



**Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
Miklós Haraszti**

7 June 2005

**Visit to Italy: The Gasparri Law
Observations and Recommendations**

The OSCE Representative on Freedom of the Media, Miklós Haraszti, accompanied by Advisers Alexander Ivanko and Roland Bless, visited Rome, Italy, from 30 March to 1 April 2004. This was the Representative's first visit to this participating State. The trip was made at the invitation of, and was organized by, the Ministry of Foreign Affairs of Italy.

The purpose of the trip was to assess the current situation in the television broadcasting sector, one year after the adoption in 2004 of the Gasparri Law¹, Italy's first comprehensive regulation of all broadcast media, and of the Frattini Law², on the conflicts between public duty and private interests of public officials. The Gasparri Law was enacted after repeated calls by Italy's Constitutional Court, as well as by European political bodies, for an overhaul of the highly concentrated television system in Italy.

The Representative appreciates the co-operative approach of the Italian authorities and their willingness to discuss all issues raised by him openly.

Miklós Haraszti met with government officials, parliamentarians, scholars, and media lawyers. Among those he had talks with were, in order of the meetings:

- Minister of Communications Maurizio Gasparri and his Deputy Giancarlo Innocenzi;
- Members of the Italian Delegation to the OSCE Parliamentary Assembly, Senator Luigi Compagna and Member of the Chamber of Deputies, Mister Fabio Ciani;
- President of the Justice Commission of the Senate, Senator Antonino Caruso;
- Professor Mauro Masi, Secretary-General of the Presidency of the Council of Ministers (Prime-Minister's Office);
- Senior officials from the Foreign Ministry.

¹ The "Gasparri Law" is Law 3 May 2004, no.112: "Regulations and principles governing the set-up of the broadcasting system and the RAI-Radiotelevisione italiana S.p.a., authorizing the government to issue a consolidated broadcasting act"
<http://www.comunicazioni.it/en/index.php?IdNews=18>

² The "Frattini Law" is Law 20 July 2004, no. 215 "Norme in materia di risoluzione dei conflitti di interessi", or "Rules of Solving Conflicts of Interest".

At the request of the Representative, the MFA of Italy kindly hosted a one-day expert workshop on the effects of the Gasparri Broadcasting Law. The workshop was attended by,

at the invitation of the MFA of Italy:

- Mrs. Laura Aria, Director of the Supervision and Control Department of AGCOM - Communications Guarantee Authority;
- Mrs. Francesca Quadri, Chief of the legislative office of the Communications Ministry, Rome;
- Mr. Vincenzo Zeno-Zencovich, Professor of Comparative private law - IIIrd University of Rome;

at the invitation of the Representative:

- Avvocato Caterina Malavenda, expert on Information and Communications Law, Milan;
- Mr Giulio Enea Vigevani, Professor of Information and Communications Law, University of Milano-Bicocca Law Faculty, Milan.
- Mr David Ward, Director, Centre for Media Policy and Development, London;

The reason for the visit: The “Italian television anomaly”

Italy has a very diverse and lively media scene with most prevalent views present. Issues of public concern are regularly debated both in the print and the broadcast media. Television has developed over time to become the main source of information for the Italian public, with fourteen nationwide surface-frequency channels³ and more than five hundred local and regional channels. There are thousands of radio stations in the country. Newspaper readership on the other hand, at 6 million daily, has remained roughly the same for the past fifty years. The ownership diversification of Italy’s newspapers is considered to ensure their pluralism and independence, although their advertisement revenues, because of their relatively low circulation, are less secure.

This country is also one of the first European Union member-states which has initiated legislation to decriminalize libel and defamation.

Freedom of expression and press freedom overall are in a healthy state in Italy. However, there is one media sector that is regularly referred to as the “Italian anomaly”, the television broadcasting market.

³ Three for RAI (RAI 1, RAI 2, RAI 3), three for Mediaset (Canale 5, Rete4, Italia 1), two owned by Telecom Italia (La 7, MTV), two owned by Holland Coordinator (Tele+ 1, Tele+ 2), Rete Mia and Rete A, in addition to Rete Capri and Home Shopping Europe.

Prior to the Gasparri and the Frattini Laws, the “Italian anomaly” consisted of three major deficiencies:

- **A duopoly domination in the nationwide television market, and a quasi-monopoly in its private sector.**
- **A conflict of incompatible interests, because the current Prime Minister is also an owner of the country’s dominating television and advertisement enterprises.**
- **An unconstitutional legislative vacuum, as no laws existed capable of averting unhealthy media concentrations or incompatible interests of public officials.**

Very high concentration in the television media

In the last two decades, no third force has been able to constraint the so-called *duopoly*, a dual domination of the nationwide television channel market by of one of the private owners, *Mediaset*, and the public *Radiotelevisione Italiana – RAI*. The duopoly was accompanied by a practically monopolistic situation in the commercial television sector and the advertisement market, both dominated by *Mediaset*.

As regulated by international frequency treaties, Italy can have eleven nationwide surface-frequency analogue-distribution channels. Actually, there are fourteen (see footnote 3).

- Within the market of these fourteen channels, the public-service broadcaster *RAI* and the privately owned *Mediaset* muster **a duopoly in audience share** with around 45 percent each (both own three channels). This 90% share is split amongst the six channels, but in actual fact only between these two companies. The remaining 10 percent of the audience share is distributed between the remaining eight national TV outlets.
- **The Italian duopoly is one of the highest concentrations of nationwide television networks in Western Europe⁴.**
- **The allocation of the combined revenues also demonstrates the duopoly. *RAI* received 38% and *Mediaset* received 32.3% of the total television revenue, amounting to 6 954.4 million Euros in 2004.**

⁴ "... Italy has the most concentrated television market, with *RAI* and *Mediaset* dominating the market, in terms of audience and revenue shares.The least degree of concentration in the television sector is in the UK where three main players - the *BBC*, *ITV* and *Channel 4* - have a combined market share of 69.9 percent of the audience..." David Ward, A Mapping Study of Media Concentration and Ownership in Ten European Countries, Netherlands Media Authority 2004.

- In the privately owned commercial segment of the TV market, that is without the *RAI* system, **the revenue situation amounts to a virtual monopoly of *Mediaset***. In 2004 *Mediaset* received 58.3% of all advertisement revenues (*RAI* received 28.1%). None of the other commercial nationwide networks received more than 2%, and the hundreds of local/regional TV stations combined harvested just below 9%.
- **The advertisement market also shows a strong concentration.** AGCOM, the Italian media authority, in March 2005 established that *Mediaset's* advertising vehicle *Publitalia '80* controlled 62.4 per cent of the television advertising revenues.

After the completion of the Representative's visit, on 14 April 2005 it was reported that *Fininvest Holding*, with a public offer of shares, lowered its stake in *Mediaset* from 51% to 34%, maintaining *Fininvest's* status as the leading shareholder but not in an absolute majority position.

The enduring *RAI-Mediaset* duopoly, and especially the quasi-monopoly of *Mediaset* within the commercial television market, has deprived the Italian audiences of an effective variety of sources of information, and has thereby weakened the guarantees of pluralism.

Incompatible interests of the Prime Minister

During the previous and present tenures of *Mr Silvio Berlusconi* as Prime Minister of Italy, the country's high media concentration was complemented with an unresolved conflict of interests. His family is the owner of *Fininvest Holding*, which owns a large part of *Mediaset*, which in turn fully owns the *Publitalia* advertisement enterprise.

In a democracy, it is incompatible to be both in command of news media and to hold a public post.

The predicament is not comparable to the usual conflict of entrepreneurial and public posts, with its dispute concerned mostly with opportunities to influence business competition. Rather, this is a conflict between political and business interests in combination with shaping public opinion.

Media ownership by public officials has grave constitutional implications, as it:

- Offers unaccountable opportunities to engineer media coverage;
- Damages fairness and transparency of the political competition;
- Diminishes pluralism of information and freedom of choice;
- Impairs the government's accountability and legitimacy.

Italy has an ongoing record of control over and interference with public-service television by political parties and governments. As the Prime Minister is also the

country's main media entrepreneur, the 'traditional' fears of governmental control of RAI are aggravated by worries of a general governmental control of the nation's most important information source, television.

The legislative vacuum and the 'photocopy' media laws

All these shortcomings - political control of public television, high level of concentration in TV broadcast media, and incompatible media ownerships - developed during a legislative backlog in the 25 years prior to the Gasparri and Frattini Laws.

The Constitutional Court was never able to impose on the legislator a comprehensive overhaul of the media system from a pluralism point of view.

The Parliament, regardless of the political colour of the majority, never acted in a timely fashion, and if it did act then it was with a view to preserve the status quo, that is, the duopoly.

The subsequent media rules passed by Parliament were dubbed 'photocopy' laws. The term was used because these laws merely acknowledged, and thereby legalised the wild-grown system already in existence, instead of improving the situation.

- In 1975, in law 103/1975, RAI was overhauled. Pluralism was seen as satisfied with the so-called '**lottizzazione**'. That system in effect carved up the nationwide channels between the three main political parties of the time.
- In 1976, decision 202 of the Constitutional Court allowed private local networks, but not nationwide channels, to compete with the nationwide operator RAI.
- During the next decade, Mr Berlusconi's *Fininvest* (as of 1994 *Mediaset*) effectively consolidated nationwide channels by purchasing local television channels, and unifying their programmes and their advertisements.
- In 1985, Parliament passed an emergency decree (10/1985). This saved the *Mediaset* television stations from being switched off by the judiciary for being de facto unauthorised nationwide channels.
- In the 1990 'Mammì Law' (223/1990), another '*photocopy*' legislation, Parliament decided to legalise nationwide commercial television channels. However, it allowed for an equal number as the public RAI channels. This amounted to three channels and Parliament thereby in fact shielded the three *Mediaset* channels from competition. The law thus cemented the 'duopoly'.

- In 1994, the Constitutional Court (420/1994) obliged Parliament to end the duopoly by enacting a 20% upper limit for television market concentration. That request of the Court is still in vigour.
- In 1997, Parliament acted for the first time on the 20% limit request. In the Maccanico Law, (249/1997) some restraints on the duopoly were introduced. It envisaged the transferring to satellite of one channel of *Mediaset* (Rete4) and the transformation of one channel of *RAI* (*RAI-3*) into an advertisement-free station. Neither has since been implemented.
- In 2002, the Constitutional Court (284/02) finally imposed a detailed timetable for Parliament to comply with pluralism principles and, in particular, with the 20% upper limit rule.
- In response, in 2003-2004, the second Berlusconi administration enacted the Gasparri Law. However, it started its work with another legislative step reminiscent of the 'photocopy' period: Referring to the imminent general reform initiated by the Gasparri Law, the Government in late 2003 enacted a temporary waiver from the restrictions on *Mediaset* and *RAI*, spelled out in the Maccanico Law. The temporary waiver has since been replaced by the new structure of the Gasparri Law; thus *Rete4* and *RAI-3* operate 'legally' again.

As with regard to the conflict of interest issue, no incompatibility law had existed prior to the Frattini Law of 2004. Also this legal gap is the failure of several governments. For example, between the two governing periods of *Mediaset* owner Mr. Berlusconi, the government of his opposition did not act on the issue either.

What was expected of the Gasparri and Frattini Laws

The Gasparri Broadcasting Law was proposed by the Government of Italy as a solution to the high concentration in the television market. After initially being rejected by Italian President, Azeglio Ciampi, for not sufficiently respecting pluralism, the bill was amended and became law in May 2004.

The Frattini Law was submitted by the Government to resolve, among other issues, the media owner/Prime Minister incompatibility. It was passed in July 2004 to deal with all conflicts between public duty and private interests of public officials.

It was expected of the Gasparri Law that it would provide a working solution to these general and specific tasks:

- Providing guarantees for actual and future pluralism of the media;
- Ending the duopoly in the nationwide television market;
- De-monopolising the commercial television and the advertisement markets;

- Complying with the Constitutional Court's demand for a 20% ceiling in national television holding for any enterprise;
- De-politicising *RAI* (making it effectively independent from political parties and governments).

The Gasparri law was also expected to ease the burden of the Mediaset/Prime Minister personal union, by its parallel de-monopolisation of *Mediaset* and de-politicisation of *RAI*.

What was expected of the Frattini Law:

- Outlawing all incompatible 'two-hat' situations, and thereby resolving the problem of the Mediaset/Prime Minister personal union as well.

New concepts introduced in the Gasparri Law

Minister Gasparri, when talking with the Representative, described the Law carrying his name as "a very modern one because of its digital approach". He called it "an avant-garde law that is looked upon by other countries." Concerning tasks of the Law related to protecting pluralism, he expressed his conviction that "the switch from terrestrial to digital will allow for a proliferation of stations and will lead to pluralism higher than in any other country."

Some of the Law's concepts are indeed novel or even the first of their kind, not only in Italy but in the whole of Europe.

These are:

- Bringing the broadcast industry into a digital environment and enhancing the convergence between broadcasting and telecommunications.
- Obliging all broadcasters to switch over to Digital Terrestrial Transmission, thereby multiplying the number of available programmes.
- Based on an abundance of digital channels, television will be freed from State licensing. Simple registration should be sufficient to start broadcasting activities. A specific act will be issued to assign frequencies.
- Telecommunication regulations will be applied to broadcasting.
- The broadcasting markets, at least for administrative purposes, will be united with all other content markets of the communication sphere; the new, much larger market is called 'integrated communication system', or SIC (*sistema integrato delle comunicazioni*).
- Broadcasting is re-defined into one of the many 'services' within the 'integrated communication system'.
- Previously closed and protected markets of different media types are opened up for intra-media competition on new markets.

- Cross-ownership limitations between different media types are abolished, with the exception of bans on newspaper acquisition by broadcasters, and on investment into broadcasting by telecom companies.
- Market regulation in the new ‘integrated communication system’ will follow the EU-concept of ‘freedom of services’, instead of the EU principle of separate regulations for the ‘relevant media markets’.
- Anti-monopoly regulation will follow the general antitrust law of the EU, applying a market share control, rather than the specific protection measures requested by the EU in defence of ‘external media pluralism’ in the ‘relevant markets’.
- Without specifying criteria or calculus, the law forbids dominant positions that would be dangerous for pluralism of media, and AGCOM, the communications authority, will have power to intervene – afterwards – when it deems respect of pluralism to be at peril.
- In the long run, the Law orders to privatise the public broadcasting company *RAI* in order to make it fully compatible with the market, and to make it independent from political forces, while it keeps *RAI* contracted to perform special public-service obligations.
- In the immediate future, Parliament and Government will continue to designate board members of *RAI*, gradually diminishing their voting power as the proportion of State held shares diminishes.

Many aspects of the Gasparri Law are unquestionably leading towards a multiplication of the broadcasting channels. They create opportunities for diversification and synergies between the channels.

In a worldwide breakthrough, based on the anticipated digitalisation, private broadcasting ceases to be a concession by the State, and it is becoming, just like newspaper publishing, an ordinary entrepreneurial start-up. That is a major step for the broadcast media on their way to true independence.

However, neither universal digitalisation nor equal competition rules can by themselves guarantee cultural diversity and political pluralism in the media, especially if the already existing media concentration is practically maintained or even enhanced by the Law.

The Gasparri Law is not likely to remedy the "Italian anomaly"

In the view of the Representative, despite its modernising effect on the media markets, the Gasparri Law can not, in the foreseeable future, correct the television anomaly, nor bring about a de-monopolised television environment in Italy.

Instead, it is likely to function as another ‘photocopy’ legislation vis-à-vis the three main worries: the duopoly, the high concentration in commercial television, and the political domination of RAI. The Law is reproducing, hiding, and shielding, rather than eliminating these features.

The Gasparri Law is not primarily aimed at addressing the concentration issue. The Law's creators admit their intention to tackle concentration indirectly and only in the distant future. De-monopolisation is supposed to be achieved as a by-product after the transition period when today's television markets will have developed into new, unknown ones.

In an ideal world, many of the Law's comprehensive market reforms could enhance media diversity; but they are not sufficient to dissolve the ready-made *RAI-Mediaset* duopoly, or the advertisement revenue domination by *Publitalia*.

One major reason for the Law's stopping short from de-monopolisation is its key assumption that, beyond ordinary market and technology regulations, there is no need for special care for pluralism in the media. Another reason is the lack of political will in the legislature to address the pluralism issue.

Italy's comprehensive digital-era media law needs a careful legislative review to address the ‘photocopy’ effects, that is, the missing or misguided provisions which, in the end effect, maintain the present dominations.

- *The well known concentration in today's television market should be dealt with separately from the market share provisions of the integrated digital media of the future, even at the price of dealing with them in the ‘old-fashioned’ pre-convergence, segregated manner.*
- *The transition from monopolistic to pluralist television should precede the transition to the Gasparri convergence market.*

Transition from analogue to digital broadcasting

The Gasparri Law's rules of transition from analogue to digital, despite their innovative force, also help preserve the old media concentration in the new legal framework, and might even enhance them.

The Gasparri Law reconfirms 2006 as the deadline for full transfer to Digital Terrestrial Transmission (DTT), originally set by Law 66/2001 of the previous government.

Based on classic analogue terrestrial frequencies, Italy is authorized to have 11 nationwide programmes. DTT allows for splitting of one traditional frequency into five digital ones; thus channel frequency will no longer be a scarce commodity.

Advocates of the Gasparri Law expect a surge of broadcasters in the wake of a universal, equally automatic switch from analogue to digital that would, as a result, end the

duopoly. Professor V. Zeno-Zencovich, one of the main experts backing the reform put it this way: “Instead of splitting the two big players we are splitting their audiences.”

Ostensibly, the fourteen “old” terrestrial national channels are already equal players with the newcomers in an allegedly open digital market.

In fact:

- Most experts, government ones included, concede that 2006 is too unrealistic a deadline for such a massive technological shift. Officially, up to the Representative’s visit, 10 % of all households have obtained the set-top unit necessary for digital decoding. Unofficial estimations all pitch lower. In fact, ‘switch-over’ could take place over a time of up to four or five years. This is suggested by all international experience in digitalisation.
- The Gasparri Law allows the ‘Analogue Fourteen’ (including the ‘Duopoly Six’, which command more than 90 % of the audience and the revenues) to keep their traditional frequencies until full audience switch-over to digital. At the same time they are allowed to use their acquired economic might to expand into all of the new markets of the digital scene.
- Additionally, a lack of incentive for newcomers is discouraging new investment in the fully saturated Italian market. The quasi-total dual domination of the audience by *RAI* and *Mediaset* is highly inhospitable to new players. Digitalisation will not, per se, encourage more competition. However, the Law stops there. The transition rules do not offer any incentive for investment from outside the duopoly.
- *A review of the Law as soon as possible should check the digital transition provisions for their capacity to maintain or diminish the existing media concentration.*
- *The amendments should make active use of the opportunities inherent in the digital changeover in order to increase pluralism.*
- *Instruments could be applied to improve competition, to motivate the old players to get rid of excess concentration, and to encourage new players to invest.*

The ‘integrated system of communications’ (SIC) and its anti-trust provisions

The newly defined convergence media market, called SIC, may stimulate market integration, but is also likely to legally embrace the duopoly of Mediaset and RAI in the coming digital television era. The anti-trust and market share clauses of the SIC

cannot meaningfully lower the existing concentration levels in the Italian television market.

According to the Law, SIC means “a sector of the economy including: daily newspapers and periodicals; electronic and directory publishing, including the Internet; radio and television; cinema; external advertising; product and service announcements; sponsorship.” This should address the fact that traditional segmentation of the media is being superseded by overlapping market sectors due to technological innovation.

- Market size of the SIC is not known, nor could any Italian authority give any figures in this regard. An estimate by the economics newspaper *Il sole 24 ore* puts the size at approximately four to five times the size of the present TV market.

In fact, SIC is a mixture of different types of services which makes it difficult to protect pluralism within the ‘relevant’ media markets. The key concept of ‘relevant market’ is missing from the law, to the detriment of the protection of diversity.

The Law also regards the Constitutional Court’s 20% limit, put in place in 1994, as obsolete. It was meant to be the ownership and revenue ceiling for the analogue television channels. That rule would have disallowed *RAI* or *Mediaset* to own more than two nationwide channels.

Instead, several other types of market ceilings are stipulated in the Law, but none of them is capable to reduce the acquired high level of concentration in the television market.

- As recently as 2 March 2005, the AGCOM, Italy’s media authority, came to the conclusion that the broadcasting market is still characterised by the duopoly RAI-Mediaset, with three companies, RAI, Mediaset and Mediaset’s advertising vehicle Publitalia ‘80 found to hold dominant positions that violate the principle of pluralism.
- It is obvious that the Italian audience, for the foreseeable future, will continue to rely on television as their main source of information on public affairs, and, regardless whether analogue or digital, will watch the channels of the ‘duopoly’.
- The ‘digital mathematics’ of the Gasparri Law continues to allow the ‘duopoly’ to maintain and increase their audience shares, without violating the new market share limits defined for the much larger SIC.

A review of the law should cease attempts to bypass, by mere regrouping and recalculating of the markets, the task of effectively de-monopolising the television scene.

- ***Anti-trust aspects of the Law should go further than the market shares of SIC, and protect external pluralism in television, that is, they should care for a sufficient number of truly different news channels.***

- ***The Law should include definitions of the separate relevant markets inside the SIC; for the protection of pluralism it is especially relevant to define a news broadcast market.***

The privatisation of RAI – its board remains political

The privatisation rules set by the Gasparri Law might for a long time only preserve the present patterns of government and party interference in RAI's steering board, despite the Law's intention to make RAI more independent through privatisation.

The Gasparri Law confirmed RAI as a publicly owned shareholder company. The Law envisages a gradual privatisation of RAI. Even after full privatisation, RAI would be obliged by contract to continue airing a certain amount of public-service information.

The voting power of the new, private shareholders will gradually grow, while the proportion of State-held shares will diminish. However, in order to prevent a hostile takeover of RAI by the broadcasting industry, or any other force, individual investors may only buy one percent of the shares, and may not join into shareholders' agreements.

- ***It is not clear why any investor would buy one percent of the shares if they are not allowed to influence the activities and profits of the company. The one-percent rule seems to effectively block the privatisation of RAI.***

In any case, privatisation of RAI is envisaged as a very long process. In the immediate future, RAI will remain politically managed as Parliament and Government will continue to designate RAI board members.

Out of the nine members of the RAI Board of Directors, six board members will be appointed by the governing coalition (four by Parliament and two by the Government) and three by the opposition parties. However, the Chairperson can only be elected with a two thirds quorum of the respective Parliamentary Commission, requesting both political blocs to cooperate on the Board's composition.

At least in the starting years of the new RAI, the Board majority will consist of Government appointees. The composition will only change when terms of Board members expire. (Parliament has just elected seven new members of the Board; obviously four were put forward by the majority and three by the opposition).

Thus the privatisation of RAI boils down to an increased number of board members, which is welcome, but the opportunity to lower political influence has been missed.

- ***At a review of the Law, the Italian legislature is encouraged to fully de-politicise the management structures.***

- *The transformation of RAI into a shareholder company also means that RAI, despite being a public-service television, has to maintain a prominent place for its commercial programmes. Some experts suggested that a better solution might be the splitting up of RAI into clearly defined public and commercial entities, possibly privatising only one or two of the current three RAI channels.*

The Frattini Law

The conflict between Prime Minister Berlusconi's public office and his media holdings was settled from a legal point of view by the Frattini Law. However, from a quality of democracy point of view, it continues to raise compatibility concerns, as the chosen legal formula does not fully distance the Prime Minister from his media holdings.

In July 2004, the Italian Parliament adopted the Rules for the Resolution of Conflicts of Interest, known as the Frattini Law. No similar legislation has been adopted under previous governments. Under this law, those holding government office can not “occupy posts, hold office or perform managerial tasks or any other duties in profit-making companies or other business undertakings.”

Section 7 of this law specifically deals with the responsibilities of the Broadcasting Authority in respect to conflicts of interest and allows it to take punitive action against media that treats any government official preferentially.

Under the current circumstances, this law prevents the Prime Minister from managing his numerous businesses. However, he is free to decide who should do that for him. It is legal, for example, to ask family members to substitute during the tenure of the office holder.

Pro-active care for pluralism and freedom of the media is a standard duty of all democratic governments. A more reassuring solution for the public would be a stricter regulation, such as a “blind trust” with a custodian. With a “blind trust” solution, office holders would have no influence over their assets during the custody, while they still would keep their property.

Summary and Recommendations

Freedom of expression and press freedoms are in a healthy state in Italy. However, there is one media sector that is regularly referred to as the “Italian anomaly”, the television broadcasting market.

The enduring *RAI-Mediaset* duopoly, and especially the quasi-monopoly of *Mediaset* within the commercial television market, has deprived the Italian audiences of an effective variety of sources of information, and has thereby weakened the guarantees of pluralism.

Italy has an ongoing record of control over public-service television by political parties and governments. As the Prime Minister is also the country's main media entrepreneur, co-owning *Mediaset*, the 'traditional' fears of governmental control of *RAI* are aggravated by worries of a general governmental control of the nation's most important information source, television.

Recommendations concerning the Gasparri Law

Some of the Gasparri Law's concepts are novel or even the first of their kind, not only in Italy but in the whole of Europe. They are leading the way towards a multiplication of the broadcasting channels, and creating opportunities for diversification and synergies between the channels.

In a worldwide breakthrough, based on the anticipated digitalisation, private broadcasting ceases to be a concession by the State, and it is becoming, just like newspaper publishing, an ordinary entrepreneurial start-up. That is a major step for the broadcast media on their way to true independence.

However, despite its pioneering features and its modernising effect on the media market, the Gasparri Law can not correct the television anomaly, nor bring about a de-monopolised television environment in Italy.

As a result of its lack of special rules to achieve pluralism in today's television, the Law is likely to reproduce, hide and shield, rather than to eliminate the duopoly, the high concentration in commercial television, and the domination of *RAI* by politics.

Italy's new comprehensive digital-era media law needs a careful legislative review in order to address the present dominations.

- ***The well known concentration in today's television market should be dealt with separately from the market share provisions of converging digital media in the future.***
- ***The transition from monopolistic to pluralist television should precede the transition to the Gasparri convergence market.***

In particular:

- ***A review of the Law as soon as possible should check the digital transition provisions for their capacity to maintain or diminish the existing media concentration.***

- *The amendments should make active use of the opportunities inherent in the digital changeover in order to increase pluralism.*
- *Instruments could be applied to improve competition, to motivate the old players to get rid of excess concentrations, and to encourage new players to invest.*
- *A review of the law should cease attempts to bypass, by mere regrouping and recalculating, the task of effectively de-monopolising the television scene.*
- *Anti-trust aspects of the Law should go further than the market shares of SIC, and protect external pluralism in television, that is, they should care for a sufficient number of truly different news channels.*
- *The Law should include definitions of the separate relevant markets inside the SIC; for the protection of pluralism it is especially relevant to define a news broadcast market.*
- *At a review of the Law, the Italian legislature is encouraged to fully de-politicise the management structures of RAI.*

Recommendations concerning the Frattini Law

The conflict between Prime Minister Berlusconi's public office and his media holdings was settled from a legal point of view by the Frattini Law.

However, from a quality of democracy point of view, it continues to raise compatibility concerns, as the chosen legal formula does not fully distance the Prime Minister from his media holdings.

- *Pro-active care for pluralism and freedom of the media is a standard duty of all democratic governments. Conflicts of interest in the media might need more specific measures to strengthen public confidence in fairness and transparency of political competition and governmental accountability.*
- *A more reassuring solution for the public would be a stricter regulation, such as a “blind trust” with a custodian. With a “blind trust” solution, office holders would have no influence over their assets during the custody, while they would still keep their property.*