



## Developments in the TV sector in 2012 and trends for 2013

2012 was characterised by fervent activity by the Italian authorities, which profoundly affected the country's TV market and encouraged great expectations for 2013.

In particular, the nullification of channel line-up (LCN or logical channel number) and the cancellation of 'beauty contests' for the allocation of additional digital terrestrial television (DTT) frequencies shook up the prevailing TV regulatory environment, heralding a new year of appealing opportunities for newcomers to the market as well as existing operators.

Here we summarize the most relevant innovations to the Italian legal framework and preview the trends to look out for in 2013.

### REVIEW OF 2012

#### • The cancellation of the 'beauty contest' to allocate DTT frequencies

After several criticisms were raised regarding the formula by which free-of-charge DTT frequencies would have been assigned, the 'beauty contest' was cancelled by the Monti Government.

#### • The nullification of the digital terrestrial television channel line-up (LCN)

At the end of August 2012 the Council of State (the highest administrative court in Italy), with four decisions, voided the Italian Communications Authority's (AGCOM) 2010 regulation on DTT channel line-up.

The nullification was based both on substantial and procedural grounds: (i) the criteria governing the allocation of LCN positions to local channels did not comply with the relevant law, and (ii) the public consultation on the LCN regulation carried out in 2010 by AGCOM was too short (lasting 15 days rather than the necessary 30).

#### • The completion of the analogue switch-off

In early July 2012 Italy completed the process, started in 2008, of transition from analogue to digital terrestrial television.

#### • Lighter requirements for operating DTT channels

Upon the completion of the analogue switch-off two of the requirements governing the operation of a DTT channel no longer apply, namely: (i) having a fully paid-up corporate capital, net of losses, not lower than €6.2 million and (ii) employing at least 20 people.

#### • New rules for the protection of minors

Legislative Decree No 120/2012 strengthened the protection of minors from certain content aired by linear and non-linear audiovisual media services. According to the new rules (i) programmes for over-18s and programmes which might seriously impair the physical, mental or moral development of minors may only be offered by VOD operators implementing a parental control system, while their transmission on linear channels is strictly prohibited, and (ii) the broadcast on linear channels of programmes for over-14s and programmes which are likely to impair (not seriously) the physical, mental or moral development of minors is allowed either from 11pm to 7am (without parental control), or at any time with parental control systems; broadcasters are required to mark the harmful content with a red symbol for the entire duration of the programme.

#### • Amendment to the AGCOM Regulation on short news reports

AGCOM has amended its Resolution No 667/10/CONS in compliance with a decision of the Council of State, which ruled that the maximum duration of each short extract of events of "high interest to the public" must be no longer than 90 seconds (instead of the former limit of three minutes).

#### • ECHR condemned Italy in the Centro Europa 7 case on media pluralism

With the decision of 7 June 2012 the European Court of Human Rights (ECHR) condemned Italy for not having assigned Centro Europa 7 the frequencies to operate its analogue TV channel, duly licensed since 1999. The Court concluded that the Italian authorities had failed to put in place an appropriate legislative and administrative framework aimed at guaranteeing effective media pluralism. The court held that Italy had to pay €10 million in damages and €100,000 in costs and expenses.

#### • Renewal of AGCOM's board

After the reduction in the number of members of the Italian Communications Authority's board from nine to five, new board members have been appointed.

### PREVIEW OF 2013

#### • Reshuffling of the DTT channel line-up (LCN)

By April this year AGCOM will issue a new regulation on LCN, after which time the Ministry will re-allocate LCN positions. Also depending on their position in the LCN, DTT channels will be able to gain audience share and advertising revenues; the new rules will therefore have a significant impact on the competitive structure of the Italian DTT market. The coming reassignment may lead to great opportunities for newcomers, as well as for existing operators, to launch new channels and reposition themselves in the Italian DTT market.

• **Allocation of TV frequencies: tender for six DTT multiplexes**

A new regulation on the allocation of six DTT multiplexes will be issued by AGCOM in the first quarter of 2013, aiming at the reallocation of frequencies based on an auction (instead of a 'beauty contest').

After the issuance of the new regulation, the Ministry of Economic Development will launch the auction for the assignment of DTT multiplexes. Notwithstanding the possibility that the upcoming general elections could trigger some delays to the process, it is expected that the relevant authorities will move forward quickly with the auction as, once new DTT multiplexes are allocated, the European Commission will finally close the infringement procedure pending against Italy since 2005.

This represents a unique opportunity for new players to enter the Italian TV market and enhance the competition between TV network operators.

• **Technical specifications to access adult content and a new criteria for classification of TV programmes**

AGCOM will issue new regulations outlining (i) the criteria for the classification of programmes which might impair the physical, mental or moral development of minors and (ii) the technical specifications to be adopted in order to exclude minors from viewing adult content on non-linear audiovisual media services.

• **Online advertising revenues shall be counted for purposes of anti-concentration limits**

The revenues raised from online advertising, including the revenues from search engines and social networks, will be included in the Integrated System of Communications (SIC). The SIC is defined as the economic sector which includes: the daily and periodic press; directory and electronic publishing including through the Internet, radio and audiovisual media; cinema; external advertising; products and services communication initiatives; and sponsorship.

AGCOM monitors compliance of media operators with the prohibition against earning revenues greater than 20% of the total revenue of the SIC by making an annual assessment of the latter. The amendment, passed in 2012, will take effect from 2013.

• **Exemptions from European content quotas**

AGCOM will issue new rules on the evaluation criteria and modalities of (i) exemption requests and (ii) broadcasters' compliance with European works transmission quotas.

• **Limits to cross-media ownership**

National broadcasters (regardless of the platform of transmission) whose revenues are equal to or greater than 8% of those of the SIC may not own shares in newspaper publishers. This prohibition was due to expire in December 2012, but has been extended until the end of 2013. There remains a question mark over whether the new government will confirm or repeal this rule.