

Telecoms and Media

An overview of regulation in
44 jurisdictions worldwide

2013

Contributing editors: Laurent Garzaniti and Natasha Good



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Turkey

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Communications policy

1 Policy

Summarise the regulatory framework for the telecoms and media sector. What is the policymaking procedure?

The telecoms and media sectors are regulated under separate legislation in Turkey.

With respect to telecoms, Law No. 5809 on Electronic Communications (the ECL) is the main legislation regulating electronic communications services and the construction and operation of the related infrastructure and network systems. Other issues subject to the ECL include the manufacture, import, sale, construction and operation of all kinds of electronic communications equipment and systems, the planning and assignment of scarce resources including frequency, and the regulation, authorisation, supervision and reconciliation activities relating to such issues.

The state is responsible for authorising the installation and operation of any kind of electronic communications equipment, systems and networks and the assignment of the necessary frequencies, numbers, satellite positions and associated resources, and their arrangement.

The Ministry of Transport, Maritime Affairs and Communications (the Ministry) may determine strategies and policies with respect to telecoms, including electronic communications services that are based on scarce resources such as numbering, internet domain names, satellite position and frequency allotment. The Ministry also sets out principles and policies to encourage the development of the telecoms sector.

The Information and Communications Technologies Authority (ICTA), which is affiliated with the Ministry, is the auditing and supervisory governmental body for the electronic communications sector. ICTA promulgates regulations to create and protect competition in the telecoms sector and takes measures stipulated by legislation. Moreover, ICTA upholds the rights of subscribers, users, consumers and end-users, as well as the processing of personal data and privacy protection in the telecoms sector. The aforementioned duties of the Ministry and ICTA are set out under the ECL and its secondary regulations.

Both the Ministry and ICTA actively participate in policymaking procedures. In addition, the Board of ICTA renders binding decisions concerning telecoms operators and consumers. ICTA also conducts the dispute resolution procedures between the operators when necessary and it is competent to enact by-laws, communiqués and other secondary regulations pertaining to the authorisations granted under the ECL.

The media sector in Turkey is regulated under separate legislation. The main statutes for Turkish media law include:

- the Press Law (Law No. 5187),
- the Radio and Television Law of Turkey (Law No. 2954),
- the Law on the Establishment of Radio and Television Enterprises and Their Media Services (the Broadcasting Law),

- the Law on Radio and Television Incomes in Turkey (Law No. 3093),
- the Internet Law, and
- the Advertisement Regulation of Radio and Television Authority of Turkey.

The Radio and Television Supreme Council (RTUK) regulates radio and television broadcasts in Turkey. RTUK is the main independent governmental body for policymaking and supervision for the radio and television sectors. As for internet media, ICTA is again the main regulatory and supervisory governmental body.

2 Convergence

Has the telecoms-specific regulation been amended to take account of the convergence of telecoms, media and IT? Are there different legal definitions of 'telecoms' and 'media'?

'Telecoms' and 'media' are not specifically defined under Turkish law. However, under the ECL, 'electronic communications' are defined as the transmission, exchange and receiving of all kinds of signals, symbols, sounds, images and data which could be converted into electrical signals, by means of cable, radio, optic, electric, magnetic, electromagnetic, electrochemical, electromechanical and other types of transmission systems. 'Media services' are defined as television broadcast services, on-demand media services, and commercial communication and radio broadcast services under the editorial responsibility of the media service provider that are offered via electronic communication networks for the main purpose of informing, entertaining or educating the public. The definition excludes personal communication as defined under the Broadcasting Law. Platform operators and infrastructure operators transmitting broadcast services that have been authorised by ICTA to provide electronic communication services are subject to the provisions of the Broadcasting Law with regard to broadcast services.

Before enactment of the ECL, the authorisation legislation required different licences granted for different types of services. For example, an operator willing to provide national and international phone call services was required to obtain separate licences. These separate requirements were amended by the ECL. Broadcasting licences and media ownership, on the other hand, are not regulated within the regime applicable to electronic communications.

3 Broadcasting sector

Is broadcasting regulated separately from telecoms? If so, how?

The telecoms sector is mainly regulated under the ECL and its secondary legislation, whereas the broadcasting regime is regulated mainly under the Broadcasting Law. Having separate legislation for telecoms and broadcasting also affects the authorisation regime for telecoms and broadcasting services.

Telecoms regulation – general

4 WTO Basic Telecommunications Agreement

Has your jurisdiction committed to the WTO Basic Telecommunications Agreement and, if so, with what exceptions?

Yes. Turkey is committed to the WTO Basic Telecommunications Agreement with two exceptions. The first relates to two neighbouring countries (Iran and Syria) with respect to fees for transiting land connections and the usage of satellite ground stations; the second permits the previously publicly held operator (Turk Telekom) to apply differential measures, such as accounting rates.

5 Public/private ownership

What proportion of any telecoms operator is owned by the state or private enterprise?

Turk Telekom, which is a joint-stock company, was a publicly held operator before being privatised. As of 2013, 55 per cent of Turk Telekom shares belong to Ojer Telekomünikasyon, 30 per cent belongs to the Turkish Treasury and the remaining 15 per cent of Turk Telekom shares are publicly traded. The articles of association and shareholders' agreement of Turk Telekom indicate that the Turkish Treasury owns the golden share.

6 Foreign ownership

Do foreign ownership restrictions apply to authorisation to provide telecoms services?

No. There are no foreign ownership restrictions with respect to authorisation to provide telecoms services. However, under article 7 of the Regulation on Authorisation for Electronic Communications Sector (Authorisation Regulation), the company applying to ICTA for authorisation must be founded under Turkish laws.

7 Fixed, mobile and satellite services

Comparatively, how are fixed, mobile and satellite services regulated? Under what conditions may public telephone services be provided?

The main regulations for fixed, mobile and satellite services are the ECL and its secondary legislation.

A provider must obtain authorisation from ICTA to provide fixed services in Turkey. If the fixed service needs allocation of scarce resources, the relevant service provider must obtain right of use in accordance with the Authorisation Regulation. The fixed service must also meet the requirements set under the Communiqué on Quality of Fixed Telephone Services.

As for mobile services, as of September 2013, only three operators are authorised in Turkey to provide mobile services under a concession agreement signed with ICTA. Mobile operators pay a certain amount to the Turkish Treasury as per their concession agreement.

Satellite services may be provided by the companies after sending a notification to ICTA. The provider must still comply with the requirements set out under Authorisation Regulation.

Providers willing to perform public telephone services must comply with the service quality regulations and maintain consumer protection.

8 Satellite facilities and submarine cables

In addition to the requirements under question 7, do other rules apply to the establishment and operation of satellite earth station facilities and the landing of submarine cables?

Satellite facilities and submarine cables are deemed electronic communications infrastructure services, which are also regulated under the ECL. Requirements under the ECL for electronic service providers are also valid for these kinds of services.

9 Universal service obligations and financing

Are there any universal service obligations? How is provision of these services financed?

Universal service obligations for operators are not specifically provided for under Turkish laws. However, certain quality provisions are laid down under separate regulations. Operators finance their services by themselves without public contribution.

10 Operator exclusivity and limits on licence numbers

Are there any services granted exclusively to one operator or for which there are only a limited number of licences? If so, how long do such entitlements last?

Yes. Certain electronic communication services may be provided only by a limited number of operators under a limited number of licences. For example, mobile services are provided by three operators in Turkey and they have a concession agreement with ICTA for 25 years. Moreover, satellite and cable TV infrastructure services are provided exclusively by Türksat. Turk Telekom has also a concession agreement with ICTA which will terminate in February 2026.

11 Structural or functional separation

Is there a legal basis for requiring structural or functional separation between an operator's network and service activities? Has structural or functional separation been introduced or is it being contemplated?

Turkish laws do not regulate the structural and functional separation between an operator's network and service activities. As of September 2013, there has been no draft regulation on this matter.

12 Number portability

Is number portability across networks possible? If so, is it obligatory?

Yes. Number portability across networks is possible in Turkey and it is regulated under Regulation on Number Portability. Article 4 of this regulation defines number portability as a facility that enables the subscriber to change its operator, geographical position or service type without changing the subscriber number. Geographic numbers, non-geographic numbers and mobile numbers in the National Numbering Plan of Turkey are within the scope of number portability. Operators to whom the numbering resources mentioned above are allocated and who allocate said numbers to its subscribers must provide number portability in accordance with the regulation.

13 Authorisation timescale

Are licences or other authorisations required? How long does the licensing authority take to grant such licences or authorisations?

Under the ECL, operators must obtain authorisation from ICTA to provide electronic communications services. ICTA authorises in two ways: after receiving a 'notification' and by providing 'right to use'. Companies intending to provide electronic communication services or install and operate network or infrastructure must notify ICTA before commencing their activities.

If companies do not require allocation of scarce resources (number, frequency, satellite position) for the electronic communication services they intend to provide, or the electronic communication network or infrastructure they intend to install and operate, they may be authorised by means of notification in accordance with the procedures and principles specified under Regulation on Authorisation for Electronic Communications Sector (Authorisation Regulation). If they need allocation of resources, they must first notify ICTA and then ICTA will grant them the right of use.

Article 8/3 of the Authorisation Regulation stipulates that ICTA must send a letter confirming that the relevant notification is duly made pursuant to the Authorisation Regulation within fifteen days

of the notification's entry on the ICTA register.

After the submission of bank receipts proving that the fee has been paid for the right of use for electronic communication services, networks or infrastructure, a right of use authorisation certificate must be issued by ICTA within thirty days of the proper application.

14 Licence duration

What is the normal duration of licences?

There is no duration for the authorisations granted by a simple notification. However, in accordance with article 14 of the Authorisation Regulation, the period for right of use as determined by the Authority is not to exceed 25 years, unless regulated otherwise under the ECL or Authorisation Regulation.

15 Fees

What fees are payable for each type of authorisation?

The authorisation fee consists of an administrative fee and a fee for right of use under the Authorisation Regulation.

The operator must pay an administrative fee each year in an amount equivalent to 0.35 per cent of its previous year's net sales. The base relevant to this fee is the net sales amount of the operator for the authorisation period.

The right of use fee is collected for ensuring effective use of the sources and for granting right of use. The minimum values of fees for right of use are determined according to article 11/5 of the ECL by the Board of Ministers upon the proposal of ICTA and the resolution of the Ministry.

16 Modification and assignment of licence

How may licences be modified? Are licences assignable or able to be pledged as security for financing purposes?

An operator intending to transfer its authorisation must apply to ICTA for approval of the authorisation transfer together with the requested documents. If ICTA requires written approval for the transfer of authorisation, the right of use certificate is issued on behalf of the company to which authorisation will be transferred. ICTA considers the market and competition conditions of the market where the transferee operates, as well as the market share of the operator and other relevant issues.

Another way to modify a licence is by amendments to concession agreements. For concession agreements, the retrieval of allocated frequency and number sources and transactions related to modifying them take place in accordance with the relevant terms of tender specification and/or its agreement.

Licences may be pledged as security for financing purposes.

17 Retail tariffs

Are national retail tariffs regulated? If so, which operators' tariffs are regulated and how?

The only regulated retail tariffs belong to Turk Telekom in Turkey. They are regulated under the concession agreement between Turk Telekom and ICTA.

ICTA does not regulate retail tariffs of other operators per se. However, it may supervise tariffs and set tariff limits if it deems necessary.

18 Customer terms and conditions

Must customer terms and conditions be filed with, or approved by, the regulator or other body? Are customer terms and conditions subject to specific rules?

Under article 16 of the Regulation on Consumer Rights in the Electronic Communications Sector, ICTA may demand the subscrip-

tion contracts from operators on its own initiative or on receiving a complaint. ICTA reviews the subscription contracts and may order amendments. Subscription contracts that have to be approved pursuant to legislation or an ICTA decision are subject to approval of ICTA.

Customer terms and conditions are subject to specific rules. Principles regarding customers' terms and conditions are specifically designated under the foregoing regulation.

19 Changes to telecoms law

Are any major changes planned to the telecoms laws?

No. There are no expected amendments pending before the Turkish parliament regarding telecoms law.

Telecoms regulation – mobile

20 Radio frequency (RF) requirements

For wireless services, are radio frequency (RF) licences required in addition to telecoms services authorisations and are they available on a competitive or non-competitive basis? How are RF licences allocated? Do RF licences restrict the use of the licensed spectrum?

ICTA issues licences for radio equipment and systems to be installed and used under the scope of the ECL. Following the notification, an entry of the assigned frequencies to the database of ICTA is required. The channel plan in frequency assignments is made considering the decisions of international organisations such as ITU, IMO, ICAO, EU and CEPT.

RF licences are available on a competitive basis.

The frequencies are assigned to the operators that are subject to authorisation for no longer than the duration stated in the right of use's certificate of authorisation.

21 Radio spectrum

Is there a regulatory framework for the assignment of unused radio spectrum (refarming)? Do RF licences generally specify the permitted use of the licensed spectrum or can RF licences for some spectrum leave the permitted use unrestricted?

The Regulation on Spectrum Management designates the procedures and principles of management, allocation, assignment, national and international coordination and registration of radio frequencies (RF) assigned, as well as the withdrawal and reassignment of assigned frequencies if necessary for the efficient and effective usage of RF.

RF licences generally specify the permitted use of the licensed spectrum in accordance with the Regulation on Spectrum Management.

22 Spectrum trading

Is licensed RF spectrum tradable?

The trade of licensed RF spectrum is not prohibited under Turkish telecommunications regulations.

23 Mobile virtual network operator (MVNO) and national roaming traffic

Are any mobile network operators expressly obliged to carry MVNO or national roaming traffic?

Under the 'Definition, Scope and Periods of Electronic Communication Service, Network and Infrastructure' document published by ICTA, MVNO provides mobile electronic communication services provided to its subscribers with its own brand. In general an operator must obtain authorisation from ICTA to provide electronic communications services. However, an operator that provides services using the infrastructure of another operator that has signed a concession agreement with ICTA need not obtain separate authorisation.

Operators may negotiate the conditions for services over the infrastructure of another operator, provided that the conditions are lawful.

Operators are not entitled to establish or have others establish on their behalf a radio access network. However, operators may procure other network units as provided under the relevant legislation. The MVNO procures the transmission lines necessary to connect its own network units from other authorised operators.

24 Mobile call termination

Does the originating calling party or the receiving party pay for the charges to terminate a call on mobile networks? Is call termination regulated, and, if so, how?

The originating calling party pays for the charges to terminate a call on mobile networks. Call termination is regulated by ICTA through authority decisions.

25 International mobile roaming

Are wholesale and retail charges for international mobile roaming regulated?

Wholesale and retail prices for international mobile roaming are not regulated under Turkish law. However, ICTA may audit operators' wholesale and retail charges.

26 Next-generation mobile services

Is there any regulation for the roll-out of 3G, 3.5G or 4G mobile services?

There is no specific regulation for the roll-out of 3G, 3.5G or 4G mobile services. However ICTA may regulate such technologies through authority decisions.

26 Next-generation mobile services

Is there any regulation for the roll-out of 3G, 3.5G or 4G mobile services?

Ownership of cable networks by telecoms operators is not restricted.

28 Local loop

Is there any specific rule regarding access to the local loop or local loop unbundling? What type of local loop is covered?

There is no specific rule regarding access to the local loop or local loop bundling.

29 Interconnection and access

How is interconnection regulated? Can the regulator intervene to resolve disputes between operators? Are wholesale (interconnect) prices controlled and, if so, how? Are wholesale access services regulated, and, if so, how?

Interconnection is regulated under the Regulation on Access and Interconnection. Interconnection is defined as the physical and logical linking of electronic communications networks used by the same or different operators to allow the users of one operator to communicate with users of the same or another operator, or to access services provided by another operator.

ICTA may intervene to resolve disputes between operators. Under article 9 of the regulation, ICTA may require an operator to provide interconnection in situations where it considers that denial of interconnection (or imposition of unreasonable terms and conditions having a similar effect) by the operator in question have hindered the emergence of a competitive market, or is not in favour of the end-users. Moreover, all operators must negotiate on interconnection with each other upon request. In case the parties cannot reach an

agreement, ICTA may impose on operators the obligation to provide interconnection.

Operators may determine their access tariffs including interconnection freely by taking into consideration the principles of the regulation. However, ICTA may impose an obligation to set their access tariffs on a cost basis for the operators having significant market power in the relevant market. Upon request of ICTA, the relevant operators must prove that their tariffs have been set on a cost basis.

Wholesale access services are also regulated. ICTA may oblige operator to meet the other operators' requests for access, if ICTA considers it within the scope of the regulation. This may be required if the denial of another operator's access request (or imposition of unreasonable terms and conditions having a similar effect) by an operator with significant market power in the relevant market would hinder the emergence of a competitive market, or would not be in favour of the end-users.

30 Next-generation access (NGA) networks

How are NGA networks regulated?

NGA is not specifically regulated under Turkish laws.

Telecoms regulation – internet services

31 Internet services

How are internet services, including voice over the internet, regulated?

Internet services are mainly regulated under the Internet Law. Voice over the internet (VoIP) is regulated under the ECL. ICTA grants the right of use for VoIP services.

32 Internet service provision

Are there limits on an internet service provider's freedom to control or prioritise the type or source of data that it delivers? Are there any other specific regulations or guidelines on net neutrality?

There are no limits on an internet service provider's freedom to control or prioritise the type or source of data that it delivers. Net neutrality is not specifically regulated under Turkish laws. However, ICTA has decisions on net neutrality which require net neutrality for a service provider.

33 Financing of basic broadband and NGA networks

Is there a government financial scheme to promote basic broadband or NGA broadband penetration?

There is no financial scheme to promote basic broadband or NGA broadband penetration.

Media regulation

34 Ownership restrictions

Is the ownership or control of broadcasters restricted? May foreign investors participate in broadcasting activities in your jurisdiction?

The ownership and control of broadcasters are restricted under Turkish laws. The Broadcasting Law allows foreign entities to hold a maximum 50 per cent of a Turkish broadcasting company in accordance with article 19/f of the relevant legislation. Moreover, a foreign entity cannot be a direct shareholder of more than two Turkish broadcasting companies. If a foreign entity is an indirect shareholder of a broadcasting company, the broadcasting company's chairman, vice chairman and the majority of the board of directors and general manager must be Turkish citizens; and the majority of the general assembly must be composed of natural and legal persons with Turkish citizenship. The articles of association of the broadcasting company must specifically and clearly include these matters.

35 Cross-ownership

Are there any regulations in relation to the cross-ownership of media companies, including radio, television and newspapers? Is there any suggestion of change to regulation of such cross-ownership given the emergence of 'new media' platforms?

Under article 19 of the Broadcasting Law, a real person or legal entity can directly or indirectly hold shares in a maximum of four media service providers. However, the annual total commercial communication income of media service providers in which a real person or legal entity is a direct or indirect shareholder cannot exceed thirty per cent of the total commercial communication income of the sector in case of holding shares in more than one media service provider. There are no specific regulations with respect to cross-ownership of 'new media' platforms.

36 Licensing requirements

What are the licensing requirements for broadcasting, including the fees payable and the timescale for the necessary authorisations?

A broadcasting licence is defined as a permit issued to media service providers by RTUK, the regulatory body for broadcasting, separately for each broadcast type, technique and medium to enable them to broadcast through any kind of technology via cable, satellite, terrestrial and similar means, provided that such companies fulfil the requirements specified under the Broadcasting Law and other relevant regulations.

A broadcast licence is granted to joint stock companies established in accordance with the provisions of the Turkish Commercial Code for the purpose of exclusively providing radio, television and on-demand broadcast service.

A broadcast licence cannot be granted to political parties, labour unions, professional organisations, cooperatives, associations, societies, foundations, local administrations, or any companies which are established by them and of which they are direct or indirect shareholders. Capital market institutions and natural and legal persons who are direct or indirect shareholders of these institutions are also prohibited from obtaining broadcast licences.

Media service providers must obtain separate licences from RTUK for each broadcasting technique and environment in order to be able to broadcast through cable, satellite, terrestrial, and similar means. Companies willing to broadcast simultaneously through different broadcasting techniques and environments must obtain separate licences for each broadcasting technique and environment, and broadcast simultaneously.

The broadcasting licence's term is ten years.

There is no specific timescale provision for obtaining authorisation from RTUK.

37 Foreign programmes and local content requirements

Are there any regulations concerning the broadcasting of foreign-produced programmes? Do the rules require a minimum amount of local content? What types of media are outside of this regime?

Under the Broadcasting Law, the rule is to broadcast in Turkish. However, broadcasts can also be conducted in dialects and other languages. The broadcasts must be conducted in conformity with the rules of the language selected. RTUK is the authority to determine the procedures and rules pertaining to the relevant broadcasts.

Television broadcasters that hold national terrestrial broadcasting licence must allocate at least 50 per cent of their broadcast time to European works, excluding the time allocated to news, sport events, contests, advertisements, tele-shopping and related data broadcasts; and allocate 10 per cent of their broadcast time or programme budget broadcasts to European works of independent producers, excluding the time allocated to news, sporting events, contests, advertisements, tele-shopping and related data. European works are defined

as audio-visual works, which are produced or co-produced by real persons or legal entities settled in signatory states of the European Convention on Transfrontier Television or in member states of the European Union.

Online media fall outside the scope of this regime.

38 Advertising

How is broadcast media advertising regulated? Is online advertising subject to the same regulation?

Broadcast media advertising is mainly regulated under the Broadcasting Law, the Regulation on Advertising for Radio and Television and the Regulation on Principles and Code of Practice Regarding Commercial Advertisements and Publications. Under the Broadcasting Law, in television and radio broadcast services, advertisements and teleshopping must be arranged in a way that they will be clearly discerned and easily distinguished from other elements of the programme service with an audio or visual announcement.

The Regulation on Principles and Code of Practice Regarding Commercial Advertisements and Publications (Commercial Advertisements Regulation) also regulates in general the principles that govern the advertisers, advertisement agencies, advertising channels and the ones who are related to advertising and which are determined by the Advertising Council. The Commercial Advertisements Regulation applies to broadcast media advertising as well.

Online advertising is also subject to the Commercial Advertisements Regulation as it provides general provisions. However, the specific broadcast regulation explained under the first paragraph is not applicable for online advertisements. Illegal content and notice and take-down procedures with respect to illegal online advertising contents are subject to the Internet Law.

39 Must-carry obligations

Are there regulations specifying a basic package of programmes that must be carried by operators' broadcasting distribution networks? Is there a mechanism for financing the costs of such obligations?

No. There are no regulations specifying must-carry obligations.

40 Changes to the broadcasting laws

Are there any changes planned to the broadcasting laws? In particular, do the regulations relating to traditional broadcast activities also apply to broadcasting to mobile devices or are there specific rules for those services?

No. There are no expected amendments pending before Turkish Parliament regarding broadcasting laws.

Regulations relating to traditional broadcast activities also apply to broadcasting to mobile devices.

41 Regulation of new media content

Is new media content and its delivery regulated differently from traditional broadcast media? How?

Yes, new media content and its delivery are regulated differently from traditional broadcast media. Mainly the Internet Law governs new media in Turkey.

42 Digital switchover

When is the switchover from analogue to digital broadcasting required or when did it occur? How will radio frequencies freed up by the switchover be reallocated?

The Broadcasting Law states that some of the companies that obtain the right to terrestrial digital television multiplex capacity allocation in the ranking tender from ICTA are also provided with the opportunity of making an analogue television broadcast for at most

two years. At the end of this period, analogue terrestrial television broadcasts shall be completely terminated countrywide and analogue terrestrial television broadcasts shall be suspended.

43 Digital formats

Does regulation restrict how broadcasters can use their spectrum (multichannelling, high definition, data services)?

Yes. RTUK makes or commissions the planning of television channel and radio frequencies under the frequency bands allocated to RTUK for terrestrial radio and television broadcasts in the national frequency plan. In the frequency plans, the numbers of national, regional and local terrestrial broadcast networks, their types and their multiplex numbers for digital broadcasts are determined.

Regulatory agencies

44 Regulatory agencies

Which body or bodies regulate the communications sector? Is the telecoms regulator separate from the broadcasting regulator?

The Ministry may determine strategies and policies with respect to the telecoms sector. Also ICTA, which is affiliated with the Ministry, is the regulatory, auditing and supervisory governmental body for the electronic telecoms sector. ICTA issues regulations with respect to the communications sector, whereas policymaking is the responsibility of the Ministry.

The telecoms regulators are separate from the broadcasting regulator. RTUK is the main independent governmental body for regulating radio and television broadcasts and for policy-making and the supervision of the radio and television sectors. As for internet media, ICTA is again the main regulatory and supervisory governmental body.

45 Establishment of regulatory agencies

How is each regulator established and to what extent is it independent of network operators, service providers and government?

ICTA was originally named the Telecommunications Authority, which was established in 2000 for the purposes of conducting the auditing and supervision duties of Turkey. ICTA was the first sectoral regulatory governmental body in Turkey. The ECL made significant legislative amendments to the telecoms sector, including transforming the Telecommunications Authority into today's ICTA.

ICTA is a public entity with administrative and financial independence and a separate budget. It consists of the Information and Communications Technologies Council and Presidency. The chairman of ICTA is the administrative supervisor of the Authority and has management and representation powers. The Council of Ministers appoints the chairman of ICTA every five years and it is possible for the chairman of ICTA to be reappointed following the end of his term of office. Therefore, it is hard to state that ICTA is strictly independent of the government. However, ICTA is independent of network operators and service providers as ICTA is the authority regulating their sector.

RTUK was established in 1994 with the former Law No. 3984 on Establishment and Broadcast of Radio and Televisions. Members of RTUK are assigned by the Turkish Parliament and it is an autonomous public entity. RTUK consists of nine members and their term of office is six years. As the members of RTUK are elected by the Turkish Parliament, it is hard to state that RTUK is strictly independent of the government. However, similar to ICTA, RTUK is also independent of network operators and service providers.

46 Appeal procedure

How can decisions of the regulators be challenged and on what bases?

ICTA and RTUK are both public entities. Therefore, their decisions are referred to as administrative decisions under Turkish laws. Disputes arising from administrative decisions are resolved in administrative courts in Turkey. The main legislation with respect to procedures for dispute resolutions regarding administrative decisions is Law No. 2577 on Administrative Jurisdiction Procedures.

Under Law No. 2577, a suit of nullity against administrative decisions may be initiated under five circumstances:

- the administrative decision is not given by the authorised governmental body;
- the form of the administrative decision is unlawful;
- the reasoning of the administrative decision is unlawful;
- the subject of the decision is unlawful; and
- the objective of the administrative decision is unlawful.

Therefore, the illegality of an administrative decision may be based on procedural reasons (ie, authorisation and form requirements) or it may originate from the content of the administrative decision (ie, reasoning, subject and objective). Decisions of the administrative courts can be appealed in the Council of State.

Data retention, interception and use

47 Interception and data protection

Do any special rules require operators to assist government in certain conditions to intercept telecommunications messages? Explain the interaction between interception and data protection and privacy laws.

Data protection in the electronic communications sector is regulated under the Regulation on Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector (DP Regulation). ICTA may determine the procedures and principles of personal data processing and privacy protection in the electronic communications sector. Under the ECL, operators must protect subscribers' information and their privacy. Operators must assist government with respect to the data kept by the operators for law enforcement purposes. When necessary, ICTA may require operators to provide information and documents related to the systems in which personal data are kept and security measures taken by them, and to request changes to the relevant security measures. In case of a particular risk of a network breach or risk to personal data security, the operator must inform the ICTA and its subscribers or users regarding such risk efficiently and without undue delay.

According to the relevant regulation, it is essential to ensure the confidentiality of communications and the related traffic data. It is prohibited to listen, tap, store or otherwise intercept or monitor communications without the consent of the communication parties, without prejudice to other legislation and judicial decisions.

48 Data retention and disclosure obligations

What are the obligations for operators and service providers to retain customer data? What are the corresponding disclosure obligations? Will they be compensated for their efforts?

The permission given to the operator by the subscriber or user also involves the retention and processing of personal data by third parties authorised by the operator. According to the DP Regulation, the use of personal data by these authorised parties should be carried out fitting the purposes of the service provided to the subscriber or user.

The stored and processed traffic data of subscribers or users must be deleted or anonymised after completing the activity which required the processing and storage in the first place. Per Article 10, personal data that is subject to investigations, evaluations, inspections or dis-

putes must be stored until the relevant processes are concluded. In all cases, personal information and records regarding access to personal data and relevant systems must be stored for four years.

There is no specific compensation provision for the operators under Turkish law.

49 Unsolicited communications

Does regulation prohibit unsolicited communications? Are there exceptions to the prohibition?

Under article 50 of the ECL, the subscriber must be able to reject certain unsolicited messages by simple means and free of charge. This applies to cases where unsolicited communication has been conveyed for purposes such as direct marketing, political propaganda or transmission of adult content by electronic communications means such as automatic dialling machines, fax machines, e-mails and short messages without the prior consent of the subscriber.

Competition and merger control

50 Competition and telecoms and broadcasting regulation

What is the scope of the general competition authority and the sectoral regulators in the telecoms, broadcasting and new media sectors? Are there mechanisms to avoid conflicting jurisdiction? Is there a specific mechanism to ensure the consistent application of competition and sectoral regulation? Are there special rules for this sector and how do competition regulators handle the interaction of old and new media?

As to competition issues in the telecoms, broadcasting and new media sectors, three main regulators have jurisdiction in Turkey. The Turkish Competition Authority (TCA) is the primary competition regulator, enforcing the Law on Protection of Competition No. 4054 dated 13 December 1994 (the Competition Law) and other relevant legislation. The Turkish Competition Board (Competition Board) is responsible for reviewing and resolving merger and acquisition notifications, competition investigations and individual exemption applications. There are no special rules in terms of the interaction of old and new media for the TCA to apply.

ICTA may perform examinations and investigations of any action conducted against competition in the electronic communications sector without prejudice to the provisions of the Competition Law. Pursuant to article 7(2) of the ECL, the Competition Board must primarily take into consideration ICTA's view and regulatory procedures while making any decisions on electronic communications sector. According to article 20 of the Authorisation Regulation, mergers taking place in the electronic communications sector are subject to the approval of ICTA.

Although the ECL stipulates that the Competition Board shall consider ICTA's view and regulatory procedures, the law does not clearly indicate that the TCA must make a decision in accordance with ICTA's view. To ensure consistent application of general competition regulations and sector-specific regulations, TCA and ICTA signed a protocol which coordinates mutual cooperation while allowing for the exchange of opinion and data among the regulators.

The Broadcasting Law stipulates certain provisions under which RTUK has the authority to regulate competition and concentrations in the media sector. RTUK is responsible for ensuring competition in the market for media service providers and for protecting public interest. However, TCA's authority as the primary regulator of competition law is preserved.

51 Competition law in the telecoms and broadcasting sectors

Are anti-competitive practices in these sectors controlled by regulation or general competition law? Which regulator controls these practices?

Anti-competitive practices are controlled both by sector-specific regulations and by general competition laws. ICTA and TCA shall inform each other where the particular case exceeds the scope of its jurisdiction. In this context, while the TCA is responsible for imposing administrative fines on the undertakings that infringe competition law, sector specific regulators take precautionary steps in order to avoid breach of the general competition rules. In matters falling under ICTA's jurisdiction, ICTA can impose fines on the undertakings based on its own regulations but it cannot ground its decision on the Competition Law.

52 Jurisdictional thresholds for review

What are the jurisdictional thresholds and substantive tests for regulatory or competition law review of telecoms sector mergers, acquisitions and joint ventures? Do these differ for transactions in the broadcasting and new media sector?

There are no sector-specific jurisdictional thresholds for telecoms and broadcasting, which are regulated under the Competition Law. The TCA recently published Communiqué No. 2012/3 amending Communiqué No. 2010/4 on the Mergers and Acquisitions Subject to the Approval of the Competition Board, which amends the turnover thresholds that a given merger or acquisition must exceed before becoming subject to notification for the purposes of the Turkish merger control regime. The thresholds are as follows:

- the aggregate Turkish turnovers of the transacting parties exceed 100 million lira and the Turkish turnovers of at least two of the transacting parties each exceed 30 million lira; or
- the Turkish turnover of the transferred assets or businesses in acquisitions exceed 30 million lira, or (ii) the Turkish turnover of any of the merging parties exceeding 30 million lira and the worldwide turnover at least one of the other parties to the transaction exceed 500 million lira.

53 Merger control authorities

Which regulatory or competition authorities are responsible for the review of mergers, acquisitions and joint ventures in the telecoms, broadcasting and new media sectors?

Mergers and acquisitions exceeding the turnover thresholds provided under Communiqué No. 2010/4 are subject to notification to the TCA. According to article 7 of the ECL, while TCA assesses a merger filing in the telecommunications sector, it takes ICTA's view into consideration. ICTA also has its own procedures for assessing a merger in the telecommunications sector. This is regulated in the Authorisation Regulation. Mergers and acquisitions taking place in the media sector should also be notified to RTUK besides the notification to the TCA.

54 Procedure and timescale

What are the procedures and associated timescales for review and approval of telecoms and broadcasting mergers, acquisitions and joint ventures?

The Competition Board, upon its preliminary review of the notification, decides either to approve or to investigate the transaction further. It notifies the parties of the outcome within 30 days following a complete filing. In the absence of any such notification, the decision is deemed to be an 'approval', through an implied approval mechanism introduced with article 10(2) of the Competition Law. While the Competition Law gives the impression that the decision to proceed with an investigation should be formed within 15 days, the Competition Board generally uses more than 15 days to form

Update and trends

Providing 4G services in Turkey is a recent hot topic as of the last quarter of 2013. Officials of mobile operators state that Turkey needs a solid regulation for sharing fibre network between the operators.

As for the media regulation, granting yellow press cards for the journalists working for online news websites in Turkey is being discussed. As of 2013, journalists working for online news websites are not considered journalists under Press Law No. 5187.

their opinion. If a notification leads to an investigation, it changes into a fully fledged investigation. These investigations take about six months. This period may be extended only once, for up to six months, by the Competition Board.

Mergers and acquisitions taking place in the electronic communications sector are subject to the approval of the ICTA. There is no specific timescale for ICTA's approval.

All mergers and acquisitions taking place within the scope of the Broadcasting Law should be notified to RTUK. The media service provider must inform RTUK before merging with another media service provider and the Trade Registry Gazette where the transaction is published must be submitted to RTUK within 30 days of the registry.

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