

Competition: Commission requests Italy to comply with EU rules on electronic communications

The European Commission has decided to send a letter of formal notice to Italy requesting information about its broadcasting legislation's compatibility with EU rules on competition in the markets for electronic communications networks and services and the New EU Regulatory Framework for Electronic Communications. The Commission is concerned that the Italian legislation fails to fulfil the obligations established by EU competition rules insofar as it introduces unjustified restrictions to the provision of broadcasting transmission services and attributes unjustified advantages to existing analogue operators. A letter of formal notice is the first step in the infringement procedure under Article 226 of the EC Treaty. Italy has now two months to respond to the concerns expressed by the Commission.

The Commission's decision to send a letter of formal notice follows a complaint from the Italian consumers' association Altroconsumo, claiming that the Italian legislation regulating the passage from analogue to digital terrestrial broadcasting technology infringes EU Directives 2002/21/EC (Framework Directive), 2002/20/EC (Authorisation Directive), 2002/77/EC (Competition Directive), as well as other provisions of EU law.

On the basis of its analysis, the Commission is concerned that Italian legislation may indeed preclude operators which are not active in analogue transmissions from experimenting with digital transmissions and from creating their own digital networks. Moreover, the Italian legislation allows existing broadcasters to acquire more frequencies for digital experimentation than they need for simulcasting their programmes in analogue and digital. Finally, the law allows incumbents to maintain control over the frequencies and networks for analogue transmissions even after the switch-off, thus depriving their competitors of the digital dividend deriving from the enhanced capacity of digital networks.

Background

Article 2bis of Law 66/01 has ruled out the implementation of the plan for redistribution of frequencies for analogue broadcasting. The same provision, together with Article 25 of Law 112/04, has extended broadcasting authorisations to analogue operators without a licence until the switch-off.

Article 23 of Law 112/04 provides that only existing analogue broadcasters can access experimentation of digital terrestrial transmissions, digital network operator licences and frequency trading. It also limits frequency trading to digital transmission and allows operators to maintain control of their analogue frequencies even after the switch-off.

Article 23(5) of law 112/04 allows analogue operators to convert their analogue licences (and thus networks) into digital licences until the switch-off and without limits.

The Commission is concerned that these laws attribute special rights to existing analogue operators. These provisions may thereby infringe Articles 2 and 4 of Directive 2002/77/EC, which require the abolition of such special rights.

The Commission considers that these same laws may also infringe Article 9 of Directive 2002/21/EC and Articles 3, 5 and 7 of Directive 2002/20/EC insofar as they:

- require undertakings to obtain an individual licence rather than a general authorisation for the operation of a broadcast transmission network.
- prevent new operators from installing and operating a digital network.
- prevent newcomers from acquiring or using frequencies for digital transmissions.
- do not limit the number of frequencies broadcasters can acquire to what is strictly necessary to substitute digital programs to the current analogue ones and fail to impose that operators return the analogue frequencies that will be freed after the switch-off.