*Mediacom S.R.L. v. Italian Communications Regulatory Authority*

Summary and Outcome

The Regional Administrative Court of Lazio (Rome) (*TAR* – *Tribunale amministrativo regionale*) issued two ordinances revoking the six-months long suspension of broadcasting activities imposed by the Italian Communications Regulatory Authority (“AGCOM”) on two companies for diffusing misleading information on the Covid-19 pandemic. Without prejudice to the prohibition on radio or television broadcasters to transmit fake news, the Court considered the measures of the AGCOM to be disproportionate.

Facts and Context

As a result of the monitoring activity regarding the compliance with the measures requesting the provision of complete and reliable information on the Covid-19 pandemic, on April 7, 2020, the Italian Communications Regulatory Authority issued a decision (Resolution No. 153 of April 2020) imposing on Mediacom S.R.L. (hereinafter “Mediacom”) the suspension for six months of its broadcasting activity.

On March 17 and 18, 2020, Mediacom – the company owning the right to broadcast on “Life 120 Channel” (Channel 61 of the digital television) – transmitted a health-related TV show (“*Il Cerca Salute*” with journalist Adriano Panzironi), devoting a special episode to Covid-19, titled “*What they did not tell you about coronavirus*”. The latter has been considered to provide misleading, false and non scientifically sound information with regards to the factors (e.g., the consumption of carbohydrates) causing severe symptoms to those contracting the coronavirus and to the measures necessary to prevent the spread of the pandemic. Sentences criticizing traditional medicine (there described as “dogmatic”) are repeated throughout the episode, and containment measures such as mandatory quarantine and social distancing are depicted as “medieval”. Consumers are invited to purchase vitaminic supplements, suggested by the “Life120” method created by Adriano Panzironi and promoted by the show, which are presented as an essential means of prevention against the contraction of the coronavirus.

In its decision, the AGCOM stated that – given its content – the program could not be regarded as offering scientific knowledge and it noted that it could not be made any reference to the freedom to provide scientific information. The Authority deemed the show to be of a particularly dangerous nature, in that persuading consumers of the efficacy (if not sufficiency) of the Life120 vitaminic supplements may lead to a decreasing in compliance with the containment measures and a subsequent spread of the pandemic. Finally, the decision restated that because “*Il Cerca Salute*” does not compare “theses with equal scientific merit according to validated criteria”, the case does not fall “within the scope of the principle of freedom of scientific information”.

In light of the above, Mediacom’s conduct was considered to be in breach of Article 36 *bis* (1)(c)(3) of the Consolidated text of audiovisual and radio media services (Legislative Decree No. 177 of 31 July 2005), regarding general principles for audiovisual and radio commercial communications. The provision requires audiovisual commercial communication not to encourage behaviors detrimental to health and safety. Further, in the opinion of the Authority, because it potentially aggravates a public health emergency, the conduct met the requirement regarding the special severity of the violation imposed by Article 51(9). Pursuant to the latter: “If the violation is particularly serious (…), the Authority may order the suspension of the activity of the broadcaster (…) for a period not exceeding six months”.

Mediacom, become aware of the Authority’s intention to initiate a proceeding, had ordered the interruption of the show “*Il Cerca Salute*” on March 20. Notwithstanding, the AGCOM ordered the above-mentioned suspension for six months.

It should also be noted that the AGCOM issued a “twin resolution” (Resolution No. 152 of 7 April 2020) addressed at Italian Broadcasting S.R.L.S., the company owning the right to broadcast “Life Tv Network” on Channel 880 of the Eutelsat Hotbird satellite. On March 17 and 18 2020, Italian Broadcasting S.R.L.S. had transmitted the same programs broadcasted by Mediacom.

Both companies appealed the decisions before the Regional Administrative Court of Lazio, asking for their enforceability to be suspended.

Decision Overview

On May 11, 2020, the Regional Administrative Court of Lazio issued two decisions: No. 3678/2020 and No. 3680/2020. Both ordinances temporarily suspended the enforceability of the resolutions, on the premise that they could not be considered proportionate. In its judgement, the Court gave particular relevance to the interruption and deletion of the program “*Il Cerca Salute*” and revoked the suspension. It specified that it is, in any case, inhibited the dissemination of contents regarding the current epidemic emergency, which may generate “misinformation in the public and inspire behaviors not recommended by the competent health authorities”.

The Court ruled exclusively on the proportionality of the sanction imposed, postponing the discussion of the merit of the case to the first hearing, on September 28, 2020. The outcome is not yet available.

Following these decisions, the AGCOM has issued a number of other measures regarding the promotion of the “Life120” supplements, the show “*Il Cerca Salute*” and the episode “*What they did not tell you about coronavirus*” (broadcasted on different channels up until March 19, 2020), changing however its orientation with regards to the sanction. By way of example, on October 22, 2020, and on February 11, 2021, the Authority issued two resolutions enjoining the payment of administrative penalties, for breach of Article 36 *bis*.

Case significance

The decisions have impacted the evaluation of the Italian Communications Regulatory Authority concerning the appropriate sanctions to be applied in order to inhibit the diffusion of non scientifically sound information with regards to the Covid-19 pandemic.

Global Perspective

National standards, law or jurisprudence

* It., Consolidated text of audiovisual and radio media services, Legislative Decree No. 177, 2005, arts. 3, 36 *bis*, 51.