

Telecoms and Media

Contributing editors

Laurent Garzaniti and Natasha Good



2016

GETTING THE
DEAL THROUGH

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Telecoms and Media 2016

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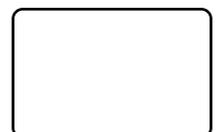


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Communications policy

1 Regulatory and institutional structure

Summarise the regulatory framework for the communications sector. Do any foreign ownership restrictions apply to communications services?

Law No. 5809 on Electronic Communications (ECL) is the main legislation in Turkey 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, as well as their arrangement.

The Ministry of Transport, Maritime Affairs and Communications (the Ministry) determines 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 with the aim of encouraging 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 supervises the rights of subscribers, users, consumers and end-users, as well as personal data processing and privacy protection in the telecoms sector. The duties of the Ministry and ICTA are regulated 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 by the ECL.

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 (the Authorisation Regulation), the company applying to ICTA for authorisation must be founded under Turkish laws.

2 Authorisation/licensing regime

Describe the authorisation or licensing regime.

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 a network or infrastructure or both must notify ICTA before commencing their activities.

Companies may be authorised by notification in accordance with the procedures and principles specified under the Authorisation Regulation as long as they do not require allocation of resources (eg, 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 or both. Article 8/3 of the Authorisation Regulation stipulates that ICTA must send a letter no later than 15 days after the entry of the notification to ICTA's registry confirming that the relevant notification is duly made pursuant to the Authorisation Regulation. There is no duration for the authorisations granted by a simple notification.

If companies need allocation of resources, they must first notify ICTA and then ICTA will grant them the right of use. In this case, after the submission of bank receipts proving that the fee was paid for the right of use for electronic communication services, networks and/or infrastructures, a right of use authorisation certificate must be issued by ICTA within 30 days after the proper application. In accordance with article 14 of the Authorisation Regulation, the period for right of use as determined by the Authority must not exceed 25 years, unless regulated otherwise under the ECL or Authorisation Regulation.

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 to ensure the 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.

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 service in Turkey. If the fixed service needs allocation of sources, 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 they have signed with ICTA. Mobile operators pay a treasury share to the state as per their concession agreement.

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

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

3 Flexibility in spectrum use

Do spectrum licences generally specify the permitted use or is permitted use (fully or partly) unrestricted? Is licensed spectrum tradable or assignable?

Spectrum licences generally specify the permitted use. ICTA issues the licence for radio equipment and systems to be installed and used under the scope of the ECL. Following the notification, the assigned frequencies must be entered into the database of ICTA. 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 certificate of authorisation granted for right of use.

The Regulation on Spectrum Management designates the procedures and principles of management, allocation, assignment, national and international coordination and registration of 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.

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

4 Ex-ante regulatory obligations

Which communications markets and segments are subject to ex-ante regulation? What remedies may be imposed?

ICTA has the authority to designate ex-ante regulations under the ECL regarding all electronic communication services. ICTA may impose remedies such as transparency, price controls and access to specific network facilities. ICTA may also regulate administrative fines to be imposed on electronic communication service providers.

5 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 January 2016, there is also no draft regulation on this matter.

6 Universal service obligations and financing

Outline any universal service obligations. How is provision of these services financed?

Universal service obligations for operators are regulated under the Universal Service Law No. 5369 (the Universal Service Law). According to article 1 of the Universal Service Law, the purpose of this law is to govern the rules and procedures for the implementation of services. Article 4 of the Universal Service Law underlines that operators that have a general authorisation, concession and authorisation agreement or a licence in the telecommunications sector are incumbent universal service providers. Universal services are fixed telephone services, public payphone services, telephone directory services (printed or electronic media), emergency call services, basic internet services, passenger transportation services for settlements to which maritime lines is the single option of access as well as communications services regarding distress and safety at sea.

Article 6 of the Universal Service Law stipulates the revenues for universal service and article 7 thereof defines the net cost of universal service. Provision of these services is financed by the Ministry in accordance with Universal Service Law.

7 Number portability

Describe the number portability regime in your jurisdiction.

Number portability across networks is possible in Turkey and it is governed under the Regulation on Number Portability. Article 4 of the Regulation defines number portability as a facility that enables the subscriber to change its operator, geographical position and 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 are obliged to provide number portability in accordance with the Regulation. In November 2015 various amendments were made to the number portability legislation in Turkey, including easier procedures for subscribers.

8 Customer terms and conditions

Are customer terms and conditions in the communications sector subject to specific rules?

Yes. Principles regarding customers' terms and conditions are specifically set out under Regulation on Consumer Rights in the Electronic Communications Sector for the protection of rights and interests of consumers who use electronic communications services. Consumers who use electronic communication services have rights, including but not limited to:

- accessing services under the same terms and to benefit from the same opportunities as similar consumers without discrimination by paying fair prices while using services;
- being able to be anonymous or not to be included in the publicly open directories for subscribers;
- using directory services free of charge or by paying a price and the right to be enrolled in subscriber directories without discrimination;
- being able to request an itemised bill;
- accessing clear, detailed and current information about tariffs and the right to be informed before the tariffs go into effect for subscribers;
- opting out by simple means or the method of application from all services within promotional tariffs, tariffs including premium rate services that are applied by short message, call centre, internet and similar methods; and
- rejecting unsolicited communications and messages.

Also, according to article 16 of the Regulation on Consumer Rights in the Electronic Communications Sector, ICTA may demand the subscription contracts from operators on its own initiative or upon receiving a complaint. ICTA reviews the subscription contracts and declares the issues that must be amended. Subscription contracts that have to be approved due to legislation or upon a decision by the ICTA are subject to the approval of ICTA.

9 Net neutrality

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?

No. 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 issued decisions that require a service provider to maintain net neutrality.

10 Platform regulation

Is there specific legislation or regulation in place, and have there been any enforcement initiatives, relating to digital platforms?

Yes. Law No. 6563 on Regulation of Electronic Commerce (the E-Commerce Law) and two secondary legislations based on the foregoing law were introduced in Turkey in 2015, providing regulation for the e-commerce sector and platforms in Turkey.

The Regulation on Service Providers and Intermediary Service Providers in Electronic Commerce (the Service Providers Regulation) was published in the Official Gazette on 26 August 2015. The Service Providers Regulation sets forth the obligations for service providers and intermediary service providers with respect to their e-commerce activities.

The Regulation on Commercial Communication and Commercial Electronic Communications (the Regulation on Commercial Communication) also covers the procedures and principles regarding the obligation to provide information about commercial communication conducted via electronic communication tools and regarding the obligations with respect to electronic commercial communications.

11 Next-Generation-Access (NGA) networks

Are there specific regulatory obligations applicable to NGA networks? Is there a government financial scheme to promote basic broadband or NGA broadband penetration?

No. There is no specific and dedicated legislation applicable to NGA networks. ICTA regulates NGA networks by means of board decisions and by-laws.

As a part of the process of Turkey's accession to the European Union, the regulation of NGA networks is underlined in European Union progress reports of Turkey. As for regulation of the NGA networks, in October 2011, ICTA excluded fibre optic networks from market analysis for the next five years or until the percentage of fibre-based subscriptions reaches 25 per cent of all fixed broadband subscriptions. ICTA enabled national roaming and access for mobile virtual network operators, and a regulation on authorisation of broadband wireless access services operators has been adopted.

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

12 Data protection

Is there a specific data protection regime applicable to the communications sector?

Yes. 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 (the DP Regulation). ICTA is authorised to determine the procedures and principles of personal data processing and privacy protection in the electronic communications sector. Under the ECL, operators are obliged to protect subscribers' information and their privacy. Operators are obliged to assist the government with respect to the data kept by the operators for law enforcement purposes. When necessary, ICTA is entitled to 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 is required to inform ICTA and its subscribers or users regarding such risk in an efficient manner 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.

A significant development on this matter is Turkish Constitutional Court's decision to cancel a sector-specific regulation on data privacy. ICTA, among its other authorities and responsibilities, is responsible for taking necessary measures for any security threats or vulnerabilities and coordinating the continuity of electronic communication.

After the Turkish Constitutional Court rendered a decision on 9 April 2014 cancelling the specific provision (article 51) of the ECL that regulates the authority of the ICTA on data protection and security matters for the electronic communication sector, a new version of article 51 was enacted in 2015. On 22 April 2015 the new version of article 51 was published in the Official Gazette. The effectiveness of the amendment to the provision is retroactive and starts from the date of the decision of the Constitutional Court cancelling the amended provision. As per the relevant provision, personal data should be processed in compliance with the law and good faith; should be true and current, if necessary; should be processed for certain, clear and legitimate purposes; should be proportionate, limited to the purpose that they are processed for and retained as long as is necessary for such purpose. As per the Turkish Constitutional Court's decision of 9 April 2014, which stated that data protection matters should be regulated by law but not through secondary legislations, the new provision regulates the data protection obligations for the electronic communications sector.

In addition, on 7 April 2016, Turkey's long-awaited Data Protection Law was published in the Official Gazette and came into force. The Data Protection Law is the first dedicated general data protection legislation in Turkey, and accordingly will apply to the communications sector as well. It is primarily based on the EU Data Protection Directive (95/46/EC). On the other hand, if incoherence occurs between the aforementioned sector specific data protection measures and the Data Protection Law, sector-specific measures should prevail.

13 Big data

Is there specific legislation or regulation in place, and have there been any enforcement initiatives in your jurisdiction, addressing the legal challenges raised by big data?

No. There is no specific legislation or regulation in Turkey addressing the legal challenges raised by big data.

14 Key trends and expected changes

Summarise the key emerging trends and hot topics in communications regulation in your jurisdiction.

The hottest topic for electronic communications regulations in Turkey for 2015 was the protection of personal data matters. After the Turkish Constitutional Court's annulment of article 51 of the ECL, which stated that as per article 20/3 of the Turkish Constitution data protection matters should be regulated under law, rather than leaving a wide authority to ICTA, a new and more detailed version of article 51 was enacted.

Under the new article 51 of the ECL, electronic communication and relevant traffic data is confidential, in principle. Apart from in cases where the relevant legislation and court decisions stipulate otherwise, listening, recording, storing, intercepting and pursuing a conversation, without the consent of all participants of a conversation, is prohibited.

Some of the most significant provisions introduced by the new version of article 51 of the ECL are discussed below.

Apart from their use for communication, operators may use electronic communication networks for the purpose of storing information in the terminal devices of the subscribers or users or providing access to the stored information, only if the relevant subscribers or users are clearly and comprehensively informed of the data processing and their explicit consent is obtained. Moreover, traffic and location data may only be transferred abroad if the data subject explicitly consents to such transfer.

Personal data may be processed by ICTA within the scope of article 49 of the ECL or for public interest, for the performance of the obligations imposed on the operators. Therefore the new version of article 51 designated specific authority to the ICTA, which does not require a court decision to process the relevant data.

Traffic data may only be processed by the persons authorised by the operators for the purposes of management of traffic, interconnection, invoicing, detection of irregularity or fraud and for conducting similar transactions or for resolution of disputes, particularly consumer complaints, interconnection and invoicing disputes. The privacy and integrity of such traffic data should be provided while storing the data until the resolution process of the disputes are completed. Traffic data, which is necessary for the purposes of providing electronic communication services with added value or marketing of electronic communication services, and location data may be processed through anonymising the data or obtaining explicit consent of the relevant subscribers or users and only by the persons authorised by the operators within the time period and extent that the indicated activities require.

For the purposes of management of risk pertaining to collection of payments and preventing abusive usage, operators may process and share the subscriber's invoice amounts and payment information regarding electronic communication services with the other operators. Moreover, the operators are liable for ensuring security, confidentiality of personal data and use of it in accordance with its purpose within the scope of the ECL.

Media

15 Regulatory and institutional structure

Summarise the regulatory framework for the media sector in your jurisdiction.

The Turkish media sector is regulated under separate legislation from telecoms. The main statutes of 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 (Law No. 6112, 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 the radio and television broadcasts in Turkey. The 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.

16 Ownership restrictions

Do any foreign ownership restrictions apply to media services? Is the ownership or control of broadcasters otherwise restricted? Are there any regulations in relation to the cross-ownership of media companies, including radio, television and newspapers?

The ownership and control of broadcasters is 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. 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: (i) the broadcasting company's chairman, vice chairman and the majority of the board of directors and general manager must be Turkish citizens; and (ii) the majority of the general assembly must be composed of real and legal persons with Turkish citizenship. The articles of association of the broadcasting company must specifically and clearly include these matters.

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 30 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.

17 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 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 to any companies that are established by them and of which they are direct or indirect shareholders. Capital market institutions and real persons and legal entities 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 10 years. There is no specific time-scale provision for obtaining authorisation from RTUK.

Broadcasting licences are obtained from RTUK. Licence fees for satellite and cable broadcasting services are available on the official website of RTUK (www.rtuk.org.tr/Home/SolMenu/27).

18 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 fall outside this regime?

Under the Broadcasting Law, the general rule is that broadcasts should be in Turkish. However, it is not prohibited to broadcast in 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 a national terrestrial broadcasting licence must: (i) allocate at least 50 per cent of their broadcast time to European works, excluding the time allocated to news, sport events, contests, advertisements, teleshopping and related data broadcasts; and (ii) 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, teleshopping and related data. European works are defined as audiovisual works that 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 falls outside the scope of this regime.

19 Advertising

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

Broadcast media advertising is mainly regulated under: (i) Law No. 6112 on Establishment of Radio and Television Enterprises and Their Media Services; (ii) the Regulation on Advertising for Radio and Television; and (iii) the Regulation on Principles and Code of Practice Regarding Commercial Advertisements and Publications. Under Law No. 6112, 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 (the Commercial Advertisements Regulation) also regulates in general the principles that govern the advertisers, advertisement agencies, advertising channels and those who are related to advertising and that 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 governance. However, the specific broadcast regulation explained under the first paragraph is not applicable to online advertisements. Illegal content and notice and take-down procedures with respect to illegal online advertising contents are subject to the Internet Law.

20 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?

There are no regulations specifying must-carry obligations.

21 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.

22 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 given the opportunity to do an analogue television broadcast for a maximum of 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.

23 Digital formats

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

Yes. RTUK makes or commissions the planning of television channel and radio frequencies under the frequency bands allocated to it 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.

24 Media plurality

Is there any process for assessing or regulating media plurality (or a similar concept) in your jurisdiction? May the authorities require companies to take any steps as a result of such an assessment?

Media plurality is not specifically regulated under Turkish law. However, 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 30 per cent of the total commercial communication income of the sector in case of holding shares in more than one media service provider. Such restrictions aim to prevent any media owner from having excessive influence over public opinion.

25 Key trends and expected changes

Provide a summary of key emerging trends and hot topics in media regulation in your country.

There have been major amendments made to the Internet Law in 2014. The Turkish Grand National Assembly (TGNA) accepted the main amending legislation on 5 February 2014. The amending legislation is ratified by the President of the Turkish Republic and came into force on the same day it is published in the Official Gazette of 19 February 2014. Further amendments are published in the Official Gazette of 1 March 2014. Latest amendments on Internet Law are published in the Official Gazette of 11 September 2014. Certain amendments which were published in the Official Gazette of 1 March 2014 are annulled by the Constitutional Court's decision of 3 October 2014, which is published in the Official Gazette on 1 January 2015.

These frequent amendments are oriented towards control and content bans and would lead to disproportionate implementations in terms of freedom of speech.

Amendments include additional obligations for internet service providers in Turkey and the sector experts expect that these changes directly affect internet usage in Turkey and internet economy.

Regulatory agencies and competition law

26 Regulatory agencies

Which body or bodies regulate the communications and media sectors? Is the communications regulator separate from the broadcasting or antitrust regulator? Are there mechanisms to avoid conflicting jurisdiction? Is there a specific mechanism to ensure the consistent application of competition and sectoral regulation?

The telecommunications sector is regulated by ICTA. ICTA is separate from both the Turkish Competition Authority (TCA) and RTUK. The TCA is the primary antitrust regulator in Turkey, enforcing the Law on Protection of Competition No. 4054 of 13 December 1994 (the Competition Law).

Acting pursuant to the ECL, ICTA has the authority to perform an examination and investigation of any action conducted against competition in the electronic communications sector but this is without prejudice to the provisions of the Competition Law. Pursuant to article 7(2) of the ECL, while making any decisions on the electronic communications sector, the Competition Board, which is the decision-making body of the TCA, must first take into consideration ICTA's view and the regulatory procedures of ICTA. The requirement to consider ICTA's view has also been acknowledged in Competition Board decisions (eg, *TTAS* decision of 25 June 2014 No. 14-22/456-201, *TTNET* decision of 11 July 2013 No. 13-44/546-242, *TTNET* decision of 5 February 2015 No. 15-06/74-31, *Avea* decision of 28

July 2015 No. 15-32/454-138 and *Krea* decision of 9 September 2015 No. 15-36/544-176). Although the ECL stipulates that the Competition Board shall consider ICTA's view and regulatory procedures, the wording of the law does not clearly indicate that the TCA must make a decision in accordance with ICTA's regulatory procedures and view. Furthermore, pursuant to article 19 of the Authorisation Regulation, mergers and acquisitions between authorised operators in the telecommunications sector are subject to the approval of ICTA.

To ensure consistent application of general competition regulations and sector-specific regulations, a protocol that coordinates mutual cooperation while allowing for the exchange of opinion and data among the regulators has been signed between the TCA and ICTA on 22 January 2015 (the Cooperation Protocol). Pursuant to article 7 of the relevant protocol, ICTA is to get an opinion from the TCA in regards to its market definition analyses. Furthermore, ICTA may ask for the TCA's view regarding the promulgation of regulations affecting the conditions of competition in the telecommunications sector and related to the protection or improvement of competition in the same, or regarding the preparation of bidding specifications regarding tenders for rights relating to telecommunication services to be supplied by a limited number of operators. ICTA may also ask for the TCA's view in regard to anticompetitive violations in the telecommunications sector. In other words, the TCA and ICTA agreed to maintain active cooperation among each other especially for their overlapping jurisdictional areas and activities. Accordingly, each of the regulatory authorities can apply to the other party and seek an opinion on a particular matter.

In a decision regarding the interaction between the jurisdictions of the TCA and ICTA, the Council of State (Decision of Council of State, 13. Chamber of 8 May 2013, Docket No. 2008/14245, Decision No. 2012/960) ruled that: with respect to violations of competition in the telecommunications sector, the Competition Authority, which is imbued with general authority (with respect to anticompetitive conduct), has jurisdiction to sanction the anticompetitive actions of undertakings even where they act in accordance with the decisions of the regulatory authority, thereby affirming the TCA's jurisdiction in the telecommunications sector.

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

27 Appeal procedure

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

ICTA, the TCA and RTUK are all independent administrative entities under Turkish law. 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. These five reasons to nullify an administrative decision are:

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

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, merits and objective). Decisions of the administrative courts can be appealed in the Council of State.

That said, article 55 of the Competition Law was amended by Law No. 6352, which took effect on 5 July 2012. The judicial review of the decisions of the Competition Board shall be undertaken by the administrative courts in Ankara. Prior to this amendment, article 55 of the Competition Law provided that the particular court of first instance to conduct the aforementioned judicial review was the Council of State. Since the amendment, the judicial review is done by the administrative courts. The amendment does not bring any further changes to the appeal procedure.

28 Competition law in the communications and media sectors**Describe the key merger and antitrust decisions in the communications and media sectors adopted over the past year by your antitrust authority.**

Describe the key merger and antitrust decisions in the communications and media sectors adopted over the past year by your antitrust authority.

In the *Turkcell* decision of 19 December 2013, No. 13-71/988-414, the Competition Board ruled that Turkcell had abused its dominant position in the market for GSM services with regard to vehicle tracking services through the use of exclusivity arrangements in its partnership arrangements with undertakings active in the vehicle tracking sector. Through the exclusivity arrangements, Turkcell prevented the relevant partners from working with Turkcell's competitors. Turkcell was subjected to a turnover-based fine in the amount of 0.45 per cent of its 2012 turnover, which amounted to 39,727,308.20 Turkish lira.

Pursuant to a complaint alleging that Türk Telekomünikasyon AŞ (TTAS) engaged in an abuse of dominance regarding the telephone cards in scope of its fixed telephone services, in its decision of 25 June 2014, No. 14-22/456-201, the TCA evaluated these allegations in scope of the price squeezing principles. The TCA decided that TTAS did not abuse its dominant position.

In its investigation regarding the 2015-2016 and 2016-2017 years Football Season Broadcasting Rights Agreement executed between the Turkish Football Federation (TFF) and Krea İçerik Hizmetleri ve Prodüksiyon AS (Krea), even though the agreement between TFF and Krea extended the term of the exclusive broadcasting rights without a tender, via its decision of 11 October 2013, No. 13-58/821-346, the TCA granted an individual exemption for the agreement. Due to an action for annulment, with

its decision of 10 July 2014 Docket No. 2014-1029, the 10th Administrative Court suspended the execution of the Competition Board's 2013 decision on the grounds that the Board rendered its decision without holding an oral hearing although there was a request made by TFF. Upon the Court's decision, the Board held an oral hearing and concluded its resolution in parallel to its suspended decision.

With its decision of 5 June 2014, No. 14-20/387-171, the TCA approved the acquisition of all shares and material assets (excluding İDEN-integrated digital enhanced network) of Motorola Kurumsal İşletmesi and its subsidiaries by Zebra Technologies Corporation. With its decision of 24 October 2013 No. 13-59/822-347, the TCA approved the merger of Omnicom Group, Inc and Publicis Groupe SA under the new establishment Omnicom Group NV.

More recently, ICTA approved the acquisition of sole control of Avea İletişim Hizmetleri AŞ (Avea) along with its subsidiary Fleksus Ödeme Hizmetleri AŞ (Fleksus) by TTAS (ICTA's decision of 9 July 2015, No. 2015/DK-YED/315). Following ICTA's approval of the transaction, a merger control filing was made before the TCA separately. In its decision of 28 July 2015, No. 15-32/454-138, the TCA granted its approval to TTAS's acquisition of sole control over Avea and Fleksus upon ICTA's preliminary report also granting approval to the acquisition. TCA stated that prior to the transaction, TTAS already had joint control of Avea, and post-transaction would have acquired all its shares and its sole control.

With its decision of 5 February 2015, No. 15-06/74-31, the TCA granted a negative clearance to 'Tivibu' services provided by TTNET AŞ to be sold as a packet by including both internet and sound systems. Prior to the TCA's decision, ICTA's view was asked for and following ICTA's preliminary report, the negative clearance was granted accordingly.

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