

TELECOMS AND MEDIA

Turkey



Telecoms and Media

Consulting editors

Alexander Brown, David Trapp

Simmons & Simmons

Quick reference guide enabling side-by-side comparison of local insights into local regulatory framework, foreign ownership restrictions and licensing requirements; spectrum use considerations; ex ante regulatory obligations; structural / functional separation considerations; universal service obligations; number allocation and portability; customer terms and conditions; net neutrality; platform regulation; next-generation access (NGA) networks; data protection and cybersecurity issues; big data; local storage requirements; foreign programmes and local content requirements; advertising; must-carry obligations; regulation of new media content; digital switchover; media plurality; regulatory agencies, competition law, and appeals; and recent trends.

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Contributors

Turkey



Cigdem Ayozger Ogun
cigdem@srp-legal.com
SRP Legal



Deniz Erkan
deniz.erkan@srp-legal.com
SRP Legal

COMMUNICATIONS POLICY

Regulatory and institutional structure

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

The main piece of legislation regulating the communications sector in Turkey is Law No. 5809 on Electronic Communications. The scope of Law No. 5809 is:

- the provision of electronic communications services and the construction and operation of the infrastructure and the associated network systems thereof;
- the manufacture, import, sale, construction and operation of all kinds of electronic communications equipment and systems;
- the planning and assignment of scarce resources including frequency and the regulation; and
- the authorisation, supervision and reconciliation activities relating to said issues.

Also, the communications sector in Turkey is particularly governed by:

- Law No. 5651 on Regulating Broadcasting on the Internet and Fighting Against Crimes Committed through Internet Broadcasting;
- Law No. 5070 on Electronic Signature;
- Law No. 6563 on the Regulation of E-Commerce;
- the Regulation on Network and Information Security in the Electronic Communications Sector;
- the Regulation on Processing and Protection of Personal Data in the Electronic Communications Sector;
- the Regulation on Consumer Rights for the Electronic Communications Sector;
- the Regulation on Authorisation in the Electronic Communications Sector;
- the Regulation on the Process of Identity Authentication of Applicants in the Electronic Communications Sector;
- the Regulation on Spectrum Management; and
- the Regulation on Access and Interconnection.

The prepared communiques and rendered decisions are enforced by the Information and Communication Technologies Authority (ICTA), and the general laws such as Capitals Markets Law No. 6362, Turkish Commercial Code No. 6102 and Criminal Procedural Law No. 5271 also govern the communications sector in Turkey.

The Ministry of Transport and Infrastructure (the Ministry) and ICTA are both vested with certain powers and duties under Law No. 5809. ICTA mainly has regulatory and executive powers, whereas the Ministry mainly has policymaking powers.

As per article 5 of Law No. 5809, the Ministry is vested with the following powers and duties:

- setting strategies and policies regarding electronic communications services that are based on scarce resources;
- determining objectives, principles and policies towards the aim of encouraging the development of the electronic communications sector and supporting the transformation into an information society;
- determining policies towards construction and development of electronic communications infrastructure, network and services;
- contributing to the creation of policies;

- representing the state in the international associations and organisations;
- conducting necessary research;
- taking necessary measures and performing coordination to ensure the continuity of electronic communications in the case of natural disasters and extraordinary situations;
- planning electronic communications services in the case of extraordinary situations and during war and performing necessary actions;
- encouraging domestic design and production of electronic communications systems, promoting research, development and training activities relating to the sectors; and
- determination of the amount of the source to be allocated by ICTA that shall not exceed 20 per cent of ICTA's income and allowing this source to be used by making necessary arrangements.

As per article 6 of Law No. 5809, ICTA is mainly vested with the following powers and duties:

- making regulations to create and protect competition and eliminating the practices that are obstructive, disruptive or limitative for competition;
- imposing obligations on operators with significant market power (SMP) in the relevant markets and on other operators when required, taking the necessary measures;
- inspecting breaches of competition and imposing sanctions;
- making necessary arrangements and supervisions pertaining to the rights of subscribers, users, consumers and end users as well as the processing of personal data and protection of privacy, rendering decisions;
- conducting the dispute-resolution procedure between the operators when necessary and taking the necessary measures;
- following developments in the electronic communications sector;
- planning and allocating the frequencies, satellite position and numbering necessary for the provision of electronic communications services and installation and operation of electronic communications networks and infrastructures;
- performing necessary regulations and inspections;
- supervising radio systems and determining the scope of commercial secrets;
- obtaining information and documentation that are deemed necessary;
- transferring sources that shall not exceed 20 per cent of the income, determining general criteria and implementation procedures and principles regarding tariffs to be imposed;
- approving reference access offers;
- determining provisions and conditions for authorisations and supervising their implementation and conformity;
- conducting frequency planning, assignment and registration procedures;
- ensuring the publication and implementation of the harmonised national standards for all kinds of systems and equipment, and creating technical regulations;
- coordinating the authorisation of institutions that will perform installation, measurement, maintenance and repair activities;
- conducting market analyses to determine the relevant market and operators that have SMP in the relevant market;
- determining all kinds of procedures and principles regarding fees;
- inspecting operators;
- taking necessary measures;
- making regulations prescribed by the legislation;
- inspecting the quality and standards of service for all kinds of electronic communications; and
- enacting by-laws, communiqués and other secondary regulations pertaining to the authorisations granted by Law No. 5809.

Although there is no restriction regarding foreign ownership under the communications law, under the Regulation on Authorisation for Electronic Communications Sector, for a company to be granted an authorisation by ICTA in the communications sector, the company has to be duly established as a limited liability or joint-stock company under Turkish Commercial Law No. 6102. Also, a foreign entity or individual can be the sole shareholder of such an authorised company.

Law stated - 25 April 2022

Authorisation/licensing regime

Describe the authorisation or licensing regime.

Within the scope of the authorisation regime that came into force with the Electronic Communications Law No. 5809, authorisation is made through notification or granting the right to use. Companies that are willing to provide electronic communications services or construct and operate electronic communications networks or infrastructure should notify ICTA of their intention via the Notification Form drafted by ICTA, before commencing activities. If the companies that have notified ICTA do not need the assignment of scarce resources, such as a number or frequency for electronic communications services or an electronic communications network or infrastructure that they plan to provide or operate, they shall be authorised under the notification to ICTA.

If the company requires the assignment of scarce resources, it shall be authorised upon receiving the right of use from ICTA. ICTA is entitled to decide whether it is necessary to grant a right of use to electronic communications services. ICTA issues the right of use within 30 days upon due application for electronic communications services made via the Right of Use Application Forms, for which the number of rights of use does not need to be limited.

Moreover, with ICTA Decision No. 2021/DK-YED/80, and published in the Official Gazette, dated 1 May 2021, a number of amendments were introduced in the Notification Form and the Application Form for the Right of Usage, such as the increase in number of documents and types of information to be submitted to ICTA. Information requested by ICTA are:

- company details;
- the target audience;
- infrastructure definition and network architecture;
- the satellites to be used;
- the planned time to start the service;
- the connection need between networks; and
- the frequency channels and numbers requested to be allocated.

Certain qualification control periods are foreseen for the operators authorised within the scope of the notification, and authorisation renewal periods of between 12 and six months prior to the expiry of the right to use, are foreseen for the operators authorised within the scope of the unlimited number of usage rights. The authorisations of the operators that cannot meet the criteria for any renewal period or control period will be cancelled. The said criteria are having the necessary number of personnel and qualifications, to have the necessary number of subscribers or net sales performance, to provide services actively and to not violate the relevant articles of the authorisation legislation repeatedly.

The authorisation fees are stipulated under the Regulation on Authorisation for Electronic Communications Sector. As per the Regulation, for the notification process, an administrative fee of 0.35 per cent of the yearly net sales must be paid to ICTA; for 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. The minimum fees for the right of use are determined by the Board of Ministers upon the proposal of ICTA and the resolution of the Ministry.

There is currently no distinct regulation regarding 4G, 4.5G and 5G mobile services. To be granted a spectrum for 5G mobile services, companies must participate in right-of-use tenders. The tenders regarding 4G and 4.5G have already been realised and finalised, whereas the right-of-use tender regarding 5G mobile services has yet to be realised. However, pursuant to the statement made by the officials of the Ministry of Transport and Infrastructure, the 5G frequency tender is aimed to be completed in 2022, thus making the first signal available to citizens in 2023.

Law stated - 25 April 2022

Flexibility in spectrum use

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

The main piece of legislation regarding spectrum management is the Spectrum Management Regulation (the Regulation) published in Official Gazette No. 27276, dated 2 July 2009. The Regulation determines the procedures and principles of management, allocation, assignment, national and international coordination and registration of radio frequencies assigned, as well as the withdrawal and reassignment of assigned frequencies if necessary, for the efficient and effective use of radio frequencies. The licences generally specify the permitted use of the licensed spectrum under the Regulation. The scope of permitted use is generally determined within the spectrum licences.

As per the Regulation, while managing spectrum allocation, ICTA shall pay attention to providing effective competition, ensuring transparency and avoiding discrimination. The planning is made pursuant to the decisions of organisations such as the International Telecommunication Union, the International Maritime Organisation, the International Civil Aviation Organisation, the European Union and the European Conference of Postal and Telecommunications Administrations, and frequencies are assigned to operators that are subject to authorisation for the duration stated in the certificate of authorisation granted for the right of use.

The trading of licensed radio-frequency spectrum is not prohibited under Turkish legislation. The trading of spectrum licences is not prohibited; however, to transfer spectrum frequency, operators must apply to ICTA for approval. ICTA shall decide for approval upon evaluation of the application by taking into consideration of the market and competition conditions of the transferee operator and other related issues. Upon ICTA's approval, a right of use shall be granted to the transferee operator within one month of the date on which the approval is granted.

Law stated - 25 April 2022

Ex-ante regulatory obligations

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

Communications markets that are subject to ex-ante regulation are:

- the call transfers on the fixed-network market;
- the call origination on the fixed-network market;
- the call termination on the fixed-network market;
- the fixed-line network access market;
- the fixed-voice telephony services market;
- the wholesale and retail leased-lines market;

- the access and call origination on the mobile-network market;
- the call termination on the mobile-network market; and
- the wholesale local-access and central-access market.

ICTA has the power to make both ex-ante regulations and ex-post regulations. As per article 6 of Law No. 5809 on Electronic Communications, ICTA is vested with the duty of conducting market analyses to determine the relevant market and the operators that have SMP in this relevant market and to inspect the breaches of competition in the electronic communications sector and impose sanctions if necessary.

Sanctions imposed on each of the markets are as follows:

- call transfers on the fixed-network market: there are no sanctions imposed;
- call origination on the fixed-network market: sanctions imposed on operators having SMP are access and interconnection, transparency, publication of reference offer, non-discrimination, tariff control, accounting separation and cost accounting, co-location and infrastructure sharing;
- call termination on the fixed-network market: sanctions imposed on operators having SMP are access and interconnection, transparency, non-discrimination, quality of service, tariff control, accounting separation and cost accounting, co-location and infrastructure sharing. Sanctions imposed on operators that do not have SMP are interconnection, non-discrimination and transparency;
- fixed-line network access market: sanctions imposed on operators having SMP are access, wholesale of leased lines, carrier selection and pre-selection, non-discrimination, transparency, publication of reference offer and tariff control;
- fixed-voice telephony services market: there are no sanctions imposed;
- wholesale and retail leased-lines market: sanctions imposed on wholesale leased lines are access, non-discrimination, transparency, publication of reference offer, tariff control, accounting separation and cost accounting and co-location and infrastructure sharing. Sanctions imposed on retail leased lines are tariff control and accounting separation and cost accounting;
- access and call origination on the mobile-network market: there are no sanctions imposed;
- call termination on the mobile-network market: sanctions imposed on mobile network operators are interconnection, non-discrimination, quality of service, transparency, publication of reference offer, tariff control, accounting separation and cost accounting and co-location. Sanctions imposed on other mobile operators are interconnection, non-discrimination and transparency; and
- wholesale local-access and central-access market: sanctions imposed are access, co-location and infrastructure sharing, tariff control, publication of reference offer, non-discrimination, transparency and accounting separation and cost accounting.

Law stated - 25 April 2022

Structural or functional separation

Is there a legal basis for requiring structural or functional separation between an operator's network and service activities? Has structural or functional separation been introduced or is it being contemplated?

Under article 6 of Law No. 5809 on Electronic Communications, ICTA is vested with inspecting breaches of competition in the electronic communications sector, imposing sanctions and taking the opinion of the Competition Authority on issues regarding breach of competition.

Additionally, as per article 7 of Law No. 5809, the Competition Board, while performing examinations and supervisions and while making any decisions on the electronic communications sector, including decisions about mergers and takeovers, primarily takes into consideration ICTA's view and the regulatory procedures of ICTA.

In the Telecommunication Sector Example in the Review Report on Financial Technologies in Payment Services published by the Competition Authority, it is stated that as a result of the regulations made by ICTA, an obligation for incumbent operators to share their infrastructure with other operators under certain conditions is indicated and in this respect, it is clear that new enterprises will enter to the market, which residents have an alternative channel to reach the customer, with vertical contracts.

Law stated - 25 April 2022

Universal service obligations and financing

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

Law No. 5369 on Universal Services stipulates the rules to promote access to telecom services in rural or under-served areas. Accordingly, operators that have a general authorisation, concession and authorisation agreement or a licence in the telecommunications sector are incumbent universal service providers.

Under Law No. 5369, universal services include:

- fixed telephone services;
- public payphone services;
- telephone directory services (printed or directories on electronic media);
- emergency call services;
- internet services;
- passenger transportation services for settlements to which maritime lines are the single option of access; and
- communications services regarding distress and safety at sea.

With the Amending Regulation on the Procedures and Principles Regarding the Collection of Universal Service Income and Expenses, which was published in Official Gazette No. 31585, dated 1 September 2021, mobile broadband, fibre to the home or fibre to the building and other fixed broadband internet services have been included within the scope of the services.

Additionally, the universal service provider operators are obliged to comply with the liabilities stipulated in Article 9 of the Regulation on the Procedures and Principles Regarding the Collection of Universal Service Income and Expenses.

For the financing of universal services provided, Turk Telekomunikasyon AS is obliged to deposit 1 per cent of its annual net sales until the end of April of the following year. Operators, except the ones liable to pay Treasury shares, are obliged to deposit 1 per cent of the annual net sales revenue by the end of June of the following year and operators that also carry out services that do not require payment of Treasury shares but are obliged to pay Treasury share due to their activities, are obliged to deposit 1 per cent of the annual net sales revenue, which does not constitute a basis for the Treasury share, to ICTA's account as a universal service contribution until the end of June of the following year. ICTA is obliged to notify the Ministry of Transport and Infrastructure of the 10 per cent of the share paid by the operators liable to pay Treasury share until the end of the following month in which said amount is paid, 20 per cent of the administrative penalties it has applied under the relevant laws by the end of the month following the month of collection and 20 per cent of the amount remaining after all expenditure is met every three months until the 15th day of the following month, before the payment to be made to the general budget in accordance with the Public Financial Management and Control Law No. 5018.

Following the collection of the aforementioned amounts, the net cost incurred owing to the operator's obligations to provide universal services and other expenses incurred within the scope of Law No. 5369 shall be financed by the Ministry.

Law stated - 25 April 2022

Number allocation and portability

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

Under Law No. 5809 on Electronic Communications, ICTA is authorised to allocate numbers and to prepare the National Numbering Plan and the National Frequency Plan under the policies of the Ministry. Number allocation and usage principles are specifically regulated under the Numbering Regulation. The purpose of that regulation is to ensure that the numbers used in the electronic communication networks are planned in a national context and are used effectively and efficiently under the stipulated plan.

Number portability is mainly regulated under the Regulation on Number Portability, which was amended under the Regulation on the Amendment of the Regulation on Number Portability published in Official Gazette No. 29546, dated 28 November 2015 and Official Gazette No. 31748, dated 12 February 2022. As per the Regulation on Number Portability, subscribers may change their operator, geographical position and service type without having to change their subscriber number. Operators are under the obligation to provide number portability. With the Amending Regulation, which was published in Official Gazette No. 31748, dated 12 February 2022, additions to the operation of the number porting request process for mobile number portability and criteria for rejection of the number porting were made. Moreover, the recipient operators are obliged to send messages confirming that they have received the number porting request.

Law stated - 25 April 2022

Customer terms and conditions

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

The customer terms and conditions between subscribers and operators are subject to the Regulation on Customer Rights in Electronic Communications Sector, which was amended under the Regulation Amending the Regulation on Customer Rights in Electronic Communications Sector (the Amending Regulation) and published in the Official Gazette No. 31723, dated 18 January 2022. The Amending Regulation sets forth new transparency obligations and obligations to inform to be imposed on the operators, alongside new terms to be applicable for subscription agreements concerning the establishment and execution issues.

The Regulation on Customer Rights in Electronic Communications Sector requires operators to be fully transparent and lays the burden of proof on the operator concerning subscriber requests and approvals.

Under the Amending Regulation, operators are obliged to keep the information and documents required for the establishment of the subscription agreement for 30 years after the subscription ends. The operator shall present an easily understandable one-page summary of the contract to the consumer in writing or electronically and shall include contract-related information such as service type, tariff name and monthly fee in this summary. The procedure regarding invoices sent electronically or via short message is also regulated in the Regulation, and the invoice shall be sent via short message if consumers do not prefer a different shipping method.

Pursuant to the Regulation on Customer Rights in Electronic Communications Sector, the customers have the following rights:

- access to services under the same terms with similar customers and benefiting from the services with fair prices without any discrimination;
- entering into agreements with the authorised operators;
- requesting that their information defined pursuant to the relevant legislation be or not be included in publicly available directories;
- benefiting from directory services being free of charge or for a price and being able to register with the directories without any discrimination;
- being informed of the emergency call services and accessing those services free of charge;
- requesting itemised invoices;
- requesting information about the scope of the services to be provided by the operators;
- access to clear, detailed and current information on the tariffs to be applied to the customers and being informed of any change to those tariffs before such change is applied;
- opting out in a simple way or by an original way of application to the service, from all the services under the campaigns or tariffs including value-added services that they opted in through short message service, call centre or internet;
- requesting equal treatment without any discrimination concerning resolving the malfunction problems; and
- receiving services in the standards determined by ICTA or by international institutions.

Last, the subscription agreement between the customer and the operator must be made in writing pursuant to the Regulation on Customer Rights in Electronic Communications Sector or electronically by authentication pursuant to the provisions of the Regulation on the Process of Identity Authentication of Applicants in the Electronic Communications Sector.

Law stated - 25 April 2022

Net neutrality

Are there limits on an internet service provider's freedom to control or prioritise the type or source of data that it delivers? Are there any other specific regulations or guidelines on net neutrality?

There are no regulations regarding net neutrality under Turkish legislation. However, in 2012, to restore net neutrality, ICTA imposed an administrative fine against an internet service provider owing to the internet service provider blocking some websites on its network without any court or competent authority's decision.

Law stated - 25 April 2022

Platform regulation

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

There are general and specific laws and regulations that apply to digital platform providers. For instance, Law No. 5809 on Electronic Communications includes provisions regarding digital platforms providing services by satellite broadcasting. Also, Law No. 6563 on Regulation of Electronic Commerce regulates the rules and procedures for electronic commerce platforms and digital marketing. Further, Law No. 4054 on the Protection of Competition in Turkey applies to the digital platform markets in Turkey. Moreover, all content published on the internet is subject to Law No. 5651 on Regulating Broadcasting on the Internet and Fighting Against Crimes Committed through Internet Broadcasting. Law No. 5651 restricts the publication of content constituting certain types of crime and content

violating the rights of third parties. Last, digital platforms are also subject to the laws and regulations on data protection and privacy.

With Law No. 7253 on the Amendment to the Law on Regulation of Publications on the Internet and Combating Crimes Committed through Such Publication, which entered into force following its publication in Official Gazette No. 31202, dated 31 July 2020, some amendments, especially those for the control of social-media networks, have been made in Law No. 5651. The purpose of the amendments regarding social-media networks was shown in the justification of Law No. 7253 as 'the need to impose obligations on social-networking platforms as well as states to take responsibility in combating illegal content'.

In addition to the definitions such as content provider, hosting provider, access provider and collective-use provider, the definition of 'social-network provider' has been added to Law No. 5651. Accordingly, social-network providers are defined as 'real or legal persons that enable users to create, view or share content such as text, images, sounds, locations on the internet for social-interaction purposes'. The definition of the traffic information that the hosting providers are obliged to keep for certain periods regarding the services they provide, internet protocol address, service start-end time, service type, transferred data amount and subscriber credentials, as well as 'port information' (virtual ports that are redirected via the internet or software), has also been added.

In addition to the decision to block access, it is now possible to decide to remove the content.

Social network providers established abroad accessed by more than one million daily users are obliged to appoint at least one legal or natural person as a representative in Turkey to fulfil the requirements of notifications and requests to be sent by official institutions, to respond to applications made by individuals under Law No. 5651 and to ensure that other obligations under Law No. 5651 are fulfilled. If the representative is a natural person, they must be a Turkish citizen. If the social-network provider does not fulfil the obligation to appoint a representative despite the notification made by ICTA, they may be subject to sanctions such as administrative fines of up to 40 million Turkish lira in total, an advertising ban and a reduction of internet traffic bandwidth of up to 90 per cent.

Another obligation for social-network providers that are domestically based or established abroad with more than one million daily users is to take the necessary measures to retain data in Turkey of those users located in Turkey. However, any specific sanction to be applied in the case of a violation of this obligation has not been foreseen.

Last, the social-network provider will be responsible for the compensation of the damages arising from content determined to be illegal by a judge or court decision is notified to the social-network provider and the network provider did not remove the content or block access within 24 hours.

Law stated - 25 April 2022

Next-Generation-Access (NGA) networks

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

In Turkey, there is no specific regulation in force for NGA networks. However, there are several ICTA board decisions regulating the NGA networks. In ICTA's 2022 plan, it is stipulated that new monitoring stations and vehicles, as well as hardware and software, will be supplied to adapt to new-generation technologies. Besides this, ICTA has also published several public releases indicating that the NGA penetration should be increased. There is also a National Broadband Strategy and Action Plan set out within the coordination of the Ministry of Transport and Infrastructure, which indicates that financial support models will be established for regions where broadband infrastructure is not available and where it is commercially difficult to provide service to support fixed and mobile broadband infrastructure investments.

Law stated - 25 April 2022

Data protection

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

Data protection in the electronic communications sector is mainly regulated under Law No. 5809 on Electronic Communications and the Regulation on Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector (the Regulation), published in Official Gazette No. 31324, dated 4 December 2020. Under these specific laws and regulations, operators are obliged to protect subscribers' information and their privacy. Also, communication must not be listened to, recorded, stored, intercepted or tracked without the explicit consent of all the relevant parties to the communication, except in cases where the relevant legislation and judicial decisions so require. In addition, operators are obliged to inform data subjects about the processing of their data within the scope of their previous explicit consent in the third quarter of each year. Otherwise, the data processing activity within the scope of the given consents must be ceased until the notification is made. Moreover, it has been stated that it is essential not to transfer traffic and location data abroad for reasons of national security. Operators are obliged to take necessary technical and administrative measures to ensure the security of the networks and personal data of the subscribers and to keep transaction records regarding access to personal data and other related systems for two years. Besides this, operators are subject to the Law on Personal Data Protection for the general rules, principles and procedures regarding data protection and privacy they process in their data-filing system. However, with the Regulation, in cases of data breach, in addition to the notification to be made to the Personal Data Protection Authority and the data subject, it is also obligatory to notify ICTA of the data breach. According to the provisions of ICTA Administrative Sanctions Regulation, if operators do not fulfil the obligations determined by the Regulation, an administrative fine of 1 per cent to 3 per cent of their net sales in the previous calendar year will be imposed.

Law stated - 25 April 2022

Cybersecurity

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

The Council of Ministers' Decision on Conducting, Managing and Coordinating National Cybersecurity Activities (the Decision), which entered into force on 20 October 2012, is one of the important legislative developments regarding cybersecurity in Turkey. Also, the Cybersecurity Board was established under the Decision, the duties of which include approval of policies, strategies and action plans regarding cybersecurity and rendering of decisions regarding their implementation nationwide in an effective manner, resolving proposals regarding the determination of critical infrastructure and determining the institutions to be wholly or partially exempt from cybersecurity provisions. In addition, in ICTA's 2022 Business Plan and its Strategic Plan of 2019–2023, there are outputs such as continuing operational activities to ensure national cybersecurity, participating in national and international exercises, conducting workshops with cyber incident response teams, assessing critical infrastructures expansion and follow-up of detection, developing software on technological measures.

On the other hand, electronic communication sector-specific cybersecurity provisions are regulated with the secondary regulation, the Regulation on Network and Information Security in Electronic Communication Sector. This Regulation, which regulates and underlines technical, administrative, organisational and physical measures to be taken by operators, does not apply to personal data processing and protection.

Under the Regulation on Administrative Sanctions No. 28914, issued by ICTA, any natural or legal entity who fails to comply with the obligations related to network and information security and cybersecurity measures to be determined by ICTA, shall be imposed with an administrative fine of 1,000 to 1 million Turkish lira.

Big data

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

There is no specific regulation regarding big data within the frame of Turkish legislation. However, if big data involves the processing of personal data, personal data-related provisions can be applied for.

If big data does not involve personal data but involves non-personal data (eg, anonymous data, commercial information and trade secrets, etc), non-personal data-related provisions can apply to those processing activities. For instance, it can be said that the Regulation on Network and Information Security in Electronic Communication Sector excludes personal data processing and protection but can apply to big data processing in the electronic communications sector.

Law stated - 25 April 2022

Data localisation

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

Under Law No. 5809 on Electronic Communications, data belonging to customers may only be transmitted abroad upon the consent of the customer. The Regulation on Processing of Personal Data and Protection of Privacy in the Electronic Communications Sector (the Regulation), published in the Official Gazette No. 31324, dated 4 December 2020, also stipulates that data transfer to third parties located abroad may only be realised upon the consent of the customer. In this scope, the customer has to be informed regarding the country to which the data is transferred, the scope and period the data will be kept and the relevant legislation and practice in the country.

Additionally, operators are also subject to Law No. 6698 on Personal Data Protection in terms of the general rules, principles and procedures of personal data processing and protection. Therefore, operators, while transferring personal data, must ensure compliance with and fulfilment of the requirements arising from both regulations.

Law stated - 25 April 2022

Key trends and expected changes

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

One of the most significant legislative development is Decision No. 2021/DK-YED/80 (the Decision) of ICTA Amending Regulation on Authorisation in the Electronic Communication Sector, which was published in Official Gazette No. 31471, dated 1 May 2021. As per the Decision, the scope of the conditions of authorisation application and obligations of operators, authorisation terms and competency control periods, changes of indirect control of operators, and authorisation cancellation of operators that do not actively provide services were amended.

In addition, at the beginning of 2022, the Regulation Amending the Regulation on Consumer Rights in the Electronic Communications Sector, which made extensive changes regarding the execution, content and implementation of subscription agreements; restriction, suspension and termination of services, and informing consumers, has created a significant legislative development.

Also, the Regulation on the Process of Identity Authentication of Applicants in the Electronic Communications Sector was published and entered into force on 31 December 2021. The Regulation introduces new methods and standards

for identity authentication in the electronic communications sector.

Last, the Regulation on Amending the Number Portability Regulation came into force on 12 February 2022. With the amendments, obligations regarding electronic identity authentication in number-porting operations were determined. Moreover, the recipient operators are obliged to send messages confirming they have received the number porting request.

On another note, the TÜRKSAT 6A project, which will be the first domestic communication satellite, was completed, and is planned to be launched into space in 2023, making Turkey become one of 10 countries producing communications satellites in the world.

Last, the Ministry published the National Cybersecurity Strategy and Action Plan for 2020–2023, which has strategic purposes such as ensuring the security of information systems of critical infrastructures operated by the public or private sector, minimising the effects of cyber security incidents, establishing an infrastructure for the determination of strategic cyber security actions for the systems to return to their normal operation as soon as possible after the incidents, and for investigating the crime by the judicial authority and law enforcement more effectively.

Law stated - 25 April 2022

MEDIA

Regulatory and institutional structure

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

The key regulations governing the media sector in Turkey constitute:

- the Constitution of the Republic of Turkey (No. 2709);
- international agreements (the European Convention on Transfrontier Television);
- sector-specific Laws (Press Law No. 5187);
- Law No. 4982 on the Right to Obtain Information;
- Radio and Television Law of Turkey (No. 2954);
- Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises;
- Law No. 3093 on Radio and Television Incomes in Turkey;
- Law No. 5651 on Regulating Broadcasting on the Internet and Fighting Against Crimes Committed through Internet Broadcasting;
- general laws (Industrial Property Law No. 6769, Turkish Criminal Law No. 5237, Turkish Law No. 6098);
- regulations (the Advertisement Regulation of Radio and Television Authority of Turkey); and
- directives, communiques, principles and procedures, instructions executing and enforcing and the decisions rendered by the relevant authority.

In 2021, the following developments took place:

- Regulation on the Presentation of Radio, Television and On-Demand Broadcasting on the Internet;
- Radio and Television Supreme Council Regulation on Procedures and Principles for Terrestrial Broadcasting License and Sorting Tender; Regulation on Administrative and Financial Conditions to be Complied By Media Service Provider Organisations and Platform and Infrastructure Operators were amended by the Radio and Television Supreme Council (RTSC). Pursuant to these amendments, which were published in Official Gazette No. 31485, dated 18 May 2021, the signature circular of individuals authorised to represent the company is no longer on the list of documents requested for licence, transmission authorisation and tender applications; and

- the Advertising Board of the Ministry of Trade enacted the Guideline on Commercial Advertising and Unlawful Commercial Practices of Social Media Influencers pursuant to the Consumer Protection Law on 5 May 2021, which regulates the advertising activities of social-media influencers in general.

The RTSC, founded in 1994, is the administratively and financially autonomous and impartial public legal authority for the regulation and supervision of radio, television and on-demand media services. In the field of audiovisual media services, the main function of the RTSC is taking essential precautions for securing freedom of expression and information, diversity of opinion, media pluralism, competition environment for avoiding media concentration and protecting public interests. On the other hand, the Information Technology and Communication Authority (ICTA), the national telecommunications regulatory and inspection authority, may also be intervened and act in some cases in this sector. For instance, under the Right to Information Regulation, ICTA is entitled to impose administrative fines on companies that do not abide by the decisions of the Criminal Court.

Law stated - 25 April 2022

Ownership restrictions

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

Certain restrictions regarding foreign ownership have been stipulated under Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises. For instance, the total direct foreign capital share in a media-service provider shall not exceed 50 per cent of the paid-in capital. Further, a foreign real or legal person can directly become a partner of a maximum of two media-service providers. Although it is important to point out that if foreign real or legal persons hold shares in companies that are shareholders of media-service providers and become an indirect partner of the broadcasters, the chair, the deputy chair and the majority of the board of executives and the general director of the broadcasting enterprises must be citizens of Turkey, and the majority of the votes in the general assemblies of broadcasting enterprises should belong to the real or legal persons holding Turkish citizenship. Last, foreign shareholders shall, by no means, own preference shares, as domestic shareholders do not.

In terms of the cross-ownership of media companies, the same Regulation indicates that a real or legal person can be a partner directly or indirectly of a maximum of four media-service providers holding terrestrial broadcasting licences. However, in the case of partnership in more than one media-service provider, the annual total commercial communication revenue of those media-service providers in which a real or legal person has direct or indirect shares shall not exceed 30 per cent of the total commercial communication revenue of the sector. The real or legal persons whose total commercial communication revenue exceeds this rate shall transfer their shares to media-service providers so that it will be reduced down to the aforesaid rate within a time limit of 90 days given by the RTSC.

Law stated - 25 April 2022

Licensing requirements

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

First, it is necessary to define 'broadcasting licence' under Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises. 'Broadcasting licence' means the certificate of permission issued

separately for each broadcasting type, technique and network by the RTSC to media-service providers to allow them to broadcast using any kind of technology via cable, satellite, terrestrial and similar networks.

Under Law No. 6112, a broadcasting licence may only be granted to joint-stock companies established under Turkish Commercial Code No. 6102. The scope of the purpose of the joint-stock company has to be exclusively determined, concerning providing radio, television and on-demand broadcast service.

However, political parties, unions, professional associations, cooperatives, associations, societies, foundations, local administrations and companies established by them or of which they are direct or indirect shareholders, stockbroker companies and real or legal persons who are direct or indirect shareholders of these companies are not allowed to apply for a broadcasting licence.

Media service providers shall apply for a separate licence for each broadcasting technique and network to the RTSC to be able to broadcast through cable, satellite, terrestrial and similar networks. It should be clearly indicated in the licence document for which broadcasting technique and network the licence is granted. Enterprises requesting to make a simultaneous broadcast on different networks by different techniques should apply for separate licences for each broadcasting technique and network and must provide a simultaneous broadcast.

As per Law No. 7103 on Amending Tax Laws, Certain Laws and Certain Decree Laws stipulating amendments to Law No.6122, media-service providers and online broadcast platforms that only broadcast content over the internet are also subject to these licensing requirements.

As per online broadcasting, the Regulation on Radio, Television and On-Demand Broadcasts on the Internet (the Regulation) outlines licensing requirements regarding three types of licences, namely:

- the INTERNET-RD broadcast licence for online radio services;
- the INTERNET-TV broadcast licence for online television services; and
- the INTERNET-IBYH broadcast licence for online on-demand broadcast services.

As per the Regulation, online broadcasting licences shall only be granted to joint-stock companies established as per Turkish Commercial Law No. 6102, exclusively established for providing radio, television and on-demand broadcasting services.

Under the Regulation, online platform operators that provide various radio, television and on-demand broadcasts through their uniform resource locator address or mobile applications must obtain internet broadcast transmission authorisation from the RTSC.

The fees payable for the necessary authorisation are stipulated separately for cable, satellite, and internet broadcasting, in each relevant regulation. These fees are increased by the revaluation rate declared each year by the Ministry of Treasury and Finance, published on the RTSC website, and collected in accordance with prevalent tariffs and article 42 of Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises, implemented as of the beginning of the January each following year.

The term of a broadcasting licence is 10 years, both according to Law No. 6112 and the Regulation, and there are no specific timescale provisions for obtaining authorisation from the RTSC.

Law stated - 25 April 2022

Foreign programmes and local content requirements

Are there any regulations concerning the broadcasting of foreign-produced programmes? Do the rules require a minimum amount of local content? What types of media fall outside this regime?

Law No. 6112 on Establishment and Broadcasting Services of Radio and Television Enterprises does not prohibit broadcasting in foreign languages; however, broadcasts made in foreign languages shall follow the rules of that preselected language and be supervised by the RTSC. On the other hand, the Regulation on the Procedures and Principles of Media Services stipulates that providing broadcasts in languages and dialects other than Turkish by media-service providers is subject to permission to be issued by the RTSC. Thus, the RTSC permits broadcasting in a foreign language if it finds the media-service provider's application appropriate according to their broadcasting area and technical facilities. However, no permission is required for on-demand media services in languages and dialects other than Turkish.

As per Law No. 6112 on Establishment and Broadcasting Services of Radio and Television Enterprises, broadcasting service providers must comply with the broadcasting service principles stipulated in article 8 of the Law regarding the content of broadcasting services provided, and this provision applies to the content of foreign-produced programmes along with the local-produced programmes. Under the same Law, if television enterprises that conduct general and thematic broadcasts include cartoons in the broadcasts for children, at least 20 per cent of the cartoons, and at least 40 per cent of other children's programmes, shall be productions made in the Turkish language and reflect Turkish culture. There are no further local content quotas for media-service providers.

However, content to be broadcast for television broadcasters holding a national terrestrial broadcasting licence is as follows:

- television broadcasters are obliged to allocate at least 50 per cent of their broadcast time to European works, excluding the time allocated to news, sports events, contests, advertisements, teleshopping and related data broadcasts; and
- they must allocate 10 per cent of their broadcast time or programme budget broadcasts to European works of independent producers, excluding the time allocated to news, sports events, contests, advertisements, teleshopping and related data.

Additionally, as per the Regulation on Radio, Television and On-Demand Broadcasts on the Internet, the broadcasting services of foreign media-service providers and foreign internet broadcasting platform operators under the jurisdiction of a country other than Turkey may be suspended by the RTSC if it is decided by the RTSC that the media-service providers or internet broadcasting platform operators have acted in violation of Law No. 6112 or any international treaties within the scope of the RTSC's authority to which Turkey is a party.

Law stated - 25 April 2022

Advertising

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

The main pieces of legislation governing broadcast media advertising are Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises and the Advertisement Regulation of Radio and Television Authority of Turkey.

As per Law No. 6112, advertisements and teleshopping in television and radio broadcasting services must be broadcast in a manner that is easily distinguishable from the rest of the elements of the broadcasting programme services, by way of the use of audio or visual warnings. Broadcast media advertisements are also within the scope of the Regulation on Commercial Advertisements and Unfair Practices (the Regulation) published in Official Gazette No. 29232, dated 10 January 2015. Thus, advertisements and teleshopping must be made in compliance with the

Regulation.

Online advertising is subject to the Consumer Protection Law and the Commercial Advertisement Regulation, which are the main legislation concerning advertisement rules. The Advertisement Board regulates the compliance of advertisements in all media, except for specific broadcasting rules that are governed under Law No. 6112. Also, all online broadcasts in Turkey are subject to Law No. 5651 on Regulating Broadcasting on the Internet and Fighting Against Crimes Committed through Internet Broadcasting. If the content of an online broadcast, including online advertising, constitutes specific crimes that are listed in this Law, access to this website could either be banned by the Information Technology and Communication Authority or by the court, depending on the type of case and urgency.

On 2 October 2021, the RTSC published an announcement on volume levels of commercial communication broadcasts. Pursuant to the announcement, media-service providers are required to keep the volume levels of their commercial communication broadcasts at a level in compliance with the legislation and take the necessary measures stipulated. Correspondingly, commercial communication broadcasts should be at the same volume level as other broadcasts.

Last, the Advertising Board of the Ministry of Trade published the Guideline on Commercial Advertising and Unlawful Commercial Practices Social Media Influencers on 5 May 2021. The main purpose of the Guideline is to guide all individuals, agencies, organisations and institutions that advertise in relation to commercial advertising and practices of social-media influencers. Pursuant to the Guideline:

- oral, written or visual hidden advertising is strictly prohibited on social media;
- if an Influencer advertises a product or a service from which the influencer received a financial income or receives it free of charge or with a discount, the influencer must disclose this fact using hashtags; and
- any form of advertising must be clearly distinguishable from other types of content.

Accordingly, the Guideline divides social-media communication into four platforms, which are:

- video-sharing platforms;
- photograph and message-sharing platforms;
- podcast-sharing platforms; and
- platforms where the content is available for a limited time.

Advertising rules of these four platforms are separately regulated under the Guideline. The Guideline also regulates the liabilities of advertisers, advertising agencies and Influencers separately and each is liable to comply with the Guideline.

Law stated - 25 April 2022

Must-carry obligations

Are there regulations specifying a basic package of programmes that must be carried by operators' broadcasting distribution networks? Is there a mechanism for financing the costs of such obligations?

There are no regulations regarding must-carry obligations under Turkish legislation.

Law stated - 25 April 2022

Regulation of new media content

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

Internet-based on-demand content has been traditionally regulated by Law No. 5651 on Regulating Broadcasting on the Internet and Fighting Against Crimes Committed through Internet Broadcasting. However, with the amendments to Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises, media-service providers that make online broadcasting and platform operators that transmit these broadcasts via the internet are required to obtain a licence from the RTSC and online broadcasting activities are subject to supervising and controlling of the RTSC under the same principles applied to TV and radio broadcasts as per Law No. 6112.

Moreover, unlike traditional broadcast media such as radio and television, new media content is regulated under Law No. 5651. Additionally, advertisements made via new media content are also subject to Law No. 5651.

Law stated - 25 April 2022

Digital switchover

When is the switchover from analogue to digital broadcasting required or when did it occur? How will radio frequencies freed up by the switchover be reallocated?

Under Law No. 5651 on Regulating Broadcasting on the Internet and Fighting Against Crimes Committed through Internet Broadcasting, companies that obtained the right to a terrestrial digital multiplex capacity allocation in the ranking tender realised under the Regulation regarding Procedures and Principles on Terrestrial Broadcast Licences and the Ranking Tender published in Official Gazette No. 30634, dated 23 December 2018, may, in line with their ranks and the analogue channel capacity, be granted the right to make analogue broadcasts as well as terrestrial digital broadcasts for a period of a maximum of two years. At the end of the two years, analogue broadcasts shall be terminated nationwide. The transition from analogue broadcasting to digital broadcasting has not yet been completed.

Law stated - 25 April 2022

Digital formats

Does regulation restrict how broadcasters can use their spectrum?

First, according to Law No. 5809 on Electronic Communications, ICTA is the competent authority for spectrum management, supervision and inspection in Turkey. However, under Law No. 5809, the RTSC is the competent authority regarding the regulation of radio frequencies and television channel broadcasts.

The regulation restricts how broadcasters can use their spectrum. After obtaining the terrestrial broadcast licence, current transmitting facilities must be removed by the private media-service providers or must be transferred to a transmitter procurer and operating company in exchange for a reasonable sum.

Under Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises, the RTSC shall adopt frequency plans concerning television channels and radio frequencies, within the framework of the frequency bands for terrestrial radio and television broadcasts allocated under Law No. 5809. Within the scope of the frequency plans the numbers and types of national, regional and local terrestrial broadcast networks, as well as multiplex numbers for digital broadcasts, shall be determined.

Law stated - 25 April 2022

Media plurality

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

Under Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises, one of the duties of the RTSC is to take essential precautions, in the field of media services, for media pluralism. On the other hand, the maximum number of media-service providers in which a real person or a legal entity may directly or indirectly hold shares is four. Although there is no specific regulation concerning media plurality in Turkey, the RTSC Strategic Plan of 2019–2023 includes a strategic goal of securing the rights and interests of shareholders by developing a pluralistic and competitive environment in the audiovisual media. In this regard, the RTSC has set forth four activities and projects to be done, namely:

- to carry out terrestrial digital television broadcasting ranking tenders;
- to cooperate with relevant institutions regarding the prevention and detection of unauthorised broadcasting and interference problems;
- to cooperate with relevant institutions regarding the detection of practices that hinder or disrupt competition and prevention of concentration; and
- to carry out terrestrial radio broadcasting ranking tenders.

In its latest pilot of Decision No. 2018/14884, dated 27 October 2021, the Constitutional Court evaluated several applications, and decided that freedom of expression and the press, and the right to a fair trial were violated. The Applications are related to access-blocking decisions of news on nationally broadcast news websites. The Constitutional Court decided that the applications were based on a systematic problem in the implementation of the access-blocking measures stipulated under the Internet Law. Accordingly, the Turkish Constitutional Court evaluated Law No. 5651 on the Regulation of Internet Broadcasts and Prevention of Crimes Committed through Such Broadcasts in its decision on freedom of expression and the press.

The Constitutional Court pointed out the relationship between freedom of expression, the press and article 9 of the Internet Law and made recommendations to the Turkish Grand National Assembly for the reformulation of the relevant article. In this regard, the Constitutional Court concluded that article 9 of the Internet Law must include certain guarantees so that the interventions to the freedom of expression and the press are not disproportionate, and it considered that since the judgeships of peace need to make a decision within 24 hours, this prevents the person or body publishing the internet content from being involved in the process. Therefore, the judgeships of peace authorised to review the objections must observe the balance of interests and evaluate the essence of the allegations to compensate for the lack of legal certainty in the later stages of the proceedings.

Law stated - 25 April 2022

Key trends and expected changes

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

A notable piece of legislation currently adopted in Turkish media law is the Guideline on Commercial Advertisement and Unfair Commercial Practices of Social Media Influencers, which was put into force as per the Advertisement Board's decision No. 2021/2 on 4 May 2021. The Guideline aims to guide advertisers, advertisement agencies, media

organisations, and all persons, institutions, and establishments involved in commercial advertisement and commercial practices of social-media influencers.

The RTSC published the new List of Major Events on 21 October 2021 to ensure that the national and international events considered of great importance for society are broadcast live or via a recording to the public by television free of charge and without encryption. The RTSC will be able to update the List of Major Events through the same procedure. Additionally, the RTSC published an announcement on 2 October 2021 regarding the change in volume levels when switching to commercial communication broadcasts, such as commercials, from other programmes. Accordingly, media-service providers are required to keep the volume levels of their commercial communication broadcasts at a level in compliance with the legislation and take the necessary measures stipulated.

Under the RTSC Strategic Plan of 2019–2023, five main strategic goals were determined, namely:

- to secure the rights and interests of shareholders by developing a pluralistic and competitive environment in the audiovisual media;
- to carry out audit activities effectively and efficiently to protect the rights and interests of all parties;
- to raise the awareness and tenderness of all shareholders regarding the audiovisual media field;
- to develop national and international policies related to the audiovisual broadcasting sector; and
- to develop institutional resources.

In its latest pilot of Decision No. 2018/14884, dated 27 October 2021, the Constitutional Court drew attention to the problems in the implementation of the access blocking measures stipulated under the Internet Law and made important evaluations regarding the interferences to the freedom of expression and the press. Accordingly, The Turkish Constitutional Court evaluated Law No. 5651 on the Regulation of Internet Broadcasts and Prevention of Crimes Committed through Such Broadcasts in its recent pilot decision on freedom of expression and the press. The Constitutional Court pointed out the relationship between freedom of expression, the press and article 9 of the Internet Law and made recommendations to the Turkish Grand National Assembly for the reformulation of the relevant article.

Some of the relevant expected changes and the steps to be taken accordingly within the media sector are as follows:

- informing the legislative organ about the need for new regulations regarding issues on the establishment of a more effective sanction system and the implementation of joint audits in connection to new technological developments;
- the strengthening of the cooperation among shareholders in the media sector;
- the drafting of more explicit and concrete regulations by the RTSC, an independent and unbiased authority, especially regarding broadcasting principles in areas that are conceived negatively;
- the re-evaluation and revision of the legislative regulations in a manner that enhances the freedom of speech and freedom of information stipulated under the laws;
- the establishment of a more efficient mechanism to enable the consent analysis of the regulatory needs within the media sector and the overcoming of issues regarding regulatory activities;
- conducting studies by ICTA to pave the way for domestic and national productions on new technologies to ensure cybersecurity while it is at the design stage; and
- the draft Türk Telekomünikasyon AŞ Reference Interconnection Offer opened to Public Opinion.

Law stated - 25 April 2022

REGULATORY AGENCIES AND COMPETITION LAW

Regulatory agencies

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

The communications sector is governed by Law No. 5809 on Electronic Communications. Whereas the media sector is mainly governed by Law No. 6112 on the Establishment of Radio and Television Providers and Broadcasting Services, the communications regulator is separate from the broadcasting regulator. The competent authority for the communications sector is the Information Technology and Communication Authority (ICTA) and the Competition Authority, whereas the competent authority for the media sector is the Radio and Television Supreme Council (RTSC). However, concerning online broadcasting, both ICTA and RTSC are vested with certain regulatory powers. Last, the Competition Authority is the main competition and antitrust monitoring authority, and the primary law applied is Competition Law No. 4054.

Besides this, the Advertisement Board, established under the Turkish Ministry of Commerce, is the main authority that is entitled to monitor and supervise advertisements for all media, including broadcasts in Turkey and to determine the related rules and impose fines in the case of violations.

Under article 6/1 of Law No. 5809, one of the powers vested in ICTA is the undertaking of regulations to establish and protect competition and to prevent activities that prevent, distort or restrict competition, and to impose remedies on operators with significant market power and other operators, if necessary. However, under paragraph 2 of the same article, it is stipulated that ICTA, while inspecting competition breaches against the same Law concerning the electronic communications sector, and imposing sanctions, seeks the opinion of the Competition Authority on issues regarding breaches specified by the legislation. Moreover, under Law No. 5809, ICTA is authorised to conduct analysis and investigations and impose sanctions regarding anti-competitive activities and practices, on the condition that the opinion of the Competition Authority is also demanded. However, the provisions of Law No.4054 are reserved.

Under Law No. 6112, one of the powers vested in the RTSC is to take the required precautions in the field of broadcast services to guarantee freedom of expression and information, diversity of opinions, competitive environment reserving the duties and powers of the Competition Authority and pluralism and prevent concentration and protect the public interest. Last, both the RTSC and ICTA must cooperate with the Competition Authority regarding matters relating to competition and anti-competitive practices. There have been cases where cooperation between ICTA and the Competition Authority has been low, and there have been some disputes regarding the respective scopes of the two authorities. ICTA and the Competition Authority signed a cooperation protocol in 2011 and the scope of this protocol was expanded on 22 January 2015. This protocol aims to ensure the cooperation of the two regulatory bodies and avoid conflicts of jurisdiction. However, within the scope of article 7 of the protocol, article 6/2 of Law No. 5809 regarding seeking the opinion of the Competition Authority has been emphasised.

Law stated - 25 April 2022

Appeal procedure

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

The Radio and Television Supreme Council, the Information and Communication Technologies Authority and the Competition Authority are all independent and impartial administrative authorities and render administrative decisions related to the media sector in Turkey. The decisions are rendered under the aforementioned laws and regulations, and

also the administrative laws and regulations, mainly Law No. 2577 on Administrative Procedures. Criminal courts of peace, administrative courts and the Council of State are competent for legal actions to be taken against these administrative decisions.

Decisions rendered by the Board of Advertisement, established under the Ministry of Trade, can also be brought to administrative courts.

In principle, the time to bring an action for nullity is 60 days from the notification of the decision. Under Law No. 2577, an action for nullity against administrative decisions and actions can be brought forward under the following circumstances:

- if the administrative decision is not made by the competent governmental body; or
- if the form, rationale, subject or objective of the administrative decision is against the law.

Administrative court decisions can be appealed before the regional administrative courts within 30 days, starting with notification of the court's decision.

Law stated - 25 April 2022

Competition law developments

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

Over the past year, one of the most important decisions rendered by the Competition Board (the Board) was the Decision No. 21-20/248-105, dated 8 April 2021, concerning the investigation on the economic entity consisting of Google Reklamcılık ve Pazarlama Ltd Şti, Google International LLC, Google LLC, Google Ireland Limited and Alphabet Inc (Google). The claim subjected to the investigation concerned that Google abused its dominant position in the general search services market and promoted its local search and accommodation price-comparison services by excluding its competitors. In the decision, the Board decided that Google has violated article 6 of Law No. 4054 on the Protection of Competition (the Law) by giving its local and accommodation services an advantage over its competitors on the general search result web page and complicating the activities of competitors by preventing competing local search websites from entering local unit and disrupting competition in the local search services. Consequently, the Board imposed an administrative fine of over 296 million Turkish lira on Google severally.

Also, Decision No. 21-10/139-57, dated 25 February 2021, regarding the investigation of whether Türk Telekomünikasyon AŞ and TNET AŞ violated the Law by price squeezing their campaign. As a result of its investigation, the Board decided that Türk Telekomünikasyon AŞ and TNET AŞ have not engaged in activities that are incompatible with the article 6 of the Law. Consequently, the Board has not imposed any administrative fines on the undertakings.

In addition to the competition infringement decisions, the Board has also rendered numerous merger and acquisition decisions in the past year. In 2021, the Competition Authority has assessed 309 mergers, acquisitions, and privatisations. Some of the most significant decisions with regard to some major acquisition transactions of 2021 are the Decision No. 21-55/774-382, dated 11 November 2021, regarding the acquisition of the operations, business, assets and liabilities of the WarnerMedia division of AT&T, Inc by Discovery, Inc. Further, Board Decision No. 21-58/838-412, dated 2 December 2021, regarding the acquisition of sole control of Mayen Telekomünikasyon Hizmetleri AŞ by Majorel Group Luxembourg SA and Decision No. 21-57/805-400, dated 25 November 2021, regarding the indirect acquisition of joint control of T-Mobile Netherlands Holding BV by mutual funds managed or consulted by Warburg Pincus LLC and Apax Partners LLP.

Jurisdictions

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|---|-----------------------------|---|
|  | Australia | Holding Redlich |
|  | Brazil | Azevedo Sette Advogados |
|  | Egypt | Soliman, Hashish & Partners |
|  | European Union | Simmons & Simmons |
|  | Greece | Nikolinakos & Partners Law Firm |
|  | Ireland | Matheson |
|  | Italy | Simmons & Simmons |
|  | Japan | TMI Associates |
|  | Mexico | Nader Hayaux & Goebel |
|  | Nigeria | Streamsowers & Köhn |
|  | Pakistan | Legal Oracles Advocates & Coporates Consultants |
|  | Philippines | SyCip Salazar Hernandez & Gatmaitan |
|  | Singapore | Drew & Napier LLC |
|  | South Korea | Bae, Kim & Lee LLC |
|  | Switzerland | CORE Attorneys Ltd |
|  | Taiwan | Yangming Partners |
|  | Thailand | Formichella & Sritawat Attorneys at Law |
|  | Turkey | SRP Legal |
|  | United Arab Emirates | Simmons & Simmons |
|  | United Kingdom | Simmons & Simmons |