

PLURALISM OF INFORMATION IN THE TELEVISION SECTOR IN ITALY: HISTORY AND CONTEMPORARY CONDITIONS

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Introduction

The history of pluralism of information in Italy illuminates the complex set of relationships among media, political, and legislative powers that have defined the evolution of electronic media, in particular, television. This history illustrates the ideological nature of pluralism by showing that this principle, fundamental for democracy, is never a natural outcome of progress in communication technologies; in fact, the concept and practice of pluralism change and adapt depending on political and industrial interests. Moreover, the history of pluralism in Italy underlines the consequences of insufficient public policies in the sector of broadcasting. Instead of protecting the citizens' rights to be informed in a media environment where 'media pluralism [is] respected' (Art. 11, Comma 2, the Charter of Fundamental Rights of the European Union), legislation has often protected the interests of broadcasting companies to consolidate and maintain their dominant positions in the market place.¹

According to Antonio Gramsci, there are '[t]wo aspects to every question: how it has been treated theoretically and how it has been dealt with practically' (Gramsci 1992: 125). In this chapter, I will address those two aspects (the theoretical and the practical) as they relate to the question of pluralism of information: I will look at how the Italian Constitutional Court has historically dealt with pluralism – namely, the theoretical treatment of pluralism; and how the legislature has responded to the court's sentences – that is, the practical treatment of pluralism. More specifically, I will focus on the history of pluralism of information as it relates to the terrestrial broadcasting television market.

The Italian context

The European Federation of Journalists notes that '[t]he narrowness of control of the Italian media is striking' (2005: 82). Indeed, Italy is a country whose media system is defined as 'one of the most complex in the European context for the set of interrelationships among political, sociocultural, and economic variables' (Richeri 2005: ix). Its broadcasting television market – defined as a duopoly – is dominated by two major players: RAI Radiotelevisione Italiana, the public broadcaster, and Mediaset, the commercial competitor. By 2006, the two broadcasters still controlled 84 per cent of national audiences (Marzulli 2007: 9), with Mediaset's three terrestrial channels commanding 40 per cent of the audience in 2007 (Vivarelli: 2008a).

Since the end of 1993, when Silvio Berlusconi (owner of media giant Fininvest/Mediaset²) entered the political arena, the lack of pluralism in the broadcasting sector has become a cause for great concern. The fact that the media mogul-turned politician (Berlusconi has been Prime Minister of Italy in 1994, 2001–6, and 2008–) controls, directly and indirectly, six out of eight national TV channels is a constant threat to pluralism of information. The results of some investigations, brought to public attention by the national daily *La Repubblica* in November 2007, are examples of the profound malaise of the information sector in Italy. Indeed, according to those investigations, between 2004 and 2005, RAI and Mediaset's top managers and TV executives regularly consulted among themselves to decide on the items to be put on the respective news bulletins, how to conceal negative results (for Berlusconi's coalition) of the regional elections of spring 2005, and how to improve Berlusconi's image when his popularity was declining.³

Homogenization of television programs

Instead of promoting diversity, competition between the two broadcast operators has in fact brought about homogenization of programming output. Indeed, as the history of Italian television illustrates, 'an increase in the number of broadcasters [does] not necessarily imply a wide variety of suppliers, genres and formats' (Richeri 2003).

Since the 1990s, the rising costs of TV productions, of imported films, and rights to broadcast live sporting events, have made the competition for audiences a fundamental goal for the public broadcaster. Counter scheduling has often been the public broadcaster's main strategy in the struggle against its commercial counterpart, and the public service broadcaster has frequently been accused of failing to play an innovative role. In fact, instead of raising the bar of quality programming and thereby initiating a 'virtuous cycle', RAI (especially its second channel, and, to a lesser extent in more recent times, its flagship channel) has often filled its prime time slots with imported TV series (or old films during the summer months), imported children's cartoons, flashy news bulletins, reality and game shows. Indeed, according to a research prepared by the Group of Specialists on Media Diversity and presented to the Council of Europe on 27 February 2006, the genre composition of RAI and Mediaset's output remains strikingly similar. At the time when the research was completed, 60 per cent of the schedule on RAI's flagship channel, RAI1, was made up of news, talk shows, light entertainment, drama and game shows; 65 per cent of the output of Canale5 (Mediaset's flagship channel) was also characterized by the same genres (Group of Specialists 2006: 41–2). As media analyst Francesco Siliato predicted, heterogeneity of programming output on Italian terrestrial broadcasting TV 'continues to be the exception, rather than the norm' (Siliato 2001).

The homogenization of TV programmes is especially disturbing in a country where 'more than half [the population]...gets its information exclusively from television' (D'Avanzo 2007), and where television is still the most used medium, with 92.1 per cent of users in 2006 (CENSIS 2007: 1–2). The concentration of political and media power is particularly worrisome if we consider that, during political campaigns, television becomes even more important. During those times television is 'absolutely the only source of information, [with] 77.3 percent [of Italians] trusting [TV] completely and only 6.6 percent accessing other sources' (D'Avanzo 2007).

Political pluralism

In a country like Italy, historically characterized by highly polarized political and media systems (Hallin and Mancini 2004: 89–98), by a wide range of political parties playing the intermediary role between citizens and state institutions (Scoppola 1991), and by a wealth of local, regional, and immigrants cultures, a plurality of voices, opinions, and political perspectives, is very important. In fact, 'proper access to the different media by all political and social actors' (Polo 2004: 2) is the *conditio sine qua non* for both 'Internal Political Pluralism' and 'External Political Pluralism', indicating respectively the 'diversified supply of political views within each single medium...and [with]in the market' (Polo 2004: 1). As Polo explains, not even a differentiation in the 'content of the media companies...[would] necessarily [mean a broader]...representation of political opinions and views' (Polo 2004: 30). In fact, given the concentrated structures of media markets and the political interests at stake, the 'market will hardly satisfy the need [for] external [as well as internal] pluralism' (Polo 2004: 30).

Media pluralism in Italy: A history

Proper public policies aimed at reducing market concentration are an absolute necessity, indeed, the history of media regulation in Italy serves as an important lesson to learn about the consequences of poor legislation in this sector. As this history points out, laws regulating the TV market have usually been too slow in coming, and those pieces of legislation that have been passed often supported the interests of political and industrial elites, protecting corporations' freedom of expression and competition (in particular, Fininvest/Mediaset's freedoms), rather than supporting and promoting citizens' rights to be informed and entertained in a pluralistic media environment.

The monopoly over broadcasting

In Italy, television has represented a formidable tool for the linguistic and cultural unification of the country after World War II (De Mauro 1962), and for political part(ies) to establish and solidify consensus (Padovani 2005; Mancini 2006; Pinto 1980; Cesareo 1970). This last aspect, namely the relationship between television and the political establishment, is critical to understanding how pluralism first developed in the country. A practice known as *lottizzazione* (i.e., the sharing of position of powers among political parties within the public service broadcaster) at times functioned as a practical application of pluralism and could be seen as a 'recognition of the existence of many groups (exclusively political groups in Italy's case) in competition and their need to express and circulate their points of view' (Mancini 2006: 6). Political pluralism within the public broadcaster often improved because of *lottizzazione*, a quota system that allowed representatives of the most important parties (including the

opposition) to intervene in the administration of the broadcaster as well as in the making of programming.

In order to understand how *lottizzazione* developed, it is necessary to understand the history of public service broadcasting in Italy. Far from considering RAI's role as that of a public sphere where information could be provided in order to promote rational and informed debates among citizens (Habermas 1989; Garnham 1983, 1986, 1992, 2003), the governing parties often saw television as a tool to establish and maintain their cultural and political hegemony. Indeed, from its early days in the 1950s, the public broadcaster was conceived not as a place for enlightenment according to the tenets of liberal democracies, but 'as a terrain of ideological struggle' (Padovani 2005: 6). From the time it obtained rights over television broadcasting in 1952⁴ until the mid-1970s, the control of the broadcaster was firmly secured in the hands of the government, which, directly and indirectly, appointed most of the members of the board of directors. Not only local and national broadcasting was under state monopoly, 'complete government control was guaranteed as all appointments were...negotiated among the various currents of the Christian Democratic Party (DC)' (Padovani 2005: 68). The DC was later joined by a variety of small parties (including the Italian Socialist Democratic Party and the Italian Republican Party), negotiating power inside the broadcaster.

Pluralism and the end of state monopoly

By the early 1970s, an unprecedented grass roots movement, comprised of national unions, citizens and consumers' organizations, print journalists, as well as RAI journalists and programmers, was advocating for the liberalization of the airways and the end of the state's monopoly over radio and television broadcasting.

Ruling in 1974 on a series of cases regarding private citizens, who, between 1971 and 1973, had been accused of illegally installing television receivers to access international broadcasts, the Constitutional Court (Sent. N. 225) urged the legislature to provide new rules for the broadcasting sector. The high court took the opportunity to underline that the only reason for justifying the legitimacy of the state's monopoly over broadcasting (a monopoly established in 1952) was for the public broadcaster to ensure cultural and political pluralism. On that occasion, the court emphasized that 'access to radio and television [broadcasting] should be impartially open...to all political, religious, cultural groups, through which the various ideologies present in society express themselves' (Art. 8, Comma F). The court envisioned a new law that would free RAI from its dependence on the government of the day and promote pluralism.

Opening the broadcaster to diverse instances in society, decentralizing RAI's production centres, and making its programming more relevant and representative of regional cultures, were the goals of the reform movement. Law No. 103 of 14 April 1975 acknowledged the growing demands coming from the high court as well as from the body social, and, in its opening statement, declared that the fundamental principles of public broadcasting were to provide 'independence, objectivity, and openness to the diverse political, social, and cultural instances' (Art. 1). An *ad hoc* sub commission was established to secure access to the broadcaster (to air time and production facilities) for underrepresented groups and ensure a 'plurality of opinions and of political and cultural orientations' (Art. 6). After years of monopoly of the Christian Democratic Party over RAI, pluralism – political and party pluralism in particular – was finally required by law.

Lottizzazione and pluralism

In an effort to respond to the court's directions emphasizing the need for more pluralism, the law of the 1975 assigned new important functions to the Commissione Parlamentare di Vigilanza RAI (founded in 1947 but rather inactive since then). In order to remove RAI from the direct control of the government, it was established that the Committee's 40 members would be nominated by all parliamentary parties, thereby broadening the governance of the public broadcaster. Among other tasks, the Committee was given the responsibility of electing more than half of the sixteen members of RAI's board of directors, while the remaining members would be nominated directly by the Parliament. Moreover, in order to ensure more diverse programming and promote a more open, de-centralized broadcaster, the law makers established that at least five per cent of TV air time (and at least three per cent of radio broadcasting time) should be reserved for 'political parties and parliamentary groups, local administrative institutions, national unions, religious organizations, political movements...[and] ethnic groups' (Law N. 103, Art. 6).

Although complete decentralization was never achieved (RAI continues to be primarily a Rome-based broadcaster, although in 2003 its second channel was moved to Milan in an effort to please the federalist requests of Berlusconi's political ally, Lega Nord), political and party pluralism was religiously implemented as a result of the 1975 reform law. RAI1 remained the channel of the ruling party with its populist and more conservative programming, while the second channel, RAI2 (founded in 1961) was assigned to the Italian Socialist Party (PSI). Finally, in 1989, RAI3, at the time a struggling regional channel, was given to the Italian Communist Party (PCI), the second most important party in the country.

Historically, *lottizzazione* played a very important role and had a positive function: in an environment that, until the mid-1970s was still defined by RAI's monopoly in the broadcasting sector, the practice of sharing positions of power among the various political parties secured both internal and external pluralism. *Lottizzazione* ensured external pluralism because each channel was assigned to one of the two (and then three) most important political parties; it provided internal pluralism, because, as an effect of rather sophisticated *lottizzazione* formulas, positions were shared among the representatives of all major parties within each channel and newsroom.

Even though most of the old mass parties of the post war era, including the DC, the PSI, and the PCI, disappeared in the wake of the so-called Clean Hands scandal of the early 1990s,⁵ the practice of allocating political party quotas inside the public broadcaster continued. RAI1, the flagship channel, including Tg1, its national news bulletin, remained in the hands of the main government party (the most important party of the governing coalition); RAI2 went to the second most important party (or the other parties in the coalition); and RAI3 to the opposition.

Consolidating the duopoly

Whereas the Constitutional Court had agreed that state monopoly over local broadcasting was unconstitutional (Sent. 202/1976), it continued to uphold state monopoly over national broadcasting based on the argument that 'public broadcasting service...is a service of general utility...[and that] the general interest [is realized] by the need to avoid the concentration of broadcasting in a monopoly or oligopoly' (Sent. 148/1981, Comma 2). Addressing those who claimed that technological advancements had in fact made the state monopoly obsolete and that there was no risk of consolidation in what appeared to be a lively and competitive growing

market (in 1978 there were more than 2000 private, or 'independent' radio stations, and, by 1981, 800 television stations), the high court clarified its position in a subsequent sentence:

The necessity [of the state monopoly] does not emerge only in relationship with the more or less available broadcasting frequencies, rather it derives from the nature of the broadcasting phenomenon, seen in the socioeconomic context in which it is destined to develop. (Sent. 148/1981, Comma 2)

On that occasion, the court underlined the need for proper regulations. In fact, unless appropriate legislation were put in place to prevent the formation of monopolies in the TV sector, the state's reserve over national broadcasting had to be maintained in order to protect a service of 'general utility'. However, when the legislature intervened, it did so primarily to protect the interests of Fininvest, the private TV operator. In the fall of 1984, after a few judges had ordered Berlusconi's channels to be shut down because of being in breach of two Constitutional Court sentences (202/1976 and 148/1981) banning private operators from broadcasting nationally, the government, then headed by Prime Minister Bettino Craxi, passed a decree law to quickly overturn the magistrates' decisions. In that decree (known as the 'Berlusconi decree' and converted into Law N. 10 on 4 February 1985), the legislator established that: (1) the channels that were in operation by 1 October 1984 could continue their broadcasts; (2) each existing broadcaster would be allowed to air pre-registered programmes at any time; and (3) each local broadcaster would be allowed to transmit its signals to other local TV stations across the country. These norms were custom-made to cater to Fininvest's needs. In fact, in an attempt to circumvent the state monopoly over national broadcasting, the private broadcaster's stratagem was to send pre-recorded tapes to all Fininvest-owned stations across the nation and broadcast those tapes almost simultaneously. Although this was not, technically, 'national' broadcasting, it obviously contributed to creating a national audience for a *de facto* national broadcaster.

The juridical principles used by the Craxi government to legitimize its support of private initiative in national broadcasting were those of freedom of expression and pluralism (Art. 1, Comma 2 of Law N. 10, 4 February 1985). Without addressing the Constitutional Court's position, according to which concentration in the TV sector had to be prevented because it was not conducive to promoting broadcasting as a 'service of general utility' (Sent. 148/1981), the legislator used the principle of freedom of expression to justify its support for the private broadcaster's own freedom of expression. While internal pluralism within RAI continued to be practised thanks to an increasingly rigid *lottizzazione*, external pluralism now meant that instead of one national monopolist (RAI), there would be two, although *only* two, national broadcasters.

In a subsequent sentence of the Constitutional Court, a fundamental one for the history of Italy's jurisprudence on pluralism of information (Sent. 826/1988), the court called on the Parliament to take action and insisted that 'an appropriate legislation [was needed] to avoid the dangers of monopoly or oligopol[ies]' (Zaccaria 1996: 5). The court warned that once national broadcasting was left in the hands of private investors in monopolistic or oligopolistic markets, those investors would be able to 'exercise, from a position of prominence, influence over the collectivity and that would be incompatible with the rules of a democratic system' (Constitutional Court, 826/1988, Comma 9).

In the same sentence, the court clarified its view on pluralism:

[P]luralism of radio and television broadcasting means...the possibility, on the part of as many voices as technically possible...to access the public as well as the private broadcaster. In order to make sure that external pluralism is real and not simply [theoretical], such access to the private broadcaster must be a concrete possibility. [Indeed] those who bear different opinions [shall] be able to express themselves without the risk of being marginalized because of the processes of concentration of technical and economic resources in the hands of one or a few. (Constitutional Court Sent. 826/1988, Comma 11)

According to the court, in order to ensure real pluralism it was necessary to foster an environment supportive of citizens' rights to be informed and entertained from a variety of media outlets. The high court explained this principle:

Pluralism manifests itself as the concrete possibility for all citizens to choose among a multiplicity of informational sources, a choice that would not be realistic if the public targeted by audiovisual communication were not in the condition to access, in the public as well as in the private sector, programmes that guarantee the expression of heterogeneous tendencies. (Constitutional Court 826/1988, Comma 11)

The court underlined that 'national [or external] pluralism [could] never be reached if the competition continue[d] to be only between one public and one private broadcaster' (Comma 19). Once again, the court urged the legislator to take action. Lawmakers were warned: 'an [impending] formal declaration of unconstitutionality [was going to be issued] unless an organic law disciplining the whole sector were to intervene in a reasonable time' (Zaccaria 1996: 7).

In fact, the prolonged inactivity of the legislator had already caused 'serious difficulties to the few publishing firms that had entered the market in the early 1980s' (Zaccaria 1996: 6). In an environment often referred to by the popular press as the far west of the airwaves, the TV market was consolidating in the hands of Silvio Berlusconi, then a young entrepreneur from Milan and owner of Canale5, who had acquired Italia1 in 1983 and Rete4 in 1984. By 1986, RAI and Fininvest were already in control of 85 per cent of the national audiences and 90 per cent of available resources. Moreover, Fininvest owned shares - up to 82 per cent of them in the 1990s - of the national daily *Il Giornale* (a newspaper founded in Milan in 1974 by journalist guru Indro Montanelli); by 1989, Berlusconi's holdings had obtained a majority share of the prestigious Mondadori publishing house.

A law to legitimize the duopoly

Law No. 223 of 6 August 1990 confirmed the inability, or unwillingness, of the political establishment to stand up in favour of a more open and diversified TV sector. Instead of regulating the market in support of citizens' right to be informed from a variety of sources, as the high court had often recommended, the law limited itself to simply describing the existing situation. As customary, the legislator paid lip service to the principle of pluralism, stating that:

Pluralism, objectivity, complete and impartial information, openness to diverse opinion, political tendencies, social, cultural and religious [tendencies]...represent the fundamental principles of the radio and television broadcasting service, [a principle] that is realized thanks to the competition of public and private operators...(Art. 1, Comma 2)

In reality, 'competition of public and private operators' only meant the competition between one public broadcaster and one private broadcaster. In this sense, the law 'put [serious] obstacles to pluralism in a fundamental way: by limiting the plurality of voices, which is the best guarantee of pluralism' (Gambaro and Silva: 162).

Article 15 of the Mammi law (named after Oscar Mammi, the communications minister at the time), forbade cross-ownership (Comma 1), but left the broadcasting sector untouched. Indeed, it set the anti-trust limits to 'no more' than three national channels (Comma 4) – three was exactly the number of channels operated by RAI and Fininvest respectively – and established that no single operator could access more than twenty per cent of the available resources for the entire mass media sector, including those for the print media, advertising, and the licence fee for the public broadcaster (Comma 2 and 3).

Technological advancements and pluralism

In an attempt to address the issue of political interference within the public broadcaster – increasingly unpopular at the time of the Clean Hands scandals of the early 1990s – Law N. 206, of 25 June 1993 (also known as the anti-*lottizzazione* law), was passed to free RAI from its dependency on the political party system. As Mancini notes (2006), the law reduced the number of members of RAI's board (from sixteen to five) in order to prevent the proportional division of those positions among parties, and established that board members be appointed by the speakers of the Senate and the House of Deputies instead of the Commissione Parlamentare di Vigilanza RAI in an effort to ensure political independence.

However, the problems afflicting the Italian TV and media sector went well beyond the relationship between RAI and the party system. Indeed, the concentration of the TV broadcasting market and Berlusconi's conflict of interests were pressing concerns. Unfortunately, not even the centre-left government of Romano Prodi (1996–8) did much to address either of these issues. Law No. 249 of 31 July 1997 (the so-called 'Maccanico Law', named after Communications Minister Antonio Maccanico) established the Communications Authority and assigned to it the task of 'adopting the necessary measurements to eliminate or impede [dominant] positions... [colliding with] pluralism' (Art. 2, Comma 7). The law also set new anti-trust limitations forbidding national broadcasters from controlling more than thirty per cent of the available resources in the television sector or utilizing more than twenty per cent of the analogue national television channels.

In an attempt to break down the duopoly (both RAI and Mediaset collected more than thirty per cent of the available resources and occupied more than twenty per cent of the television channels), the legislator imposed (Art. 3, Comma 6) the transition of the exceeding channels to other platforms (satellite or cable). However, it failed to set a deadline for the migration, a task that was instead assigned to the Communications Authority (Art. 3, Comma 7). Widespread expectations about the advent of digital terrestrial TV (a delivery technology that would have overcome the limitations dictated by the spectrum scarcity and cured the ills of a concentrated

market), were some of the reasons for not pushing the migration of RAI and Mediaset's third channels to satellite. After all, with a future of abundant digital channels just around the corner, why worry?

Expectations for a fast transition to digital-only television failed to materialize and, four years later, the Communications Authority finally set 31 December 2003 as the deadline for compliance with the anti-trust limitations established by the Maccanico law of 1997 (Resolution 346/2001). In 2002, the Constitutional Court declared Art. 3, Comma 7, of the Law 31 July 1997, unconstitutional for failing to 'provide a deadline, certain and unchangeable' (Sent. 466/2002), and confirmed the deadline set by the Authority. The court underlined that:

external pluralism...cannot be...achieved based [just] on the fact that there is competition between a public and a private pole, [and when] the private [competitor] is [in] a dominant position. This is because [in such a situation] access to the broadcasting sector on the part of the 'highest possible number of diverse voices' cannot not be [fully] realized. (155/2002)

Meanwhile, motivated by a similar intent to maintain the status quo, both the public and the commercial broadcasters found themselves agreeing on what they saw as a useless imposition. RAI's perspective was exemplary: indeed, representatives from the public broadcaster argued that the 'reduction of an exceeding operator would not in itself be sufficient to ensure pluralism' (RAI's defence quoted in Constitutional Court, Sent. 466/2002, Art. 8). The technological transformation of the broadcasting sector was perceived as the solution to the lack of external pluralism and many hoped that the upcoming 'technical innovation in digital terrestrial [transmission] would allow an unlimited increase of available frequencies, with the consequence of increased pluralism of information' (RAI's defence quoted in Sent. 466/2002, Art. 8).

Pluralism as the right of the minorities

In reality, the full transition to digital TV, first scheduled for the end of 2003, then postponed to 2006, is now expected to be completed in 2012. Meanwhile, RAI and Mediaset have continued to dominate the broadcasting market. In a sign of urgency and concern, even Carlo Azeglio Ciampi (President of the Republic from 1999 to 2006) addressed the Parliament on two occasions in July 2002 and December 2003.

In his July 2002 address, the president emphasized that 'there [can be] no democracy without pluralism and impartiality of information' (Ciampi 2002). He also underlined that the existence of dominant positions in the field of communication and media, is, in itself, an 'objective obstacle to the effective actualization of pluralism', and reminded the lawmakers of their duty to 'secure pluralism of voices, expressions of freedom of thought, and to guarantee, in this way, the fundamental right of citizens to information' (Ciampi 2002).

The Italian President applauded technological advancements in the field of broadcasting transmission, but warned that 'pluralism and impartiality of information will not be the automatic consequence of technological progress'. Lawmakers – he told the Parliament – should work on public policies in order to guide technological processes. Ciampi also called attention to cultural pluralism (a fundamental component of Italian culture) and recommended to his audience that

'pluralism and impartiality of information are fundamental factors to balance the rights of the majority with those of the minorities'.

In his second parliamentary address in 2003, Ciampi explained the reasons why he had refused to sign a bill, proposed by the Berlusconi government and approved by the Parliament, to reform the media and television sectors. The president called the lawmakers' attention to the fact that the bill had failed to impose the migration of analogue broadcasting channels in excess of anti-trust limitation as demanded by the Constitutional Court's sentence No. 466 of 2002. Moreover, Ciampi underlined that the proposed law did not provide, as requested by another sentence (420/1994), 'appropriate legislation that would prevent dominant positions' (Ciampi 2003). Finally, the head of State criticized the legislator for proposing a new system to calculate the 'relevant market' (out of which anti-trust percentages would be calculated). This system, called 'integrated system of communication' or 'SIC', would include not only TV ads and the licence fee, but also resources generated from books, movies and the Internet. In fact, Ciampi believed that the SIC, 'taken...as the baseline for calculating the profits of each operator...could cause...even for those in control of [only] twenty per cent of the resources...to be in a dominant position' (Ciampi 2003).

The Gasparri Law

In its opening remarks, the Gasparri Law (named after Communications Minister Maurizio Gasparri and approved on 3 May 2004 with only minor adjustments), the legislator celebrated 'freedom and pluralism of the means of communication, and the tutelage of freedom of expression for every citizen' (Law N. 112, Art. 3, Comma 1), and guaranteed 'the user's access...to an ample variety of information and content offered by a plurality of national and local operators...in conditions of pluralism and freedom of competition' (Art. 4, Comma 1a). The law also stated that in order to guarantee pluralism of the means of communication, the broadcasting sector would have to strictly adhere to the principle of market competition, thereby forbidding 'the constitution or the maintenance of positions that [could be] damaging to pluralism' (Art. 5, Comma 1a). It is important to notice that freedom of competition rather than citizens' freedom of expression and their right to be informed and entertained in a pluralistic media environment, were, once again, the legislator's main concerns. In fact, 'there is no doubt that [this law] was conceived to protect Berlusconi's broadcasting empire' (Tonello 2007: 246), and the existing duopoly.

The Gasparri law established that no single operator could access more than twenty per cent of total available resources, but significantly enlarged the 'relevant market' out of which this percentage ought to be calculated (Art. 15, Comma 2 and 3). Indeed, the Integrated System of Communication would include resources generated by the 'printing press...electronic publishing, INTERNET, radio and television, cinema,...and advertising' (Art. 15, Comma 2 and 3). As one commentator wrote, Mediaset could even buy the national newspaper *Corriere della Sera* (the Milanese daily with the highest circulation in the country) and still be in compliance with the 20 per cent anti-trust limitations (Rampini 2003)!

Moreover, in an effort to secure a fast transition to digital terrestrial television (DTT), Article 25 of the Gasparri law established that, by January 2004, the public broadcaster would cover 50 per cent of the population with its digital terrestrial channels; 70 per cent by 2005. According to

the law, such new delivery technology would solve the problem of spectrum scarcity, implicitly eliminating the need for sending existing analogue channels to other platforms.

As Ezio Mauro (editor in chief of the daily *La Repubblica*) wrote, the law 'deformed information, pluralism, and the market of consensus,...sanctifie[d]...the absolute supremacy [of Silvio Berlusconi]...[and] alter[ed] the rules of the political game by transforming television in the last Italian ideology, the perpetual source of Berlusconi's power' (Mauro 2003). For Giuseppe Tesauo, president of the Italian Antitrust, 'the anti-concentration norms [set by the Gasparri law]...risk to transfer the...duopoly [from the broadcasting market] in the digital era' (Tesauo, quoted in *La Repubblica*, 2003). Indeed, given the prolonged transitional period from analogue to digital TV, the uncertainties of the new digital terrestrial television market, and the existing operators' advantage over delivery networks, programmes acquisition, and content development, both RAI and Mediaset find themselves positioned to enjoy their privileged positions on into the future.

The Gentiloni Bill

Understandably, the Gasparri Law became a target of the European Commissioner for Competition that declared the law as illegal in one of its notes addressed to the Italian government (then led by Romano Prodi) on 19 July 2006. Indeed, according to European Commissioner Neelie Kroes, the law contained:

unjustified restrictions for new operators and unjustified advantage for the existing ones – which could, according to Kroes – preclude those who are not active in the analog broadcasting market from experimenting with the creation of digital transmissions and... digital networks. (Maggiore 2006).

The second centre-left Prodi government (May 2006 – January 2008) was prompt to respond and, in fact, Communications Minister Paolo Gentiloni assured that a new law would soon be designed to reduce RAI and Mediaset's dominant position, set new anti-trust limitations, and govern the transition to digital television. The minister also ensured that a long overdue national database for broadcasting frequencies would be prepared to rationalize the allocation of frequencies.⁶

A bill approved by the government in October 2006 required TV broadcasters with more than two analogue national channels to send the surplus channels to a digital platform by 2009; it established that in the future, all-digital environment, content providers would not be allowed to utilize more than twenty per cent of available transmitting capabilities, and that content providers should be separated from network providers. The bill also set a new anti-trust ceiling of 45 per cent of advertising revenues for television. This was a noteworthy step forward, considering – as Polo (2006) explains – that Mediaset, in 2006, controlled as much as 60–5 per cent of the TV advertising market, and RAI controlled between 30 and 35 per cent. Unfortunately the Gentiloni bill, presented to the senate on 29 May 2007, was never approved.

Conclusions

Political interference in the television sector in Italy has a long history. At times, such interference has served as a positive force for pluralism of information, by promoting, thanks to the practice of *lottizzazione*, a variety of voices and perspectives to be heard on television. However,

through the years, the consolidation of media and political power has encouraged the formation and continuation of the duopoly in the TV market. The absence of appropriate legislation in support of citizens' rights to be informed and entertained in a pluralistic media environment has *de facto* encouraged the process of consolidation of the broadcasting market since the early 1980s. While the public broadcaster has been able to maintain a considerable portion of the audience share and a strong presence in the analogue broadcasting market, Silvio Berlusconi has embodied the worst aspects of the historically close relations between the political system and the television system in Italy.

The negative impact on Italian democracy is evident: as Jürgen Habermas underlines, Berlusconi has been able to use his considerable 'economic clout as a switch to immediately convert media power into public influence' (Habermas 2006: 19). The unresolved conflict of interests between Berlusconi's public duties as prime minister and his private interests has warped Italy's public debate on media-related issues for more than a decade, and will continue to do so in the future. This has given birth to a situation in which the media mogul has 'used his media empire to back dubious legislation in support of the consolidation of his private fortunes and political assets' (Habermas 2006: 19). As Alexander Stille bluntly puts it, Italy might continue to be 'a nation of 58 million people held hostage to the interests of one man and his company' (Stille 2006: 351). For this to change, laws that protect and favour citizens' right to be informed in a pluralistic media environment are vital.

Unfortunately, given the history of the legislation in the field of broadcasting and media, and Berlusconi's extraordinary political and media power (he became Italy's prime minister again after his coalition won national elections in April 2008), it is more than reasonable to not expect, in a foreseeable future, any law that might seriously reform the TV and media sector, break the duopoly, or prevent the same duopoly from casting its shadow over the digital TV market. Reciting the same old mantra celebrating technological advancements as the solution to market concentration, those who support the status quo dismiss concerns over the duopoly as something that belongs to the past. In their opinion, Mediaset and RAI will be players, just like any other, in the new all-digital media environment. The future is in the pay-TV sector (including pay DTT channels, a sector where Mediaset is aggressively expanding), where there will be plenty of competition.

In reality, terrestrial free-to-air TV is still a very strategic asset for Mediaset. Berlusconi's TV channels control high percentages of advertising resources for television, and although audience share for terrestrial TV channels is diminishing (Marzulli 2007: 9), terrestrial free-to-air TV is crucial for the resources that it brings in (of the \$6.25 billion revenues posted by Mediaset for fiscal year 2007, 85 per cent was from TV advertising (Vivarelli 2008b)), and for the political and ideological clout that it has.

Perhaps Mediaset might even be able to finally purchase Telecom Italia, the telecommunication giant which operates La7, the small seventh TV channel in the Italian broadcasting market. In fact, talks about this possibility have been making the headlines on trade publications since early 2007 (see, for instance, *The Times* 2007: 48; *Variety* 2008: 16; Lyman 2008). Certainly, if this were to happen, the new 'merged entity would be one of the world's largest communications and media companies' (Lyman 2008), and this, as Lyman naïvely notices, might never happen because of anti-trust restrictions. But when, throughout the history of Italian media legislation, have regulations failed to favour Berlusconi's private interest?

Notes

1. The Italian Constitution supports freedom of expression in its Art. 21, where it reads: 'everybody has the right to manifest their own thinking...via any means of communication'.
2. According the European Federation of Journalists, the Berlusconi family owns 96 per cent of Fininvest, a private financial holding company founded by Silvio in 1978 ('Media Power in Europe: The Big Picture of Ownership'). Fininvest controls 36 per cent of Mediaset (established in 1996), which owns the three national broadcasting channels Canale5, Italia 1, and Rete4, in Italy; Telecinco in Spain; and the advertising giant Publitalia '80.
3. This story was broken by the daily *La Repubblica* on 21 November 2007 (see *La Repubblica* 2007a; see also *La Repubblica* 2007b; D'Avanzo 2007; Merlo 2007).
4. See Concession of 1952 *Approvazione ed esecutoreità della Convenzione per la concessione alla Radio Audizioni Italia Società per azioni del servizio di telediffusione su filo* [Concession of 1952 between the state and RAI for radio and television broadcasting services], approved by Presidential Decree N. 180 on 26 January 1952.
5. The Clean Hands scandal of the early 1990s refers to a series of investigations carried out by a pool of Milanese magistrates over the illegal financing of political parties. The magistrates unveiled many cases of corruption of political elites and party leaders; as a result, many of the old politicians were forced to step down and most of the post war mass parties (including the Christian Democratic Party and the Italian Socialist Party) disappeared.
6. The Communications Ministry and the Communications Authority announced the national database of broadcasting frequencies on 4 June 2007 (see Italian Government 2007).

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