency requirements for content providers including a requirement of accounting separation for holders of more than one authorisation as content provider for each authorisation they hold; requirement of accounting separation for holders of authorisation as content and as service provider.

- Article 27 transparency requirements for network operators including a requirement of accounting separation for local network operators who are also content providers; requirement of company separation for national network operators who are also content providers.

- Article 29 in order to promote diversity of information, pluralism etc, AGCOM adopts, by 31 March 2004, a measure containing dispositions in matter of agreements between network operators and content providers, in order to guarantee, in particular, the access to networks of independent content providers of particular value (for the quality of content and pluralism of information, both at national and local level). At the time of writing, such measure has not been adopted yet.

- Article 32 subjects who legitimately operate as broadcasters (via analogue terrestrial, cable and satellite) are allowed to request an "authorisation for the experimentation of digital terrestrial broadcasts" (see above, Article 2-bis of Law 66/2001) until 30 March 2004. The length of the "authorisation for the experimentation of digital terrestrial broadcasts" cannot exceed 25 July 2005.

- Article 35 starting from 31 March 2004 and, in any case, subsequently to the adoption by AGCOM of the measure prescribed by Article 29 of the present Regulation, subject qualified for digital experimentations can apply to the Ministry of Communications for the award of licence for network operator for the service area they have been qualified to experiment.

Amendments to previous legislation in the present law

| **Earlier legislation** | **Amended in the present law to read:** |
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| **Article 8(8) of Law no 223 of 6 August 1990**<br><br>The broadcasting time devoted by private radio broadcasters to advertising messages (spots) cannot exceed, for each hour:<br><br>(…)<br><br>**5%** as far as community radio stations (transmitting both at local and national level) are concerned. | **Art. 5(2)**<br><br>The broadcasting time devoted by private radio broadcasters to advertising messages (spots) cannot exceed, for each hour:<br><br>(…)<br><br>**10%** as far as community radio stations (transmitting both at local and national level) are concerned. |
| **Article 8 (9-ter) of Law no 223 of 6 August 1990**<br><br>As far as local television broadcasters are concerned, the daily advertising ceiling increases to **35%** when other forms of advertising, such as tele-shopping programmes, are included, provided the compliance with the daily and hourly ceilings for spots (as set in paragraph 9 of Article 8). | **Art. 7(6)**<br><br>As far as local television broadcasters are concerned, the daily advertising ceiling increases to **40%** when other forms of advertising, such as tele-shopping programmes, are included, provided the compliance with the daily and hourly ceilings for spots (as set in paragraph 9 of Article 8). |

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| **Article 8 (9-ter) of Law no 223 of 6 August 1990**<br><br>As far as local television broadcasters are concerned, the daily advertising ceiling increases to **35%** when other forms of advertising, such as tele-shopping programmes, are included, provided the compliance with the daily and hourly ceilings for spots (as set in paragraph 9 of Article 8). | **Art. 7(5)**<br><br>Local television broadcasting firms which undertake, within two months from the date on which the present law enters into force, to broadcast teleshopping programmes amounting to more than 80 % of their overall programmes **shall not be subject to the 40 % congestion limit laid down in Article 8, paragraph 9-ter, of Law no 223 of 6 August 1990, as amended by paragraph 6 of this article, or to the information obligations incumbent on local television broadcasters.** |
| **Article 1(1) of Law no 175 of 5 February 1992** [16]<br><br>Advertising related to the medical professions (as defined by the current regulations) is allowed only through (…) through daily newspapers and periodicals. | **Art. 7(8)**<br><br>Advertising related to the medical professions (as defined by the current regulations) is allowed only through (…) through daily newspapers and periodicals **and local television broadcasters.** |
| **Article 6(1)(b) of the regulation referred to in Decree no 430 of the President of the Republic of 26 October 2001** | **Art. 7(9)**<br><br>**The following words are added:**<br><br>…in the case of radio broadcasters, listeners who take part in events through a radio link or any other remote link shall also be deemed to be present. |
| **Article 8(8) of Law no 223 of 6 August 1990**<br><br>The broadcasting time devoted by private radio broadcasters to advertising messages (spots) cannot exceed, for each hour:<br><br>(…)<br><br>**20%** as far as radio broadcasting at the local level is concerned; | **Art. 7(14)**<br><br>**Amend as follows:**<br><br>The broadcasting time devoted by private radio broadcasters to advertising messages (spots) cannot exceed, for each hour:<br><br>(…)<br><br>**25%** as far as radio broadcasting at the local level is concerned; |

[16] *As amended by Article 3 of Law no 42 of 26 February 1999 and Article 12(1) of Law no 362 of 14 October 1999.*

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| **Article 8(9) of Law no 223 of 6 August 1990**<br><br>The broadcasting time devoted by local private television broadcasters to advertising cannot exceed 15% of daily programming and **20%** of hourly programming. | **Art. 7(15)**<br><br>The broadcasting time devoted by local private television broadcasters to advertising cannot exceed 15% of daily programming and **25%** of hourly programming. |
| **Article 21(2) of Law no 223 of 6 August 1990**<br><br>The authorisation entitles local radio or television broadcasters transmitting in different geographic areas to transmit simultaneously for not more that 6 hours daily, apart from the case of news broadcasts of exceptional and not foreseeable events. | **Art. 8(1)**<br><br>**Amend as follows:**<br><br>The authorisation entitles local broadcasters transmitting in different geographic areas to transmit simultaneously for not more that 6 hours daily **in the case of radio broadcasters and 12 hours in the case of television broadcasters (**apart from the case of news broadcasts of exceptional and not foreseeable events). **Changes of the transmission time of simultaneous broadcasts by authorised persons shall be permitted, provided that the Ministry of Communications isnotified at least 15 days in advance.** |
| **Article 39(1) of the regulation referred to in Decree no 225 of the President of the Republic of 27 March 1997** | **Art. 8(2)**<br><br>**The following words to be added:**<br><br>6 hours a day **in the case of radio broadcasters and 12 hours in the case of television broadcasters** |
| **Article 2(2) of Decree-Law no 5 of 23 January 2001**<br><br>The renewal actions set in Art. 5 of Decree No 381 of 10 September 1998 enacted by the Ministry of Environment are arranged by the regions and the autonomous provinces and are borne by the owner of the transmission network The subjects who don't comply, within the terms prescribed by law, with the environmental or health requirements, are charged with a pecuniary administrative sanction ranging from | **Art. 9**<br><br>**The following sentence to be added:**<br><br>The sanctions referred to in the preceding sentence, reduced by one third, shall apply to authorised persons, operating legitimately, who are affected by orders to bring broadcasting stations into line with urban development, environmental or health requirements and who have submitted redevelopment plans to branch offices of the Ministry of Communications, |

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| 50 to 300 millions of Lire. | obtaining authorisation for alterations to the stations, with which they have complied within a period of 180 days |
| **Article 1(6)(b)(6) of Law no 249 of 31 July 1997**<br><br>[AGCOM]<br><br>6) ascertains that the regulations for the safeguarding of minors in the radio-television broadcasting sector are observed, taking account of self-regulation codes that may be in place concerning the relations between minors and television, as also the guidelines provided by the parliamentary commission for general policy and superintendence on radio and television services; | **Art. 10 (4)**<br><br>**The following text to be inserted at the end:**<br><br>In the event of failure to comply with the rules on the protection of minors, including the rules laid down in the Code on TV self-regulation and minors approved on 29 November 2002, as subsequently amended, the products and services committee of the Authority shall decide whether to impose the sanctions provided for in Article 31 of Law no 223 of 6 August 1990. The sanctions shall apply even if the act constitutes an offence and irrespective of any criminal proceedings. Sanctions imposed either by the Authority or by the committee for the application of the Code on TV self-regulation and minors must be given adequate publicity and the broadcaster on which the sanction is imposed must mention it among the news items broadcast at appropriate or peak viewing times |
| **Article 114(6) of the Code of Criminal Procedure**<br><br>Art.114 Ban on publication of items [acts, deeds]. (6) It is prohibited to publish personal information and image of minors (witness, offended person and injured party) until they are eighteen years old. The children's court, in the interest of the minor, or the minor who is sixteen, can allow the publication. | **Art. 10(8).**<br><br>**The following sentence to be inserted after the first sentence:**<br><br>"The publication of items which may lead, even indirectly, to the identification of the abovementioned minors shall also be prohibited". |
| **Art. 2(16) of Law No. 249 of 31 July 1997**<br><br>16. For purposes of identifying the dominant positions forbidden **by the present law**, the shareholdings in the capital acquired or owned through companies controlled directly or indirectly, trust companies or third parties will be taken into consideration. (…)When agreements exist among the various shareholders, in whatever manner it may be concluded, as regards concerted voting behaviour, or the management of the company, other than the mere consultation among shareholders, each of the shareholders is | **Art. 14 (5)**<br><br>**Amend as follows:**<br><br>16. For purposes of identifying the dominant positions forbidden **in the integrated communications system**, the shareholdings in the capital acquired or owned through companies controlled directly or indirectly, trust companies or third parties will be taken into consideration. (..) When agreements exist among the various shareholders, in whatever manner it may be concluded, as regards concerted voting behaviour, or the management of the company, other than the mere consultation among shareholders, each of |

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| regarded, **for purposes of the present law**, as owner of the sum of the shares or shareholdings held by the shareholders in agreement among themselves or which such shareholders may control. | the shareholders is regarded**~~, for purposes of the present law~~**, as owner of the sum of the shares or shareholdings held by the shareholders in agreement among themselves or which such shareholders may control. |
| **Art. 2(7) of Law No. 249 of 31 July 1997**<br><br>The Authority, in obedience to the changes in the characteristics of markets **and having regard to the criteria indicated in clauses 1 and 8**, without prejudice to the non-enforceability as indicated in clause 2, will adopt the measures necessary for the elimination or prevention of the creation of positions as set out in clause 1 or which are in any way harmful to pluralism. | **Art. 15 (5)**<br><br>**Amend as follows:**<br><br>The Authority, in obedience to the changes in the characteristics of markets **~~and having regard to the criteria indicated in clauses 1 and 8~~**, without prejudice to the non-enforceability as indicated in clause 2, will adopt the measures necessary for the elimination or prevention of the creation of positions as set out in clause 1 or which are in any way harmful to pluralism. |
| **Article 8(7) of Law no 223 of 6 August 1990**<br><br>The broadcasting time devoted by nation-wide private television broadcasters to advertising **messages** cannot exceed 15% of daily programming and 18% hourly programming. | **Art. 15 (7a)**<br><br>**Amend as follows:**<br><br>The broadcasting time devoted by nation-wide private television broadcasters to advertising **spots** cannot exceed 15% of daily programming and 18% hourly programming. |
| **Article 8(9-bis) of Law no 223 of 6 August 1990**<br><br>The broadcasting time that nation-wide private television broadcasters can devote to advertising messages [spots] increases to 20% if including forms of advertising such as the offers made directly to the public for the sale, the acquisition and the rent of products or for the provision of servicesa are included, provided the compliance with the daily and hourly ceilings (as set in paragraph 7 of Art.8) for advertising other than the offers referred to in this paragraph. However, the transmission time dedicated by broadcasters to such forms of **offers** cannot exceed 72 minutes daily. | **Art. 15 (7b)**<br><br>**Amend as follows:**<br><br>The broadcasting time that nation-wide private television broadcasters can devote to advertising messages [spots] increases to 20% if including forms of advertising **different from advertising spots** such as the offers made directly to the public for the sale, the acquisition and the rent of products or for the provision of services are included, provided the compliance with the daily and hourly ceilings (as set in paragraph 7 of Art.8) for advertising other than the offers referred to in this paragraph. However, the transmission time dedicated by broadcasters to such forms of **advertising other than advertising spots** cannot exceed 72 minutes daily. |

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| **Article 10 of Law no 62 of 7 March 2001**<br><br>**- (Advertising messages to promote books and reading). –**<br><br>1. Advertising messages forming part of initiatives taken by specialist institutions, bodies and associations, with a view to mobilise public opinion vis-à-vis books and reading, broadcast free of charge or on favourable terms by public or private television or radio broadcasters, shall not be taken into consideration for the purpose of calculating the upper limits referred to in Article 8 of Law no 223 of 6 August 1990, as subsequently amended. | **Art. 15 (8)**<br><br>**Replace with the following text [17]:**<br><br>1. Advertising messages forming part of initiatives taken by specialist institutions, bodies and associations, producers and publishers, with a view to mobilise public opinion vis-à-vis books and reading, broadcast free of charge or on favourable terms by public or private television or radio broadcasters, shall not be taken into consideration for the purpose of calculating the upper limits referred to in Article 8 of Law no 223 of 6 August 1990, as subsequently amended. |
| **Article 1 (2-quarter) of Law no 66 of 20 March 2001**<br><br>Local radio broadcasting companies may transmit signals to a maximum of 4 regions (in the north of Italy) or 5 regions (in the centre and in the suth of Italy), providing that they are neighbouring regions and the total population served does not exceed 15 millions persons. | **Art. 24(4)**<br><br>**Replace with the following text:**<br><br>A single person, exercising local sound broadcasting activity, directly or through a number of interlinked or controlled persons, may transmit signals to a maximum coverage of 15 million people |
| **Article 19(1)(b) of Law no 103 of 14 April 1975**<br><br>Beyond the running of the services licensed, the company holding the public television broadcasting | **Art. 25 (13a)**<br><br>**Amend as follows:**<br><br>Beyond the running of the services licensed, the |

[17] *The two texts appear to be identical. The same seems to be the case with the Italian original. Article 10 of Legge 7 marzo 2001, n. 62 "Nuove norme sull'editoria e sui prodotti editoriali e modifiche alla legge 5 agosto 1981, n. 416" pubblicata nella* Gazzetta Ufficiale *n. 67 del 21 marzo 2001 is as follows: "1. I messaggi pubblicitari facenti parte di iniziative, promosse da istituzioni, enti, associazioni di categoria, volte a sensibilizzare l'opinione pubblica nei confronti del libro e della lettura, trasmessi gratuitamente o a condizioni di favore da emittenti televisive e radiofoniche pubbliche e private, non sono considerati ai fini del calcolo dei limiti massimi di cui all'articolo 8 della legge 6 agosto 1990, n. 223, e successive modificazioni". In the Gasparri Law, the text which is to replace it reads as follows: "1. I messaggi pubblicitari facenti parte di iniziative, promosse da istituzioni, enti, associazioni di categoria, produttori editoriali e librai, volte a sensibilizzare l'opinione pubblica nei confronti del libro e della lettura, trasmessi gratuitamente o a condizioni di favore da emittenti televisive e radiofoniche pubbliche e private, non sono considerati ai fini del calcolo dei limiti massimi di cui all'articolo 8 della legge 6 agosto 1990, n. 223, e successive modificazioni".*

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| franchise must supply the following services: […] to broadcast - in accordance with the directives of the Presidency of the Council of Ministers, heard the competent parliamentary commission - television and radio services for television and radio stations abroad in order to promote the Italian language and culture **and to short wave outside the country, in accordance with Legislative Decree no 1132 of 7 May 1948 and Decree no 1703 of the President of the Republic of 5 August 1962.** | company holding the public television broadcasting franchise must supply the following services: […] to broadcast - in accordance with the directives of the Presidency of the Council of Ministers, heard the competent parliamentary commission - television and radio services for television and radio stations abroad in order to promote the Italian language and culture ~~**and to short wave outside the country, in accordance with Legislative Decree no 1132 of 7 May 1948 and Decree no 1703 of the President of the Republic of 5 August 1962.**~~ |
| **Article 20(3) of Law no 103 of 14 April 1975** | **Art. 25 (13b)**<br><br>**Amend as follows:**<br><br>b) the whole of the passage in Article 20(3) from the words: «through transmissions» to the end of the paragraph shall be deleted. |
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