



Final regulations on the digital dividend beauty contest

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By Ernesto Apa and Dario Morelli

On July 8 2011 the final regulations on the procedure for allocating the internal digital dividend was published in the *Official Gazette*. The assessment and allocation procedure - or beauty contest - will be held to allocate six digital terrestrial multiplexes to network operators for the purpose of establishing six national digital television networks. The application period closed on September 6 2011.

Available multiplexes

The multiplexes in question will be available following analogue switch-off, which is scheduled for early 2012. They have been divided into three subsets.

Subset A

Subset A comprises three Digital Video Broadcasting-Television (DVB-T) multiplexes - the existing standard for digital terrestrial audiovisual broadcasting in Italy - in the 181 megahertz (MHz) to 188 MHz, 502 MHz to 510 MHz and 526 MHz to 534 MHz bands.

Resolution 181/09/CONS states that in order to guarantee pluralism and market efficiency within the broadcasting sector, parties which control two or more analogue television networks nationally before analogue switch-off are not eligible for the multiplexes included in Subset A. Thus, no operators belonging to the RAI, Mediaset or Telecom Italia groups may compete for these multiplexes. This restriction is based on a pending EU infringement proceeding initiated against Italy on the grounds that its legal framework for television broadcasting is inconsistent with EU rules on e-communications.

Following the European Commission's decision of July 20 2010, which amended the original commitments made in relation to the Stream/Telepiù merger, Sky is entitled to participate in the contest for a single multiplex under Subset A. However, if successful, Sky may use the multiplex for free-to-air transmissions only.

Subset B

Subset B comprises two DVB-T multiplexes in the 742 MHz to 750 MHz and 766 MHz to 774 MHz bands. Any operator may participate, with the exception of Sky.

Subset C

Subset C consists of a single multiplex in the 734 MHz to 742 MHz range. This may be used for Digital Video Broadcasting-Handheld (DVB-H) services, such as mobile television services for smartphones.

Alternatively, the multiplex may be used for DVB-T2, a broadcasting standard which may develop further in future, but at present is used only by a limited number of viewers who have suitable decoders. Since Rai, Mediaset and H3G each already hold a DVB-H multiplex, they will not be allowed to compete for the Subset C multiplex.

Evaluation

The final ranking will be decided by a committee appointed by the ministry. The committee will be assisted by an adviser. Unconfirmed statements suggest that this role may be given to the Ugo Bordoni Foundation, an institution which (among other things) provides consultancy and support on developments in telecommunications, information technology, electronics and multimedia.

The beauty contest is not an auction and the participants will not be ranked on the basis of the financial value of their tenders. Rather, they will be assessed on:

their technical infrastructure plan (up to 35%);
their marketing plan for broadcast services (up to 35%); and
their company structure and experience in the field of e-communications (up to 30%).
In the event of a tie between two or more participants, new entrants will prevail.

Conditions and further changes after switch-off

The regulation approved by the ministry provides that at the end of the beauty contest, no operator may control more than five national DVB-T multiplexes. For example, Elettronica Industriale is a network operator belonging to the Mediaset group. It owns four DVB-T multiplexes (as well as one DVB-H multiplex). Therefore, it may acquire no more than one new multiplex through the beauty contest. Telecom Italia Broadcasting, which controls three multiplexes, may acquire up to two. However, operators which reached the five-multiplex threshold as a result of the beauty contest may buy further multiplexes from other operators, provided that such multiplexes were not originally assigned through the beauty contest.

In the five years following analogue switch-off, the operators that were successful in the beauty contest may not transfer or otherwise make available to third parties any rights in the multiplexes assigned as a result of the beauty contest, on either a temporary or a permanent basis. The only exception is for exchanges of frequencies between winning bidders in Subsets A and B - however, Sky is again excluded. Thus, during the five-year period only operators that obtain at least one multiplex in the beauty contest may transfer multiplexes assigned through that process, and then only to other assignee operators. Such multiplexes may not be assigned to operators that have reached the five-multiplex threshold as a result of the contest.

If RAI, Elettronica Industriale or Telecom Italia Media Broadcasting reaches the five-multiplex threshold as a result of the contest, it will be required to allow independent channels to use 40% of the transmission capacity of its fifth multiplex.

Within five years of the beauty contest, the operators which have acquired multiplexes must develop appropriate networks covering no less than 80% of the Italian population. Performance of this requirement will be guaranteed by funds deposited by the operators, which may be collected (wholly or in part) in the event of a breach. Winners will be granted use rights in respect of the frequencies for a renewable period of 20 years.

Comment

By the end of Autumn 2011 it will become clear whether the beauty contest has merely consolidated existing interests or has provided a shake-up of the Italian television market and facilitated market entry for new operators.