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TMT

Turkey – Law & Practice

Contributed by
ELIG Attorneys at Law

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TURKEY

LAW & PRACTICE:

p.3

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The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

Law & Practice

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corporate law, mergers and acquisitions, competition law, anti-corruption, white collar irregularities and compliance, EC law, Internet law, technology, media and telecommunications law, data protection and privacy law, banking and finance law, litigation and arbitration, energy, oil and gas law, administrative law, real estate law, employment law and intellectual property law. As an independent Turkish law firm, ELIG collaborates with many international law firms on various projects.

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1. General Structure of TMT Regulation and Ownership

1.1 Statutes, Laws and Legislation

Under Turkish laws Telecoms Media Technology industries are governed by different pieces of legislation applicable for each industry.

The most important legislation for broadcasting and media industries can be listed as the Radio and Television Law (Law No. 2954), Law No. 6112 on the Establishment of Radio and Television Enterprises and Their Media Services (Law No. 6112) and the Press Law (Law No. 5187) along with their secondary legislation. Law No. 5809 on Electronic Communications Law (ECL) is definitely the main and most important law for the telecoms, wireless, satellites and broadband industries, along with its secondary legislation, primarily the Regulation on Authorisation Regarding the Electronic Telecommunication Sector (Authorisation Regulation). There is also a special legislation for the broadcasting services pro-

vided through the satellites titled the Radio and Television Supreme Council Regulation on Satellite Broadcasting. As for the internet broadcasts, the Law No. 5651 on Regulation of Broadcasts via Internet and Prevention of Crimes Committed through Such Broadcasts (Law No. 5651) constitutes the main and the most important legislation.

1.2 Government Ministries, Regulatory Agencies and Privatised Entities

The Turkish Ministry of Transport, Maritime Affairs and Communications (the Ministry) is the main policy maker and strategy decider with respect to issues concerning telecommunications, including but not limited to electronic communications services which are based on scarce, limited resources such as numbering, internet domain names, satellite position and frequency allocation. The Ministry is also entitled to set out principles and policies for the growth and development of the telecommunications industry in Turkey.

On the other hand, the Information and Communications Technologies Authority (the ICTA), which is affiliated with the Ministry, is the independent regulatory and supervisory authority for the electronic communications sector. The ICTA is entitled to issue regulations to create and protect competition in the telecoms sector and to take measures stipulated by legislation. Moreover, the ICTA supervises the rights of subscribers, users, consumers and end users, as well as personal data processing and privacy protection in the telecoms sector. ECL requires the ICTA to provide the Ministry with all documents and information necessary for the policy making and strategy development process, when requested.

Accordingly, both the Ministry and the ICTA actively participate in policymaking procedure. In addition, the Board of the ICTA renders binding decisions concerning operators providing electronic communications under the authorisation of the ICTA, which from time to time has direct impacts on consumers. The ICTA also conducts the dispute resolution procedures between the operators when necessary and is entitled to issue regulations, by-laws, communiqués and other secondary regulations pertaining to the ECL. The electronic communications industry, including telecoms, wireless, satellites, internet and broadband services is regulated by the ICTA.

As for the radio and television broadcasts and industry, the Radio and Television Supreme Council (the RTUK) is the independent regulatory authority for policymaking and supervision. On the other hand, as for media broadcasts through the internet, the ICTA is again the regulatory and supervisory authority. Furthermore, Law No. 6112 contains certain provisions under which the RTUK has the authority to regulate competition and concentrations in the media sector as well.

1.3 Developing Rules and Adopting Policies

The process for developing policies or adopting rules for regulating Telecoms Media Technology is not regulated and is actually at the discretion of the government. However there is an established code of conduct for the policymaking process which requires requesting the stakeholders' opinion before developing or determining policies and rules for regulation.

1.4 Ownership of Telecoms Media Technology Industries

Telecoms Media Technology industries are privatised. However there are still certain government-owned industry players in these markets.

1.5 Limits on Participation

Telecoms Media Technology industries are open to competition. Having said that, participation is possible only if certain conditions stipulated under the relevant legislation are met

and the necessary licenses or authorisations are obtained from the regulatory authorities.

1.6 Restrictions on Foreign Ownership or Investment

The ownership and control of radio and television broadcasters are restricted under Turkish laws. Law No. 6112 allows foreign entities to hold a maximum 50% of a Turkish broadcasting company in accordance with Article Section 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, (a) the broadcasting company's chairman, vice chairman and the majority of the board of directors and general manager must be Turkish citizens; and (b) the majority of the general assembly must be composed of real persons with Turkish citizenship or legal entities incorporated under Turkish laws. The articles of association of the broadcasting company must specifically and clearly indicate the foregoing.

There are no foreign ownership restrictions with respect to authorisation to provide telecoms services. However, under Article 7 of the Authorisation Regulation, the company applying to the ICTA for authorisation must be incorporated under Turkish laws. Therefore although there are no restrictions as to foreign ownership of an operator, there is a requirement for the operator to be established under Turkish laws.

1.7 World Trade Organization Membership

Turkey has been a member of the World Trade Organization since 26 March 1995.

Turkey undertook a commitment under the General Agreement on Trade in Services to end the monopoly on exclusive rights for voice telephony and other basic telecoms services by 2006. Turkey also opened cellular mobile services and paging to competition, and committed to allow increased market access for data transmission services operating within certain regulatory principles.

Turkey also has two MFN exemptions. The first one relates to two neighbouring countries with respect to fees for transit land connections and the use of satellite ground stations. The second one permits the government or the government-run operator to apply differential measures, such as accounting rates, in bilateral agreements with other operators or countries.

1.8 Appellate Process

The regulatory authorities for Telecoms Media Technology industries are independent administrative entities and their decisions and actions are deemed within the scope of "administrative acts" under Turkish laws. In this regard, disputes arising from administrative decisions are resolved in

administrative courts according to the administrative judicial procedure. The main legislation with respect to procedures for dispute resolutions regarding administrative acts is Law No. 2577 on Administrative Procedure (Law No. 2577).

Under Law No. 2577, an appeal may be filed against an administrative act if:

(a) the administrative act is not given by the authorised authority, or (b) the requirements as to form are not met in the administrative act, or (c) the legal ground of the administrative act is against the law, or (d) the subject matter of the act is against the law, or (e) if the objective of the administrative act is against the law. Therefore a possible appeal against an administrative act may be based on both procedural grounds and the merits of the decision. Decisions of the administrative courts may also be appealed before the Council of State.

1.9 Annual or Recurring Fees

The authorisation fee requested from operators, providing electronic communication services through an authorisation, consists of an administrative fee and a fee for right of use under the Authorisation Regulation. An operator must pay an administrative fee each year in an amount equivalent to 0.35% 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 requested to ensure effective and efficient use of the scarce resources. The minimum amount of fees for the right of use is determined by the Board of Ministers upon the ICTA's proposal on the matter and the resolution of the Ministry (Article 11/5 of the ECL).

On the other hand, the fees pertaining to satellite and cable broadcasting licences obtained from RTUK are available on the official website of RTUK.

2. Broadcasting/Media

2.1 Important Companies

According to Directorate General of Press and Information's report titled "Turkish Media at a Glance", the three leading broadcasting networks in Turkey are Dogan Group, Dogus Group and Turkuaz Group with market shares of 13.74%, 11.48% and 10.95% respectively. There are also two major digital platforms providing their service through satellite broadcasting, and these are Digital Platform Teknoloji Hizmetleri A.S. and Dogan TV Digital Platform Isletmeciligi A.S., the latter being a subsidiary of the Dogan Group. Lastly, there is one active company broadcasting through cable which is Turksat Uydu Haberlesme Kablo TV ve Isletme A.S.

2.2 Requirements for Obtaining a Licence/ Authorisation to Provide Services

Media service providers must obtain a broadcasting licence, which is issued by Radio and Television Supreme

Council (Supreme Council) as a permit for each broadcast type, technique and medium to enable them to broadcast through any kind of technology via cable, satellite, terrestrial and similar means. Under the ECL, platform operators and infrastructure operators must obtain an authorisation from the ICTA and a broadcast transmission authorisation from the Supreme Council. Multiplex operators are also required to obtain a broadcast transmission authorisation from the Supreme Council. The companies must also fulfill other requirements specified under ECL, Law No. 6112 and other regulations.

The broadcast licences that provide media services are granted only 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.

Political parties, labour unions, professional organisations, co-operatives, associations, societies, foundations, local administrations or companies that are established by them or of which they are direct or indirect shareholders cannot be granted broadcast licences. 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 acquire separate licences from the RTUK for each broadcasting technique and environment to be able to broadcast through cable, satellite, terrestrial and other means available. In order to broadcast simultaneously through different techniques and environments, companies must obtain licences for each technique and environment separately.

Platform operators and infrastructure operators must obtain separate broadcast transmission authorisations for each environment as well.

Relevant legislations do not specify a timescale for the application and approval process of licences or authorisations.

According to the RTUK's official website, licence fees as of 2015 are as follows: (a) TL24,032 for the radio broadcasting licence, (b) TL240,318 for the television broadcasting licence and (c) TL57,219 for the on-demand broadcasting service. Annual fee of the broadcast transmission authorisation is TL114,437 + TL (number of subscribers x 0.45775) for the platform operator and TL286.093 for the infrastructure operator. The fees are same for both satellite and cable broadcasts, although separate licences are required to provide services simultaneously on both environments.

Annual fee of the broadcast transmission authorisation for the multiplex operator is calculated by the Supreme Council

depending on signal power, capacity and other specifications in accordance with the relevant regulation.

The fees are same for both satellite and cable broadcasts, although separate licences are required to provide services simultaneously on both environments.

2.3 Typical Term for a Licence/Authorisation to Provide Services

Broadcasting licences are valid for a term of 10 years, after which they must be renewed. Media service providers may apply to the RTUK for renewal two months before its license expires and provided the company complies with the technical requirements and submits the relevant documents, its licence may be renewed for another 10 years.

2.4 Transfer of Licences/Authorisations to Other Entities

Regarding transfer of authorisations given by the ICTA for broadcasting and media services to other entities through changes in ultimate ownership, merger or assignment, our explanations for the telecoms industry is applicable.

The By-Law on Administrative and Financial Conditions with which media service providers and platform and infrastructure operators are required to comply requires the media service providing joint-stock companies, which are holding broadcasting licences, to notify the Supreme Council of any share transfers within 30 days as of such transaction. On the other hand, the merger and acquisition of a media service provider with another media service operator; and the demerger of a media service operator are subject to prior permission to be obtained from the Supreme Council. Media service providers are also required to notify the Supreme Council, within 30 days of such a transaction, and to post a notification of the transaction in the Turkish Trade Registry Gazette.

Terrestrial broadcasting licences cannot be transferred by any means. If the establishment decides not to continue terrestrial broadcasting, the licence must be returned to Supreme Council.

However, broadcasting licences other than terrestrial broadcasting licence may be transferred between media service providers subject to prior permission and approval of the Supreme Council.

2.5 Spectrum Allocation

The National Frequency Plan for frequency assignments is prepared in light of the decisions of the international organisations such as ITU, IMO, ICAO, EU and CEPT and issued by the ICTA. There are specific spectrum allocations for each different service industry.

The Regulation on Spectrum Management designates, in general, the procedures and principles of management, allocation, assignment, national and international co-ordination and registration of radio frequencies assigned, as well as the withdrawal and reassignment of assigned frequencies if necessary for the efficient and effective usage of radio frequencies.

Radio frequency licences generally specify the permitted use of the licenced spectrum in accordance with the Regulation on Spectrum Management. That being said, in accordance with the National Frequency Plan, ICTA allocates specific frequencies to RTUK for broadcasting purposes. RTUK has the authority to issue broadcast transmission authorisations and media service providing licences in regards to allocated frequencies as well as to decide on specific regulations regulating frequency usage.

2.6 Restrictions on Common Ownership

Media plurality is not specifically regulated under Turkish law. However, Article 19 of the Law No. 6112 provides that a real person or legal entity can directly or indirectly hold shares in a maximum of four media service providers. Nevertheless, the total annual commercial communication income of media service providers in which a real person or legal entity is a direct or indirect shareholder cannot exceed 30% of the total commercial communication income of the sector where the shareholder has shares in more than one media service provider. These restrictions aim to prevent any media owner from having excessive influence over public opinion.

A media service-providing company is allowed to provide one television broadcasting service, one radio broadcasting service and one on-demand broadcasting service. A media service provider cannot provide two different services in the same type broadcasting type.

2.7 Content Requirements and Regulations

Under the Broadcasting Law, the rule is to broadcast in Turkish language. However, it is also possible to broadcast in other languages as this is not prohibited in the legislation. The broadcasts must be conducted in accordance with the rules of the selected language. RTUK is the authority to determine the procedures and rules pertaining to the relevant broadcasts.

Television broadcasters that hold a national broadcasting licence must: excluding the time allocated to news, sport events, contests, advertisements, teleshopping and related data broadcasts (a) allocate at least 50% of their broadcast time to European works; and (b) allocate 10% of their broadcast time or programme budget broadcasts to European works of independent producers. 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.

Broadcast media advertising is regulated mainly under:

- Law No. 6112;
- the Regulation on Advertising for Radio and Television; and
- the Regulation on Principles and Code of Practice Regarding Commercial Advertisements and Publications. Under Law No. 6112, in television and radio broadcasts, advertisements and teleshopping must be broadcasted in a way that they could be clearly discerned and easily distinguished from other elements of the programme service with an audio and/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 main 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 contents and notice and take-down procedures regarding illegal online advertising are subject to the Internet Law.

Law No. 6112 also prohibits broadcasting contents that are obscene.

2.8 The Difference in Regulations Applicable to Broadcasting Versus Cable

Radio and Television Supreme Council By-Law on Broadcasting via Satellite (By-Law on Satellite Broadcasting), Television Supreme Council By-Law on Broadcasting via Cable (By-Law on Cable Broadcasting) and Radio and Television Supreme Council By-Law on Terrestrial Broadcasting and Arrangement Tender Procedures and Principles (By-Law on Terrestrial Broadcasting) regulates satellite broadcasting services, cable broadcasting services and terrestrial broadcasting services respectively. Although there are many technical differences between the three environments, the same or similar principles apply to all of them.

Depending on the environment the service is provided, multichannel video distribution platforms are subject to legislations governing their respective broadcasting environment.

2.9 Transition from Analogue to Digital Broadcasting

The transition from analogue broadcasting to digital broadcasting in Turkey started in 1998 and frequency plans for television and radio were completed in 2000. By-Law on Satellite Broadcasting, By-Law on Cable Broadcasting and Radio and Television Supreme Council By-Law on Terrestrial Broadcasting and Arrangement Tender Procedures and Principles regulating satellite broadcasting, cable broadcasting and digital broadcasting respectively, came into effect in 2011.

In addition, Turksat 4A started functioning at the end of 2014, as the third Turkish satellite in service with Turksat 2A and Turksat 3A. Turkey is on the way to complete the transition from analogue to digital broadcasting.

3. Telecoms

3.1 Important Companies

Turk Telekomunikasyon A. S. is the incumbent operator in Turkey with 83.1% market share of fixed line telephone services and has net revenue of TL2.483.731.826 in 2014. In the mobile sector, there are three companies and these are: Turkcell İletişim Hizmetleri A. S. (net revenue of TL2.300.631.352), Vodafone Telekomunikasyon A. S. (net revenue of TL53.634.967) and Avea İletişim Hizmetleri A. S. (net revenue of -)TL793.497.469) with market shares of 48.2%, 29.1% and 22.7% respectively.

3.2 Requirements for Obtaining a Licence/ Authorisation to Provide Services

Operators providing telecoms services in Turkey are subject to authorisation, which is to be obtained from the ICTA (Article 8 of the ECL). This authorisation is obtained from the ICTA either through “notification” or “right to use”. Besides, before the ICTA (named Telecommunications Authority at that time) was established on 27 January 2000 and before the ECL entered into force and there were no regulations in place, the operators providing electronic communication services were executing authorisation or concession agreements with the Ministry, which were later assigned to the ICTA by the Ministry. As for mobile services, only three operators are authorised in Turkey to provide mobile services, under concession agreements they have signed with the ICTA and these agreements are still effective. These mobile operators pay treasury share to the state per their concession agreement.

Operators intending to provide electronic communication services and/or install and operate a network or infrastructure are obliged to notify the ICTA before commencing their activities. These operators 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 provide. Article 8/3 of the Authorisation Regulation stipulates that the ICTA must send a letter no later than 15 days after the entry of the notification to the ICTA's registry confirming that the relevant notification is duly made pursuant to the Authorization Regulation. That being said, in principle, an operator may start providing services, once the notification is received by and registered to the ICTA's records.

If there is a need for allocation of resources for providing a service, an operator has to, first, notify the ICTA and then the ICTA should grant them the right of use regarding scarce resources. Following submission of bank receipts attesting payment of the required fees pertaining to the right of use for the electronic communication services, networks and/or infrastructures, a right of use authorisation certificate is issued by the ICTA within 30 days after the application process is completed. However, if there is an infrastructure to be established, after the authorisation is completed, the period for obtaining Telecommunication Communication Presidency's approval for the infrastructure standards may vary, depending on the establishment of the infrastructure.

The period for granting right of use by the Authority may not exceed 25 years, unless regulated otherwise under the legislation (Article 14 of the Authorisation Regulation).

3.3 Transfer of Telecoms Licences/Authorisations to other Entities

Telecoms authorisations are transferrable to other entities through changes in ultimate ownership, merger or assignment under Turkish laws.

If the authorisation is to be directly assigned to another entity, then the operator should submit a notification form, to be filled by the assignee, along with other documents that might be requested by the ICTA and file an application before the ICTA for obtaining permission to this transfer. These relevant forms will not be required for the assignee operators already providing electronic communication services under an authorisation. Once the ICTA finds that assignment admissible and grants a written permission, the registration of the relevant operator will be completed within a month as of the permission (Article 19 of the Authorisation Regulation).

The Authorisation Regulation also requires (a) the operators, which are authorised within the scope of limited right to use, to notify the ICTA of any share transfers, acquisitions or movements, (b) the operators, which are authorised within the scope of unlimited right to use, to notify the ICTA of any share transfers, acquisitions or transactions, which leads to a change of control, within two months as of such transaction. On the other hand, merger or acquisition

of an operator is subject to prior permission to be obtained from the ICTA. The ICTA considers the market conditions, competition conditions, the market share and other relevant issues related to the operator to be merged or acquired, in its evaluation regarding the merger and acquisition.

As for the operators having authorisation or concession agreements, there is another specific provision pertaining to transfer of shares. The operators which have authorisation or concession agreements are obliged to notify the ICTA of any share transfers, acquisition and movements within a month at the latest. If a share transfer, acquisition or movement leads to a change of control in the operator, which has an authorisation or concession agreement; then this share transfer is subject to the permission of the ICTA (Temporary Article 4 of the Authorisation Regulation).

On the other hand, 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). The 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. Therefore the TCA may also review a transfer solely from a competition law perspective.

The TCA engages in consultations with other regulatory authorities, when it is statutorily required to do so (Article 11(2) of Communiqué No. 2010/4). Article 7(2) of the ECL requires the TCA to get the ICTA's written opinion in reviewing a transaction concerning the electronic communications sector. In this regard, in early 2015, the TCA and the ICTA have entered into a co-operation protocol to maintain active co-operation among each other especially for their overlapping jurisdictional areas and activities. According to the co-operation protocol, each of the regulatory authorities can apply to the other party and seek opinion on a particular matter.

Nevertheless these processes are different and separate from each other. For instance the written opinion obtained by the TCA from the ICTA during a merger control review for a transaction in electronic communications sector would not replace or supersede the approval of the ICTA.

3.4 Regulations for Network-to-Network Interconnection and Access

There is a regulation for setting out the principles and procedures pertaining to interconnection and access titled the Regulation on Interconnection and Access.

According to the regulation, access and interconnection contracts are public, provided that trade secrets are not disclosed. Having said that, the ICTA may oblige the operators

with significant market power to disclose information such as technical features, network properties, terms and conditions as to supply and use and fees, and make them public.

The disputes arising from interconnection or access are resolved before the ICTA through the dispute resolution process. If the relevant parties cannot agree through the dispute resolution process, then the ICTA may render a decision on the disputed issues within two months, unless further investigation is required due to newly provided services by one of the parties.

3.5 Accounting, Functional and Legal Separation

Under Turkish laws, there are no regulations for a telecoms operator to be subject to functional separation or legal separation.

On the other hand, the ICTA may impose an accounting separation obligation on the operators who have significant market power. Such operators might be obliged to keep their accounts for each field of their activity separate (Article 21 of the ECL).

Furthermore the Authorisation Regulation requires the operators to keep their accounting records separate for each type of service that the operator provides within the scope of authorisation. An operator providing fixed and mobile services under an authorisation is obliged to keep its accounting records separate for each of these services (Article 19 of the Authorisation Regulation).

3.6 Provisions for Access to Public and Private Land

The ECL entitles the operators to obtain from the administration a right of access to public and private lands to install telecommunications infrastructure for the purpose of providing electronic communication services (Article 22 of the ECL).

Furthermore ECL also includes a provision providing an opportunity for the administration to decide on expropriation of a private property or to provide the operators with a right to use on the public properties, if necessary for the provision of telecommunications services (Article 30 of the ECL).

3.7 Rules which Govern the Use of Telephone Numbers

There are certain regulations governing the use of telephone numbers under Turkish telecommunications legislation. The main regulation pertaining to use of telephone numbers is the Regulation on Numbering which regulates the principles and procedures for providing the efficient and effective use of numbers in the electronic communication networks nationwide, and allocation of numbers. The other one is the Regulation on Number Portability, which regulates number portability across networks. According to this regulation,

geographic numbers, non-geographic numbers and mobile numbers in the National Numbering Plan of Turkey are within the scope of number portability. Operators are obliged to provide number portability to its subscribers under the regulation.

3.8 Regulation of Retail Tariffs

Operators may freely determine their retail tariffs provided that these tariffs are not in violation of the relevant legislation and ICTA regulations. In this regard, there are certain principles regulated under the ECL for determination of tariffs by the operators (Article 14 of the ECL).

On the other hand, the ICTA may supervise, approve, audit the tariffs issued by the operators with significant market power and determine maximum and minimum limits for their tariffs in order to ensure competition in the market and protection of consumers. The principles and procedures of this intervention are regulated under the Tariff Regulation issued by the ICTA.

3.9 Rules to Promote Service in Underserved Areas

Under Turkish laws the rules to promote access to telecoms service in rural or underserved areas are regulated under the Law No. 5369 on Universal Service (the Universal Service Law). The Universal Service Law regulates the principles and procedures as to establishing a universal service fund and imposing obligations on the operators and encouraging them for providing electronic communication services in rural or underserved areas.

4. Wireless

4.1 Important Companies

There are numerous companies offering wireless service in different parts of the country. Their services are usually available only in a small, restricted area (eg a neighbourhood or a mall district of a city). TTNET A. S. (a subsidiary of Turk Telekom A.S., the incumbent operator in Turkey) and Doruk İletişim ve Otomasyon Sanayi ve Ticaret A.S. provide wireless service in large cities through their hotspots located in cafes, restaurants and cinemas etc. Therefore, it might be said that there is no dominant figure in Turkey with regards to providing wireless internet service.

4.2 General Requirements for Obtaining a Licence/Authorisation to Provide Wireless Services

Our explanations as to general requirements, timeframe and costs for obtaining a licence/authorisation to provide telecoms services in 3.2 are also applicable for providing wireless services, since they are both deemed within the scope of electronic communication services under the ECL.

4.3 Transfer of Wireless Licences/Authorisations to Other Entities

Wireless authorisations are transferrable to other entities through changes in ultimate ownership, merger or assignment. The regulatory and competition law authorities are the ICTA and the TCA for approving such transfers and the requirements, process and timing for such transfers are subject to the same conditions explained in detail for Telecoms in 3.3.

4.4 Spectrum Allocation

The National Frequency Plan for frequency assignments is prepared in light of the international organisations' decisions, such as ITU, IMO, ICAO, EU and CEPT and issued by the ICTA. There are specific spectrum allocations for each different service industry.

The Regulation on Spectrum Management designates, in general, the procedures and principles of management, allocation, assignment, national and international co-ordination and registration of radio frequencies assigned, as well as the withdrawal and reassignment of assigned frequencies if necessary for the efficient and effective usage of radio frequencies.

Radio frequency licences generally specify the permitted use of the licensed spectrum in accordance with the Regulation on Spectrum Management. The ICTA has the sole authority to regulate frequencies in the wireless service sector. Specific frequencies are allocated to different types, techniques and environments of wireless service. The ICTA has also been given the authority to change, restrict and limit the use of any frequency any time in Turkey.

4.5 Procedures to Identify and Assign Spectrum Among Competitors

The identification and assignment of spectrum among the competitors are made through spectrum auctions conducted by the ICTA.

4.6 Unlicensed Spectrum Uses

The amateur use of radio (eg walkie-talkie) within a limited area for personal purposes does not require a licence for use of spectrum, if the radio meets the technical criteria regulated under the Regulation on Private Radio Systems and Regulation on Radio Devices With Short Distance.

4.7 Government Policy/Regulation to Promote Next Generation Mobile Services

The government does not currently have a policy or regulation in place for promoting the timely introduction of next generation mobile services. A tender was conducted recently in August 2015 for the next generation mobile services (4.5 G), and is expected to be launched in April 2016.

4.8 Price Regulation for Mobile Services

The ICTA issues a maximum price tariff, based on the Tariff Regulation, for mobile services and specifies the maximum price for each rate, to be adopted by the mobile service operators.

4.9 Regulation of Government and Commercial Wireless Uses

Government wireless uses are not regulated differently from commercial wireless uses in Turkey.

5. Satellite

5.1 Important Companies

Turkey's satellite sector consists of (a) Satellite Communication Services, where Eser Telekomunikasyon Sanayi ve Ticaret A.S. has a 39.1% market share; (b) Satellite Platform Services, where Digital Platform Teknoloji Hizmetleri A.S. and Dogan TV Digital Platform Isletmeciligi A.S. have the biggest market shares and (iii) Satellite and Cable TV Services, where Turksat Uydu Haberlesme Kablo TV ve Isletme A.S. is the only company actively providing services.

5.2 General Requirements for Obtaining a Licence/Authorisation to Provide Satellite Service

Our explanations as to general requirements, timeframe and costs for obtaining a licence/authorisation to provide telecoms and wireless services in 3.2 are also applicable for providing satellite services, since they are both deemed within the scope of electronic communication services under the ECL.

5.3 Transfer of Satellite Licences/Authorisations to other Entities

Satellite authorisations are transferrable to other entities through changes in ultimate ownership, merger or assignment. The regulatory and competition law authorities are the ICTA and the TCA for approving such transfers and the requirements, process and timing for such transfers are subject to the same conditions explained in detail for Telecoms in 3.3.

5.4 Spectrum Allocation to Satellite Service

The National Frequency Plan for frequency assignments is prepared in light of the international organisations' decisions, such as ITU, IMO, ICAO, EU and CEPT and issued by the ICTA. There are specific spectrum allocations for each different service industry.

The Regulation on Spectrum Management designates, in general, the procedures and principles of management, allocation, assignment, national and international co-ordination and registration of radio frequencies assigned, as well as the withdrawal and reassignment of assigned frequencies

if necessary for the efficient and effective usage of radio frequencies.

Radio frequency licences generally specify the permitted use of the licensed spectrum in accordance with the Regulation on Spectrum Management. The ICTA has allocated different frequencies for each different service provided through satellites. Authorisations issued by the ICTA may include specific terms and conditions which defines the permitted use of subject frequency by the operators. The ICTA has been given the authority to issue specific regulations and decisions which change, limit or restrict the use of any determined frequency as the ICTA deems fit.

5.5 International Telecommunication Union Membership

Turkey is a member of the International Telecommunication Union and has UTU satellite network filings.

5.6 Provision of Service by Foreign-Licensed Satellites

Foreign-licensed satellites are not permitted to provide satellite service in Turkey, since providing satellite services in Turkey requires obtaining authorisation from the ICTA regardless of the fact that a company has prior authorisations or licences acquired in other countries. The Authorisation Regulation requires a company to be incorporated in Turkey to apply for authorisation.

5.7 Milestone and Due Diligence Deadlines

Satellite operators in Turkey are not subject to any milestone or other due diligence deadlines for the construction or launch of satellites as there are no specific regulations on the matter.

6. Internet/Broadband

6.1 Important Companies

The biggest internet service provider in Turkey is TTNNet A.S. (75.3% market share), followed by Superonline İletişim Hizmetleri A.S. (15.8% market share) and Dogan TV Digital Platform İşletmeciliği A.S. (4.4%).

6.2 Regulation of Voice Over IP Services

VoIP (voice-over IP) services are deemed within the scope of electronic communication services and require authorisation (licence) of the ICTA within the scope of Turkish electronic communications legislation, just as with any other telecoms services. There are no provisions specifically regulating VoIP services.

6.3 Interconnection and Access Regulatory Conditions to IP-Based Networks

Although the ICTA regulates interconnection and access conditions in Turkey, it does not have a regulation specifically governing conditions regarding IP-based networks.

6.4 Net Neutrality Requirements

Turkey lacks a regulation on net neutrality requirements that prevent an internet service provider from being able to charge different rates or block different types of traffic over its network. On the other hand, according to the ECL, operators have an obligation for non-discrimination in providing their services to subscribers, users or operators having equal conditions. The ICTA also has certain decisions which require net neutrality in the provision of services.

6.5 Government Regulation of Internet/Broadband

The government, namely the Ministry of Development, issued a strategy document on information society for the years 2015 – 2018 promoting internet and broadband penetration in Turkey. This strategy document was published in the Official Gazette of 6 March 2015.

6.6 Over-the-Top Internet-based Providers

The issue of whether Over-the-Top (OTT) internet-based providers of media or telecommunications services are subject to the licensing requirements or any other regulations that other electronic communication services are subject to, is uncertain. There are no regulations or ICTA decisions determining OTT services' position under Turkish laws yet. However the tendency of the ICTA appears to be not requiring a licence for providing OTT services as they do not provide electronic communication service themselves, but make use of licensed operators' telecommunication services to provide their OTT services. For instance, the ICTA rendered a decision on July 14, 2010 on Web TV service, which provides a data maintenance and storage service, and determined that web TV is not subject to authorisation (2010/DK-08/419).

7. Privacy

7.1 Government Access to Private Communications

Pursuant to the Law on Police Duties and Authorities, a judge, or where time is of the essence the Chief of Police or Head of Intelligence Department, may decide to intercept, listen, record and evaluate private communication for purposes of preventing certain designated crimes.

Under the Criminal Procedure Law, if there are strong grounds for suspicion indicating that a crime has been committed and there is no other possibility to obtain evidence; the judge or where time is of the essence the public prosecutor may decide to locate, listen or record private communica-

tions or to evaluate the signal information of the suspect or the accused. Decision on listening, recording and evaluation of the private communication can only be given during investigation or prosecution of a crime, which is listed in Article 135 of the Criminal Procedure Law.

The judge or where time is of the essence the public prosecutor may decide to locate the mobile phone of a suspect or an accused, in order to be able to arrest them. The Regulation on Execution of Injunctions of Surveillance of Communication Through Telecommunication, Secret Investigator and Surveillance Through Technical Equipment as Stipulated in the Criminal Procedure Law, regulates in detail the interception of private communication, as well as the principles and procedures pertaining to listening, recording and evaluation of private communication.

In accordance with the Law on National Intelligence Services and the National Intelligence Agency, for reasons of national security, which are defined in the relevant legislation, depending on the decision of a judge, or where time is of the essence of the undersecretary of the agency or its deputy, National Intelligence Agency may intercept and obtain access to private communications.

7.2 Use of Encryption Technology

Principles and procedures of encrypted electronic communication in Turkey and the permissions in Turkey for producing, importing, using and exporting devices or systems or using software that enables encrypted or coded electronic communications are comprehensively regulated under the Regulation on the Procedures and Principles of Coded or Encrypted Communication of Public Entities and Real Persons and Legal Entities in Electronic Communication Service (Encryption Regulation), which is issued by the ICTA based on the ECL. According to the Encryption Regulation, use of encryption requires the ICTA's prior permission, unless the encryption is used in a closed circuit communication.

Telecoms Media Technology providers are not required by the law to use encryption technology under Turkish legislation.

7.3 Liability of TMT Companies for Content Carried Over Their Networks

In principle, Telecoms Media Technology companies are not liable for content carried over their networks. However there are certain content liability regulations for the internet broadcasts and broadcasts through radio and television.

Law No. 5651 is the primary regulation with respect to content liability in the internet medium and allocation of liability among the internet actors. In principle, content providers are responsible for any kind of content they present on the internet.

Hosting providers, on the other hand, are not responsible for checking the hosted content or researching whether the content constitutes an unlawful activity. Hosting providers are defined under the law as real persons or legal entities that provide or run systems to contain services and content. Access providers (internet service providers), which are defined as real persons or legal entities that provide access to internet for its users, are not responsible for checking whether the content accessed through itself is illegal or raises any liability.

As for radio and television broadcasts, Law No. 6112 states that the media service providers are liable for all the content and the way that the content is provided, even if the content is produced by third parties. Media service providers are defined under the law as the legal entities who have editorial responsibility with respect to selection of the content of radio or television broadcast and who decides on the arrangement and form of broadcast. On the other hand, multiplex operators, platform operators and infrastructure operators providing broadcast transmission services, who are also subject to authorisation of the ICTA, are only liable for complying with the administrative, financial and technical requirements set out by the Supreme Council.

7.4 Obligation of TMT Companies to Block Access to Certain Sites or Content

Internet service providers, or in other words, the access providers, are responsible for blocking access to illegal content broadcasted by a user, provided that they have been informed about the illegal content pursuant to Law No. 5651. Furthermore, access providers are also responsible for taking measures to block alternative access channels regarding the broadcasts, subject to access ban decisions rendered by the courts. There is also an Access Providers' Union established per Law No. 5651 which is composed of all internet service providers in order to enforce access ban decisions and to provide all hardware and software necessary to implement these decisions.

7.5 Obligation of TMT Companies to Retain Customer Data

The obligations of Telecoms Media and Technology companies providing electronic communication services under the ECL as to privacy of customer data and retaining the data are regulated per Article 51 of the ECL. According to this provision, privacy and integrity of the customers' traffic data should be provided by the operators, whilst storing the data until the resolution process of the disputes are completed. Furthermore, personal data subject to an investigation, examination, monitoring or a dispute should be stored until the relevant process is completed. Transaction records regarding accesses to personal data and other relevant systems should be kept for two years. Records attesting to the consent of the subscribers/users on processing of their personal data should be kept at least throughout the subscription period.

As for the services related to the internet medium, Law No. 5651 requires the hosting providers to keep the traffic information of the services it hosts for a period that is no shorter than one year and no longer than two years and to maintain the accuracy, integrity and confidentiality of such information. On the other hand, access providers are obliged to keep the traffic information for a period that is not less than six months and more than two years and to ensure the accuracy, integrity and confidentiality of this information.

7.6 Prohibition of Unsolicited Communications

Law No. 6563 on Regulation of Electronic Commerce (the E-Commerce Law) is the law prohibiting and regulating unsolicited communications under Turkish laws, along with its secondary legislation elaborating on the form and content on electronic commercial communications in detail. E-Commerce Law provides obligations as to providing opt-in and opt-out options, notifications etc for the electronic commercial communications to prevent unsolicited communications and regulates penalties and legal remedies for such unsolicited electronic communications, including e-mail, text and automatic dialing equipment. E-Commerce Law also regulates allocation of liability arising from unsolicited communications and obligations in respect thereof.

8. Future

8.1 Status and Process of Convergence

Despite the political uncertainty and the issues that Turkey dealt with regarding internal and external affairs in 2015, the country showed remarkable progress in the development of convergence of Telecoms Media Technology. The most important development of 2015 in the telecommunications industry appears to be the tender on authorisation for IMT services and infrastructures, also commonly known as the tender on Turkey's fourth-generation (IMT-Advanced Standard, which is marketed as 4.5 G) network which was held on August 26, 2015, in Ankara. The tender was a sale of mobile spectrum used all over Europe for 4G, which allows for up to 10 times faster mobile broadband than 3G technology. The new 4G service launched on 1 April 2016. On the other hand in 2016 Turkey will convert its analogue systems

for radio broadcasts to digital systems. Analogue radios will no longer be used, and the consumers will be provided with a higher and sustainable quality of radio broadcast. These developments and innovative approach will certainly increase the process of convergence of Telecoms Media Technology in Turkey and may lead to a status comparable to the European Union.

8.2 Changes to Statutes, Laws or Legislation

The draft of the 'Law on Protection of Personal Data' (LPPD) has been awaiting ratification since 2003. LPPD was submitted to the Turkish Grand National Assembly (TGNA) on December 26, 2014 and was finally ratified by the TGNA on March 24, 2016. LPPD is drawn up in accordance with the EU's approach on data protection. LPPD, which will bring important liabilities to telecom, media and technology industries, is sent to the Presidency for approval and will become effective once it is published in the Official Gazette. That being said, Articles 8, 9, 11, 13, 14, 15, 16, 17 and 18 of the Law will enter into force six months as of the date of publication in the Official Gazette. LPPD determines the principles for processing personal data and establishes a Personal Data Protection Authority and a Personal Data Protection Board (PDPB), which will be composed of 9 (nine) members, five of which will be chosen by the TGNA and the rest by the President and the Council of Ministers equally. PDPB will have the authority to determine necessary precautions to be taken for data transfers in the country and out of the country, as well as to issue administrative fines in case principles and procedures set forth in LPPD are violated.

Also, the Turkish Constitutional Court rendered a decision on annulment of certain provisions of Law No. 5651, the main internet law in Turkey. An application was filed before the Constitutional Court for partial annulment of Articles 2, 3, 4, 5, 6, 7, 9, 9/A and Additional Article 1 of Law No. 5651 and annulment of Article 6/A (the provision which establishes the Access Providers Union) and Provisional Article 3 of Law No. 5651. The Constitutional Court partially accepted the request and annulled certain provisions of Articles 3, 4, 5 and 9 of the Law No. 5651.

The decision has been published in the Official Gazette and became effective. However, the Constitutional Court decided that annulment of the relevant provisions of Articles 2, 3 and 4 will be effective after one year as of the publication date of the decision, i.e. on January 28, 2017. Once they become effective, it will change the way the things are for the internet actors, since the access providers will not be obliged to provide the ICTA with user data without a duly obtained court decision.

8.3 Changes to Government Ministries, Regulatory Agencies or Privatised Entities

There have not been any planned changes recently to the government ministries, regulatory agencies or other governmental or privatised entities that have a role in making

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policy and regulating Telecoms Media Technology industries in Turkey.

8.4 Identification and Assignment of Additional Spectrum

There have not been any plans recently to identify and to assign additional spectrum for wireless Telecoms Media Technology services.