



Resolution 1387 (2004)¹

Monopolisation of the electronic media and possible abuse of power in Italy

Parliamentary Assembly

1. Italy is a founding member of the Council of Europe and strongly supports the ideals for which it stands. The Parliamentary Assembly is therefore concerned by the concentration of political, commercial and media power in the hands of one person, Prime Minister Silvio Berlusconi.
2. The Parliamentary Assembly cannot accept that this anomaly be minimised on the grounds that it only poses a potential problem. A democracy is judged not only by its day-to-day operations but by the principles the country upholds with regard to its own citizens and internationally. The Assembly recalls that, in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights, states have a duty to protect and, when necessary, take positive measures to safeguard and promote media pluralism.
3. The Assembly deplores the fact that several consecutive Italian governments since 1994 have failed to resolve the problem of conflict of interest and that appropriate legislation has not yet been adopted by the present parliament. It disagrees that the leading principle of the Frattini Bill currently under consideration – that only managers, not owners, should be held responsible – provides a genuine and comprehensive solution to the conflict of interest concerning Mr Berlusconi.
4. Through Mediaset, Italy's main commercial communications and broadcasting group, and one of the largest in the world, Mr Berlusconi owns approximately half of the nationwide broadcasting in the country. His role as head of government also puts him in a position to influence indirectly the public broadcasting organisation, RAI, which is Mediaset's main competitor. As Mediaset and RAI command together about 90% of the television audience and over three quarters of the resources in this sector, Mr Berlusconi exercises unprecedented control over the most powerful media in Italy.
5. This duopoly in the television market is in itself an anomaly from an antitrust perspective. The status quo has been preserved even though legal provisions affecting media pluralism have twice been declared anti-constitutional and the competent authorities have established the dominant positions of RAI and the three television channels of Mediaset. An illustration of this situation was a recent decree of the Prime Minister, approved by parliament, which allowed the third channel of RAI and Mediaset's Retequattro to continue their operations in violation of the existing antitrust limits until the adoption of new legislation. Competition in the media sector is further distorted by the fact that the advertising company of Mediaset, Publitalia '80, has a dominant position in television advertising. The Assembly deplores the continued exclusion of a potential national broadcaster, Europa 7, winner of a 1999 government tender to broadcast on frequencies occupied by Mediaset's channel, Retequattro.
6. The Assembly believes that the newly-adopted "Gasparri Law" on the reform of the broadcasting sector may not effectively guarantee greater pluralism simply through the multiplication of television channels in the course of digitalisation. At the same time, it manifestly allows Mediaset to expand even further, as it gives the

1. Assembly debate on 24 June 2004 (23rd Sitting) (see [Doc. 10195](#), report of the Committee on Culture, Science and Education, rapporteur: Mr Mooney; and [Doc. 10228](#), opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Ates). Text adopted by the Assembly on 24 June 2004 (23rd Sitting).



market players the possibility to have a monopoly in a given sector without ever reaching the antitrust limit in the overall integrated system of communications (SIC). The Assembly notes that these concerns led the President of the Republic to oppose the previous version of the law.

7. The Assembly is particularly concerned by the situation of RAI, which is contrary to the principles of independence laid down in Assembly [Recommendation 1641 \(2004\)](#) on public service broadcasting. RAI has always been a mirror of the political system of the country and its internal pluralism has moved from the proportionate representation of the dominant political ideologies in the past to the winner takes all attitude reflecting the present political system. The Assembly notes with concern the resignations of the president of RAI and of one of the most popular journalists in the country in protest against the lack of balanced political representation in the Council of Administration and against the political influence over RAI's programming.

8. While the printed media in Italy has traditionally provided greater pluralism and political balance than the broadcasting sector, most Italians receive their news through the medium of television. The high cost of newspaper compared to television advertising is having a damaging effect on the Italian printed media. However, the Assembly wishes to record its approval of government measures to help small- and medium-sized newspapers and other measures to boost newspaper readership.

9. The Assembly is extremely concerned that the negative image that Italy is portraying internationally because of the conflict of interest concerning Mr Berlusconi, could hamper the efforts of the Council of Europe aimed at promoting independent and unbiased media in the new democracies. It considers that Italy, as one of the strongest contributors to the functioning of the Organisation, has a particular responsibility in this respect.

10. The Assembly points out that several international bodies, such as the OSCE representative on Freedom of the Media and, most recently, the European Parliament, have expressed concerns similar to its own. It welcomes the measures for safeguarding media pluralism proposed in the European Parliament resolution on the risks of violation, in the European Union and especially in Italy, of freedom of expression and information (Article 11 (2) of the Charter of Fundamental Rights) of 22 April 2004, namely that the protection of media diversity should become a priority of European Union competition law.

11. The Assembly calls on the Italian Government:

11.1. to pass as a matter of urgency a law resolving the conflict of interest between ownership and control of companies and discharge of public office, and incorporating penalties for cases where there is a conflict of interest with the discharge of public office at the highest level;

11.2. to ensure that legislation and other regulatory measures put an end to the long-standing practice of political interference in the media, taking into account in particular the Committee of Ministers' Declaration on freedom of political debate in the media, adopted on 12 February 2004;

11.3. to amend the Gasparri Law in line with the principles set out in Committee of Ministers' Recommendation No. R (99) 1 on measures to promote media pluralism, in particular:

- a. by avoiding the emergence of dominant positions in the relevant markets within the SIC;
- b. by including specific measures to bring an end to the current RAI-Mediaset duopoly;
- c. by including specific measures to ensure that digitalisation will guarantee pluralism of content.

12. The Assembly calls on the Italian Government:

12.1. to initiate measures to bring the functioning of RAI into line with Assembly [Recommendation 1641 \(2004\)](#) on public service broadcasting, with the declaration of the 4th European Ministerial Conference on Mass Media Policy in Prague and with Committee of Ministers' Recommendations No. R (96) 10 on the guarantee of the independence of public service broadcasting and Rec(2003)9 on measures to promote the democratic and social contribution of digital broadcasting;

12.2. to give a positive international example by proposing and supporting initiatives within the Council of Europe and the European Union aimed at promoting greater media pluralism at European level.

13. The Assembly asks the Venice Commission to give an opinion on the compatibility of the Gasparri Law and the Frattini Bill with the standards of the Council of Europe in the field of freedom of expression and media pluralism, especially in the light of the case-law of the European Court of Human Rights.