

Telecoms and Media

Contributing editors

Alexander Brown and Peter Broadhurst



2018

GETTING THE
DEAL THROUGH 

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Alexander Brown and Peter Broadhurst
Simmons & Simmons LLP

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Preface

Telecoms and Media 2018

Nineteenth edition

Getting the Deal Through is delighted to publish the nineteenth edition of *Telecoms and Media*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Cyprus, Kenya and Serbia.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Alexander Brown and Peter Broadhurst of Simmons & Simmons LLP, for their assistance with this volume.

GETTING THE
DEAL THROUGH 

London
May 2018

Turkey

Hande Hançar Çelik and Ozan Karaduman

Gün + Partners

Communications policy

1 Regulatory and institutional structure

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

The main legislation governing the communications sector is the Electronic Communications Law No. 5809 and dated 5 November 2008 (the ECL). The ECL provides the main principles regarding the authorisation of the operators, their obligations and the powers granted to the Information and Communication Technologies Authority (ICTA), which is the regulatory authority in the electronic communications sector.

The ICTA has issued and continues to issue regulations that set forth detailed provisions regarding the main principles determined by the ECL. The most important of these regulations is the Authorisation Regulation published in the Official Gazette dated 28 May 2009, which details how a company can be authorised to provide electronic communication services or infrastructure in Turkey and what its main obligations are. In addition to the Authorisation Regulation; the Regulation on Customer Rights in the Electronic Communication Sector, the Regulation on Number Portability, the Regulation on Spectrum Management, the Regulation on Wireless and Telecommunication Terminal Equipment, the Regulation on Encrypted Communication and other important regulations that provide the obligation that an operator must be aware of.

No foreign ownership restrictions apply to communication services, however, the Authorisation Regulation sets forth that only limited liability and joint-stock companies established in Turkey can be authorised to become operators. A foreign entity or individual can be the sole shareholder of such a company established in Turkey.

2 Authorisation/licensing regime

Describe the authorisation or licensing regime.

There are two types of authorisation under the ECL: notification and right of use.

For operations that do not require any allocation of resources from the ICTA, a notification must be made to the ICTA with the required documents about the specifics of the contemplated operation and after the ICTA approves that the contemplated operation can be made via such a notification, the applicant company is deemed to be authorised to operate in Turkey. The fact that the applicant company will be deemed an authorised operator only after the approval of the ICTA is owing to a change to the Authorisation Regulation made on 11 July 2016. Before this change, an applicant company was deemed an authorised operator when its notification was registered with the ICTA. The main rationale behind the previous version was that for services and infrastructure that do not require any resources, a company should not need the approval of the ICTA, but would just make a notification so that the ICTA could keep track of the operator. This new change does not comply with this rationale and provides the ICTA with a stricter control of the market.

If an operation requires allocation of resources from the Regulatory Authority such as frequencies or numbers, then a right of use must be

granted by the ICTA for that operation to be started. The documents requested by ICTA for right of use applications are a little more than the ones required for the notification process; the applicant company must also provide documents and information in relation to the resources to be allocated to it.

The right of use procedure consists of two sub-procedures. If the service or infrastructure that is subject to right of use can be operated by various companies, then the procedure set forth in the above paragraph will apply. However, if the service or the infrastructure can be operated by only a limited number of operators, then a tender is made and only the companies that are awarded tender can provide the relevant service or infrastructure. The most common example of the electronic communication service that can be operated by only a limited number of operators is GSM mobile services. There are only three GSM operators in Turkey (ie, Turkcell, Turk Telekom (formerly Avea) and Vodafone), which have been awarded their rights of use through tender at different times. The allocation of 3G and 4G spectrum was also made through tenders and the same GSM operators obtained the rights of use for the 3G and 4G licences.

To give examples for the authorisation needed for different types of services: for a fixed-line service (eg, PSTN lines used in homes) that would require allocation of numbers, a right of use application must be made; for conventional GSM services, a company must wait for the state to open a tender, whereas for operation of fibre-optic cables, the notification procedure mentioned above must be followed.

As regards the fees, for the notification process an administrative fee of 0.35 per cent of the yearly net sales must be paid to the ICTA and for the right of use process, in addition to the administrative fee, the specific fee for the relevant resource to be used in the operation must be paid. For example, for fixed-line operators requiring number allocation, operators must pay the fees determined for the numbering blocks that they require. Furthermore, the operators must make yearly payments of a Universal Service Fee in the amount of 1 per cent of their yearly net sales.

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?

The permitted use is not unrestricted; the spectrum licences are given by the ICTA and the permitted use of the spectrum is specified. The operators that would like to use spectrum for their operation must apply to the ICTA and make a request for the allocation of spectrum. If this request is accepted, the spectrum is allocated and registered with the database of the ICTA. If a person or legal entity that is not an operator, but would like to install a device that uses a spectrum that requires allocation from the ICTA, such person or legal entity must apply to the ICTA and also request allocation. Only devices that operate in the allowed predetermined spectrum ranges do not require application for the allocation process set forth above.

Although the legislation does not provide any explicit prohibition of the sale of the allocated spectrum, we believe that it is not possible to trade or sell the allocated spectrum; the operators can only transfer the spectrum allocated to them if they transfer their authorisations.

4 Ex-ante regulatory obligations

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

No ex-ante regulations can be made in the communications markets.

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?

No, currently there is no legal basis for a structural or functional separation between an operator's network and service activities and there is no draft legislation requiring such a separation.

6 Universal service obligations and financing

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

The following services are considered universal services:

- fixed line telephony services;
- public payphone services;
- telephone directory services (printed directories and directories on electronic media);
- emergency call services;
- internet services;
- transportation services for places where the single option for travel is by sea; and
- communication services regarding sea voyages and safety at sea.

Operators are under an obligation to provide the above stated universal services. The provision of these services is financed through the universal service fee payments made by the operators as mentioned in our response to question 2.

7 Number allocation and portability

Describe the number allocation scheme and number portability regime in your jurisdiction.

Number portability is a right provided to subscribers of the electronic communication services that require allocation of numbers. Upon the request of the subscriber, the operator must allow for the subscriber to become a customer of another operator without changing his or her number or to change his or her address without changing the number. There is no cross-portability obligation between fixed-line services and GSM services; a customer of a fixed-line telephone service cannot request to use the same number for a GSM service and a customer of a GSM service cannot request to use the same phone number for a fixed-line telephone service. A customer cannot request to keep the same geographical number if he or she changes the address to a different geographical location. For example, a person using fixed-line telephone services in Istanbul with a number starting with the geo-code of 0212 (the code for Istanbul) cannot request to keep the same phone number if he or she moves to Izmir (which uses a geo-code starting with 0232).

8 Customer terms and conditions

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

Yes, customer terms and conditions between subscribers and operators are subject to the Regulation on Customer Rights in the Electronic Communication Sector. In accordance with this regulation, customers have the following rights:

- accessing services under the same terms with similar customers and benefiting from the services with fair prices without any discrimination;
- entering into agreements with the authorised operators;
- requesting that their personal data be or not be included in publicly available directories;

- benefiting from the directory services free of charge or for a price and being able to register with the directories without any discrimination;
- being informed of the emergency call services and accessing to those services free of charge;
- requesting itemised invoices;
- requesting information about the scope of the services to be provided by the operators;
- accessing clear, detailed and current information on the tariffs to be applied to the customers and being informed of any change to those tariffs before such change is applied;
- opting out by a simple way or by original way of application to the service, from all the services under the campaigns or tariffs including value-added services that they opted in through SMS, call centre, or internet;
- requesting equal treatment without any discrimination in relation to resolving the malfunction problems; and
- receiving services under the standards determined by the ICTA or by international institutions.

Another important obligation arising from the Customer Rights Regulation is that the agreement between the customer and the operator must be made in writing.

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?

There is no specific clause regarding net neutrality under Turkish legislation; however, article 4(1)/j of the ECL sets forth that the operators must remain neutral while providing services. Although it is not crystal clear whether the 'neutral' mentioned under the ECL refers to neutrality as in the net neutrality, we believe it should be interpreted in that way. Furthermore, the ICTA made a decision against one of the ISPs in Turkey because it restricted access to certain websites without any order to do so from the authorised courts and institutions. That decision shows that the ICTA accepts the net neutrality principle and restricting access to certain websites or applications without any legal background is prohibited.

10 Platform regulation

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

Yes, although web-based solutions and platforms can be freely established, there are two main laws regulating the content published on those platforms.

The Law on Regulation of Electronic Commerce No. 6563 and dated 23 October 2014 (the E-Commerce Law) regulates the content of the online platforms over which commercial transactions are concluded. The E-Commerce Law provides obligations on the e-commerce digital platform operators about the type of information to be provided to the customers, provision of a copy of the agreement to the customers and the way the communication with customers must be handled.

The Law on Regulation of the Publications Made on the Internet and Fighting against Crimes Committed through such Publications No. 5651 and dated 4 May 2007 (the Internet Law) is the generally applicable law for all content published on the internet. The Internet Law restricts the publication of content constituting certain types of crime (eg, sexual abuse, crimes against Atatürk – the founder of the Turkish Republic) and content violating the rights of third parties.

There is other legislation that can restrict online content; this is not specific to online content but its scope is extensive so that it covers both online and offline content. For example, online broadcasters are also under the obligation to ensure that any broadcasts that are likely to negatively impact the physical, mental or moral development of children or youths must be presented in a way that will ensure that these broadcasts are not – under normal circumstances – heard or seen by children or youths.

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?

There are no specific regulatory obligations applicable to NGA networks; the NGA networks are treated the same as every electronic communication infrastructure. There is no government financial support scheme to promote the NGA penetration, however, the ICTA releases statements that the NGA penetration should be increased.

12 Data protection

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

Yes, article 51 of the ECL provides specific obligations in relation to protection of personal data in the communications sector. The Regulation on Protection and Privacy of Personal Data in the Electronic Communication Sector (the Regulation on Privacy) sets forth more detailed provisions on the protection of personal data in the communications sector. These two pieces of legislation list certain situations where the personal data of the customers can be processed by the operators only with the consent of the customers and also set forth how the traffic and location data can be processed by the operators without the consent of the customers. One of the interesting points about the ECL and the Regulation on Privacy is that they accept the data of both real persons and legal entities as personal data. Another point to note about this legislation is that the previous version of article 51 of the ECL had a much narrower scope and had stated only that matters related to personal data would be governed by a regulation after which the Regulation on Privacy was issued by the ICTA. In 2014, the Constitutional Court decided that a fundamental right such as the protection of personal data cannot be governed by regulations and at least the main principles should be set forth by law. After this decision, article 51 of the ECL was amended and took its current form. However, no change was made to the Regulation on Privacy and there are some provisions in the two pieces of legislation that conflict with each other. As a country applying the principle of hierarchy of norms, where the two pieces of legislation conflict, the provisions of article 51 of the ECL should be taken into consideration.

A generally applicable law on protection of personal data came into force only last year on 7 April 2016 (the DPL). The DPL is heavily modelled on Directive 95/46/EC, with many of the terms and central provisions very closely mirroring their equivalents in the Directive. Where the ECL does not regulate an issue, the provisions of the DPL should be taken into consideration.

13 Cybersecurity

Is there specific legislation or regulation in place concerning cybersecurity or network security in your jurisdiction?

Both article 51 of the ECL and article 12 of the DPL set forth that operators must keep all the personal data secure and confidential. The DPL sets forth that data controllers (operators) and data processors must take all necessary technical and administrative precautions for establishing the appropriate level of security in order to: prevent personal data from being processed illegally; prevent personal data from being accessed illegally; and safeguard personal data.

14 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 in Turkey in relation to big data. The provisions of the DPL will apply to the analyses made on big data or collection of big data itself.

15 Data localisation

Are there any laws or regulations that require data to be stored locally in the jurisdiction?

Article 51 of the ECL sets forth that traffic and location data can only be transferred abroad with the consent of the customer. The Regulation on Privacy provides a stricter obligation and sets forth that personal data cannot be transferred abroad. However, as mentioned above, the Regulation on Privacy came into force before the decision of the Constitutional Court and has not been amended since the decision. As a result, the provisions of the ECL and the Regulation on Privacy conflict with each other and therefore, the strict restriction of the Regulation on Privacy should not be taken into consideration as applicable in relation to the transfer of personal data abroad. The operators cannot transfer the traffic and location data abroad without the consent of the customers. For the transfer abroad of other personal data, the provisions of the DPL will be applicable. Under the DPL, the general principle with regard to transfer of personal data outside of Turkey is that the explicit consent of the data subject is required. However, in certain additional situations set forth under the DPL, personal data may be transferred outside of Turkey if the recipient country provides 'sufficient safeguards'. If the country where the recipient is located does not provide sufficient safeguards, personal data may only be transferred following further approval and authorisation by the Turkish Data Protection Board.

16 Key trends and expected changes

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

As mentioned above in our response to question 12, article 51 of the ECL was amended following the decision of the Constitutional Court. Consequently, ICTA published a Draft Regulation on the Processing and Protection of the Privacy of Personal Data in the Electronic Communications Sector (Draft Regulation) in order to clarify matters related to the implementation of ECL article 51, to ensure uniformity in practice and to regulate secondary aspects. As explained in detail above, the current Regulation on Privacy is still in force; however, the Draft Regulation sets out the principles and procedures regarding the processing and protection of the privacy of personal data in the electronic communications sector and incorporates the provisions of the Law No. 6698, which were not included in the Regulation on Privacy.

Another current issue relates to over-the-top (OTT) internet-based providers of media or telecommunications services (WhatsApp, Google, YouTube, etc). OTT internet-based providers are currently not regulated in Turkey, thus there is no licensing requirements for those providers. However, because of their increasing importance, Turkey's High Planning Council evaluated the matters related to OTT internet-based providers under the National Broadband Strategy and Action Plan (2017-2020) (the Plan). The Plan was entered into force with its publication in the Official Gazette on 21 December 2017 and it mainly aims to expand the broadband infrastructure throughout the country at high capacity and speed, to create a competitive market for infrastructure and services, to increase demand, to facilitate the life of the citizens and the business world. As it is expected that developments in OTT will gradually increase with the high-speed broadband infrastructures, the Plan also contains detailed action plans for development of certain measures concerning OTT internet-based service providers, with the aim of supporting domestic operators. The Plan also requires establishment of a Broadband Strategy Monitoring Board, which will consist of related public entities, operators and non-governmental organisations in order to maintain and implement the actions foreseen in the Plan.

Media

17 Regulatory and institutional structure

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

The main legislative regulations of Turkish Media Law are as follows:

- 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 Law on Regulating Broadcasting in the Internet and Fighting Against Crimes Committed through Internet Broadcasting (Law No. 5651, the Internet Law); and
- the Advertisement Regulation of Radio and Television Authority of Turkey.

The Radio and Television Supreme Council (RTUK) monitors radio, television and on-demand media service in Turkey. The RTUK is the main independent governmental body for policymaking for and monitoring of the radio and television sectors. As for internet media, the ICTA is the supreme regulatory and supervisory governmental body.

18 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?

Under Turkish law, some restrictions are applied to ownership and control of broadcasters. One example is article 19/f of the Turkish Broadcasting Law, which mandates that a foreign entity must not control more than half of the shares of a broadcasting company established under Turkish law. Furthermore, the same foreign entity cannot be the direct shareholder of more than two Turkish broadcasting companies. In a case where a foreign entity is the indirect shareholder of a broadcasting company, the following requirements must be met: the chairman, vice chairman and the majority of the board of directors and the general manager must hold Turkish citizenship; and the majority of the voting rights in the general assembly must belong to natural or legal persons of Turkish citizenship.

Article 19/d also states that a natural or legal person cannot own shares, whether directly or indirectly, in more than four different media service providers. Also, if a natural or legal person is a shareholder of more than one media service provider company, the annual commercial communication income of said companies cannot exceed the 30 per cent of the total commercial communication income of the sector. If it does, said persons must transfer their shares, within 90 days allotted by RTUK, in order to decrease their income to a level below the limitation.

There are no specific regulations in relation to cross-ownership of media platforms.

19 Licensing requirements

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

Article 3/hh defines the broadcasting licence as the certificate of permission issued separately for each broadcasting type, technique and network by RTUK to media service providers on the condition that they meet the provisions stated in Law No. 6112 and by-laws and other regulations prepared in accordance with Law No. 6112 in order to allow them to broadcast using any kind of technology via cable, satellite, terrestrial and similar networks. As this clearly mandates, media services providers must obtain separate licences from the RTUK for each broadcasting technique. Owing to a recent amendment to the Broadcasting Law that came into force on 27 March 2018, media service providers that make online broadcasting and platform operators that transmit these broadcasts via the internet are required to obtain a licence from RTUK. We refer to our detailed explanations with regard to these amendments in question 23.

Pursuant to article 19 of Law No. 6112, a broadcast licence can only be granted to joint-stock companies established under the Turkish Commercial Code for the exclusive purpose of providing radio, television and on-demand broadcast services. Political parties, labour unions and professional organisations are banned from obtaining a broadcast licence.

The term of a broadcast licence is 10 years and there are no specific time-scale provisions for obtaining authorisation from the RTUK. Licence fees are determined each year by the RTUK and the most recent information can be found at <https://www.rtuk.gov.tr/yayinlisans-kanal-frekans-yillik-kullanim-ve-yetkilendirme-ucretleri-3756>.

20 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?

As per article 5 of Law No. 6112, the general rule is that the broadcasts must be in Turkish. However, languages and dialects other than Turkish can be used for the broadcast as well, on the condition that the broadcast follows the rules of that preselected language. On the other hand, the Regulation on the Procedures and Principles of Media Services stipulates that providing broadcasts in languages and dialects other than Turkish by media service providers is subject to permission to be issued by RTUK. Thus, RTUK permits broadcasting in a foreign language if it finds the media service provider's application appropriate according to their broadcasting area and technical facilities. However, no permission is required for on-demand media services in languages and dialects other than Turkish.

According to Broadcasting Law No. 6112, if television enterprises that conduct general and thematic broadcasts include cartoons in the broadcasts for children, at least 20 per cent of the cartoons, and at least 40 per cent of other children's programmes shall be productions made in the Turkish language and reflecting Turkish culture.

There aren't any other local content quotas for media service providers. Article 15 of Law No. 6112 titled 'European Works' stipulates that television broadcasters holding a national terrestrial broadcasting licence must allocate at least 50 per cent of their broadcast time to tests, advertisements, teleshopping and related data broadcasts; and allocate 10 per cent of their broadcast time or programme budget broadcasts to European works by independent producers, excluding the time allocated to news, sporting events, contests, advertisements, teleshopping and related data. European works are defined as audio-visual 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.

21 Advertising

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

In Turkey, broadcast media advertising is thoroughly regulated. Major legislative regulations can be found under: Broadcasting Law No. 6112; Consumer Protection Law No. 6502; and the Regulation on Commercial Advertisements and Unfair Commercial Practices (Commercial Advertisement Regulation). Broadcast media advertising is ruled and supervised by the RTUK, which is an autonomous, impartial public legal entity. The RTUK regulates and supervises the radio, television and on-demand media services and examines the broadcasts including advertisements in light of the provisions of Law No. 6112, the European Convention on Transfrontier Television (of which Turkey is a member), and the Regulation on the Principles and Procedures of Radio and Television Broadcasts (including advertising principles). Another regulatory entity, namely the Advertisement Board that was established under the Turkish Ministry of Customs and Trade, is the main authority controlling advertisements for all media, including broadcasts on TV, radio, internet in Turkey.

Online advertising is subject to the Consumer Protection Law and the Commercial Advertisement Regulation which are the main legislations with respect to advertisement rules. The Advertisement Board regulates the compliance of advertisements in all media, except for specific broadcasting rules that are governed under Broadcasting Law No. 6112. In addition to the foregoing, all online broadcasts in Turkey are subject to the Internet Law. Under article 8 of the Internet Law, if the content of an online broadcast – including the ads – constitutes specific crimes that are listed in the Internet Law, the access of this website could either be banned by the regulatory body ICTA or by the court depending on the type of the case and urgency. The catalogue of

crimes set out in the Internet Law are as follows: encouraging suicide, child abuse, facilitating the use of drugs, procurement of substances that pose health risks, obscenity, prostitution, gambling and offences related to insulting Atatürk. In the presence of these specified crimes, access to the relevant website could be banned upon request.

22 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 mandating must-carry obligations.

23 Regulation of new media content

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

Internet-based on-demand content has been traditionally regulated by the Internet Law. With the new amendments on Law No. 6112, media service providers that make online broadcasting and platform operators that transmit these broadcasts via the internet are required to obtain a licence from RTUK and online broadcasting activities will be subject to supervising and controlling of RTUK under the same principles applied to TV and radio broadcasts as per Law No. 6112. Media service providers and platform operators that are domiciled abroad but make online broadcasting in Turkey are also under obligation to comply with these principles. Although the scope and procedural aspects of the amendments are not yet completely clear, it is expected that a regulation, which will be enacted by RTUK and ICTA within six months of the effective date of the amendment, will rule in detail on the procedures regarding the implementation of the new rules.

Radio and Television Supreme Council IPTV Broadcasting Licence and Permits Regulation, which was promulgated on 17 July 2010, was abolished shortly after its enactment and is no longer in force.

24 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 digital switchover process is still ongoing in Turkey, although it was expected to be finalised by 2016. The details regarding the freed-up radio frequencies and the transition process are regulated under Law No. 6112. As per provisional article 4 of Law No. 6112, based on their ranks and analogue channel capacities, some of the enterprises that acquire the right to be allocated a digital terrestrial multiplex capacity in the ranking tender will be allowed to also make analogue television broadcasts for a period of two years at most, along with their digital terrestrial broadcasts. At the end of the two-year period following the allocation, analogue terrestrial television broadcasts are to be completely terminated across the country and switched off. In the framework of the allocations and durations allowed by RTUK, the Turkish Radio-Television Corporation will transfer its terrestrial radio and television broadcasts from its channels and frequencies into the newly allocated channels, frequencies and multiplex capacities.

25 Digital formats

Does regulation restrict how broadcasters can use their spectrum?

It does. After obtaining the terrestrial broadcast licence, current transmitting facilities must be removed by the private media service providers or must be transferred to a transmitter procurer and operating company in exchange for a reasonable sum.

26 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?

A natural or legal person cannot be shareholder in more than four media service provider entities. Also, if a natural or legal person is a shareholder of more than one media service provider company, the annual commercial communication income of said companies cannot exceed 30 per cent of the total commercial communication income of the sector. If it does, said persons must transfer their shares within the 90 days stated by the Supreme Council, in order to decrease their income to a level below the limitation. These limitations serve in a tacit way to prevent monopolies in the media sector and to protect media plurality.

27 Key trends and expected changes

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

Lately, there has been a major shift in Turkey's key trends in the media and entertainment sector. With the introduction of internet-based television and on-demand content, media viewership in Turkey has become more dependent on internet rather than traditional broadcasting. The Law on Amendment to Tax Laws, Some Laws and Decree-Laws (Amendment Law) which brings amendments to the Broadcasting Law No. 6112, was published in the Official Gazette numbered 30373bis on 27 March 2018 and entered in force. Article 82 of the Amendment Law sets forth incorporation of a new article, namely article 29/A to the Broadcasting Law. According to this new ruling:

- media service providers that make online broadcasting and platform operators that transmit these broadcasts via the internet are required to obtain a licence from RTUK;
- online broadcasting activities will be subject to the supervising and controlling of RTUK under the same principles applied to TV and radio broadcasts as per RTUK Law;
- media service providers and platform operators that are domiciled abroad but make online broadcasting in Turkey are also under obligation to comply with these principles;
- the Criminal Court can block the access or remove the content upon request of RTUK, if broadcast services are provided without broadcast licence and transmission permit; and
- a regulation regarding the broadcast licence, transmission permit and the procedures and rules regarding implementation of article 29/A will be jointly issued by the RTUK and the Information and Communication Technologies Authority within six months of the effective date of article 29/A.

The licensing model and new implementations are not applicable to video sharing websites, platforms such as YouTube, Vimeo, etc. Personal communication is not covered by this new Law, this is considered to exclude platforms like Twitter.

Regulatory agencies and competition law

28 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?

In Turkey, the communication regulator is entirely separate from the broadcasting and antitrust regulators.

The telecommunication sector is monitored and supervised by the ICTA. The Turkish Competition Authority (the TCA) is the main competition and anti-trust monitoring authority and it enforces the provision set forth in Law No. 4054 on the Protection of Competition (the Competition Act).

Pursuant to Law No. 5809 on Electronic Communications, the ICTA has the competence and authority to conduct a thorough investigation on any action conducted against the competence in electronic

communications sector, without prejudice to the provision set forth in Competition Act.

The regulating authority for the broadcasting sector is the RTUK and in some special cases defined under Law No. 6112, the RTUK has the competence and jurisdiction to supervise competition in the media sector. The Advertisement Board, which was established under the Turkish Ministry of Customs and Trade, is the main authority controlling advertisements for all media, including broadcasts within Turkey. The Board has the authority to determine rules for advertising, supervise ads and impose penalties for violations.

The ICTA and the Competition Authority cooperate in relation to the competition issues in the communications sector. Article 7(2) of the ECL requires the Competition Authority to obtain the opinion of the ICTA and take into consideration the regulatory actions of the ICTA in relation to the competition matters it handles in the communications sector. Furthermore, the ICTA and the Competition Authority signed a cooperation protocol in 2011 and expanded the scope of the protocol in 2015. The cooperation protocol aims to ensure the cooperation of the two regulatory bodies and avoid conflicts of jurisdiction.

29 Appeal procedure

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

The ICTA, TCA and RTUK are all independent administrative authorities under Turkish Law, which makes their decisions 'administrative decisions'. Administrative law and its procedures are subject to the Code of Administrative Procedures No. 2577. As a general principle of Turkish administrative procedural law, all administrative decisions can be challenged before an administrative court, unless the law states otherwise. The time period to bring an action for nullity is 60 days from the notification of the decision.

Under Law No. 2577, an action for nullity against administrative decisions and actions can be brought forward under the following circumstances: if the administrative decision is not made by the competent governmental body; or if the form, rationale, subject or the objective of the administrative decision is against the law.

Similarly, the Board of Advertisement established under the Ministry of Customs and Trade issues binding decisions that can be appealed before the Administrative Courts.

As can be seen above, the reasoning of the action for nullity can be both procedural and meritorious. Administrative court decisions can be appealed before the regional administrative courts within 30 days, starting with the notification of the court's decision.

According to the Law on Protection of Competition, TCA decisions can only be appealed before the administrative courts of Ankara. This is a special provision creating an exception to the rules brought by the Code of Administrative Procedures. The exception only relates to jurisdiction with relation to forum. The rest is the same as the general rules.

30 Competition law developments

Describe the main competition law trends and key merger and antitrust decisions in the communications and media sectors in your jurisdiction over the past year.

The past couple of years have been quite active in the merger and acquisition side of competition law developments in the media sector. The TCA has seen notifications of takeovers by media agencies or corporations or large groups of smaller agencies or corporations. One such merger notification that was cleared by the TCA was the 2015 takeover of the full control of Enformasyon Reklamcılık ve Filmcilik, otherwise known as CNBC-E, by Discovery (Discovery Medya Hizmetleri Ltd Şti).

Another such merger that was cleared by the TCA is the takeover of all shares and full control of Pozitron (Pozitron Medya Holding AŞ) by Krea Production (Krea İçerik Hizmetleri ve Prodüksiyon AŞ). Market shares in the television broadcasting market, in which Pozitron was found to be active through Digiturk's activities - in that Pozitron's market shares were deemed to have been included in those of their business partner Digiturk - are in principle calculated on the basis of advertising income. Because Pozitron was providing services exclusively for Digiturk, the TCA found no alarming concentration in the takeover in 2015's decision No. 15-36/540-172.

Further, there has been some activity on antitrust by the TCA; it appears that the TCA has decided to reopen investigations that it had closed, either because of administrative court judgments cancelling out the TCA's decision not to pursue the matter any further, or owing to change of circumstances.

Diye, a media services provider, had notified that its activities, which entailed measuring media performances under the name of 'media barometer' services and selling to actors in the advertising sector, had been cleared off competition law concerns in the TCA's decision of 2014 No. 14-51/900-410. The concern was that the sale of critical and sensitive market information could lead to collusion and eventually a cartel in the advertising and other media sectors. Three years later in 2017, however, the case came back from the Administrative Court, whose decision was upheld by the Council of State, and investigations were opened again with allegations that the advertising undertakings buying the 'media barometer' services had been acting in a buying cartel.

An agreement on the Turkish Football Federation's broadcasting rights to be transferred to Digiturk was also subject to antitrust scrutiny by the TCA, but was cleared in the decision of 2015 No. 12-23/659-181. A competing service provider's application to the administrative court, the agreements conferring exclusive broadcasting rights were once again examined by the TCA in terms of monopoly rights and entry barriers. Clearance was granted in the 2016 decision No. 16-04/82-36 on the condition of commitments for the allowance of sub-licensing, which would help soften the monopolisation of the broadcast of national football.

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