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Television across Europe:

Follow-up Reports 2008

ITALY

La televisione in Europa:

Rapporto di aggiornamento 2008

ITALIA

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This country report was prepared as part of a series of monitoring reports titled ‘Television across Europe: Follow-up Reports 2008’. The series presents an update of the situation in nine of the original twenty countries covered in the 2005 reports series ‘Television across Europe: regulation, policy and independence’. The countries included in the 2008 series are: Albania, Bulgaria, Czech Republic, Italy, Lithuania, Macedonia, Poland, Romania and Slovakia.

Both series of reports have been prepared by the EU Monitoring and Advocacy Program (EUMAP) of the Open Society Institute and by the Media Program of the Open Society Foundation, in cooperation with local experts. EUMAP and Media Program would like to acknowledge the primary role of the following individuals in researching and drafting this country report.

Final responsibility for the content of the reports rests with the Programs.

“Television across Europe: Follow-up Reports 2008, Italy”

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Preface

Television across Europe: Follow-up Reports 2008 is a monitoring project of EUMAP (EU Monitoring and Advocacy Program) at the Open Society Institute and of the Media Program at the Open Society Foundation. The project updates and builds on the outcome of the original *Television across Europe: regulation, policy and independence* monitoring reports released in October 2005, which covered 20 countries.

The 2005 reports concluded that the pivotal role of television in supporting democracy in Europe was under threat. It showed that public service broadcasters were being forced to compromise quality to compete with commercial channels, and that many of them depended on Governments or political parties. Moreover, ever-larger concentrations were developing in the commercial sector, often with clear political affiliations. These developments jeopardised broadcasting pluralism and diversity, with the new democracies of Central and Eastern Europe most acutely at risk.

The original *Television across Europe* project and its linked advocacy activities ended in June 2006. Since then, the Media Program has funded a number of follow-up projects, carried out by partner organisations in selected countries, aimed at promoting and building on the reports' findings and conclusions.

There have been significant developments in many of the countries covered in the 2005 reports, with respect to many of the areas monitored. Launched in London in March 2008, *Television across Europe: Follow-up Reports 2008* monitors these developments in nine of the twenty countries that were originally monitored: Albania; Bulgaria; the Czech Republic; Italy; Lithuania; Poland; the Republic of Macedonia; Romania and Slovakia. These countries were selected because of the continuing significant changes in their broadcasting landscape.

Television across Europe: Follow-up Reports 2008 maps the main changes in broadcasting legislation, policy and market over the past three years and assesses the progress – or lack of – that these countries have made in improving the independence and pluralism of their broadcasting.

As with the original 2005 reports, these updates are addressed to policy makers, civil society activists and academics alike, as a contribution to bringing about change where it is needed.

The nine country reports were drafted by local experts with the support of partner NGOs. All country reports are based on the same methodology, thus allowing for a comparative analysis. OSI and OSF assume final responsibility for their content.

About EUMAP

EUMAP, the EU Monitoring and Advocacy Program of the Open Society Institute, monitors the development of selected human rights and rule of law issues in both the European Union and in its candidate and potential candidate countries.

EUMAP works with national experts and nongovernmental organizations (NGOs) to compile reports that are distributed widely throughout Europe and internationally. The reports are designed to encourage broader participation in the process of articulating the EU's common democratic values as well as in ongoing monitoring of compliance with human rights standards throughout the Union.

In addition to these monitoring reports on Television across Europe, EUMAP is currently focusing on access to Education for Roma and on the situation of Muslims in selected EU Cities.

Previous EUMAP reports include the 2005 Television across Europe series as well as reports on minority protection, the rights of people with intellectual disabilities, judicial independence, judicial capacity, corruption and anticorruption policy and equal opportunities for women and men.

All EUMAP reports as well as further information on the program are available at www.eumap.org.

About the Media Program

The Media Program seeks to promote independent, professional, and viable media and quality journalism, primarily in countries undergoing a process of democratization and building functioning media markets.

The Media Program supports initiatives aimed at helping media-related legislation conform to international democratic standards, increasing professionalism of journalists and media managers, strengthening associations of media professionals, and establishing mechanisms of media self-regulation. The Media Program also supports media outlets that stand for the values of open society, as well as efforts aimed at monitoring and countering infringements on press freedom, and promoting changes in media policy that ensure pluralism in media ownership and diversity of opinion in media.

Although traditionally the Media Program has focused on Central, Eastern, and South Eastern Europe, CIS, and Mongolia, during the past several years it has expanded to Western and Southern Africa, Southeast Asia, and Latin America.

Television across Europe:

Follow-up Reports 2008

Italy

By Gianpietro Mazzoleni and Giulio Enea Vigevani

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List of Abbreviations

AGCM	Antitrust Authority, <i>Autorità garante della concorrenza e del mercato</i>
AGCOM	Communications Guarantee Authority, <i>Autorità per le Garanzie nelle Comunicazioni</i>
ECJ	European Court of Justice
DTT	Digital Terrestrial Television
RAI	Italian Radio-television, <i>Radiotelevisione Italiana</i>
SIC	Integrated communications system, <i>Il sistema integrato delle comunicazioni</i>

A. Executive Summary

After some early hopes of change, thick clouds are again looming over the Italian broadcasting scene. The *Italian anomaly* described in the OSI's 2005 report¹ still persists. Broadcasting reform was one of the priorities of the centre-left coalition, led by Romano Prodi, that won the April 2006 elections. However, the Prodi Government's attempts to introduce a set of rules that would respond to technological developments while respecting constitutional and European principles did not bear fruit. The Government's unexpected fall in February 2008 dashed all reformist initiatives.

It is very likely that the return to power of media mogul Silvio Berlusconi² will bring things back to where they were when he left power in spring 2006. Nevertheless, the new cabinet will have to face a new European legal framework, the Audiovisual Media Services (AVMS) Directive,³ a ruling of the European Court of Justice (ECJ) on a major dispute over TV frequencies, and a marketplace that is quickly changing due to the fast spread of new media platforms.

The Prodi Government had introduced two bills to amend the country's broadcasting legislation. These bills aimed on the one hand at creating conditions for a more competitive and pluralistic market by introducing a ceiling on TV advertising, a more equitable and effective distribution of frequencies, and the automatic transfer of one network each from RAI (a public service broadcaster) and Mediaset (a commercial broadcaster) to the digital platform; and on the other hand at guaranteeing greater independence and efficiency for RAI by radically revamping the appointment criteria of its governing structures.

Both bills went through a painfully slow and bumpy procedure in Parliament. The likelihood of both chambers accepting them was never great, due to the serious political difficulties that the Prodi Government faced from the outset, and the ruling coalition's weak majority in the Senate. This vulnerability did not, however, entirely explain Parliament's attitude to these bills. Pluralism of information and the independence of RAI were strangely neglected, as if the mere fact that Berlusconi's rule had ended made these matters less urgent.

¹ "Italy" in Open Society Institute, *Television across Europe: regulation, policy and independence*, Budapest, 2005 (hereafter OSI/Italy), pp. 866–954.

² Berlusconi won control of both the Senate and the lower house of Parliament in the early elections on 13–14 April 2008. That gave him a fourth term as Prime Minister. It is Italy's 62nd government since World War II. Berlusconi last resigned as Prime Minister in May 2006 after losing elections.

³ Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, *Official Journal of the European Union*, 18 December 2007, L 332/27.

A similar fate met the debate on how to regulate the conflicts of interests in broadcasting. Obviously, with the change of government in 2006, the anomaly of having a prime minister who also owned the nation's three largest commercial TV networks came to an end – but only because he lost the elections. The danger remained. The interruption of the Berlusconi era in 2006 also diminished the suspicion that the Government was more interested in supporting private rather than public interests in the broadcasting sector. The centre-left majority concocted a bill which, although it failed to bar Government officials from controlling the means of mass communication, tried to identify effective tools for preventing conflicts of interest. The ruling coalition did not demonstrate either the strength or the political support to push through changes in legislation on conflicts of interest.

Again, serious legal reform was shown to be possible in Italy only if propelled from outside. The European Commission launched infringement proceedings against Italy, because the Gasparri Law⁴ was suspected of breaching key provisions in European directives on electronic communication. At the end of January 2008, the ECJ ruled on a dispute involving the Italian broadcaster Centro Europa 7. The Court acknowledged the right of Centro Europa 7, which has owned a broadcasting concession since 1999, to be assigned the frequencies necessary for it to broadcast.

While the legislature did not make any decisive moves, the Prodi Government and the regulatory authority, the Communications Guarantee Authority (AGCOM, *Autorità per le Garanzie nelle Comunicazioni*) were more pro-active. They approved various regulations and provisions to put in place a more equitable use of frequencies, motivate broadcasters to make a quicker transfer to new technologies, and clarify the role and tasks of RAI.

Overall however, the broadcasting market has stagnated. It continues to be highly concentrated, with the two largest broadcasting operators, RAI and Mediaset, still holding about 85 per cent of both the audience and TV advertising. Television continues to take more than half of the national advertising spend, while print media and the Internet record some of the lowest advertising market shares in Europe.

The Gasparri Law wagered everything on two solutions to the lack of diversity and pluralism in broadcasting, namely the magic of new technology and the privatisation of RAI. These have failed to deliver; indeed, they have proven to be completely insubstantial. Digital terrestrial television has so far been unable to break the *status quo* by encouraging new operators into the market, in part because of provisions in the Gasparri Law that impede newcomers' access to the digital market. Nor did the Law liberate RAI from politics: another of its purported aims. The privatisation of RAI was

⁴ Law on Regulations and Principles Governing the Set-up of the Broadcasting System and the RAI-Radiotelevisione italiana S.p.a., as well as Authorising the Government to Issue a Consolidated Broadcasting Act, no. 112 of 3 May 2004, *Gazzetta Ufficiale* 104, 5 May 2004 (Gasparri Law).

abandoned by the Berlusconi Government itself, in order to further strengthen the control of political parties. At the same time, the Mediaset channels' political coverage became even more biased in favour of Berlusconi, Mediaset's major shareholder.

The only truly important change since 2005 has been the growing success of satellite television, with its increasing share of the television advertising spend, reaching 28 per cent in 2006 (the same as Mediaset). The rise of satellite broadcasting has been monopolistic, for it is driven by Sky Holding, which controls 91 per cent of pay-TV in Italy. There is almost no cable television.

The lack of dynamism in the television market has had a negative impact on broadcasting innovation, which has seen major developments in recent years, brought by convergence. This has prompted AGCOM president Corrado Calabrò to say that television's contribution to transforming the communications business in Italy is "slow and insignificant".⁵

⁵ AGCOM, Annual Report On activities carried out in 2007, available (in English) at http://www.AGCOM.it/rel_07/eng/rel_07_eng.pdf, hereafter AGCOM, Annual Report 2007.

B. Recommendations

1. ORIGINAL RECOMMENDATIONS FROM THE 2005 REPORT⁶

The recommendations from the OSI's 2005 report, addressed in particular to Parliament and the Government, were in line with those that had already been supported by international institutions, the President of the Republic, the Constitutional Court and AGCOM. One purpose of the 2005 report was to open up dialogue with public authorities in order to introduce the concept of a broadcasting system based on exercising fundamental liberties and the value of pluralism. The Ministry of Communications showed interest in the report's viewpoints and recommendations. The Undersecretary of State at the Ministry, Luigi Vimercati, commented favourably on these recommendations at the presentation of the OSI's work at the Eurovisioni Festival on 22 October 2006 in Rome.⁷ On 26 April 2007, Minister of Communications Paolo Gentiloni discussed the reform of RAI with the report's authors and editors. The Government's broadcasting initiatives, particularly those of Minister Gentiloni, were broadly in line with the report's standpoints and recommendations. At the launch of the report in December 2005, Gentiloni, then an opposition politician and President of the Parliamentary Commission for General Guidance and Supervision of Broadcasting Services, announced that the report's recommendations would be included in the policy proposals that the centre-left coalition was formulating at that time. The two reforming bills drafted by the Prodi Government include many of the report's recommendations. However, following the political turmoil that led to the Government's fall in February 2008, the fate of the reforms is unknown. It will fall to the next Government and Parliament to adopt reforming legislation.

⁶ OSI/Italy, pp. 942–945.

⁷ See <http://www.mediapolicy.org/advocacy-1/advocacy-on-the-television-across-europe-2005-reports/debate-rais-public-service-contract-a-chance-to-relaunch-a-real-radio-and-television-public-service-in-italy> (accessed 23 April 2008).

1.1 Policy

<i>Digitalisation</i>	
<p>1. The Government should postpone the deadline for the switch-over to digital television, allowing analogue television for at least five or six more years. The Government should enact “neutral” policies with respect to the different media, so that cable and satellite are not penalised by a preference for digital television.</p>	<p>This recommendation was fulfilled. Legal provisions on postponing the deadline for digital switch-over to 2012 were introduced.⁸</p> <p>The change responds to obvious technical and industrial demands and allows for a more gradual and rational transition to digitalisation. It is important, however, to point out that the mere deferral of the switch-off deadline, without provisions that encourage competition and pluralism during the simulcast period, risks maintaining the duopoly for an even longer period of time.</p> <p>At the same time, State incentives for purchasing TV sets to encourage the spread of digitalisation were extended to cover all platforms: terrestrial, cable, satellite and the Internet. This set of incentives respects the principle of technological neutrality. Such a policy, however, cannot have a major impact without additional policies. The incentives have undoubtedly boosted the sales of set-top boxes, but without attractive free-to-air programmes on the digital platform, this equipment is quite useless.</p>

⁸ Law by decree, 1 October 2007, no. 159, Art. 16.

1.2 Regulatory authorities

<i>Enforcement powers</i>	
2. Parliament should adopt changes to legislation to strengthen the powers of the regulatory authorities. In particular, AGCOM should be assigned more sanction powers to enforce its decisions.	This recommendation has not been adopted. There have been no changes in the governing structures of AGCOM. Although the regulator was active in adopting secondary legislation, it still needs more sanction powers to be able to implement its decisions.
<i>Independence</i>	
3. Parliament should initiate changes in legislation to ensure the independence of AGCOM, by changing the procedure of appointing its members so that the Prime Minister no longer appoints AGCOM's Chair and Parliament no longer appoints the other members based on political criteria (lottizzazione). One possible solution would be to entitle the President of the Republic with the power to elect AGCOM's members.	This recommendation has not been adopted. The appointment procedure of AGCOM's members remains unchanged.
<i>Frequency allocation</i>	
4. AGCOM should ensure compliance by the Italian State with European Council Directives 2002/21/CE and 2002/22/CE, which call for transparent, non-discriminatory and proportional procedures for the allocation of radio-electrical frequencies. 5. Parliament should amend legislation in order to prevent the legalisation of broadcasters who illegally occupy frequencies.	Along with the Ministry of Communications, AGCOM set up the first register of frequencies and their usage. This database is essential for a rational and more equitable distribution of frequencies to national and local operators, and for an efficient management of the switch-over to a digital signal. In autumn 2007, the Government also announced that it would award analogue frequencies to those broadcasters that do not have sufficient coverage at national level. This would be the first time that analogue frequencies have been distributed in a non-discriminatory and transparent way.

1.3 Public and private broadcasters

<i>Local broadcasters</i>	
6. Parliament should take steps to introduce legislation to give more financial and technological aid to private local television broadcasters to promote the establishment of alternative networks to the national ones.	This recommendation has not been adopted. Parliament has shown no interest whatsoever in introducing legal provisions to help local broadcasters. The recommendation remains pertinent.

1.4 Public service broadcaster

<i>Restructuring</i>	
<p>7. Parliament should halt the ongoing process of privatisation of RAI, which is unrealistic from an economic point of view (as the Gasparri Law stipulates that a shareholder cannot own more than one per cent of RAI's shares) and unconstitutional (as it sets up a complete privatisation of a public service).</p> <p>8. Parliament should take steps to split RAI into two separate companies, one with public service obligations and the other with a commercial profile, in line with the recommendations of the Competition Authority in its report of 16 November 2004 (AGCM Ruling no. 13770).</p> <p>9. Parliament should take steps to make the public service broadcasting offered by the new RAI an independent public service (non-governmental) with the legal structure of a foundation like the British Broadcasting Corporation (BBC). The commercial part of RAI should be privatised and sold on capital markets, with no restrictions.</p>	<p>Most of the recommendations on RAI were taken into account in the "Guidelines for the reform of RAI", which, after broad public consultations (also involving OSI), led to the bill that was presented to the Senate on 22 May 2007. The Gentiloni Bill's starting point is the abandonment of the RAI privatisation idea advanced by the Gasparri Law.</p> <p>In order to restructure RAI as a more efficient and more independent broadcaster, the Gentiloni Bill wanted to create a Foundation to which the RAI shares were transferred. This Foundation was to guarantee the independence of RAI from political and economic interests. The same Bill envisaged appointing the Board of the Foundation from a variety of organisations and institutions.</p>
<i>Independence</i>	
<p>10. Parliament should take steps to amend the Gasparri Law to ensure that RAI becomes a truly independent institution, like the Constitutional Court or the Bank of Italy.</p> <p>11. Parliament should take steps to guarantee that the members of the RAI Board are politically independent from the influence and control of the Government and political parties. This can be achieved for example, if Board members are elected by a qualified majority vote, and serve staggered terms. Another way would be to entrust the appointment of a part of the Board to AGCOM or to the Antitrust Authority (AGCM, Autorità garante della concorrenza e del mercato)</p>	<p>The Bill proposed to finance RAI's public service output through the licence fee and its commercial activities through advertising.</p> <p>The Bill also included provisions to ensure the transparency of appointments and candidates' experience.</p> <p>The reaction of Parliament and the political parties to these proposals has so far been lukewarm.</p>
<i>Professionalisation</i>	
<p>12. Parliament should adopt changes in legislation to ensure that members of the RAI Board are appointed according to their professional expertise and qualifications. To ensure this, candidates running for the RAI</p>	

<p>Board should be subjected to rigorous hearings in Parliament.</p> <p>13. Parliament should make changes in legislation to introduce stricter incompatibility criteria for the members of the RAI Board. Individuals who have served in Parliament or been members of political parties, or had interests in communication businesses, should be forbidden from becoming members of the RAI Board.</p> <p>14. Parliament should make changes in legislation so that the General Director of RAI is appointed solely by the RAI Board, without consultation with the Government.</p>	
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1.5 Private broadcasters

<i>Diversity and pluralism</i>	
<p>15. Parliament should take steps aimed at solving the Italian anomaly by breaking Mediaset's monopoly on commercial broadcasting before the switch-over to digital television.</p> <p>16. Parliament should amend the Gasparri Law to ensure the implementation of the Decision of the Constitutional Court – which demands a 20 per cent threshold for each analogue television broadcaster and guarantees an effective variety of sources of information to citizens – before the switch-over to digital television.</p> <p>17. The Government should promote diversity and pluralism in broadcasting by supporting financially new entrants into the broadcasting market.</p>	<p>These recommendations were taken into account, albeit not implemented entirely.</p> <p>AGCOM carried out an analysis of the broadcasting market, which highlighted the dominant position of RAI and Mediaset in analogue terrestrial broadcasting. The regulator pointed out in October 2007 that one solution would be to allow newcomers to share the technical infrastructures of the two broadcasters. Under the same logic of market development, AGCOM adopted secondary legislation allowing new TV content providers to be able to transmit their production via 40 per cent of the digital terrestrial networks. In October 2007, the regulator also approved rules guaranteeing neutral criteria in choosing independent content providers. Arguing that the two largest players control the bulk of the market, which harms pluralism, AGCOM also adopted a set of rules aimed at disciplining the advertising market. They include lowering the advertising ceiling from 18 to 12 per cent for Mediaset's programmes transmitted via a terrestrial digital signal (other than simulcast).</p>
<p>18. The Government should follow European best practice in defining a monopoly in the broadcasting market, in terms of the audience share or the percentage of television advertising market.</p>	<p>This recommendation has not been adopted. The Government has not put forward any proposals to introduce a definition of monopoly in broadcasting. The recommendation remains pertinent.</p>

<p>19. Parliament should amend the articles of the Gasparri Law defining the integrated communication system (SIC),⁹ to establish clear definitions of the separate markets inside the SIC, and introduce new rules providing clear thresholds to identify dominant positions, in order to protect pluralism and competition. Parliament should also adopt legislation imposing limits on the advertising revenues that a media company can control.</p>	<p>This recommendation has not been implemented. AGCOM carried out an analysis of the market, calculating the SIC in 2005 to be worth €22.1 billion, but it did not adopt legal provisions to establish clear definitions of the separate markets in the SIC.</p>
<p>20. Parliament should introduce legal provisions to ensure that television audience measurement is carried out by an agency independent of any corporate interests. Television companies should be banned from holding stakes in any such agency.</p>	<p>None of these recommendations have been adopted.</p>
<p>21. The Law on Conflict of Interest should be amended to introduce explicit incompatibility between the holding of elected or governmental positions and the ownership of media outlets.</p>	

These measures show that in recent years, the Ministry of Communications and AGCOM has not waited for Parliament to initiate changes in broadcasting, but they have used their prerogatives to make a difference. However, it is clear that only legal reform can truly move the TV market towards greater pluralism and competition. Many recommendations are still valid. The most significant and urgent of these should be addressed by the new Parliament and Government after the general elections in April 2008. They include:

- The Government should respond to the observations put forward by the European Commission to prevent Italy from being sued at the ECJ for violation of Community requirements. The Government could do this through a Decree-Law, a legally binding regulatory act which can be adopted in emergencies and take effect immediately;
- Parliament should modify the appointment criteria for the RAI Board of Administration and the mandate for the current directors, in order to avoid a new division of control over RAI between the ruling majority and the opposition;

⁹ The integrated communication system (SIC) is a wide and heterogeneous concept that encompasses all sorts of advertising in various media, including: television; publishing; radio; the Internet; direct advertising activities; sponsorships; revenues from RAI's yearly licence fee; sales of cinema tickets; video cassettes; and rentals or sales of DVDs.

- Parliament should introduce antitrust provisions for the analogue television market to stimulate competition in the TV market to ensure that the transition to digitalisation does not take place in the current duopolistic context.

2. NEW RECOMMENDATIONS BASED ON THE 2008 REPORT

2.1 Digitalisation

1. Parliament should introduce legal provisions that would allow regions to go digital and that would envisage the early transfer to digital signal of the major operators in order to encourage a balanced development of the system.
2. The Government should adopt policies, in particular for the public service broadcaster, to support serious investment in programming for the new platforms.

C. Main Findings of the Follow-up Monitoring

1. GENERAL BROADCASTING ENVIRONMENT

1.1 Key developments in legislation and policy

In 2006-2007, the most significant political initiatives for the broadcast sector were two bills prepared by Minister of Communications Paolo Gentiloni on the transition to digital broadcasting and public service reform.¹⁰ (*See section 3 for the second bill.*) These bills were meant to create a more competitive and pluralistic market and guarantee RAI's greater independence and efficiency by radically changing the criteria for appointing its governing structures.

The Gentiloni bill for a reform of the broadcasting system, presented to the House of Deputies on 16 October 2006, introduces a novelty from the methodological point of view compared to the previous interventions on the part of the legislators in 1990, 1997 and 2004. The Government, indeed, does not aspire to reform the regulations in effect at the moment in their entirety (the Decree no. 177 of 31 July 2005, Consolidated Broadcasting Law). The Government preferred to concentrate on certain critical structural points, in particular the excessive concentration of advertising resources in a few private hands and the distribution and use of frequencies. In other words, the Government realised that unless digital transition is accompanied by a series of antitrust regulations, it will perpetuate today's dominant positions in broadcasting.

If this is to be achieved, the licensing system that was put in place by the laws of 1990¹¹ and 1997¹² must be overhauled. Concretely, the bill proposed to:

- introduce a ceiling of 45 per cent on the amount of advertising revenue of terrestrial analogue, digital cable and satellite television. Surpassing this ceiling would be considered a “dominant position” in the sector and would allow the regulator to lower the ceiling from 18 to 16 per cent of the hourly advertising time for analogue broadcasters;
- include all kinds of advertising, including the station's self-promotion clips, in the advertising ceilings;

¹⁰ Bill no. 1825 on the safeguarding of pluralism in the transition from analogue to digital broadcasting; Bill no. 1588 on the public broadcasting service.

¹¹ Law Regulating Public and Private Broadcasting, no. 223, 6 August 1990, *Gazzetta Ufficiale* 185, 9 August 1990 (*Mammì Law*).

¹² Law setting up the Italian Communications Guarantee Authority and Introducing Regulations of the Telecommunications and Broadcasting Systems, no. 249, 31 July 1997, *Gazzetta Ufficiale* 177, 31 July 1997 (*Maccanico Law*).

- require operators which own more than two nationwide networks (i.e. RAI and Mediaset) to start airing digitally on one of their networks within 15 months of the adoption of the law;
- reclaim surplus frequencies and frequencies that have been illegally occupied;
- ensure efficient management of the frequency spectrum and the equitable distribution of frequencies;
- suspend the power of RAI and Mediaset to gain more frequencies;
- reform the people-meter audience measurement system to include all platforms;
- guarantee broadband access for all operators in a transparent, proportional and non-discriminatory way;
- strengthen AGCOM's powers of supervision and sanction;
- stop the "privatisation" of RAI initiated by the Gasparri Law.

The Gentiloni Bill provoked caustic reactions from the opposition, which accused the Government of designing a law *contra personam* (i.e. against one individual, namely Berlusconi). Some scholars¹³ questioned the Bill's compatibility with the Constitution and European antitrust legislation, saying that it would automatically establish dominant positions, without taking licence fees into account as another source of revenue. These attacks could not be decisive because information pluralism is considered to be a basic principle in European legislation, permitting Member States to adopt *ad hoc* rules on television, which is still considered the most influential mass medium.¹⁴

The Italian media are subject to a special legal regime, complemented by general antitrust regulations. They are in general more strictly regulated than other sectors as they involve issues of access for the largest number of citizens. A summary of more than 40 years of Italian constitutional jurisprudence shows that general antitrust law only works as *ex post* regulation while protection of pluralism functions as *ex ante* regulation.

The real issue, therefore, is not how legitimate it is to impose a 45 per cent ceiling on advertising revenues, but rather to introduce rules that would eliminate entrance

¹³ Fondazione Magna Carta, Papers, "Dominante per legge o dominante per il Mercato?" (Dominant legally or economically?), Roma, 2006.

¹⁴ "Recommendation no. 2/2007 of the Committee of Ministers to Member States on media pluralism and diversity of media content, adopted on 31 January 2007", advises the Member States to adopt "rules aimed at limiting the influence which a single person, company or group may have in one or more media sectors as well as ensuring a sufficient number of diverse media outlets". It says "rules may include introducing thresholds based on objective and realistic criteria, such as the audience share, circulation, turnover/revenue, the share capital or voting rights".

barriers to new operators and shake the strong positions of broadcasters currently operating on the market. There are doubts mainly regarding the enforcement mechanisms including the reduction of the hourly advertising cap to 16 per cent unless the broadcaster transferred one of its networks to a digital or satellite platform; and the enforcement timeframe (within two years of the law entering into force). The mechanisms do not encourage the dominant operators to correct their behaviour; rather, they make it easier for them to take as much advertising as possible because they face trivial sanctions.

The other provision at the heart of the Gentiloni reform is related to frequency regulation, including the digital transfer by broadcasters with more than two nationwide analogue stations. This is a serious attempt to regulate a market of extreme economic and political importance and to put an end to the “wild west” situation that still dominates Italian broadcasting. The law aims at encouraging the transition to digitalisation rather than forcing broadcasters to do so. The real task is to build a more pluralistic market after more than 20 years of transitory provisions that have continually postponed the enforcement of antitrust legislation.

1.2 EU legal provisions

The European Union has continued to move against any Italian broadcast law that is not fully in line with relevant EU directives and basic principles.

On 19 July 2006, the European Commission sent the Government a default notice,¹⁵ contesting in particular Italy’s violation of certain community requirements enshrined in the 2002 directives on electronic communications¹⁶ as well as in the directive on market competition and electronic communications services.¹⁷

By limiting market access to companies that were already operating when it was enacted in 2004, the Gasparri Law blocked new broadcasters from the market. The European Commission claimed that the exclusion of companies not already operating

¹⁵ European Commission, “Letter of Formal Notice to Italy concerning Rules on Electronic Communications”, available online at <http://merlin.obs.coe.int/iris/2006/8/article5.en.html> (accessed 5 March 2008).

¹⁶ European Union, Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services, *Official Journal of the European Communities*, L 108/21, 24 April 2002. (*Authorisation Directive*); European Union, Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, *Official Journal of the European Communities*, L108/33, 24 April 2002 (*Framework Directive*).

¹⁷ European Commission, Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services, *Official Journal of the European Communities*, L 249/21, 17 September 2002.

on the market from gaining frequencies was a violation of EU legislation. It also defined as illegal the lack of provision in Italian law to oblige broadcasters to return analogue frequencies after switching to digital platforms. The Commission further found that the Gasparri Law¹⁸ violated EU competition provisions by deferring a licence to broadcast in analogue signal those operators not holding analogical concessions until the switch-off and by hindering broadcasting of those operators holding analogue concessions because of a lack of frequencies.

In September 2006, the Government acknowledged the legitimacy of the Commission's observations and, with the Bill no. 1825, pledged to delete those provisions of the Italian Law that clashed with EU law. The Bill was received relatively well by the Commission. In July 2007, however, the Commission again criticised Italy for delaying the Bill's passage and asked for enactment within two months. The next step will involve opening a case against Italy at the ECJ for breach of EU regulations. If Italy loses, it will be heavily fined.

Another important case at the ECJ was launched by the Italian broadcaster Centro Europa 7, which has held a broadcast concession since 1999, but has been unable to obtain the frequencies needed to broadcast. On 12 September 2007, ECJ Advocate General Miguel Pojares Maduro criticised the Italian situation and supported Centro Europa 7's right to be granted frequencies. On 31 January 2008, the ECJ confirmed the conclusion of Pojares Maduro by ruling on the "discriminatory nature" of Italian frequency allocation.¹⁹

In January 2007, the European Commission decided that subsidies for digital set-top boxes granted by the Government in 2004 and 2005 were incompatible with EU regulations on State aid as they were not technologically "neutral" and distorted competition. It demanded manufacturers of set-top boxes to return the money to the State. It is not known whether reimbursement is forthcoming.

1.3 Broadcasting market

The map of television in 2006 (the latest available consolidated data) shows the same old picture, with RAI and Mediaset channels commanding more than 85 per cent of the primetime audience. Terrestrial analogue television continues to be the main way

¹⁸ Gasparri Law, Art. 25 (11).

¹⁹ Judgment of the Court (Fourth Chamber), 31 January 2008 (Freedom to provide services – Electronic communications – Television broadcasting activities – New common regulatory framework – Allocation of radio frequencies), available online at [http://curia.europa.eu/juris/cgi-bin/form.pl?lang=EN&Submit=Rechercher\\$docrequire=alldocs&numaff=C-380/05&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100](http://curia.europa.eu/juris/cgi-bin/form.pl?lang=EN&Submit=Rechercher$docrequire=alldocs&numaff=C-380/05&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100) (accessed 10 March 2008).

of watching TV for the 85 per cent of Italian viewers who watch an average of some four hours a day.²⁰

Table 1. TV audience shares in 2006 (as percentage)

Networks	Primetime (8.30 p.m.–10.30 p.m.)	Night time (10.30 p.m.–12.00 p.m.)
RAI (RAI 1, RAI 2, RAI 3)	45.01	40.18
Mediaset (Canale 5, Rete 4, Italia 1)	40.58	40.97
La 7 (Telecom Italia)	2.42	3.50
Other channels	5.98	7.73
Satellite channels (Sky Italia)	6.01	7.62
Total	100.0	100.0

Source: AGB-Nielsen Media Research

The satellite television audience has grown steadily, revealing its potential to gain a key position in the market. In 2004, satellite TV reached 20.2 per cent of the population; by 2006, this figure was 22.3 per cent.²¹ In mid 2007, the combined audience of satellite channels reached about 8 per cent. However, it must be noted that satellite television is a monopoly, fully controlled by Rupert Murdoch's News Corporation. AGCOM has asked Auditel, the company conducting people-meter audience measurement in Italy, to include satellite channels in their surveys.

Over recent years, Mediaset's three channels, Canale 5, Italia 1 and Rete 4, have seen their combined audience decrease slightly but steadily, from 43.2 per cent in 2003 to 39.6 per cent in 2006. RAI's three channels saw a much smaller drop in ratings, from a combined 45.7 per cent in 2003 to 44.7 per cent three years later.

²⁰ AGCOM, Annual Report 2007.

²¹ The source of this information is Auditel RdB.

Table 2. Audience shares in 2003–2006 (as percentage)

Channel	Year			
	2003	2004	2005	2006
RAI 1	24.2	23.7	23.7	23.8
Canale 5	23.2	22.7	22.0	21.1
RAI 2	12.0	12.2	11.3	11.3
Italia 1	10.5	10.2	10.2	9.9
RAI 3	9.5	9.4	9.4	9.6
Rete 4	9.5	9.3	9.0	8.6
La 7	2.3	2.5	2.9	3.2
Other	8.8	10.0	11.5	12.5
Total	100.0	100.0	100.0	100.0

Source: IP International Marketing Committee²²

Digital Terrestrial Television (DTT) is slowly expanding despite lack of clear legislation. By mid 2007, some 3.7 million digital set-top boxes had been sold in Italy, meaning that about 48 per cent of Italian households have access to DTT.

²² IP International Marketing Committee, *Television 2006. International Key Facts*, October 2006, p. 231 (hereafter, IP International Marketing Committee, *Television 2006*); IP International Marketing Committee, *Television 2007. International Key Facts*, October 2007, p. 233 (hereafter, IP International Marketing Committee, *Television 2007*).

2. REGULATION AND LICENSING OF THE TELEVISION SECTOR

2.1 Regulatory authorities and framework

The regulatory authorities and framework have not been reformed in any way since 2005. Broadcasting is policed by AGCOM, which also covers the telecommunications sector. This body was created in 1997 partly to comply with EU laws and partly in response to the political crisis of the 1990s, which prompted calls for more independent regulatory authorities. Nevertheless, the Government still plays an important role in broadcast regulation.

2.2 Licensing system

Management of the frequency spectrum, including the licensing of broadcasters and assigning frequencies, has been a “black hole” in the judicial system since the mid 1970s. These matters continue to be very badly legislated.

3. REGULATION AND MANAGEMENT OF PUBLIC SERVICE TELEVISION BROADCASTING (PSB)

3.1 PSB legislation and policy

RAI’s prestige has continued to slide. As was foreseen by the OSI’s 2005 report, the Gasparri Law intensified the political struggle over senior positions. The appointment of the Board of Directors in 2005 followed the same political logic and directors have often made important decisions based on their political affiliation. The Board, comprising members linked with the former ruling parties before the political elections in 2006, the centre-right coalition, several times thwarted the Director General’s initiatives, which led to paralysis. That caused further delays in digital innovation and media convergence. More generally, it provoked widespread hostility towards RAI, which has become despised as a fiefdom of politicians and is ever harder to distinguish from the commercial networks.

There are many examples of political interference in RAI’s policy and governance. Three cases are particularly grave, prompting demands for comprehensive legal reform. The first and most serious has become known as the “Meocci case”. Alfredo Meocci was appointed in 2005 as General Director of RAI by the then Minister of the Economy Domenico Siniscalco and the five members of the Board, close to the previous centre-right coalition. His incompatibility with the position was obvious as he had previously been a member of the AGCOM Board. Ruling that the appointment was illegal, AGCOM fined RAI the sum of €14.3 million and Meocci €373,000. AGCOM’s decision was buttressed by both the Regional Administrative Court of

Rome and the Council of State. The five board members who endorsed the appointment are now under investigation by the Public Prosecutor's Office in Rome, accused of abuse of authority. The Court of Accounts asked them to pay a total of €50 million in compensation for the damage they caused to RAI. It is not known whether this fine has been paid.

Just as controversial and still unresolved is the case related to the attempt of Minister of the Economy Padoa Schioppa to replace a member of the RAI Board. In September 2007, following a lengthy political and legal battle with the opposition, the Minister replaced the Board member Angelo Petroni, appointed in 2005 by the Berlusconi Government, with Fabiano Fabiani, who had centre-left political ties. By rebalancing the Board, this gave the centre-left Government considerable power over the station. Many observers questioned the legitimacy of the Minister's move. In November 2007, the Regional Administrative Court of Lazio found the dismissal illegal and ordered the restoration of the centre-right majority on the RAI's Board.

The most recent case of blatant political interference began in November 2007. The publication of tapped telephone conversations revealed the existence in 2004 and 2005 of a continual exchange of information between the managers of RAI and Mediaset, with the general purpose of agreeing on favourable editorial coverage of Prime Minister Berlusconi. If proven, these accusations are serious. In particular, it is alleged that the stations conspired to delay the announcement of partial results of regional elections in 2005, in which the opposition parties clearly triumphed, and to create at the same time a serene atmosphere in order to prevent abstention from the polls of Catholic voters who were then mourning the death of the Pope.

In the wake of these incidents, the Government made moves in two directions.

It renewed the Service Contract between the Ministry of Communications and RAI for the period 2007–2009. Along with the Auditel measurement of RAI's audience share, the new contract introduced the task of measuring RAI's quality, requiring the station to increase its content destined solely for terrestrial digital television with the aim of accelerating its transition.

On the legal front, Minister Gentiloni presented his "Guidelines for the reform of RAI" in January 2007. After public consultations (involving OSI among others), these guidelines led to the presentation of the so-called Gentiloni Bill to the Senate on 22 May 2007.²³ Gentiloni's reforms were premised on abandoning the idea of privatising RAI that was advanced by the Gasparri Law, and on accepting that there were still technical, economic and cultural reasons for justifying the presence of a public service entity. It is, however, broadly acknowledged that the mission, role and governance of RAI must be thoroughly modified, after the 30 years since its last reform in 1975.

The goals of Gentiloni's Bill were:

²³ Bill no. 1588 on "Discipline and reorganisation of the public service broadcasting".

- to make RAI more efficient through restructuring;
- to increase RAI's autonomy and independence from political and economic interests;
- to guarantee the greater quality of RAI's programming in order to increase public awareness of the difference between public service and commercial television;
- to reduce dependence on advertising;
- to encourage innovation and the capacity to compete in the digital market.

3.2 PSB governance structure

To pursue these ambitious objectives, the Bill aimed to re-organise the public service broadcasting by changing in particular RAI's governance structure. In brief, the Government proposed:

- to create a Foundation that would own RAI shares. This Foundation would guarantee RAI's independence from political and economic interests. It would not have daily managerial tasks but would be in charge of implementing RAI's strategy and operational top-level management;
- that the Board of the Foundation should comprise 11 members appointed from a variety of organisations and institutions:
 - four from Parliament (with the consent of two thirds of the Commission for Broadcasting),
 - two from the regions,
 - one nominated by each RAI's employees' union and various cultural institutions, or personalities renowned for their public prestige and political independence.
- that the Board of the Foundation should appoint RAI's Board of Directors, according to standard corporate practice;
- to schedule a thorough restructuring of RAI, retaining the unity of the corporation and its public legal status, while separating administrative and editorial management. As a consequence, the Bill proposed to finance RAI's public service activities through the licence fee and its commercial activities through advertising.

The Bill also included provisions to ensure the transparency of appointments and candidates' experience, and transparency of parliamentary hearings of the candidates

and incompatibility rules on representatives of State institutions or individuals affiliated with political parties or broadcasting companies.

The Bill has seriously drawn on the BBC model in attempting to erect a shield between the Government (and the political establishment in general) and RAI. Overall, Gentiloni's Bill promoted an integral vision of public service broadcasting, without implying the segregation of cultural or other high-end programmes on a single channel.

The reaction of Parliament and the political parties to these proposals has been lukewarm, as had happened often in the past. The political class hardly likes the idea of losing control over the public service broadcasting company.

3.3 PSB funding

RAI continues to be a 100 per cent publicly owned company, but in reality it is in the Government's hands through the majority shareholder, the Ministry of the Economy. The licence fee remains the station's major source of income (51.8 per cent in 2006). Advertising revenues are also stable. However, they had increased in 2006 over the previous year by less than the rate of inflation.

Table 3. Budget of RAI in 2005–2006 (in € million)

Source of financing	2005	2006	Change	Change (in percentage)
Licence fee	1,482.5	1,491	8.5	0.6
Advertising	1,121.2	1,133.3	12.1	1.1
Other income	228.8	254.1	25.3	11.1
Total	2,832.5	2,878.4	45.9	1.6

Source: RAI, Annual Report for 2006²⁴

3.4 Editorial standards and independence

Although strict standards of independence are enshrined in numerous documents, such as RAI's Service Contract, these standards are remote from reality. In relation to RAI, the Prodi Government did not behave much differently from its predecessors, although it did not reach the degree of control that Berlusconi had achieved. For example, Prodi tried to have allies in RAI's governing body, but his attempt was dashed by legal steps taken by the opposition. The editor of the main newscast (*TG Uno*) was immediately

²⁴ RAI, Annual report for 2006, available online (in Italian) at <http://www.bilancio2006.rai.it/ita/bilancio/civ02.htm> (accessed 5 March 2008).

replaced with a prominent journalist from the daily newspaper *Il Corriere della Sera*, who openly declared his sympathy for the centre-left coalition. Such indirect interventions by the ruling coalition are normal when the political power shifts. Overall, RAI journalism has always been subservient, to different degrees and in different styles, to the political logic imposed by the parties in power.

4. COMMERCIAL BROADCASTING

4.1 Regulation and management

(See section 1. General Broadcasting Environment)

4.2 Ownership and management

The major TV broadcasters have not seen major changes in their ownership in the past four years. One development in this respect has been the composition of Mediaset's ownership. In 2005, Berlusconi sold 17 per cent of his stake in Mediaset (held through Fininvest), decreasing his ownership in the company from 51 per cent to 34 per cent.

The sale did not, however, reduce Berlusconi's control of the holding. The remaining shares in Mediaset are owned by the investment bank Lehman Brothers, the investment management firm Capital Research and Management and part floated on the Milan Stock Exchange.

4.3 The advertising market

Italy's gross advertising spend in 2006 was €9.2 billion, representing a growth of 2.6 per cent over 2005. Television continued to take the lion's share.

Table 4. Share of advertising spending in 2004–2006

Medium	Year		
	2004	2005	2006
Television	53.6	53.7	53.5
Print media	32.2	32.2	32.1
Outdoor	6.0	5.9	6.0
Radio	6.1	6.0	5.9
Internet	1.2	1.4	1.8
Cinema	0.9	0.8	0.7
Total	100.0	100.0	100.0

Source: AGCOM, Annual Report 2007

Overall, the domestic TV advertising market is still characterised by high concentration. In 2006, Mediaset took 55 per cent of TV advertising and RAI took 29 per cent. Although there was a slight decrease of some 2.7 per cent in TV advertising during the first five months of 2007, coupled with an increase of 3.6 per cent in the advertising revenues of daily print media, the ratio between print media and TV in Italy remains unbalanced.

Advertising remained the primary source of revenue for the TV sector in 2006, followed by licence fees.

Table 5. Revenues of the television sector in 2005–2006 (as percentage)

Source of financing	2005	2006
Advertising	54.4	50.3
Licence fees (only RAI)	20.5	19.2
Pay services	23.7	28.5
Other	1.4	2.0
Total	100.0	100.0

Source: AGCOM, Annual Report 2007

However, both licence fees and advertising have seen a significant decrease whereas paid-TV services (including pay-TV, satellite subscription, pay-per-view, etc.) are on the rise.

4.4 Editorial standards and independence

No new provisions regarding commercial broadcasting have been introduced. The parallelism and collusion between news and politics that characterises RAI journalism²⁵ can be seen also in commercial broadcasting, especially in the Mediaset channels, which represent the other 40 per cent of the TV information offer. This has been influenced to a great extent by the Berlusconi factor, which led to the *anomaly* of Italian broadcast journalism.

4.5 Regional and local broadcasting

Local television broadcasting is still fragmented, being covered by a few nationwide networks and syndicated content, and about 500 local stations. The field is still characterised by a chaotic distribution of frequencies with roots in the 1980s when the sector experienced an explosion of commercial broadcasters in a context of lack of regulations. To discipline this field, the Ministry of Communications and AGCOM created a “Database of Frequencies” in 2007. This is supposed to be the basis for reforming the licensing of private TV enterprises at national as well as local levels.

The high number of local channels is healthy for the pluralism of information in a country dominated by the oligopolies of the nationwide networks. There is no research available on the profile of local TV journalism. However, the general opinion is that the frailties of journalists at the national level are also present at local level. The hypersensitivity of local broadcasters and print media towards local politicians is all too obvious.

²⁵ See Hallin and Mancini, p. 26.

5. PROGRAMMING

5.1 Output

Programme strands on public service and commercial channels have not seen any major changes over the past years.

Table 6. RAI output by genre in 2005–2006 (in percentage of total programming)

Genre	Share of programming	
	2005	2006
Entertainment	10.9	19.8
Non-European film/Fiction	10.2	
European film/Fiction	8.0	7.6
Art films	1.6	1.4
Sports	6.7	8.4
Science and environment	5.1	4.9
Educational	3.7	3.7
Children	9.2	9.2
Programs of general interest	13.8	14.3
Institutional programmes (such as Presidential speeches)	1.3	1.5
News and current affairs	29.5	29.2
Total	100.0	100.0

Source: RAI-Relazione Bilancio 2005, Rome 2006; RAI, Annuario 2006, Roma, 2007

The three major private channels, run by Mediaset, have maintained the same programming patterns. They are clearly more commercially oriented than RAI. According to the latest data (for 2006), most programming on the Mediaset channels consisted of news programmes (over 25 per cent), entertainment and talk-shows (20 per cent), followed by culture and news and current affairs, and sports.

The most popular strand among Italian viewers remained sports programmes. Football and Formula 1 car racing dominated the top 20 programmes list in Italy in 2006, all broadcast by RAI 1. Otherwise, the most popular programmes on RAI during this period included games, serials and reality shows. In 2006, the most-watched programmes on RAI 1 were the San Remo music festival and the quiz show *Deal or No Deal*. Similar programming, variety shows, soaps, serials, reality and quiz shows, score high ratings on all three Mediaset channels. The top programme on Canale 5 in 2006

was the comedy show *Striscia la notizia* (The news is sneaking), Italia 1's most watched programme was the US series *House M.D.* and Rete 4's top programme was a variety show, *All you need is love*.

5.2 General provisions on news

RAI's Service Contract for the period 2007–2009 contains general and specific provisions regarding programme quality.²⁶ It also contains provisions on news, which are based on the Code of Practice that RAI adopted in 1999. As before, the Contract obliges RAI to air news guided by principles such as freedom, completeness, objectivity and pluralism. The Contract states that training RAI's young journalists is a priority. The Code of Practice contains detailed norms on news coverage, tackling issues of pluralism, election campaigns, privacy protection, news balance and the protection of minors. No other new provisions on news have been introduced in the past three years.

5.3 General programme guidelines

There have been no changes on programming guidelines, except for those that are included in the new Service Contract for RAI. (See section 5.5 *Obligations on PSB*)

5.4 Quotas

The main quotas on programming are imposed on RAI through the Service Contract, which obliges the public service broadcaster to allocate 15 per cent of its total annual revenue to producing and co-producing films and cartoons, documentaries, drama, ballet, classical and popular music. RAI must also reserve at least 20 per cent of its total programming on the terrestrial analogue signal to European works by independent producers. It is not known whether RAI fulfils these quotas, as no reports are available from AGCOM or RAI on this topic. There have been no changes in the system of quotas in the new Service Contract. As before, the new contract also envisages programming for minorities, without imposing any quotas.²⁷ Commercial broadcasters do not have to comply with any system of quotas.

²⁶ RAI, "Contratto di Servizio 2007–2009" (Service Contract), 5 April 2007, Rome, available online (in Italian) at http://www.comunicazioni.it/binary/min_comunicazioni/televisione_rai/contratto_servizio_5_aprile_2007.pdf (accessed 6 March 2008), Art. 2, pp. 2–3. (hereafter Service Contract).

²⁷ Service Contract, Art. 11.

5.5 Obligations on PSB

The current Service Contract obliges RAI to air a wide range of content in order to give citizens a positive perception of the public service broadcaster and to clearly distinguish RAI from commercial broadcasting.²⁸ The guiding principles are:

- freedom, completeness, balance and pluralism of information;
- safeguarding national identity, local cultures and linguistic minorities;
- enhancing national culture, history, traditions and artistic heritage;
- representing the reality of daily life in the country;
- promoting safe conditions for labour and covering developments on the labour market
- covering family life;
- protecting minors, underprivileged and disadvantaged social groups.

The Service Contract also stipulates that the station must air “balanced” editorial and information content throughout the day.²⁹ Programmes must include:

- political information, talk-shows, sports and significant national and international events, and local information;
- socially relevant information on a wide range of topics such as the environment, health, quality of life, human and civic rights, disabilities, the elderly, offering reasonable airtime to civil society associations and organisations, ethnic and language groups, consumer organizations;
- education-related information such as the promotion of foreign languages, computer literacy, music and e-learning;
- promotion of Italian and European culture with special attention to drama, documentaries, films of special art value.

The Service Contract introduces a concept for measuring programme quality by combining indicators of cultural and civil enrichment, respect for the feelings of audiences, innovation, pluralism, independence, balance, ability to entertain and originality.³⁰ It is hard to forecast how this system will perform in practice. As envisaged, it seems more like a wish list from the authors of the Service Contract than a viable proposal. The new Service Contract is an improvement on the older one. It is based on progressive thinking and contains noble principles and guidelines. However,

²⁸ Service Contract, Art. 2/3.

²⁹ Service Contract, Arts. 2/4-5.

³⁰ Service Contract, Art. 3.

there are still no mechanisms controlling its implementation and therefore any detailed assessment is impossible.

The policies over the past few years have not brought any new obligations for commercial broadcasters.

6. CONCLUSIONS

The past two years have been characterised by a legal struggle to break down the RAI-Mediaset duopoly in order to ensure greater diversity. Concentration in the hands of only a few powerful entities is a trend common to many European democracies. Lingering hopes that the Prodi Government would bring some changes to this system were dashed by the political crisis that toppled the Government and froze Parliament's work in January 2008. It is difficult to view the future with optimism. Berlusconi's return to power will most probably end all the efforts by the former Government to overcome the *Italian anomaly* for good, and to make Italy a more diverse and competitive media market.

Through his Mediaset empire, he [Berlusconi] controls most of Italian private television. Now that he is back in government, he will indirectly control state-run television too, giving him influence over some 90 per cent of Italian TV. It is to the central-left's eternal discredit that in its two recent periods in office it did nothing to deal with Mr. Berlusconi's conflicts of interest in the media.³¹

Whereas many parliaments in Europe now face the challenge of maintaining and increasing competition in the new technological context shaped by digitalisation, Italian lawmakers have to create the conditions for competition and pluralism from scratch, during the transition to digitalisation, in order to avoid perpetuating the same dominant positions after the analogue switch-off.

The general reasons why many international institutions are anxiously studying Italian broadcasting remain the same: the presence of a dominant private operator; the concentration of broadcasting capacity and resources in the hands of oligopolies; and the overt mingling of broadcasting with politics.

AGCOM President Calabrò has said: "Digital television is the drawbridge that permits the two lords of analogue television to leave the castle courtyard." At the same time, it is true that the transition from "feudal" analogue broadcasting to the modern digital era will depend on the ability and will of the next Parliament to reform the legislation on broadcasting and to align with the standards of more mature democracies.

³¹ "Mamma mia", *The Economist*, 19–25 April 2008, p. 12.

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