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The International Comparative Legal Guide to:

Telecoms, Media & Internet Laws & Regulations 2016

9th Edition

A practical cross-border insight into telecoms, media and internet laws and regulations

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General Chapter:

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Country Question and Answer Chapters:

EDITORIAL

Welcome to the ninth edition of *The International Comparative Legal Guide to: Telecoms, Media & Internet Laws & Regulations*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of telecoms, media and internet laws and regulations.

It is divided into two main sections:

One general chapter. This chapter provides an overview of the EU Regulatory Framework for electronic communications and services in the EU Member States.

Country question and answer chapters. These provide a broad overview of common issues in telecoms, media and internet laws and regulations in 37 jurisdictions.

All chapters are written by leading telecoms, media and internet lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Rob Bratby of Olswang LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The International Comparative Legal Guide series is also available online at www.iclg.co.uk.

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1 Overview

1.1 Please describe the: (a) telecoms; (b) audio-visual media distribution; and (c) internet infrastructure sectors in Turkey, in particular by reference to each sector's: (i) importance (e.g. measured by annual revenue); (ii) 3-5 most important companies; (iii) whether they have been liberalised and are open to competition; and (iv) whether they are open to foreign investment.

(a) Telecoms:

The Turkish telecommunications sector has continually exhibited significant growth, with the first quarterly report of 2015, as published by the Information and Telecommunication Technologies Authority ("ICTA"), stating that the total revenue of the telecoms sector for the quarter, including fixed and mobile operators, was valued at EUR 2.5 billion.

After the 2003 ruling that Türk Telekomünikasyon A.Ş. (Turk Telekom) constituted a monopoly in rendering local and international telephony services – including the establishment and administration of infrastructure – a transition period of liberalisation was experienced in the Turkish telecoms sector from 2003 to 2010. While this period did not realise a fully liberalised and competitive Turkish telecoms sector, subsequent steps have aimed to increase liberalisation and competition in the provision of electronic communication services.

Following the liberalisation of the telecoms sector, the most important companies in the sector are now Turk Telekom, Turkcell, Avea and Vodafone. These companies are also regarded as having significant market power ("SMP") by ICTA.

The telecoms sector is liberalised and is open to competition under the supervision of the Competition Authority. Additional measures, such as the introduction of number portability in 2009, have also served to increase competition in this sector. Foreign investment is possible in this sector.

(b) Audio-visual media distribution:

After a change to the Turkish Constitution in 1993 which removed the public monopoly on radio and TV, private radio and TV broadcasting activities were initiated in Turkey. Then, in 1994, the Radio and Television Supreme Council ("RTSC") was established to regulate and monitor radio and TV activities. The revenue of the RTSC for the year 2014 was reported as around EUR 60 million as of December 31, 2014. Currently the switch over from analogue to digital has not been completed in Turkey, however the latest amendments to the legislation pave way for a dual system following the switchover.

The state-owned radio and television broadcaster, Turkish Radio and Television Association ("TRT"), still plays a significant role in national audio-visual media distribution. However, as this sector has been liberalised and has been open to competition under the guidance of the Competition Authority, privately owned companies have also been active in this sector. The most important privately owned companies in this sector can be mentioned as Doğan Yayın, Doğuş and Turkuvaz Medya, and the significant companies having foreign capital can be listed as Al Jazeera Turkey and Doğan Yayın. On July 13, 2015 it was announced that Digiturk, one of the major satellite television providers in Turkey, had been sold to the Qatari beIN Media Group.

The sector is open to foreign investment. Of particular significance, among others, is that under current provisions, direct foreign shareholding for private broadcast service providers must not exceed 50% of the total share capital. In addition, foreign persons can only be a direct shareholder in a maximum of two media service provider entities.

(c) Internet:

The internet infrastructure market in Turkey has also been liberalised and is open to competition. One of the most significant events in the electronic telecommunications sector was commencement of the privatisation of Turk Telekom in 2003, as it was ruled to be a monopoly in providing PSTN services; telephony and ADSL services have also been separated under Turk Telekom and TTNET (a Turk Telekom company).

With regards to this sector, the main players can be named as TTNET, D-Smart, Superonline and Turknet.

The internet infrastructure sector is open to foreign investment. The total revenue of internet service providers for the first quarter of 2014 has been reported as EUR 445 million.

1.2 List the most important legislation which applies to the: (a) telecoms; (b) audio-visual media distribution; and (c) internet, sectors in Turkey.

(a) Telecoms and internet:

- Electronic Communication Law No. 5809 dated November 05, 2008.
- Regulation on Data Privacy and Process of Personal Data in Telecommunications Sector, dated July 24, 2012.
- Regulation on Consumer Rights in Telecommunication Sector dated July 28, 2010.
- Authorization Regulation in Telecommunications Sector dated January 15, 2010.

- Regulation on Access and Interconnection dated September 08, 2009.
- Law on the Regulation of the Publications Made Available on the Internet and the Fight Against the Crimes Committed Through Those Publications No. 5651 dated May 23, 2007 ("Law 5651").
- Law on the Regulation of Electronic Commerce No. 5653 dated May 11, 2014 ("E-Commerce Law").

(b) Audio-visual media distribution:

The Turkish Broadcasting Law No. 6112 (the "Law 6112") dated March 03, 2011 applies. The Regulation on Procedures and Principles of Media Services, as well as the Regulation on Administrative and Financial Conditions with which Media Service Providers and Platform and Infrastructure Operators are Required to Comply, complement the law and the main principles of audio-visual media distribution, administrative and financial conditions, as well as including advertisements and broadcasting principles, are also stipulated in these regulations.

The Competition Act dated December 07, 1994 is relevant to all sectors.

1.3 List the government ministries, regulators, other agencies and major industry self-regulatory bodies which have a role in the regulation of the: (a) telecoms; (b) audio-visual media distribution; and (c) internet sectors in Turkey.

The relevant ministry in these sectors is the Ministry of Transportation, Maritime Affairs and Communication.

(a) Telecoms and internet:

In Turkey, the main regulator in telecommunications and internet is ICTA. ICTA, independently established in 2000, having a seat in Ankara, is an independent administrative authority responsible for the regulation and inspection of the telecommunications sector. One of ICTA's main functions is to issue regulations related to the authorisation of entities in the area of electronic communications services and inspect the authorised firms in terms of their compliance with the relevant legislation and agreements, along with its power to impose sanctions on non-compliant entities.

Following ICTA, the Presidency of Telecommunication ("Presidency"), operating under the structure of ICTA, is also responsible for executing and monitoring electronic communications by all means, including the internet.

The Access Providers Association was incorporated in 2014 as per Law 5651, which regulates the crimes committed through internet content. Although it is not a typical self-regulatory body, the Association is responsible for executing blocking of access decisions and other complaints received by users regarding personal rights and privacy matters. However, while the Council of State ordered a suspension of the execution of the charter of the Association on January 20, 2015, the Association has remained operating in its role as designated by Law 5651.

The Competition Authority and ICTA have signed a protocol with respect to competition matters in the telecommunications sector. As per the protocol, in order to ensure a competitive market in the telecommunications sector, the Competition Authority should take the opinion of ICTA, along with the regulatory arrangements made by ICTA.

(b) Audio-visual media distribution:

The main regulator in audio-visual media distribution is the RTSC. The RTSC is responsible for regulating and monitoring radio and television broadcasts, carrying out inspections at its own discretion or upon complaints as it is responsible for compliance of all TV and radio commercials and content with general programming principles. It is an independent public authority whose members are appointed by the National Parliament General Assembly as per the Turkish Constitution.

The RTSC is also the competent authority for issuing licences and permits for establishments engaged in broadcasting through different channels, such as satellite, cable and IPTV.

The Competition Authority is the competent authority regarding competition matters in Turkey. Without being limited to any of the sectors, the Competition Authority enforces competition laws and is charged with taking the necessary measures, cautions and executing the necessary regulations in order to prevent practices and operations of undertakings which exploit efficient competitive conditions within the market.

1.4 Are there any restrictions on foreign ownership or investment in the: (a) telecoms; (b) audio-visual media distribution; and (c) internet sectors in Turkey?

There are no restrictions on foreign ownership or investment in the telecoms and internet sectors in Turkey, despite the mandatory requirements in order to be granted a licence or authorisation.

In the audio-visual media distribution sector, foreign shareholders can only own up to 50% of the shares of a media service provider. Additionally, a foreign person can only be a direct shareholder in a maximum of two media service provider entities.

For the requirements in the telecoms and internet infrastructure sectors please see our explanation under question 2.6.

2 Telecoms

General

2.1 Is Turkey a member of the World Trade Organisation? Has Turkey made commitments under the GATS regarding telecommunications and has Turkey adopted and implemented the telecoms reference paper?

Turkey has been a member of the World Trade Organisation since March 26, 1995. Turkey has also made commitments under the GATS regarding the telecommunications sector along with mail and courier sectors. However, Turkey did not adopt the telecoms reference paper as a whole and had some exemptions.

2.2 How is the provision of telecoms (or electronic communications) networks and services regulated?

Please refer to our explanations under questions 1.2 and 1.3.

2.3 Who are the regulatory and competition law authorities in Turkey? How are their roles differentiated? Are they independent from the government?

The Competition Authority is the one and only regulatory body regarding competition matters and it is independent from the government. It is authorised to monitor the sectors and ensure competition. The Competition Authority works in coordination with other regulatory bodies in regulated sectors.

2.4 Are decisions of the national regulatory authority able to be appealed? If so, to which court or body, and on what basis?

As the decisions of ICTA are regarded as administrative, the Secretary of State is the competent authority for challenging such decisions.

As per the Code of Administrative Procedures, a cancellation action or request to suspend the execution of a decision rendered by ICTA can be filed within 60 days upon notification or announcement.

The Secretary of State solely examines whether the decision is in compliance with the relevant legislation and does not comment or limit the competency of ICTA.

Licences and Authorisations

2.5 What types of general and individual authorisations are used in Turkey?

Under the Electronic Communication Law, companies providing Electronic Communication Services ("ECS") and/or which construct and operate an Electronic Communication Network ("ECN") or other electronic communications infrastructure must notify ICTA of these intentions before they commence the provision of such services.

The procedure of notification differs depending on whether or not the company will require the allocation of resources for the provision of these services, with the two types of authorisation being *notification* and *right to use*.

Companies that do not require the allocation of resources such as numbers, frequency or satellite position will be able to provide their intended services upon notification of ICTA in accordance with the established terms and conditions. In the case of companies needing allocation of resources, such companies must obtain a right of use from ICTA, which must be issued within 30 days of application.

The Electronic Communication Law also grants ICTA authorisation to determine which types of ECS can be obtained subject to a right of use and which ECS require a limited number of resources that must only be handled by a limited number of service providers.

An exemption from the requirements of the authorisation regime is set forth under the Electronic Communication Law for ECS and/or ECN intended for personal use of real or legal persons.

2.6 Please summarise the main requirements of Turkey's general authorisation.

As per Article 7 of the Regulation Relating to Authorisation in the Electronic Communication Sector, the main requirements for a company applying to ICTA for notification or right to use are:

a) being a joint stock company or limited liability company incorporated in accordance with Turkish Law only for the purposes of providing the services subject to authorisation or in addition to providing services such as device sales, set-up, maintenance and consultation, which are required for and/or is related to the services subject to the authorisation; and

b) having the scope of activities as "the provision of electronic communication/telecommunication services and/or the establishment and running of communication networks or infrastructures" or the electronic communications activity that they are applying for authorisation for.

c) Companies applying for authorisation to provide fixed telephone services must be established with a capital of at least 1,000,000 TRY.

There are also conditions that apply to real person shareholders who own at least 10% of the company's shares and the people authorised to manage and represent the company, such as they should not have been sentenced for punishment restricting freedom due to crimes relating to information technologies as listed in the Turkish Criminal Code and not to have been sentenced to hard labour or a prison sentence longer than five years, etc.

2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded.

Authorisations are granted for each type of electronic service. These authorisations can be granted for a period up to 25 years, but, pursuant to the conditions stated in the Electronic Communications Law, granted authorisations can be revoked by ICTA. For rights of use that have not been limited by ICTA, the service provider may apply for renewal between six and 12 months before the right of use expires.

In order to transfer the authorisation, the company must apply to ICTA by submitting the required application form and any other information and/or documentation requested by ICTA. If the transferee company is already a service provider, there is no need to submit an application form. Upon granting of permission of transfer by ICTA, the relevant authorisation is issued within a month.

Mergers and acquisitions in terms of authorised electronic communications must be submitted to ICTA. Upon submission of the application form and relevant documentation, obtaining consent from ICTA can take up to a month. If ICTA has granted consent to a transaction, it must be informed of the completion of the transaction within a month of completion.

In both a transfer of authorisation and consenting to mergers and acquisitions, ICTA considers market conditions, competition requirements and the market share of the service provider.

Public and Private Works

2.8 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

As per the Regulation on the Right of Passage of Fixed and Mobile Telecommunication Infrastructure and Network, the right of passage when implementing infrastructure for telecommunications services is granted by the Ministry of Transport, Maritime Affairs and Communications of Turkey.

Given that there is already existing infrastructure used for telecommunications services, it is regulated that such infrastructure, and facilities in general, can be shared with other telecommunications operators. All operators who have already implemented their infrastructure on or under public or private land are obligated to share their infrastructure with other operators. Although the cost can be determined at the discretion of the operator who owns the infrastructure, players in the market that are SMPs are obliged to determine the cost on the basis of expenses.

If such sharing is not possible, an operator that wants to implement infrastructure must apply to the Ministry in order to obtain a right of passage. As a result of the Ministry's evaluation, if such right is granted, the operator shall conduct an agreement with private land owners under the principle of freedom of contract. However, the operator must apply to the relevant public authority if the land is public. Such agreements and applications must be done within 120 days as of the grant of the right.

Access and Interconnection

2.9 How is network-to-network interconnection and access mandated?

The Regulation on Access and Interconnection defines access as all types of access in any form to the components of electronic communication networks, including interconnection.

In the case ICTA determines a service provider having SMP is not allowing other service providers access or is presenting unreasonable terms and conditions to the same effect, preventing competition and/or the situation is to the detriment of the end-users, ICTA may impose an obligation on the service provider with SMP to accept the requests for access from other service providers.

Article 9 of the Regulation grants ICTA the same right to determine obligations for service providers with SMP that similarly do not allow interconnection or obligations for interconnection with service providers if they cannot reach an agreement relating to interconnection.

In both situations, if the service provider with SMP can prove, based on objective criteria, that it cannot provide full access or interconnection, ICTA may allow for a limitation of the obligation imposed on the service provider with SMP.

2.10 How are interconnection or access disputes resolved?

The Electronic Communication Law enables ICTA to implement dispute resolution procedures between service providers. As per the Law, in the situation that, pursuant to a request for access, an agreement has not been reached within two months or there is a dispute relating to an existing access agreement, upon the application of either of the parties ICTA can implement dispute resolution procedures and take any measures in the interim that it deems necessary for the public good.

2.11 Which operators are required to publish their standard interconnection contracts and/or prices?

ICTA can impose an obligation on operators with SMP to publish their standard interconnection contracts and prices. These operators must submit a number of documents in order to substantiate their costs and justify their prices. Unless otherwise stated by ICTA, such stated contract and prices are renewed annually based on the submissions in place; however, operators are allowed to submit an offer to make changes based on changing market conditions and technological developments.

Furthermore, operators must submit an approved copy of their interconnection and access agreements to the ICTA within 15 days of execution. In the case ICTA finds any terms not in compliance with laws and regulations, then the operator must submit the correct form to the ICTA within 30 days.

2.12 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and, if so, how?

As per Article 12 of the Regulation on Access and Interconnection, service providers are free to determine charges for access – including interconnection – provided that they adhere to the principles set out in the Regulation. However, ICTA has the right to impose on service providers with SMP the obligation to determine their charges based on costs. If such an obligation is imposed by ICTA, the service provider must prove that the access charges are based on costs and if they fail to do so the charges can be determined by ICTA.

2.13 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?

Operators are not subject to functional or legal separation. Even though they have a tendency to undertake a functional separation of different types of services they provide, such a separation is not required by the law: Turkcell, which is a mobile operator, also has another entity named Superonline which provides internet services solely at the discretion of itself, but this is only a preference, and does not go beyond a commercial decision.

Although the legislation does not impose a general accounting separation, the Electronic Communication Law states that operators having SMP may be obligated to undertake accounting separation, and ICTA is competent to impose such obligation. For example, Turk Telekom, Avea, Vodafone and Turkcell, which have been determined to be having SMP in the relevant market, are under the obligation of accounting separation.

It should also be noted that, after Turk Telekom was privatised, certain functional and legal separation obligations were imposed and Turk Telekom was obliged to provide retail internet services via TTNet, through another legal entity.

2.14 Are owners of existing copper local loop access infrastructure required to unbundle their facilities and if so, on what terms and subject to what regulatory controls? Are cable TV operators also so required?

Pursuant to Turkish competition law, agreements under which the supplier makes the sale of a product or service conditional upon the sale of another product and/or service or conditional upon the display of another good or service by the purchaser are deemed in violation of competition law, unless there are commercial justifications. Service providers can offer bundled services if they have objective reasons and they do not impede competition (including by abuse of dominant position).

It is worth stating that the Competition Authority rendered a decision in 2009 evaluating whether Turk Telekom had abused its dominant position in the ADSL market by requiring end-users to have fixed line telephones in order to provide them with ADSL service. Since at the time the Competition Authority rendered the decision, in 2009, there were no regulations imposing the provision of NDSL services, it was alleged that Turk Telekom had abused its dominant position in the ADSL market for the benefit of its PSTN services. In its decision, the Competition Authority concluded that Turk Telekom abused its dominant position in the ADSL market, and a grace period of three months was granted to Turk Telekom to adapt its services to NDSL and make the required application to ICTA.

ICTA, by issuing the Communiqué on Procedures and Principles Regarding Unbundled Access to the Local Loop (the "Communiqué"), imposed certain obligations on service providers holding SMP and by doing so has enabled service providers with few or no facilities to offer services by having access to other networks.

2.15 How are existing interconnection and access regulatory conditions to be applied to next generation (IP-based) networks? Are there any regulations or proposals for regulations relating to next-generation access (fibre to the home, or fibre to the cabinet)? Are any 'regulatory holidays' or other incentives to build fibre access networks proposed? Are there any requirements to share passive infrastructure such as ducts or poles?

Currently, there is no particular legislation regarding IP-based networks, therefore current interconnection and access conditions apply to IP-based networks.

With regard to incentives for the increase of fibre access network, pursuant to the ICTA decision of 03.10.2011, there is a regulatory holiday on the requirement of local loop unbundling for fibre access network. This regulatory holiday is in place until 03.10.2016, or until the proportion of fibre access users to total broadband users of the operator providing the fibre access network reaches 25%.

Price and Consumer Regulation

2.16 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?

As per the Regulation on Tariffs, ICTA is entitled to impose different types of price controls in the telecommunications sector. Being at the sole discretion of ICTA, the authority may adopt a notification process, set out the minimum/maximum tariffs, approve tariffs taking into consideration the expenditure of the services and, lastly, set out a price cap for the tariffs. Electronic communication service providers must comply with the practices of ICTA before applying their own prices.

With regards to mobile services, ICTA has set out a price cap and adopted a notification process. Thus, mobile operators must notify their price list and any changes occurred therein, within seven days before applying such tariff, provided that the prices are compliant with the price cap.

On the other hand, ICTA has adopted a notification process for fixed telephone services in which only Turk Telekom is required to notify ICTA and have its approval beforehand.

Turk Telekom is also required to have the approval of ICTA when providing infrastructure services to internet service providers. However, there is no price control with regards to the relationship between internet service providers and consumers.

2.17 Is the provision of electronic communications services to consumers subject to any special rules and if so, in what principal respects?

The Regulation on Consumer Rights in Electronic Communication Sector sheds light on the rights of consumers and sets out the principles regarding the services to be provided to consumers. The main principles are transparency and notification of any and all matters which affect consumers. In principle, there are three obligations to be fulfilled by companies that provide electronic communication services. These are a) providing the trade name and address of the company, b) providing the definition, coverage, general terms and conditions, the net price of the tariff, including taxes of the services and the repairs and maintenance services provided by the company, c) providing effective dispute resolution mechanisms, and d) providing detailed bills upon request of the consumer.

The Regulation on the Quality of Services in Electronic Communication Sector also imposes the technical standards of quality in telecommunications. In this context, companies are obligated to keep their standards as stipulated and strive for the continuation of services without any interruptions.

Numbering

2.18 How are telephone numbers and network identifying codes allocated and by whom?

All telephone numbers are allocated by ICTA. In accordance with the Regulation on Numbering and the National Numbering Plan, service providers or candidate service providers apply for authorisation by a tender process. The applications are evaluated by ICTA, and in the event of deficient applications, applicants are notified and granted a time period of three months to complete the necessary documents. If the application is in compliance with the requirements of the regulations mentioned above, ICTA allocates the numbers in 30 days following the application. The numbers are granted for a limited time period.

Network identifying codes ending with the country code ".tr" are also allocated by ICTA, following an application by natural or legal persons to one of the registrars. The registrars are appointed in accordance with the Internet Domain Name Communiqué, and can be found as listed online. Following the application, the registrars run the process through the .tr Network Information System ("TRABİS").

2.19 Are there any special rules which govern the use of telephone numbers?

The Regulation on Numbering stipulates the conditions governing the use of allocated numbers. Accordingly, allocated numbers shall be used in compliance with the relevant legislation, the national numbering plan and the purpose specified during the application process for the allocated number, as well as the competition rules and consumer rights. Likewise, the allocated numbers cannot be transferred, or used by other persons, without the permission of ICTA.

2.20 Are there any obligations requiring number portability?

The Regulation on Number Portability stipulates that the authorised operators who allocate geographical, non-geographical and mobile numbers are required to provide number portability options to their subscribers in accordance with the principles of the aforementioned regulation.

3 Radio Spectrum

3.1 What authority regulates spectrum use?

According to the Electronic Communication Law, ICTA is the competent authority for spectrum management, monitoring and inspection, and the RTSC is the competent authority for regulating the radio spectrum, allocated to itself by ICTA, for radio and television broadcasting. Apart from broadcasting, ICTA allocates certain frequencies to the Turkish Armed Forces as well. ICTA reserves the right to release the frequencies allocated to the RTSC and Turkish Armed Forces.

3.2 How is the use of radio spectrum authorised in Turkey? What procedures are used to allocate spectrum between candidates – i.e. spectrum auctions, comparative 'beauty parades', etc.?

According to the Turkish Broadcasting Law No. 6112, media service providers that are established as radio broadcasters, operating in the area of radio broadcasting for at least one year and which meet the preliminary requirements in the tender specification, may participate in the ranking tender for radio frequencies and multiplex capacities, provided that they obtain a certificate of qualification from the RTSC to participate in the tender. Radio frequencies or multiplex capacities are allocated to the media service providers who are qualified at the tender.

The spectrum used in the telecoms sector is also regulated by authorisations granted and tenders organised by ICTA. Currently, Turkey is preparing to initiate the spectrum tender for fourth-generation mobile telecom services, which are hoping to be realised in 2015.

3.3 Can the use of spectrum be made licence-exempt? If so, under what conditions?

As per the Regulation on Spectrum Management prepared by ICTA, only those wireless telecommunications systems that are not subject to the authorisation of ICTA benefit from the use of spectrum for a maximum period of five years, provided that they obtain the permit from ICTA.

Under Turkish Broadcasting Law, use of spectrum cannot be made licence-exempt. Media service providers are required to obtain separate licences from the RTCS in order to broadcast through cable, satellite, terrestrial, and similar means pursuant to Article 27 of the Broadcasting Law. In the case of using the spectrum without licence, those who broadcast without a licence shall be liable to legal sanctions (judicial monetary fine and imprisonment) as per Article 33 of the Turkish Broadcasting Law and Article 60 of the Turkish Criminal Code regulating the sanctions to be imposed on legal entities.

3.4 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?

As per Article 37/(d) of the Turkish Broadcasting Law, the RTCS is authorised to determine the radio frequency usage fees. Accordingly, an annual usage fee is charged by the RTCS for radio frequency spectrum allocated to a media service provider.

Likewise, ICTA imposes a "right of usage fee" to those that are allocated with radio frequencies. The factors that are taken into account when calculating this fee can be listed as the total number of channels, the uplink and downlink frequencies, bandwidth, and the local and regional level of economic development.

3.5 What happens to spectrum licences if there is a change of control of the licensee?

As per the Turkish Broadcasting Law, broadcasting licences are granted to joint stock companies established in accordance with the provisions of the Turkish Commercial Code for the purpose of exclusively providing radio, television and on-demand broadcast services.

In principle, licences are not affected by a change of control of the licensee. However, a transfer of the shares or the merger/acquisition of a licence holder joint stock company shall be notified to the RTSC together with information containing the names and surnames of the shareholders, the structure of the new shareholder and the vote proportions subsequent to the share transfer or merger/acquisition within 30 days from the date of the operation.

With regard to mergers/acquisitions and spin offs, official permission shall be obtained from the RTSC for broadcasting services and from ICTA for telecommunications services before the operation with the necessary information and documents, and the operation shall be notified to the RTSC within 30 days after such operational processes as mentioned in the above paragraph.

If there is a violation of the Turkish Broadcasting Law after a share transfer, merger/acquisition or spin off procedure in terms of the structure of the company, such violation shall be remedied in a period not exceeding 90 days, which will be granted by the RTSC to the company. Otherwise, the broadcasting licences of the relevant media service providers are cancelled. If a violation occurs in terms of telecommunications services, ICTA is also authorised to cancel the authorisation of the service provider.

3.6 Are spectrum licences able to be assigned, traded or sub-licensed and if so on what conditions?

Please refer to our explanations under question 5.4 below for broadcasting services, as the same principles described there apply to radio spectrums.

With regard to telecommunications services, it is possible to assign the rights and obligations of an authorised service provider, provided that it obtains the permission of ICTA. Frequency can also be traded, which is called "spectrum trading", so long as the permission of ICTA is received.

4 Cyber-security, Interception, Encryption and Data Retention

4.1 Describe the legal framework (including listing relevant legislation) which governs the ability of the state (police, security services, etc.) to obtain access to private communications.

Accessing private communications is subject to a single piece of law, the Code of Criminal Procedure, together with the accompanying regulations and communiqués. Article 135 of the Code of Criminal Procedure entitles the Presidency to access private communications via the internet or telecommunications under several conditions. As per the Regulation on Principles and Procedures of Determining, Evaluating Signal Information and Recording Communication and the Incorporation, Duty and Authorizations of the Presidency, the Presidency is authorised to execute access orders. Further, the Regulation on the Execution of Measures such as Profiling

Communication, Covered Investigator and Monitoring with Technical Gadgets governs the decisions in which such measures are ordered and the scope of the measures.

The Code of Criminal Procedure stipulates that during the criminal inquisition and prosecution, in situations where a high level of doubt can be grounded on concrete evidence and an impossibility to gather evidence by other means arises, the high criminal court or – in a situation where a delay would be detrimental – the public prosecutor may decide that the communications of the suspect or the defendant be detected, monitored, recorded and the relevant signal information be evaluated. The public prosecutor is required to submit the decision for the court's approval, and the court shall give its decision within 24 hours at the latest. If the time period expires without a decision being rendered, or if the court does not decide in favour of such measures, the public prosecutor must immediately revoke its decision for injunction. Such measures can only be taken by the unanimous affirmative votes of three judges at the High Criminal Court.

The decisions made and proceedings conducted are to be kept confidential during the duration of these measures.

Within this context, the communications may be monitored, recorded, and the signal information can be evaluated **only** for the catalogue crimes that have been stated within Article 135. These catalogue crimes include migrant smuggling and human trafficking, wilful murder, torture, the drug trade, disruption of the unity of the state and the county, and crimes against the constitutional order and the implementation of this order. With respect to other crimes, communications can only be detected and their content shall not be taken into consideration during a trial, as it would go beyond the limits of the measures and constitute illegal evidence.

Communications of the suspect or the defendant with those individuals who may be exempt from testifying during a trial cannot be recorded.

Recordings relating to the content of the monitoring are required to be deleted within 10 days at the latest, under the supervision of the relevant institution's highest supervisor, or the Presidency.

These measures can only be foreseen for a maximum time period of two months and this period can only be extended for once. In the case of organised crime, this period can only be extended three times, provided that each is issued for one month at the most. Other than the above, no one is authorised to monitor or record the communications of another via telecommunications.

4.2 Summarise the rules which require market participants to maintain call interception (wire-tap) capabilities. Does this cover: (i) traditional telephone calls; (ii) VoIP calls; (iii) emails; and (iv) any other forms of communications?

All market participants, regardless of the character of telecommunication, which provide electronic communication services and/or the network or infrastructure of such services, within the scope of their authorisation, must implement the required interception capabilities, at their own costs, in order to let the government execute the measures stated above.

Pursuant to a change in the Regulation Relating to Authorisation in the Electronic Communication Sector made on 30.12.2014, authorised operators that have not established or maintained technical interception systems cannot provide services to users or other operators and, in turn, other authorised operators cannot provide services to such operators who have not established or updated the required technical systems.

4.3 How does the state intercept communications for a particular individual?

As explained under question 4.1, the state can only intercept communications if the abovementioned conditions are met, such as the presence of a court order. After being informed of such court order, the Presidency shall execute the order. It should be noted that the order will not be sent to the operators, as the communications logs are already being sent to the Presidency whenever they are needed.

4.4 Describe the rules governing the use of encryption and the circumstances when encryption keys need to be provided to the state.

Providing encrypted telecommunications services are subject to the permission of ICTA. When obtaining such permission, the encryption keys must be provided to ICTA, and ICTA is obliged to retain these keys to use when needed.

4.5 What call data are telecoms or internet, infrastructure operators obliged to retain and for how long?

The Regulation on the Process and the Protection of Personal Data in Telecommunication Sector published in the Official Gazette dated July 24, 2012 sets out the obligations of telecoms operators or infrastructure operators regarding data retention. The Regulation stipulates four different stages of retaining data, i.e. following and determining the origin of the telecommunications, determining the conclusion of the communications, determining the date, time and duration of the communications and determining the character of the communications.

In order to determine the foregoing, fixed and mobile operators must provide the phone number, subscriber, address and date when the number is allocated, the recipient's phone number, the starting and ending time of the communications and the types of communications. With regards to infrastructure operators, the IP number, if Network Address Translation is used the dynamic IP number, allocated identity of the user, the e-mail user account, the recipient account, port and server information, log-in and log-out date and time, and for dial-in connections the phone number needs to be logged.

Both telecoms and internet infrastructure operators must comply with the above mentioned obligations and must retain such information for one year starting from the communication. However, this one-year period has led to controversial executions of such obligation, as the Regulation does not set the maximum period of time of retaining these logs and this has led to some mobile operators having retained such information for more than five years.

It should be noted that, if any personal information is accessed, such access logs must be retained for four years.

5 Distribution of Audio-Visual Media

5.1 How is the distribution of audio-visual media regulated in Turkey?

Together with the legislation listed under question 1.3:

- the Regulation on Broadcasting via Cable Networks published in the Official Gazette dated June 15, 2011 numbered 27965;

- the Regulation on Broadcasting via Satellite published in the Official Gazette dated June 15, 2011 numbered 27965;
- the Regulation on Broadcasting via Terrestrial License and Tender Procedures published in the Official Gazette dated November 9, 2012 numbered 28462; and
- the Regulation on Broadcasting Principles, published on the Official Gazette on November 02, 2011,

are the most important legislation regarding the distribution of audio-visual media.

Audio-visual media is regulated by the RTSC and licences are granted for each broadcasting method (cable, satellite and terrestrial). Application procedures are designated under each of the relevant regulations. Besides, the broadcasting principles for all TV, radio and on-demand broadcasting services are set out in the Regulation on Broadcasting Principles.

5.2 Is content regulation (including advertising, as well as editorial) different for content broadcast via traditional distribution platforms as opposed to content delivered over the internet or other platforms? Please describe the main differences.

The Broadcasting Law is applicable to radio and television broadcasting services and on-demand media services under the jurisdiction of the Republic of Turkey, transmitted by any and all techniques, methods or means, and by electromagnetic waves or other means under any denotation. All content, including the principles of advertisements and editorials, is subject to the Regulation on Broadcasting Principles, which is also applicable to the above, e.g. the duration of advertisements. Although there are no distinctions regarding content, the process of licensing and the obligations of media service providers to consumers may vary due to the type of content. For example, under Article 8/3 of the Regulation on Broadcasting Principles, on-demand media service providers shall ensure that content that is likely to impair the physical, mental or moral development of minors and young people is only made available in such a way that there is an encrypted broadcast format or a similar protection method, as well as ensuring that the end user is an adult. Otherwise they should not be able to see such broadcasts.

5.3 Describe the different types of licences for the distribution of audio-visual media and their key obligations.

The RTSC stipulates four different types of licences. These are namely: terrestrial broadcasting licences for television and radio broadcasts; cable broadcasting licences for television broadcasts only; and satellite broadcasting licences for television and radio broadcasts. Only terrestrial broadcasting licences are subject to a ranking tender.

All licence holders that are considered media service providers must comply with the terms and conditions of broadcasting as listed in Turkish Broadcasting Law and relevant regulations as mentioned above.

5.4 Are licences assignable? If not, what rules apply? Are there restrictions on change of control of the licensee?

Broadcasting companies that have a terrestrial broadcasting licence cannot assign their licences. However, if they decide to terminate their radio or television services, these companies are obligated to return their licences back to the RTSC.

Other licensees that want to assign their licences must submit the documentation requested by the RTSC, such as a clearance certificate obtained from the RTSC, a social security clearance certificate, the board decision of the licensee, which includes the assignment decision, and a notarised assignment agreement. After an inspection the RTSC may approve the assignment. Without the registration of an approval regarding the assignment, the assignee cannot distribute any audio-visual media. The application fees paid by the assignor are deemed valid in the case of an assignment and no further fee is applicable.

There are no restrictions on a change of control of a licensee; however, any company that acquires the control of a licence is required to be in compliance with a shareholding structure that the RTSC imposes. The current restriction imposed on the shareholding structure of private broadcasting service providers under the Broadcasting Law is that direct foreign shareholdings cannot exceed 50% of the total share capital, and if there is an indirect foreign shareholding in a broadcast service provider, then the chairman, the vice-chairman and the majority of the board of directors and the general manager must be Turkish citizens, and the majority of the voting rights in the general assembly must belong to real persons or legal entities having Turkish citizenship. Besides, notification must be made to the RTSC within 30 days after the realisation of such a change of control.

6 Internet Infrastructure

6.1 How have the courts interpreted and applied any defences (e.g. 'mere conduit' or 'common carrier') available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

As per Law 5651, service providers are obliged to prevent access to any illegal content once they are notified of the existence of such content in accordance with the provisions of the Law. Once notified, service providers must ensure all access is prevented, including through alternative means. In the situation that service providers do not adhere to the obligations stated in Law 5651, such infringements will face administrative fines ranging from 10,000 to 50,000 TRY.

This being said, service providers are neither obliged to check the legality of the content transferred through their systems nor compelled to audit whether such content would lead to any liabilities.

While there have been no reported cases detailing the obligations of service providers, the obligations that service providers must ban all alternative forms of access once notified of the illegal content has only recently been introduced in amendments to Law 5651 which came into effect in February 2014. Consequently, the responsibility of service providers to restrict any and all alternative means of access – which has been criticised as technically impossible – may lead to actions being brought against service providers that have not been able to restrict these means of access in due time after notification.

6.2 Are telecommunications operators and/or internet service providers under any obligations (i.e. provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?

Telecommunications operators and internet service providers are not under any obligation to assist content owners as per the current legislation. However, Law 5651 requires internet service providers,

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including mobile operators offering internet services, to block access to any illegitimate content upon being aware of such content and to pursue the censorship decisions given by the courts. Thus, if the content owner whose rights are infringed obtains a court order in this regard, telecommunications operators and internet service providers are required to block access to such content.

6.3 Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks? Are there any 'net neutrality' requirements?

There are no specific regulations in this regard. However, the "net neutrality" concept has long been one of the target issues of ICTA.

Despite the lack of legislation, decisions of ICTA sets out the standards of internet service providers. The decision of ICTA dated January 08, 2012 and numbered 2012/DK-59/19 is considered to shed light on the "net neutrality" concept as it recently imposed sanctions on the biggest player of the internet service providers, TTNet, for blocking access to YouTube, Vimeo, etc., illegaly. However, no other action was taken by ICTA in this regard.

6.4 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content?

Law 5651 regulates blocking sites in detail.

Law 5651 stipulates three main grounds for blocking access to content.

Article 8 of Law 5651 regards the blocking of access to content that is illegal under the Turkish Criminal Code, and grants prosecutors and judges the power to issue blocking orders for situations where content relating to one or more of the stated catalogue crimes are featured.

Article 8/A stipulates cases in which courts can decide to remove or impose blocking orders on content concerning issues such as the security of life and private property, the right to life, the protection of national security and public order, the prevention of crimes or the protection of public health. This particular provision is highly debated, as the Presidency is authorised to decide on banning content at its own discretion in urgent cases and its decision must follow a request from the Prime Minister's Office or the related minister about issues such as the protection of national security and public order, the prevention of crimes or the protection of public health. The decision must be complied with within four hours of notification.

Article 9 relates to cases where a legal or real person's personal rights have been violated and Article 9/A Law introduces a process for applying for blocking orders on the grounds of violation of personal privacy. The application is limited to real persons, and in a situation that their right to personal privacy is violated by online content they are granted the right to directly apply to the Presidency for a blocking order.

In order to facilitate the blocking process, there is an association of access providers, and companies that are not members are banned from operation in Turkey. Upon receipt of a blocking order with respect to Article 8/A and/or Articles 9 and 9/A, the association shall block such content within four hours.

With respect to Article 8, once served with a notification, if issued with a blocking order by the court, access providers will be obligated to block all access to the content, including any and all alternative means of access. Similarly, Article 8/A foresees that if it is not possible to block the content by banning the URL address, the domain of such website will be blocked entirely. Access providers that fail to comply with a blocking order are sanctioned with a judicial monetary fine; those that do not comply with Article 8/A specifically shall be sanctioned with an administrative monetary fine between EUR 15,000-170,000.

In practice, when operators do not comply with blocking orders, the authorities tend to prevent access to the website, although this is not the original aim of the regulations.

6.5 How are 'voice over IP' services regulated?

There is no specific regulation regarding voice over IP in Turkey. ICTA tends to think that it must be subject to an authorisation, however there is no explicit regulation or established practice in this respect.

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