

Italy

1. EXECUTIVE SUMMARY

The Italian broadcasting system is distinguished by controversial involvement of politicians, especially in the State-owned broadcaster, RAI, which has always been strictly controlled by the Government and political parties. When commercial television began in the 1970s, in a totally unregulated marketplace, it changed the media scene and the advertising market, as well as the political stakes. In the mid-1990s, commercial television played a significant role in the rise to political stardom and power of Prime Minister Silvio Berlusconi, a northern entrepreneur with a formidable media arsenal.

The principal players in the present broadcasting market are RAI and Mediaset, which, thanks to the duopoly created by the alliance between politics and the media, divide up most of the audience and advertising resources. Other competitors have recently tried to enter the market, but they still lag far behind the two dominant players in terms of available infrastructure and ratings.

The super-concentration that characterises Italy's broadcast sector, the confusion created by the collusion between the media and the political establishment, and the excessive attention of the executive to the management of the public networks are not just "Italian anomalies". These problems represent imminent potential threats to any democratic system, and especially to the transitional democracies of Central and Eastern Europe. Italy is only the first front in the struggle to develop and implement common rules for the relationship between the media and the governing class. Italians are used to the "television issue" – it has been with them for decades and is not close to a solution.

While it is impossible to break up the duopoly and open up the market to other competitors without strong legislative action, the Government has been touting another strategy: promoting digital terrestrial broadcasting in order to increase the number of available networks. However, the two major players have already seized a large quantity of frequencies, thereby helping to perpetuate their dominance.

The rules governing Italy's media are still extremely haphazard, and often inconsistent with European Union (EU) policies. This poor regulation, and the fact that the Government is currently led by a media tycoon, have raised serious concerns about media freedom. The international community – including the European Parliament, the Council of Europe and other influential international institutions and advocacy groups – have responded by issuing formal warnings and recommendations for Italy to resolve the anomalies of its media system.

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The 2004 *Gasparri Law* regulates many aspects of the evolution of the broadcasting market, and makes a timid attempt at privatisation of State-owned television, but it has not improved the *status quo*. The law is widely perceived as a product of the conflict of interest plaguing the political landscape.

The existence of an integrated Italian Authority for Communications as regulatory body for the communications sector might give the impression that the media system and the information marketplace are under good governance. Yet, in reality, the authority's competencies are scattered among several parliamentary organisms and governmental agencies, including the commission in charge of RAI; the Ministry of Telecommunications, which grants public broadcast licences and permits; the anti-monopoly Competition Authority; and, for the past few years, the regional administrations.

In such a chaotic legislative framework, the dominant players are virtually undisturbed in planning their industrial and business strategies. Unfortunately, this commercial free-market does not yield corresponding editorial freedom. Italian broadcast media appear to be structurally tied to the ruling political elite, and the journalism carried out by these media is still affected by a sort of subordination to political interests. Newspapers and magazines, on the other hand, maintain relative autonomy, thanks to the higher plurality of players in the print sector.

RAI appears particularly prone to political influence. The "service agreement" between RAI and the ruling administration requires certain procedures that should, at least theoretically, guarantee internal pluralism and balanced information in the public broadcaster. However, behaviour at RAI is, in fact, dictated by the logic of "*lottizzazione*" – originally an agricultural term for the 'parcelling out' of land, and now a shorthand for the way that hiring for executive posts, journalists and producers is determined by the political parties, especially the ruling coalition. Mediaset, as a private concern that has objectives other than serving the public interest, could pursue a policy more independent from politics. However, as its controlling shareholder is the present head of the Government, Mediaset now appears even more predisposed than RAI to satisfy the needs of its owner's political ambitions and goals. Despite this situation, not all information provided by RAI and Mediaset are non-critical representations of "the master's voice". Indeed, many reporters fight a tough battle to preserve their independence, on a daily basis. Many pay with their own jobs, which is what happened when Mediaset sacked the founder and editor of its most popular daily TV news bulletin, Tg5.

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The new media – digital television, broadband connection, Internet and satellite broadcasting – are advancing rapidly in the information arena, and they have begun to change the habits of millions of Italians. New services are being put online by ambitious entrepreneurs and start-ups, and there appears to be a new synergy between telecommunications and mass communication. New technologies, and the global media market, may succeed in establishing the conditions for a free-market that lawmakers have failed to create. However, even here there are grey areas, because it is dangerous to entrust the fate of democracy to nothing more than the logic of the market.

It is therefore still unclear whether this new approach to the development of terrestrial digital by the current Government is dictated by the stated goal of promoting pluralism or by the efforts of certain policymakers to retain control of the media, especially in view of the failure of digital television in several advanced countries.

The Italian broadcasting system, both analogue and digital, appears to suffer from being overfed: the market pie has been split between the members of an elite club for too long. However, one can feel the pressure from other players, who want to get a chunk of the pie. If new competitors are not able to enter the club with the help of truly pluralistic, market-oriented legislation, they will certainly attempt to leverage the new technologies.

2. CONCLUSIONS

From a financial standpoint, the broadcasting system appears to be in good shape, generating considerable resources and turnover. Advertising remains the main driver of Italian broadcasting, abundantly feeding all media-related business sectors. RAI can count on a constant stream of income from advertising, despite the legal caps. Mediaset continues to show a significant year-on-year increase in income and revenues, thanks to the help of Prime Minister Berlusconi. Pay-TV, meaning satellite, cable and terrestrial digital television, is growing at such a rate that advertisers have begun looking into it with strong interest.

The Italian television output, as stressed by the main regulator, AGCOM, creates one of Europe's richest markets, with an abundance of generalist and niche networks that are poised for further growth thanks to new technologies. It is unlikely that any new market players would be able to compete successfully with the reigning, and apparently

untouchable, analogue television duopoly, RAI-Mediaset. Digital terrestrial television therefore represents the new frontier for entrepreneurs willing to invest in Italian television. The policies pursued by the current administration, which have raised concerns all over the world, continue to cast doubts about the real intentions of this Government on the development of terrestrial digital broadcasting. Yet, if terrestrial digitalisation takes off – should the two Government agencies fairly supervise its growth and should the conditions which led to its failure in the UK and Spain not be repeated – the next few years may bring a broadcasting revolution.

However, if the financial health of Italian television appears to be sound, given the abundance of resources for business and of choices for consumers, the same cannot be said about its “political” and cultural state of health.

Political influence over the media, and particularly over television, has harmed the development of a healthy media structure. Until the mid-1970s, television was monopolised by the governing coalition and kept under strict control by the ruling administration. This situation long impeded television’s modernisation and blocked any attempt at deregulation and any effort towards a true pluralist system. Between the-mid 1970s and the *Mammì Law* of 1990, various Governments, happy with their control over public broadcaster RAI, left commercial television in complete legal chaos. This situation allowed a Darwinian selection process, which favoured the financial empire of the new media tycoon, Berlusconi. The 1990s and the past decade have seen Berlusconi’s entry into politics, followed by a political and institutional short-circuit, which turned the media subject into a hot debate. It also put often insurmountable obstacles on the path toward pluralism and a true competitive media market, creating a dangerous precedent in the media market, and a potential threat to the democratic system itself.

Even those who will not accept that Italy sits on the brink of a media dictatorship cannot deny that the perennial “media issue”, which has characterised the Republican period since its inception, is becoming more of a “Berlusconi issue”. Such a concentration of media power in the hands of a single individual is without precedent in Italian democratic history and in liberal democracies. The law on conflict of interest approved by the Parliament in July 2004 has not resolved the “issue”. On the contrary, it has made the situation even more complicated. If, in the past, one could say that Berlusconi’s policies were unlawful and inopportune, today Berlusconi is well shielded by a law that legitimises the ownership of his media empire.

The fact that the head of the Government has a substantial say in the management of State-owned RAI, heightens concerns that certain political decisions are dictated by a policy prone to favour Mediaset. At the same time, it seems clear that the head of the Government is taking political advantage of his control over both RAI and Mediaset in order to influence public opinion and the electorate. Such decisions include those on the inflation of the “integrated communication system” and the bet on terrestrial digital television in the *Gasparri Law*. Large industrial conglomerates have withdrawn from traditional generalist broadcasting, apparently preferring not to oppose the

present governing class. For example, the Italian telecommunication giant Telecom Italia, which owns a relatively small player, La 7, has given up its strategy of developing and improving its television network.

The unexpected sacking in November 2004 of Enrico Mentana, the founder and editor for more than a decade of Mediaset's most popular news bulletin, Tg5, on Canale 5, is a disquieting sign that the media are preparing for the 2006 elections. Considered by friends and foes alike as a guarantor of balanced information who brought authority and popularity to Mediaset's news outlet, Mentana commented that "after the passing of the Gasparri Law, there was no need for a news bulletin to guard Mediaset's borders."²⁵⁷

Thus, the dominant concerns about the state of Italian television are political. The overall performance of the present Italian broadcasting system does not appear to reflect the significant check-and-control role that is traditionally attributed to the media in an advanced democracy. There has been an almost complete control by the majority of the information flow over television channels. This situation contrasts sharply with the truly pluralistic Italian press, where stricter anti-monopoly rules have allowed the voices of the opposition and of large sectors of public opinion to be heard.

In this scenario, it is not difficult to formulate a long list of detailed recommendations to the Italian legislature on the reform of the broadcasting system. It would suffice to reiterate the suggestions and concerns raised by international institutions, NGOs and independent agencies. Particularly relevant was the advice directed to Italian lawmakers by the Council of Europe's Parliamentary Assembly, including that of ending their long-standing practice of political interference in the media.²⁵⁸ Also significant are the deep concerns of the European Parliament,²⁵⁹ and its recommendation to accelerate work on the reform of the broadcasting sector.²⁶⁰ Other balanced and fair considerations are included in the Italian President's formal message of 23 July 2002, particularly those pointing out the conditions for any reform: pluralism and impartiality, aimed at shaping a critical and educated public opinion, able to exercise responsibly its fundamental democratic rights.²⁶¹

Nevertheless, it is doubtful that this list of recommendations will bring positive results. The influential critics inside and outside the Italian system have not generated any real momentum for reforming the system. Paradoxically, although facing such a widespread concern, the current Parliament sponsored and approved in 2004 a law which puts

²⁵⁷ Statement of Enrico Mentana in *Corriere della Sera*, 14 November 2004.

²⁵⁸ CoE Report 10195, para. 79.

²⁵⁹ European Parliament, Resolution 2003/2237, art. 66.

²⁶⁰ European Parliament, Resolution 2003/2237, art. 87.

²⁶¹ See the formal message of the President of the Republic, Carlo Azeglio Ciampi, to the Italian Parliament, on pluralism and impartiality of information of 23 July 2002, available online (in Italian) at <http://www.quirinale.it/Discorsi/Discorso.asp?id=20101> (accessed 1 June 2005).

RAI under an even stricter control by the political establishment and allowed Mediaset to grow further in the advertising and other media sectors.

It would be useless to propose model media systems that take no account of Italy's actual political environment – namely that the parties, administrative institutions and information operators have been arguing over the independence of State-owned television and its pluralism for at least the past 30 years. In the past decade, they have been debating the issue of conflict of interest and the relationship between media and politics. Legal scholars, political scientists and communication experts are fully aware of the various alternative models, as well as of the different remedies that could promote the right of the public and Italian nationals to be informed and to participate in public life, and to debate in an efficient and knowledgeable fashion. Unfortunately, sectional interests have always prevailed over general principles and legality.

3. RECOMMENDATIONS

3.1 Policy

Digitalisation

1. The Government should postpone the deadline for the switchover 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.

3.2 Regulatory authorities

Enforcement powers

2. Parliament should adopt changes to legislation to strengthen the powers of the regulatory authorities. In particular, the Communications Guarantee Authority (AGCOM) should be assigned more sanction powers to enforce its decisions.

Independence

3. Parliament should initiate changes in legislation to ensure the independence of the Communications Guarantee Authority (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.

Frequency allocation

4. The Communications Guarantee Authority (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 the radio-electrical frequencies.
5. Parliament should amend legislation in order to prevent the legalisation of broadcasters who illegally occupy frequencies.

3.3 Public and private broadcasters*Local broadcasters*

6. Parliament should take steps to introduce legislation to give more financial and technological aid to the private local television broadcasters, to promote the establishment of alternative networks to the national ones.

3.4 Public broadcaster*Restructuring*

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 1 per cent of RAI's shares) and unconstitutional (as it sets up a complete privatisation of a public service).
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).
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.

Independence

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.
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 can be to entrust the appointment of a part of the Board to AGCOM or to the AGCM.

Professionalisation

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 Board should be subjected to rigorous hearings in Parliament.
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.
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.

3.5 Private broadcasters

Diversity and pluralism

15. Parliament should take steps aimed at solving the “Italian anomaly” by breaking Mediaset’s monopoly on commercial broadcasting before the changeover to digital television.
16. Parliament should amend the *Gasparri Law* to ensure the implementation of the Decision of the Constitutional Court – that demands a 20 per cent threshold for each analogue television broadcaster and guaranteeing an effective variety of sources of information to citizens – before the switchover to digital television.
17. The Government should promote diversity and pluralism in broadcasting by supporting financially new entrants on the broadcasting market.
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.
19. Parliament should amend the articles of the *Gasparri Law* defining the integrated communication system (SIC), to establish clear definitions of the separate markets inside the SIC, and introduce new rules providing for 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.

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.
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.

