



**CHAMBERS**  
Global Practice Guides

**TMT**

Law and Practice – Turkey

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# TURKEY

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## **LAW AND PRACTICE:**

p.5

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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 and Practice

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**Gün + Partners** is one of the oldest and largest law firms in Turkey, with over 70 lawyers. Based in Istanbul, it also has working offices in Ankara, Izmir, and provides multilingual services to local and international companies. The firm represents clients in numerous sectors with a particular focus on TMT, life sciences, insurance and reinsurance, energy and natural resources. In terms of TMT, it provides advisory, transactional and dispute resolution services and detailed data protection advice, also offering particular expertise in corporate deals in the TMT

sector, representing multinational investors in Turkey and advising on direct establishment, M&A and corporate advisory services. Additionally, Gün + Partners represent clients before regulatory bodies including the Information Technologies and Communication Authority, the Radio and Television Broadcasting Authority, the Turkish Radio and Television Institution, and the Advertisement Board. The firm's dispute resolution services in the TMT sector includes representing clients before the civil and administrative courts.

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## 1. General Structure of TMT Regulation and Ownership

### 1.1 Statutes, Laws and Legislation

In Turkey, the main legislation concerning the telecom sector is the Electronic Communications Law, dated 5 November 2008 and numbered 5809 (the "ECL"). The ECL regulates the rules and procedures regarding authorisation and obligations of the operators and the powers of the Information and Communication Technologies Authority (the "ICTA"), which is the regulatory authority in the telecom sector.

The ICTA issues regulations setting forth the details of the main principles stipulated in the ECL. Authorisation Regulation which was published in the Official Gazette, dated 28 May 2009 and amended from time to time (the "Authorisation Regulation"), is one of the most important regulations of ICTA. Authorisation Regulation provides the details for authorisation of companies to provide electronic communication services or infrastructure and sets forth their obligations. The Regulation on Wireless and Telecommunication Terminal Equipment, the Regulation on Number Portability, the Regulation on Spectrum Management, the Regulation on Encrypted Communication and the Regulation on Customer Rights in the Electronic Communication Sector are

the other important regulations for the telecommunication sector.

On the other hand, the main legislation concerning the media industry can be listed as follows:

- the Radio and Television Act 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 Press Law (Law No 5187);
- 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 "Advertisement Regulation").

## 1.2 Government Ministries, Regulatory Agencies and Privatised Entities

The Ministry of Transportation, Maritime Affairs and Communications is the ministry responsible for policy making in the telecommunication sector. Furthermore, the Information and Communication Technologies Authority (the “ICTA”) is the quasi-independent regulatory authority, which is responsible for regulation and supervision of the telecommunication sector.

On the other hand, the Radio and Television Supreme Council (the “RTUK”), a quasi-independent regulatory authority, is responsible for policymaking in the media sector and monitoring of the radio and television sectors. However, for internet media ICTA is the main regulatory and supervisory authority.

## 1.3 Developing Rules and Adopting Policies

There is not a specific process for developing policies or adopting rules for regulating TMT industries; however, the ministry or regulatory authorities usually issue policies or regulations according to the needs of the relevant industry.

In practice, draft legislative acts are usually opened to public consultation and finalised after receiving the opinions of the stakeholders of the relevant sector.

Regulation is the preferred type of legislation in telecom, media and technology industries. Additionally, guidelines are also issued to provide details on the laws and regulations. Moreover, regulatory authorities (eg, ICTA) render binding decisions on specific matters.

## 1.4 Ownership of Telecoms Media Technology Industries

In general, TMT industries are privatised. However, the Turkish Radio and Television Corporation (“TRT”), which was established on 1 May 1964 and which is a neutral state-owned enterprise, is still an active player in the sector with 14 television channels, five national, five regional, three international and three local radio stations, websites and tele-text broadcast.

## 1.5 Limits on Participation

TMT industries are open to competition – in other words, companies which meet specific conditions stipulated in the relevant legislation and where necessary obtain required licences/authorisations can operate in these industries.

## 1.6 Restrictions on Foreign Ownership or Investment

Turkish legislation does not contain any restriction on foreign ownership or investment restrictions in the telecommunication sector. The Authorisation Regulation sets forth that only limited liability and joint stock companies that are

established in Turkey can be granted an authorisation to become operators. However, a foreign entity or an individual can become the sole shareholder of such limited liability or joint stock company established in Turkey.

For the media industry, Turkish broadcasting legislation contains foreign ownership restrictions. Pursuant to Article 19/f of the Broadcasting Law, a foreign entity cannot control more than 50% of the shares of a broadcasting company established under Turkish law. Furthermore, same foreign entity cannot be the direct shareholder of more than two broadcasting companies established in Turkey. If a foreign entity becomes the indirect shareholder of a broadcasting company in Turkey, (a) the chairman, vice chairman and the majority of the board of directors and the general manager must be Turkish citizens, and (b) the majority of the voting rights in the general assembly meetings of the broadcasting company must belong to natural or legal persons having Turkish nationality.

## 1.7 World Trade Organisation Membership

Turkey has been one of the founding members of the World Trade Organization (“the WTO”) since 26 March 1995, signing the Marrakesh Agreement establishing the WTO after the Uruguay Round and General Agreement on Trade in Services (“GATS”) was also signed during these negotiations.

By 2006, Turkey committed to end the monopoly on exclusive rights regarding voice telephony and other basic telecom services in accordance with GATS. Additionally, cellular mobile services and paging were opened to competition. Turkey also undertook a commitment of market access for data transmission services managed under certain regulatory principles.

Turkey has presented two Most Favoured Nation Exemptions: one is about two neighbouring countries regarding fees for transit land connections and the usage of satellite ground stations; the other allows the Government or the Government-run operator to apply differential measures in bilateral agreements with other operators or countries (eg, accounting rates.)

## 1.8 Appellate Process

The RTUK and ICTA are quasi-independent regulatory authorities and their decisions are qualified as “administrative decisions” under Turkish Law. Administrative law and its procedural rules are regulated by the Law on Administrative Procedures No 2577 (“Law No 2577”). As a general principle of Law No 2577, unless the law states otherwise, an action for nullity can be filed before an administrative court against administrative decisions within 60 days following the decision.

Pursuant to Law No 2577, an action for nullity against administrative decisions can be filed:

- 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 laws.

In other words, an action for nullity can be filed either on the procedures or on the merits of the administrative decision. It is possible to appeal the decisions of the administrative courts before the Regional Administrative Courts within 30 days, starting from the notification of the administrative court's decision.

### 1.9 Annual or Recurring Fees

Licence fees for cable and satellite broadcasting are determined by the RTUK every year by annually increasing the fees in accordance with the annual revaluation rate determined and declared by the Ministry of Finance. The licence fees are published in the website of the RTUK. Furthermore, an annual usage fee is charged for channels and radio frequencies allocated for radio and television broadcast service to be transmitted through a terrestrial network.

As regards the fees for the telecom sector, an administrative fee of 0.35% of the yearly net sales must be paid to the ICTA for the operations that are authorised through notification process and regarding the operations that are authorised through the right of use process, the specific fee for the relevant resource to be used in the operation must be paid in addition to the administrative fee. As an example, fixed line operators which require allocation of numbers must pay an administrative fee as well as the fees determined for the numbering blocks allocated to the relevant operators. Furthermore, the operators must annually pay a Universal Service Fee in the amount of 1% of their yearly net sales.

## 2. Broadcasting/Media

### 2.1 Important Companies

Turkish Media at a Glance, the report issued by the Directorate General of Press and Information, indicates that in 2016 the three major broadcasting networks in Turkey were Doğan Group, Doğuş Group and Turkuvaz Group with a market share of 13.74%, 11.48% and 10.95% respectively.

Companies providing their services actively through Türksat Satellite are Digiturk Digital Platform Teknoloji Hizmetleri A.Ş. (acquired by beIN Group in August 2016), Doğan TV Digital Platform İşletmeciliği A.Ş. (D-Smart), Platformturk Dijital Platform Hizmetleri A.Ş. (Filbox) and Türk Telekomünikasyon A.Ş. (formerly TTNET) (Tivibu). According to the report issued by ICTA, the number of domestic users in the second quarter of 2017 is 2,626,646 for Digiturk and 1,004,606 for D-Smart; these are the two leading digital platforms providing services by satellite broadcasting.

Both public and private cable broadcasting in Turkey are operated by Türksat Uydu Haberleşme Kablo TV ve İşletme A.Ş., which is a monopoly in this sector.

### 2.2 Requirements for Obtaining a Licence/Authorisation to Provide Services

Media services providers must obtain separate licences from the RTUK for each broadcasting technique. Pursuant to Article 3/hh of the Broadcasting Law, 'broadcasting licence' means the certificate of permission issued by RTUK to media service providers separately for each broadcasting type, technique and network; this is conditional on the service providers meeting the conditions stated in the Broadcasting Law and by-laws and other regulations prepared in accordance with the Broadcasting Law to enable them to broadcast using any kind of technology via cable, satellite, terrestrial and similar networks.

Pursuant to Article 19 of the Broadcasting Law, broadcasting licence can be granted to joint stock companies established pursuant to the Turkish Commercial Code exclusively for providing radio, television and on-demand broadcast service. The same company can offer only one radio, one television and one on-demand broadcast service. Political parties, labour unions and professional organisations, co-operatives, associations, societies, foundations, local administrations, any companies which are established by them and of which they are direct or indirect shareholders, and capital market institutions and real persons and legal entities who are direct or indirect shareholders of these institutions cannot obtain a broadcasting licence.

The term of a broadcast licence is ten years.

With regard to costs, licence fees for cable and satellite broadcasting are determined by the RTUK every year by increasing the fees by the revaluation rate determined and declared every year by the Ministry of Finance. The licence fees are published in the website of the RTUK. Furthermore, an annual usage fee is charged for channels and radio frequencies allocated for radio and television broadcast service to be transmitted through terrestrial network.

### 2.3 Typical Term for a Licence/Authorisation to Provide Services

The term of broadcast licence for cable casting and satellite broadcasting is ten years. Media service-providers which want to renew their licences must submit a renewal request to the RTUK at least two months before the expiry of their broadcast licensing period.

Following this request, the license can be renewed provided that the technical competence of the media service provider is determined by an on-spot examination and that information and documents requested by RTUK are submitted.

Media service providers must pay a licence fee for the renewed license.

The terrestrial broadcasting licence's term is also ten years. The terrestrial broadcast capacity which expires at the end of the licence term will be put out to tender by the RTUK again.

## 2.4 Transfer of Licences/Authorisations to Other Entities

It is possible to transfer the licences/authorisations to other entities through changes in ultimate ownership and merger with the following conditions.

Pursuant to Article 20 of the Broadcasting Law, share transfers of a joint stock company which is holder of a broadcasting licence must be notified to the RTUK within 30 days following the transfer.

Furthermore, permission must be obtained from the RTUK before any merger or acquisition of the licence holder company and a merger or acquisition transaction must be notified to the RTUK within 30 days following the completion of the transaction.

If the company structure that will be formed following the share transfer, merger or acquisition violates the provisions of the Broadcasting Law, these violations must be remedied within the period that will be given by the RTUK, which will not exceed 90 days. Otherwise the relevant media service provider's licence will be cancelled.

In addition to the above, pursuant to Article 7 of Act No 4054 on the Protection of Competition ("Competition Act"), mergers or acquisitions which would result in significant lessening of competition in a market for goods or services within the whole or a part of Turkey must be notified to the Turkish Competition Board for authorisation, provided that the turnover thresholds regulated by Communiqué Concerning the Mergers and Acquisitions Calling For the Authorization Of the Competition Board are met by the relevant undertakings.

According to Article 10 of the Competition Act, upon the preliminary examination conducted within 15 days of the date of notification, the Competition Board shall render a decision on the notified transaction. The notification is deemed to be filed after completion of all required information and the 15-day examination period officially starts.

Pursuant to Article 10 (2) of the Competition Act, if the Competition Board does not provide its response or does not take any action, the transaction is deemed to have been cleared and acquired legal validity upon expiration of 30 days following the notification.

## 2.5 Spectrum Allocated

The procedures and principles of spectrum management are dealt with under the Regulation on Spectrum Management (the "Spectrum Regulation"). An operator that would like to use spectrum for their operations must apply to the ICTA. Should ICTA accept this request, a spectrum licence is granted and the allocated spectrum is registered with the database of the ICTA. In case a real or legal person, which is not an operator, would like to install a device requiring a spectrum allocation by the ICTA, such real or legal person must also apply to the ICTA for allocation of spectrum. On the other hand, the devices which operate in the allowed pre-determined spectrum ranges do not require an application to ICTA for spectrum allocation.

Pursuant to the Spectrum Regulation, ICTA prepares a National Frequency Plan by taking into account the ITU-R and CEPT documentations and announce it on its website. The National Frequency Plan includes general and detailed frequency plan, frequency interval for planned systems, authorisation procedure, reference information, output power and brief notes. The current National Frequency Plan covers the frequency range from 9 kHz to 275 GHz.

## 2.6 Restrictions on Common Ownership

Pursuant to Article 19/a of the Broadcasting Law, the same media service provider can only offer one radio, one television and one on-demand broadcast service.

Furthermore, Article 19/f of the Broadcasting Law states that a natural or legal person cannot directly or indirectly own shares in more than four different media service providers. Also, if a natural or legal person is a shareholder in more than one media service provider company, the annual commercial communication income of those companies cannot exceed the 30% of the total commercial communication income of the sector. If this rate is exceeded, said natural or legal persons must transfer their shares in order to decrease their income to a level below this rate within 90 days given by the RTUK.

## 2.7 Content Requirements and Regulations

Pursuant to the Broadcasting Law, in principle broadcasting services shall be in Turkish. However, it is also possible to broadcast in other languages or dialects. The broadcast services shall be conducted in the type and in the selected language notified to the RTUK.

If television organisations conducting general and thematic broadcasts include cartoons during broadcasts for children, at least 20% of the cartoons, and at least 40% of other children's programmes, must be made in the Turkish language and reflect the Turkish culture.

Radio and television enterprises are under the obligation to include Turkish folk and Turkish classical music programmes in their broadcasts at a certain percentage and at certain times to be determined by the RTUK. Pursuant to the Regulation on the Procedures and Principles of Media Services, total duration of these programmes may not be less than one hour within the weekly broadcasting duration.

Furthermore, television broadcasters holding national terrestrial broadcasting licence are under the obligation to allocate at least 50% of their broadcast time (excluding the time for news, sport events, contests, advertisements, tele-shopping) to the works of individuals or legal entities in one of the contracting states of the European Convention of Transfrontier Television or in one of the EU members (“European Works”), and to allocate 10% of their broadcast time or programme budget (excluding the time for news, sport events, contests, advertisements, tele-shopping) to European Works of independent producers.

Furthermore, it is not allowed to broadcast any programmes, which could impair the physical, mental, or moral development of young people and children within the time intervals that children may be viewing, even with a cautionary symbol in radio and television broadcasts. Also, on-demand media service providers are obliged to ensure the provision of media services that could adversely impact the physical, mental or moral development of young people and children in a way that children will not hear and see under normal circumstances.

Broadcasters shall ensure that commercial communication is auditorily and visually easily distinguishable from other elements of the media service; commercial communication must conform to the principles mentioned in the Broadcasting Law – eg, aiming to prevent any discrimination on the basis of sex, race, colour, ethnic origin, nationality, religion, philosophical beliefs or political ideas, disability, age and any discrimination, exploitation of women or behaviour that may harm health, the environment and safety.

Furthermore, the Regulation on Commercial Advertising and Unfair Commercial Practices also includes certain restriction on advertising such as prevention of statements or images that contradict general moral codes or disruptive advertisements to public health.

## **2.8 Difference in Regulations Applicable to Broadcasting Versus Cable**

Terrestrial, cable and satellite broadcasting in Turkey are mainly governed by the Broadcasting Law. However, there are a number of secondary regulations which govern different broadcast mediums and which have been issued pursuant to the Broadcasting Law, such as the Radio and Television Supreme Council Satellite Broadcasting Regula-

tion and the Radio and Television Supreme Council Cable Broadcasting Regulation.

There are not any differing regulations that apply to broadcasting versus cable and other multichannel video distribution platforms. Accordingly, related legislation among the above specified legislation will be applied to multichannel video distribution platforms based on the broadcast environment to be used.

## **2.9 Transition from Analogue to Digital Broadcasting**

The transition from analogue to digital broadcasting has not yet been completed in Turkey. The exact time when digital terrestrial television will be rolled out is still unclear, but the authorities are continuing to make progress on this issue.

The planning of the frequency spectrum, which is a limited and scarce resource, and the allocation in line with these plans are important issues. Within this scope, an agreement was entered into between RTUK and GATE Elektronik San. ve Tic. A.Ş. in order to plan frequencies which are dedicated for broadcasting. By this agreement, Terrestrial Radio and Television Electronic Regulation System Project was initiated and the researches were carried out at Bilkent University Communication and Spectrum Management Research Center (ISYAM).

The Terrestrial Digital Television (DVB-T2) National Frequency Plan was prepared by the Project Group formed by the personnel of RTSC, Bilkent University and GATE Elektronik.

## **3. Telecoms**

### **3.1 Important Companies**

Türk Telekomünikasyon A.Ş. (formerly TTNET) is the major fixed line telephone service with a market share of 57.5%, according to the number of subscribers. Superonline follows Türk Telekomünikasyon A.Ş. with 11.1% market share regarding the subscriber numbers as of the second quarter of 2017.

Turkcell İletişim Hizmetleri A.Ş., Vodafone Telekomünikasyon A.Ş. and Türk Telekomünikasyon A.Ş. (formerly Avea) are the three companies in the mobile sector with market shares of 40.4%, 36.6% and 23% respectively, according to the revenues as of the second quarter of 2017.

Market shares are 44.6%, 30.9% and 24.5% respectively for Turkcell, Vodafone and Türk Telekom, according to the number of subscribers as of 2017.

### 3.2 Requirements for Obtaining a Licence/Authorisation to Provide Services

Under the ECL, there are two types of authorisation to provide telecom services: (i) notification, and (ii) right of use.

With regard to the operations not requiring any allocation of resources from the ICTA, a notification must be made to the ICTA with the required documents for the planned operation. Once ICTA approves that the planned operation can be carried out through such a notification, the applicant company is accepted to be authorised to operate in Turkey. It is a new process that the applicant company will be accepted an authorised operator after the approval of the ICTA; this follows a recent change to the Authorization Regulation on 11 July 2016. Before this change, an applicant company was deemed an authorised operator upon registration of its notification with the ICTA.

Should an operation require allocation of resources (such as frequencies or numbers) by the ICTA, ICTA must grant a right of use for commencement of such operation. A little more documentation is needed for right of use applications compared to the ones required for the notification process; accordingly, the applicant company must provide documents and information regarding the resources to be allocated to it.

There are two different procedures with regard to obtainment of the right of use. First of all, if it is possible for various companies to operate the service or infrastructure that is subject of the right of use, the above specified procedure will be applied. A fixed line service (eg, PSTN lines used at homes) which require allocation of numbers, can be given as an example to this.

On the other hand, if only a limited number of operators can operate the service or the infrastructure, a tender is made and only the companies which are awarded as a result of the tender can provide the relevant service or infrastructure.

The GSM mobile service is the most common example of the electronic communication service which can be operated only by a limited number of operators. In Turkey, there are only three GSM operators (namely Turkcell, Turk Telekom (formerly Avea) and Vodafone) which have been awarded their rights of use through tender. The 3G and 4G spectrum were also allocated through tenders and the above specified GSM operators obtained the rights of use for the 3G and 4G licenses.

As regards the fees, an administrative fee of 0.35% of the yearly net sales must be paid to the ICTA for the operations that are authorised through the notification process and regarding the operations that are authorised through the right of use process, the specific fee for the relevant resource to

be used in the operation must be paid in addition to the administrative fee. As an example: for fixed line operators which require allocation of numbers, the operators must pay an administrative fee as well as the fees determined for the numbering blocks allocated to the relevant operators. Furthermore, the operators must annually pay a Universal Service Fee in the amount of 1% of their yearly net sales.

### 3.3 Transfer of Telecoms Licences/Authorisations to Other Entities

Pursuant to the Authorisation Regulation, operators are required to obtain permission from the ICTA before transfer, acquisition and movement of 10% or more of the shares of the operator company. An operator authorised for limited numbers of right of use is obliged to inform the ICTA in relation to share transfer, acquisition and movements up to 10% within two months following such transaction.

In case of a merger of an operator with another company or transfer of the operator to another company, pursuant to provisions of the Turkish Commercial Code, the company to be merged with or to take over the operator must meet authorisation application requirements provided under the Authorisation Regulation and the merger or takeover is subject to the permission of the ICTA.

If the merger or takeover will be realised under a company other than the operator, the operator must apply to the ICTA with a notification form and, when required, with the right of use application form to be determined by the ICTA to obtain permission for the transaction. In case the merger and takeover will be realised under the operator company, the operator must apply to the ICTA with the relevant information and documents for the same purpose.

If the ICTA give permission for the merger or takeover transaction, it informs the related persons within one month. If the merger or takeover is realised under a company other than the operator, the transaction must be informed to the ICTA within one month following the transaction. The ICTA issues a right of use authorisation to the new company and the new company is registered.

In addition to the above, pursuant to Article 7 of the Competition Act, the mergers or acquisitions, which would result in significant lessening of competition in a market for goods or services within the whole or a part of Turkey, must be notified to the Turkish Competition Board for authorisation provided that the turnover thresholds regulated by Communiqué Concerning the Mergers and Acquisitions Calling For the Authorization Of the Competition Board are met by the relevant undertakings.

According to Article 10 of the Competition Act, upon the preliminary examination conducted within 15 days of the

date of notification, the Competition Board shall render a decision on the notified transaction. The notification is deemed to be filed after completion of all required information and the 15-day examination period officially starts.

Pursuant to Article 10 (2) of the Competition Act, if the Competition Board does not provide its response or does not take any action, the transaction is deemed to have been cleared and acquired legal validity upon expiration of 30 days following the notification.

### **3.4 Regulations for Network-to-Network Interconnection and Access**

Network-to-network interconnection and access is regulated by the Regulation on Access and Interconnection Public (“Interconnection Regulation”), which was published in the Official Gazette dated 8 September 2009 and numbered 27343.

Pursuant to the Interconnection Regulation, the ICTA may require the operators having significant market power in the relevant market to make available the technical specifications, network specifications, terms and conditions regarding supply and usage, fees and similar information. The ICTA may also require the operators having significant market power to prepare reference access offers including the interconnection. The relevant operator shall prepare and submit its reference offer to the ICTA within three months following the date on which that obligation was imposed.

Operators are obliged to publish their reference access offers directly approved by the ICTA on their websites, and through other methods which can be determined by the ICTA, within one week following approval of offer by the ICTA.

The Interconnection Regulation also includes provisions for resolution of the interconnection or access disputes. Accordingly, if no agreement can be executed between the related operators within two months following a new access request, or if a dispute arises regarding the existing access agreement, each of the parties can apply to the ICTA for commencement of the settlement procedure. The ICTA notifies the other operator regarding the request and decides whether or not to accept the settlement request by taking into account several issues, such as the previous regulations made by the ICTA for the same or similar matters, availability of other dispute resolution mechanisms (eg, mediation) to solve the dispute in a more effective way, etc. If the ICTA decides to accept the settlement request, the settlement process is started. In case the parties cannot come to an agreement during this process, the ICTA is authorised to determine terms, conditions and prices of access agreement subject of the dispute within two months following commencement of the settlement procedure. This period may be extended for two months if

it is deemed necessary by the ICTA in exceptional circumstances – for example, if the request is related to a service not provided previously or the claim requires a comprehensive research, etc.

### **3.5 Accounting, Functional and Legal Separation**

Pursuant to the ECL, ICTA is authorised to impose accounting separation obligation on operators having significant market power in the relevant market. Operators which are imposed with an accounting separation obligation must keep separate accounts for their activity areas and business units, according to the principles and procedures to be determined by the ICTA. The Interconnection Regulation also provides a similar provision for accounting separation.

Furthermore, pursuant to the Authorisation Regulation, operators must separate accounts for its activities carried out under the authorisation that they have for each type of service. If the operator conducts fixed-line and mobile services under single authorisation, the operator is obliged to keep separate accounts concerning the fixed-line and mobile services.

On the other hand, there is no requirement for a structural and/or functional separation by operators and there is no planned or draft legislation requiring this separation.

### **3.6 Provisions for Access to Public and Private Land**

Article 22 of the ECL regulates the “right of access” as any kind of right to transfer, disassemble, change, repair, control, maintain all kinds of electronic communication infrastructure (and their supporting equipment under or over public and/or private property) or otherwise use these properties for provision of electronic communication services and similar purposes.

The details of the right of acceptance (eg, acceptance of the request for a right of way, freedom of agreement, protection of environment, obligations regarding the right of way, facility sharing and co-location priority, etc) is regulated in detail in articles 23–29 of the ECL.

Furthermore, Article 30 of the ECL regulates expropriation; this can be made on immovable property which is in private ownership, according to the principles stated in the Expropriation Law numbered 2942.

### **3.7 Rules which Govern the Use of Telephone Numbers**

Together with the ECL, the Numbering Regulation, published in the Official Gazette dated 27 June 2009 (the “Numbering Regulation”), is the main legislation regulating the numbering regime in the telecommunication sector. The Numbering Regulation describes the different types of num-

bering and which type can be allocated for which types of use.

One of the most important issues is number portability. Number portability is regulated by Article 32 of the ECL and the Numbering Regulation. Pursuant to these regulations, the operator must allow its subscribers to become a customer of another operator and to change his or her address upon request without changing the number.

On the other hand, as there is no regulated cross-portability obligation between GSM services and fixed-line services, a customer cannot request to use his or her fixed-line number for a GSM service or vice versa. Furthermore, it is not possible for a customer to keep the same geographical number if he moves to a different geographical location.

### 3.8 Regulation of Retail Tariff

Retail tariffs are mainly regulated by Articles 13 and 14 of the ECL. Pursuant to the ECL, tariff may be determined as one or more of the various fee items – for instance, fixed fee, conversation fee, line rental, subscription fee, etc. Operators can freely determine the tariffs to be applied provided that the tariffs are not contrary to the relevant legislation and the regulations of the ICTA. If it is determined that an operator has significant market power in the relevant market, the ICTA may determine the methods of approval, monitoring and inspection of the tariffs and the lower and upper limits of the tariffs and their application procedures and principles.

Furthermore, the Regulation on Tariff regulates details such as tariff arrangements, principles to be applied in the arrangement of schedules, and principles regarding the submission of schedules to the ICTA, publicity and publication of the tariffs.

### 3.9 Rules to Promote Service in Underserved Areas

The Law on Provision of Universal Service and Amendments to Certain Laws No 5369 (“Law on Universal Service”) regulates the rules to promote access to telecom service in rural or under-served areas. Pursuant to the Law on Universal Service, the operators are under the obligation to provide the universal service as specified in the law.

Fixed telephone services, payphone services, telephone directory services to be provided in print or electronic media, emergency call services and internet services are considered as universal services under the Law on Universal Service.

The operators are under the obligation to make yearly payments of a Universal Service Fee in the amount of 1% of their yearly net sales by the end of April of the following year.

The Authorisation Regulation also underlines the obligation of operators to comply with Law on Universal Services and provisions of the relevant legislation.

## 4. Wireless

### 4.1 Important Companies

There are various companies providing internet access (wi-fi hotspots) in the public domain (such as cafes, restaurants, hotels, cinemas), some of which can be listed as Türk Telekomünikasyon A.Ş. (formerly TTNET), Doruk İletişim ve Otomasyon Sanayi ve Ticaret A.Ş., Siba Bilişim Telekomünikasyon Elk. İth. Ihr. Ltd. Şti, and Ataknet Telekomünikasyon. However, it is not feasible to determine the dominant company in Turkey, since they provide the internet access to different limited selected areas.

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

As wireless services are covered within the scope of ECL, our explanations concerning the general requirements for obtaining a licence/authorisation to provide Telecom services are also applicable to general requirements for provision of wireless service. For further information, see above **3.2: Requirements for Obtaining a Licence/Authorisation to Provide Services** in the telecoms sector.

### 4.3 Transfer of Wireless Licences/Authorisations to Provide Wireless Services

Licences/authorisations for wireless services can be transferred to other entities through changes in the ultimate ownership or merger, subject to the terms and conditions stipulated under the ECL and Competition Act. The regulatory entity responsible for approving such transfers is ICTA, whereas the competition law entity responsible for such approval is the Competition Board. For further information about the regulatory requirements under the ECL and competition law requirements under the Competition Act, please see **3.2: Transfer of Telecoms Licences/Authorisations to other Entities**.

### 4.4 Spectrum Allocation

The procedures and principles of spectrum management is regulated by the Regulation on Spectrum Management.

Pursuant to the Spectrum Regulation, ICTA prepares a National Frequency Plan by taking into account the ITU-R and CEPT documentations and announces it on its website. The National Frequency Plan includes general and detailed frequency plan, frequency interval for planned systems, authorisation procedure, reference information, output power and brief notes. The current National Frequency Plan covers the frequency range from 9 kHz to 275 GHz.

#### **4.5 Procedures to Identify and Assign Spectrum Among Competitors**

According to the Spectrum Regulation, while managing spectrum allocation, the ICTA should pay attention for providing effective competition, ensuring transparency and avoiding discrimination.

The operators that would like to use spectrum for their operations must apply to the ICTA and request allocation of spectrum. Should ICTA accept this request, a spectrum licence is granted and the allocated spectrum is registered with the database of the ICTA. In case a real or legal person, who is not an operator, would like to install a device requiring a spectrum allocation by the ICTA, such real or legal person must also apply to the ICTA for allocation of spectrum. On the other hand, the devices which operate in the allowed pre-determined spectrum ranges do not require an application to ICTA for spectrum allocation.

For certain spectrum, tenders are made by the ICTA to grant an authorisation regarding the right to use of such spectrum. This approach was implemented within the scope of 2G, 3G and 4.5G tenders made in the previous years for mobile networks.

#### **4.6 Unlicensed Spectrum Uses**

Pursuant to the ECL, there are permitted uses of spectrum that do not require a licence (unlicensed spectrum uses). Authorised wireless equipment and systems, which operate in frequency bands allocated for specific purposes determined by ICTA and for which no frequency allocation is required according to the regulations of the ICTA, can be used without any permission to set up and use any wireless and without any need for wireless licences.

#### **4.7 Government Policy/Regulation to Promote Next Generation Mobile Services**

In Turkey, 4.5G was launched on 1 April 2016, providing higher internet speed, more data capacity and shorter latency. As yet, 5G has not been launched in Turkey, but the authorities claim that the country will be able to use 5G simultaneously with the rest of the world as developments continue.

#### **4.8 Price Regulation for Mobile Services**

In the telecommunications sector, ICTA has the authority to impose various types of price controls according to Regulation on Tariffs. The electronic communication service providers shall consider these tariffs while applying their own prices.

Regarding the mobile services, ICTA adopted a notification process and a price cap. Operators of mobile services are free to determine their own tariffs provided that they do not exceed the relevant maximum fees specified by ICTA

in “Mobile Electronic Communication Services Maximum Tariff Schedule”. The mobile operators have the obligation to notify the price list, which complies with the price cap, and any other changes made in that list within seven days before that tariff is applied.

There is no price control regarding the prices applied to the end-users by the internet service providers. On the other hand, internet services providers use the infrastructure of Turk Telekom to provide ADSL internet access – in other words they obtain wholesale service from Turk Telekom. Turk Telekom is required to have the approval of ICTA for the tariffs it applies for providing infrastructure services to the internet service providers.

#### **4.9 Regulation of Government and Commercial Wireless Uses**

There is no difference between the regulation of Government wireless uses and commercial wireless uses.

### **5. Satellite**

#### **5.1 Important Changes**

With regards to Satellite Communication Services, the market shares of the leading companies are 31.5% for Türksat, 23.8% for Eser Telekomünikasyon Sanayi ve Ticaret A.Ş. and 17.5% for Superonline according to the number of subscribers as of the second quarter of 2017.

With regards to Satellite Platform Services, Digital Platform Teknoloji Hizmetleri A.Ş. (Digitürk), Doğan TV Digital Platform İşletmeciliği A.Ş. (D Smart), Platformturk Dijital Platform Hizmetleri A.Ş. (Filbox) and Türk Telekom (formerly TTNET) operate actively in this sector. Digitürk and D-Smart has the biggest number of users with 2,626,646 and 1,004,606 users respectively.

With regards to satellite and cable TV services, Türksat is the only company providing such services.

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

Satellite services are mainly covered within the scope of the ECL, except satellite broadcasting services which are regulated by legislation on radio and television broadcasting services.

Accordingly, our explanations concerning the general requirements for obtaining a licence/authorisation to provide telecom services are also applicable to general requirements for provision of satellite service. For further information, please see above **3.2: Requirements for Obtaining a Licence/Authorisation to Provide Services**.

For further information on satellite broadcasting services, please see above **2.2: Requirements for Obtaining a Licence/Authorisation to Provide Services.**

### 5.3 Transfer of Satellite Licences/Authorisations to Other Entities

Satellite services are mainly covered within the scope of the ECL except the satellite broadcasting services which are regulated by the legislation on radio and television broadcasting services.

Accordingly, licences/authorisations for satellite services can be transferred to other entities through changes in the ultimate ownership or merger subject to the terms and conditions stipulated under the ECL and Competition Act. The regulatory entity responsible for approving such transfers is ICTA whereas the competition law entity responsible for such approval is the Competition Board. For further information about the regulatory requirements under the ECL and competition law requirements under the Competition Act, please see **3.3: Transfer of Telecoms Licences/Authorisations to other Entities.**

### 5.4 Spectrum Allocation to Satellite Service

The procedures and principles of spectrum management are regulated by the Spectrum Regulation, according to which the operators that would like to use spectrum for their operations must apply to the ICTA and request allocation of spectrum. Should ICTA accept this request, a spectrum licence is granted and the allocated spectrum is registered with the database of the ICTA. In case a real or legal person, who is not an operator, would like to install a device requiring a spectrum allocation by the ICTA, such real or legal person must also apply to the ICTA for allocation of spectrum. On the other hand, devices that operate in the allowed pre-determined spectrum ranges do not require an application to ICTA for spectrum allocation.

Pursuant to the Spectrum Regulation, ICTA prepares a National Frequency Plan by taking into account the ITU-R and CEPT documentations and announce it on its website. The National Frequency Plan includes a general and detailed frequency plan, a frequency interval for planned systems, an authorisation procedure, reference information, output power and brief notes. The current National Frequency Plan covers the frequency range from 9 kHz to 275 GHz.

### 5.5 International Telecommunication Union Membership

Turkey has been a member of the International Telecommunication Union (“ITU”) since its establishment in 1865 (as the International Telegraph Association).

According to a review of the ITU-R database of satellite filings – conducted on 22 July 2011 – relating to S-DAB, Turkey has eight ITU satellite network filings.

### 5.6 Provision of Service by Foreign-Licensed Satellites

According to the Authorisation Regulation, only limited liability and joint stock companies that are established in Turkey can be granted with an authorisation to become operators in Turkey in the electronic telecommunication sector, including satellite services. Therefore, foreign companies are not permitted to provide services in Turkey.

### 5.7 Milestone and Due Diligence Deadlines

Construction and launch of satellites is an area that the Turkish government is trying to develop. Currently, Turkey launches the satellites through international channels with co-operation agreements made with international companies.

## 6. Internet/Broadband

### 6.1 Important Companies

Türk Telekomünikasyon A.Ş (formerly TTNET), Superonline İletişim Hizmetleri A.Ş. and Vodafone Net are the top three operators with the biggest market shares of 67.0%, 20.0% and 5.7% respectively, according to the number of subscribers.

### 6.2 Regulation of Voice-Over-IP Services

Voice-over IP (“VoIP”) services are regulated within the scope of ECL. Therefore our explanations concerning the general requirements for obtaining a licence/authorisation to provide telecom services are also applicable to general requirements for provision of wireless service. For further information, please see above **3.2: Requirements for Obtaining a Licence/Authorisation to Provide Services.**

Over the Top VoIP services – such as Whatsapp call, Face-time call or Viber – are not currently regulated under Turkish legislation.

### 6.3 Interconnection and Access Regulatory Conditions to IP-Based Networks

Voice over IP services are regulated within the scope of ECL. Therefore our explanations concerning the general requirements for obtaining a licence/authorisation to provide telecom services are also applicable to general requirements for provision of wireless service. For further information, please see above **3.2: Requirements for Obtaining a Licence/Authorisation to Provide Services.**

Over the Top VoIP services, such as Whatsapp call, Face-time call or Viber, are not currently regulated under Turkish legislation.

#### **6.4 Net Neutrality Requirements**

Under Turkish legislation, there is no specific regulation regarding net neutrality. On the other hand, according to Article 4 (1)/j of the ECL, operators must be neutral in provision of electronic communication services. As there is no other explanation, it is not clear if the term “neutral” refers to neutrality as used in the sense of net neutrality. However, we are of the view that the neutrality in Article 4 (1)/j of the ECL should be interpreted broadly and cover “net neutrality”.

In addition to the above, ICTA rendered a decision against an internet service provider since it restricted access to certain websites without any order from the competent courts or authorised institutions. Based on the mentioned decision, we understand that ICTA also accepts the net neutrality principle; therefore, it prevents an internet service provider from being able to block different types of traffic over its network.

#### **6.5 Government Regulation of Internet/Broadband**

The Information Society Strategy and Action Plan of Turkey for 2015-2018 (“Plan”) has been approved by the High Planning Council and published in the Official Gazette dated 6 March 2015. Among other things about information society strategy, this plan aims to promote internet and broadband penetration in Turkey.

#### **6.6 Over-the-Top Internet-Based Providers**

OTT internet-based providers of media or telecommunications services currently are not regulated in Turkey and are not subject to any licensing requirements. However, due to the increasing importance of OTT internet-based providers both in Turkey and in the world, this issue has been discussed in the Draft National Broadband Strategy and Action Plan (2017-2020). This draft plan includes a section titled “Taking Measures Regarding OTT Services” – in other words, regulation of OTT services is stated as one of the strategic purposes in the draft. Additionally, the draft includes some planned actions in order to improve the measures for OTT internet-based service providers (Google, WhatsApp, YouTube, BİP, Wirofon, etc) to support domestic products. One of the main goals stated under the draft is to balance the burden between the internet infrastructure and service providers and OTT providers.

## **7. Privacy**

### **7.1 Government Access to Private Communications**

Under Turkish law, there are legal requirements that permit the government to obtain access to or intercept private communications.

Pursuant to Article 135 of the Code of Criminal Procedure No 5271 (“Code of Criminal Procedure”), law enforcement officers are provided with the possibility to install their own equipment and/or access to infrastructure to intercept communications or obtain stored user data. Law enforcement officers can intercept communications only with the decision of a judge or on non-delayable cases with the decision of a prosecutor (which must be approved by a competent judge).

The procedure for deciding on interception/monitoring of telecommunication was amended on 24 December 2016 with Law No 6755 regarding acceptance of the Decree Law on Measures to be Taken in the Scope of a State of Emergency and Regulations of Certain Institutions and Organizations (“Law No 6755”). Pursuant to Law No 6755, the public prosecutor must submit its decision regarding interception/monitoring within five days (prior to amendments there was no period stipulated in Article 135 and the decision was to be submitted immediately) and the judge must approve the decision within five days as well (while it was 24 hours under Article 135).

In addition to the law enforcement officers mentioned above, the Computer Forensics Expert Agency which was established by Law No 6758 on 19 November 2016, have been granted to authority to review, analyse, research and report all kinds of digital and electronic materials and information systems that can collect, process, store or transfer data.

Furthermore, pursuant to the Law on Duties and Responsibilities of Police Officers, communication via telecommunication or data transmitted between internet connections and internet resources can be detected and listened to and signal information can be evaluated and recorded with the decision of a judge or on non-delayable cases with the written instruction of (i) the directorate general of public security, (ii) the General Directorate of Security Intelligence chief or (iii) the department chair of cyber-crimes for prevention of certain crimes, including cyber-crimes. Said written instruction must be submitted for the approval of a competent judge within 24 hours and must be approved by the judge within 48 hours.

Pursuant to the State Intelligence Services and the National Intelligence Organization Law, in order to fulfil the duties under said law and in the presence of a serious danger to the democratic state of law and to the basic qualities specified in

the Turkish Constitution, telecommunication communication can be determined, listened to and signal information can be evaluated and recorded with the decision of a judge or on non-delayable cases with the written instruction of MIT Undersecretary of the National Intelligence Organization or his assistant. Said written instruction must be submitted for the approval of a competent judge within 24 hours and must be approved by the judge within 24 hours.

## 7.2 Use of Encryption Technology

Under Turkish Law, there are legal requirements governing the use of encryption or circumstances when TMT providers are required to use encryption technology. According to the Encryption Regulation No 27738, the ICTA may request the encryption keys and that is the main document regulating all matters related to encryption.

The Encryption Regulation requires obtainment of an approval from ICTA before importing a device encrypting communication. In order to get that approval, the encryption key must also be submitted to ICTA.

The Encryption Regulation mainly covers the encryption devices. On the other hand, as the Encryption Regulation is not a very well-written document, it is not clear if it also covers encryption software. With a broad interpretation of the Encryption Regulation, the encryption software can also be accepted within the scope the regulation; however, such a broad interpretation would not be correct considering the wording of the Encryption Regulation.

## 7.3 Liability of TMT Companies for Content Carried Over Their Networks

Pursuant to the Regulating Broadcasting in The Internet and Fighting Against Crimes Committed through Internet Broadcasting (Law No 5651), which regulates the obligations of the content providers, hosting providers and access providers, content providers are liable for content made available by themselves on the internet. Content providers are not liable for the contents of other persons for whom it provides a link, unless it is understood from the manner of its presentation that it has embraced the content for which it provides the link and aimed access of the users to such content.

Pursuant to Law No 5661, hosting providers are not liable for the content for which they provided hosting and access providers are not liable for the content for which they have provided access.

In the media sector, media service providers are responsible for the content and presentation of all broadcast services, including commercial communications and those services generated by third parties.

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

Internet Service Providers are not under any obligation to make a self-assessment and block and/or limit access to websites containing unlawful content. However, if the Internet Service Provider is requested to block a certain content in accordance with Law 5651 or the “Law on Intellectual and Artistic Works” dated 5 December 1951 and numbered 5846, it becomes obliged to prevent access to the relevant content.

## 7.5 Obligation of the TMT Companies to Retain Customer Data

Pursuant to Article 51/10 of ECL, operators subject to the ECL are obliged to retain customer data. Accordingly, those companies shall retain:

- the personal data which is subject to investigation, examination, inspection and disagreement – this can be stored until the relevant process is completed;
- the transaction records concerning access to personal data and other related systems – this is stored for for two years; and
- the records showing the consent of the subscribers/users for processing of their personal data – this can be stored during the subscription period (as a minimum).

Furthermore, Article 5 of Law No 5651 sets forth the obligations of a hosting service provider concerning data storage. Pursuant to the article, hosting providers are obliged to store the traffic information of its services for a period to be specified in the secondary regulation, which should not be less than one year and no more than two years. The hosting provider is also obliged to provide the accuracy, integrity and confidentiality of this information. The Regulation on the Principles and Procedures of Regulating the Publications on the Internet (“Regulation on Internet Publications”) sets forth the storage period as six months.

Article 6 of Law No 5651 states that the Internet Service Providers are obliged to store the traffic information about the services for a period to be specified in the secondary regulation, which should not be less than six months and no more than two years. The access provider is also obliged to guarantee the accuracy, integrity and confidentiality of this information. The Regulation on Internet Publications sets forth the storage period as one year.

## 7.6 Prohibited of Unsolicited Communications

According to the Law on Electronic Commerce No 6563, dated 23 October 2014 (the “E-Commerce Law”), companies which intend to send electronic communication messages to consumers for commercial purposes must obtain the prior consent of such consumers, in other words an opt-in system is regulated for sending commercial electronic communication. Furthermore, in each electronic communication, such

companies must provide consumers with the opportunity to opt-out any time even if they have given their consent.

## 8. Future

### 8.1 Status and Process of Convergence

By 1 April 2016, 4.5G was launched, providing higher internet speed, more data capacity and shorter latency. Although 5G is not yet launched in Turkey, the authorities claim that the country will be able to use 5G simultaneously with the rest of the world as developments continue. The Head of Information and Telecommunications Technologies Authority recently stated that Turkey will be able to use 5G as of 2020.

Furthermore, studies relating to the transition from analogue to digital broadcasting are still in progress.

These developments will ensure the increase in the process of convergence of telecom, media and technology in Turkey.

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