

Digital Terrestrial Television: Italian Communications Authority Launches Public Consultation on Channel Line-Up

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1. The Decisions of the Council of State Voiding the Existing LCN

At the end of August the Council of State (the Italian highest administrative court), with four decisions, has voided the regulation on the digital terrestrial television channel line-up (so called LCN – logical channel numbering) issued in 2010 by the Italian Communications Authority (AGCOM).

The Council of State ruled in particular that:

- (i) the public consultation carried out in 2010 by AGCOM on the LCN regulation was too short (15 days rather than 30);
- (ii) the criteria to allocate LCN positions to local channels did not comply with the relevant law;
- (iii) AGCOM must carry out a new investigation on whether, before the approval of the LCN regulation, Italian viewers allocated positions 7, 8 and 9 to national or local channels;
- (iv) the law does not require to include the semigeneralist channels within the same section of the former analogue channels (which hold the first positions).

The Council of State voided the LCN regulation in its entirety, therefore after the publications of the decisions none of the TV channels had an exclusive right to LCN positions previously assigned to them.

This is the reason why the Council of State expressly stated that AGCOM is entitled to adopt interim measures aimed at avoiding the chaos which could be triggered by the sudden cancellation of the LCN.

2. The Public Consultation on the New LCN Regulation

On September 4, 2012, few days after the publication of the Council of State decisions, AGCOM issued a resolution to freeze the existing LCN until the adoption of the new LCN regulation.

One month later, on October 4, AGCOM approved a draft LCN regulation and launched a public consultation on such draft regulation.

Broadcasters and other interested operators may submit to AGCOM their comments and proposed amendments to the draft regulation on LCN; the deadline will expire 30 days after the publication (not yet happened) of the draft regulation on the Official Journal.

After the end of the public consultation, AGCOM will adopt the new LCN regulation. Likely the new regulation will empower the Ministry of Economic Development – Communications Department to draft the tender rules to assign the LCN positions to the channels: the broadcasters will need to tender their applications for the LCN numbers according to the new rules and the Ministry will then assess all applications and will assign new LCN numbers.

3. Opportunity for New Entrants

The Italian TV market is vibrant. After the recent completion of the analogue switch-off, digital terrestrial television reaches more than 24 million households.

It is expected that existing operators will launch new channels and new broadcasters will start DTT services. An auction to allocate additional terrestrial frequencies will take place in the next few months and this should increase opportunities for new channels.

The re-allocation of the channel line-up offers a great opportunity for foreign operators to enter the Italian market.

Interested parties will be keen to participate in the consultation process, since the channels will be ranked according to criteria established in the regulation for the re-allocation of the LCN.