

# Telecoms & Media 2020

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**Published by**

Law Business Research Ltd

Meridian House, 34-35 Farringdon Street

London, EC4A 4HL, UK

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First published 2000

Twenty-first edition

ISBN 978-1-83862-366-1

Printed and distributed by

Encompass Print Solutions

Tel: 0844 2480 112



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# Telecoms & Media 2020

**Contributing editors****Alexander Brown and Peter Broadhurst****Simmons & Simmons LLP**

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Lexology Getting The Deal Through is delighted to publish the 21st edition of *Telecoms & Media*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

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

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Egypt, Pakistan and Philippines.

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

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



London

June 2020

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This article was first published in July 2020

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# Turkey

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## COMMUNICATIONS POLICY

### Regulatory and institutional structure

1 | 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 (Law No. 5809). 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
- authorisation, supervision and reconciliation activities relating to said issues.

In addition, the communications sector in Turkey, is particularly governed by:

- Law No. 5651 on Regulating Broadcasting in 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 the 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 Electronic Communications Sector;
- the Regulation on Authorization in Electronic Communications Sector;
- the Regulation on Spectrum Management; and
- the Regulation on Access and Interconnection.

The communiqués prepared and decisions rendered and 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 the ICTA are both vested with certain powers and duties under Law No. 5809. The 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 at 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 the ICTA, which shall not exceed 20 per cent of the ICTA's income and allowing this source to be used by making necessary arrangements.

As per article 6 of Law No. 5809, the 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 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 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 network 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 significant market power 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, communiques 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, pursuant to the Regulation on Authorisation for Electronic Communications Sector, in order for a company to be granted an authorisation by the ICTA in the communications sector, the company has to be duly established as a limited liability or joint-stock company in accordance with Turkish Commercial Law No. 6102. In addition, a foreign entity or individual can be the sole shareholder of such an authorised company.

### Authorisation/licensing regime

#### 2 | Describe the authorisation or licensing regime.

Pursuant to Law No. 5809 on Electronic Communications (Law No. 5809), authorisation is issued by the ICTA based on either notification or right of use.

Companies who are willing to provide electronic communications services or to construct and operate electronic communications networks or infrastructures should notify the ICTA of their intention before commencing their activities. If the companies who have notified the ICTA do not need the assignment of scarce resources such as number or frequency for electronic communications services or electronic communications network or infrastructure that they plan to provide or to operate, they shall be authorised pursuant to the notification to the ICTA.

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

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 the 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 right of use are determined by the Board of Ministers upon the proposal of the ICTA and the resolution of the Ministry.

There is currently no distinct regulation regarding 4G, 4.5G and 5G mobile services. To be able to be granted a spectrum for 5G mobile services, companies have to 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.

### Flexibility in spectrum use

#### 3 | 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 in accordance with the Regulation. The scope of permitted use is generally determined within the spectrum licences.

As per the Regulation, while managing spectrum allocation, the 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 EU 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 right of use.

The trade of licensed radio frequency spectrum is not prohibited under Turkish legislation. The trading of spectrum licences is not prohibited; however, in order to transfer spectrum frequency, operators must apply to the ICTA for approval. The 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 the 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.

### Ex-ante regulatory obligations

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

The 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 (Law No.5809) the ICTA is vested with the duty of conducting market analyses to determine the relevant market and the operators that have significant market power 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 fixed network market: there are no sanctions imposed;

- call origination on 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 fixed network market: sanctions imposed on operators having SMP are access and interconnection, transparency, non-discrimination, QoS, 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 mobile network market: there are no sanctions imposed;
- call termination on mobile network market: sanctions imposed on mobile network operators are interconnection, non-discrimination, QoS, 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.

### Structural or functional separation

- 5 | 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?

Pursuant to article 6 of Law No. 5809 on Electronic Communications (Law No. 5809), the ICTA is vested with inspecting breaches of competition in the electronic communications sector, imposing sanctions and taking the opinion of 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, takes into consideration primarily the ICTA's view and the regulatory procedures of the ICTA.

The Competition Board is also authorised to decide on a structural or functional separation between an operator's network and service activities, taking the ICTA's view on the matter into consideration. That was the case during the privatisation of the incumbent operator: Turk Telekomunikasyon AS. In accordance with Decision No. 05-48/681-175 of 21 July 2005 of the Competition Authority, rendered upon taking the view of the ICTA (which was referred to as the Telecommunication Authority at the time of the decision), TTNET AS was structurally separated from Turk Telekomunikasyon AS and, as of 28 April 2006, TTNET AS was established as a separate legal entity. However as of 27 January 2016, Turk Telekomunikasyon AS and TTNET AS have once again merged.

### Universal service obligations and financing

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

Law No. 5369 on Universal Services (Law No. 5369) 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.

Pursuant to 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 is the single option of access and communications services regarding distress and safety at sea.

For the financing of universal services provided, Turk Telekomunikasyon AS and operators other than mobileoperators are obliged to declare to the Ministry of Transport and Infrastructure (the Ministry) 1 per cent of their annual net sales proceeds by the end of April of the following year. Mobile operators are obliged to declare to the Ministry 10 per cent of the share they are to pay the Treasury within the month of payment. The ICTA is obliged to declare to the Ministry 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 is obliged to declare to the Ministry 20 per cent of the amount remaining after all expenditure is met at the end of the fiscal year by the end of January every year.

Following the collection of the above-mentioned 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.

### Number allocation and portability

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

Pursuant to Law No. 5809 on Electronic Communications (Law No. 5809), the ICTA is authorised to allocate numbers and to prepare the National Numbering Plan and the National Frequency Plan under the policies of the Ministry of Transport and Infrastructure. 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 in accordance with the stipulated plan.

Number portability is mainly regulated under the Regulation on Number Portability, which was amended pursuant to the Regulation on the Amendment of the Regulation on Number Portability published in the Official Gazette dated 28 November 2015 (No. 29546). 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.

### Customer terms and conditions

- 8 | 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.

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

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 personal data 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 SMS, call centre or internet;
- requesting equal treatment without any discrimination in relation to resolving the malfunction problems; and
- receiving services in the standards determined by the ICTA or by international institutions.

Finally, the agreement between the customer and the operator must be made in writing in accordance with the Regulation on Customer Rights in Electronic Communications Sector.

#### Net neutrality

- 9 | 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, the 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.

#### Platform regulation

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

There is no specific regulation that covers digital platforms. However, there are general and specific laws and regulations that are applicable to digital platform providers. For instance, Law No. 5809 on Electronic Communications includes provisions regarding digital platforms providing services by satellite broadcasting. In addition, Law No. 6563 on Regulation of Electronic Commerce (Law No. 6563) regulates the rules and procedures for electronic commerce platforms and digital marketing. Furthermore, Law No. 4054 on the Protection of Competition in Turkey is applicable to the digital platform markets in Turkey. Moreover, all content published on the internet is subject to Law No. 5651 on Regulating Broadcasting in the Internet and Fighting against Crimes Committed through Internet Broadcasting (Law No. 5651). Law No.5651 restricts the publication of content constituting certain types of crime and content violating the rights of third parties. Finally, digital

platforms are also subject to the laws and regulations on data protection and privacy.

#### Next-Generation-Access (NGA) networks

- 11 | 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 board decisions of the ICTA regulating the NGA networks. In the ICTA's plan pertaining to 2020, it is stipulated that new monitor stations and vehicles, as well as hardware and software, are planned to be supplied for the purpose of adapting to new generation technologies. Besides this, the ICTA has also published several public releases indicating that the NGA penetration should be increased.

#### Data protection

- 12 | 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 (Law No.5809) and the Regulation on Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector (the Regulation), published in the Official Gazette dated 24 July 2012 (No.28363). Pursuant to these specific laws and regulations, operators are obliged to protect subscribers' information and their privacy. In addition, 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. Moreover, traffic and location data may be transferred abroad only with the explicit consent of the data subjects. Finally, operators are obliged to take necessary technical and administrative measures to ensure the security of the networks and personal data of the subscribers. 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.

#### Cybersecurity

- 13 | 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, a Cybersecurity Board has been established pursuant to 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.

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 for personal data processing and protection.

Pursuant to Regulation on Administrative Sanctions No. 28914, issued by the 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 the ICTA shall be imposed with an administrative fine of 1,000 to 1,000,000 Turkish lira.

### Big data

**14** | 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 (anonymous data, commercial information, trade secrets etc), non-personal data-related provisions can be applicable 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 be applicable to big data processing in the electronic communications sector.

### Data localisation

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

Pursuant to Law No.5809 on Electronic Communications (Law No.5809), data belonging to customers may only be transmitted abroad upon the consent of the customer. The Draft Regulation on Processing of Personal Data and Protection of Privacy in the Electronic Communications Sector (the Draft Regulation), which has been submitted to public opinion, 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 (Law No.6698) 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.

### Key trends and expected changes

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

One of the most significant legislative developments is the Draft Regulation on Processing of Personal Data and Protection of Privacy in the Electronic Communications Sector being submitted to public opinion. As per the Draft Regulation, the ICTA is given a more dominant role in the operations and practices of operators in relation to the processing of personal data.

The Competition Board is conducting an investigation against Turkey's largest fixed-line operator, namely Turk Telekomunikasyon AS, on the basis that the operator is abusing its dominant position in the telecommunications sector.

On another note, the Ministry of Transport and Infrastructure has announced that there has been major progress in preparations regarding the 5G mobile service infrastructure, and it is anticipated that the transition to 5G will be realised as of 2020.

Finally, the Ministry of Transport and Infrastructure published the national cybersecurity strategy and action plan for 2020–2023.

## MEDIA

### Regulatory and institutional structure

**17** | 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 in 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); directives, communiques, principles and procedures, instructions executing and enforcing and the decisions rendered by the relevant authority.

In 2019, the following developments took place:

- the Regulation on Procedures and Principles regarding the Improvement of Broadcasting Services Access by Hearing and Visually Handicapped, published in the Official Gazette dated 11 October 2019 and numbered and fully entered into force on 11 January 2020; and
- the Regulation on Radio, Television and On-Demand Broadcasts on the Internet (the RTI Regulation) published in the Official Gazette dated 1 August 2019 (No. 30849) and fully entered into force on 1 September 2019. The essential point is that the RTI Regulation is also applicable for content or hosting providers located in a foreign country, and media service providers that perform their business activities under the jurisdiction of the established country. In addition to this, media service providers broadcasting over the internet in Turkish and targeting Turkey, or broadcasting in another language but targeting Turkey and also including commercial broadcasts to Turkey are subject to this RTI Regulation. However, individual communications are excluded from its scope.

The Radio and Television Supreme Council (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) that is the national telecommunications regulatory and inspection authority of Turkey may also be intervened and act in some cases in this sector. For instance, under the RTI Regulation, the ICTA is entitled to impose administrative fines on companies that do not abide by decisions of the Criminal Court.

### Ownership restrictions

**18** | 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 (Law No. 6112). For instance, the total direct foreign capital share in a media service provider shall not exceed 50 per cent of the paid-in capital. Furthermore, 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 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 the Republic of Turkey, and the majority of the votes in the general assemblies of broadcasting enterprises should belong to the real or legal persons having the Turkish citizenship. Finally, 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, 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 in 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.

### Licensing requirements

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

First of all, it is necessary to define 'broadcasting licence' under Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises (Law No. 6112). '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.

Pursuant to Law No. 6112, a broadcasting licence may only be granted to joint stock companies established pursuant to Turkish Commercial Code No. 6102. The scope of the purpose of the joint stock company has to be exclusively determined, with regard to 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, stock broker 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 in order 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 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 Amending Tax Laws, Certain Laws and Certain Decree Laws No. 7103 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) sets forth licensing requirements regarding three types of licences. The first regards radio-based broadcasting online, namely, INTERNET-RD broadcasting licence. The second regards television-based broadcasting online, namely, INTERNET-TV. The third one regards on-demand broadcasting online, namely,INTERNET-IBYH.

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.

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

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

Licence fees are determined each year by the RTSC, and the most recent information on satellite, cable and online broadcasting license fees for radio, television and on demand broadcasting services can be found on the website of the RTSC.

### Foreign programmes and local content requirements

20 | 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 (Law No. 6112) 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.

Pursuant to 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 reflecting Turkish culture. There are not any other local content quotas for media service providers.

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

- televisionbroadcasters are obliged to allocate at least 50 per cent of their broadcast time to European works, excluding the time allocated to news, sport events, contests, advertisements, tele-shopping 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, sporting events, contests, advertisements, tele-shopping 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 to.

### Advertising

**21 | 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 (Law No. 6112) and the Advertisement Regulation of Radio and Television Authority of Turkey.

As per Law No. 6112, advertisements and tele-shopping in television and radio broadcasting services have to be broadcast in a manner that is easily distinguishable from the rest of the elements of the broadcasting programmes/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 the Official Gazette dated 10 January 2015 (No. 29232). Thus, advertisements and tele-shopping 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 with respect to advertisement rules. The Advertisement Board regulates the compliance of advertisements in all media, except for specific broadcasting rules that are governed under Law No. 6112. In addition, all online broadcasts in Turkey are subject to Law No. 5651 on Regulating Broadcasting in 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.

### Must-carry obligations

**22 | 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.

### Regulation of new media content

**23 | 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 in the Internet and Fighting Against Crimes Committed through Internet Broadcasting (Law No 5651). However, with the amendments to Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises (Law No.6112), media service providers that make online broadcasting and platform operators that transmit these broadcasts via the internet are required to obtain a licence from 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.

### Digital switchover

**24 | 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?**

Pursuant to Law No. 5651 on Regulating Broadcasting in 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 pursuant to the Regulation regarding Procedures and Principles on Terrestrial Broadcast Licences and the Ranking Tender published in the Official Gazette dated 23 December 2018 (No. 30634) 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 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.

### Digital formats

**25 | Does regulation restrict how broadcasters can use their spectrum?**

First of all, according to Law No. 5809 on Electronic Communications (Law No. 5809), the ICTA is the competent authority for spectrum management, supervision and inspection in Turkey. However, pursuant to 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. So, 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.

Pursuant to Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises, the RTSC shall adopt frequency plans with regard to television channels and radio frequencies, within the framework of the frequency bands for terrestrial radio and television broadcasts allocated pursuant to 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.

### Media plurality

**26 | 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?**

Pursuant to 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. However, there is no specific regulation with regard to media plurality in Turkey.

### Key trends and expected changes

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

The most important piece of legislation currently adopted in Turkey is the Regulation on Radio, Television and On-Demand Broadcasts on the

Internet (the Regulation), which was published in the Official Gazette dated 1 August 2019 (No. 30849). The Regulation has been drafted as a cooperative effort of the ICTA and the RTSC. It is understood that the two authorities are carrying out their activities in cooperation.

As per the recently enacted Regulation, online broadcasting of radio, television and on demand broadcasts shall fall under the authority and supervision of the RTSC, and online broadcast platforms that only broadcast content over the internet shall also be obliged to obtain licences from the RTSC. As per the Regulation, the RTSC is now also vested with the power to suspend online broadcasts that are in violation of the Regulation and Law No. 6122. Additionally, 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 said 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.

In the last quarter of 2019, significant negotiations were initiated in connection with foreign broadcasting platforms, in addition to local broadcasting platforms. As per the announcements published by the RTSC:

- special importance shall be given to artificial intelligence;
- when evaluating broadcasts, matters such as cyber bullying and violence shall be taken into consideration;
- measures shall be taken for content that may adversely affect the psychological and physical development of children; and
- in connection with on-demand broadcasts, special attention shall be given to parental control mechanisms

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 audit 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; and
- 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.

## REGULATORY AGENCIES AND COMPETITION LAW

### Regulatory agencies

**28** 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 (Law No. 5809). Whereas the media sector is mainly governed by Law No. 6112 on the Establishment of Radio and Television Providers and Broadcasting Services (Law No.6112), the communications regulator is separate from the broadcasting regulator. The

competent authority for the communications sector is the Information Technology and Communication Authority and the Competition Authority (ICTA), whereas the competent authority for the media sector is the Radio and Television Supreme Council (RTSC). However, with regard to online broadcasting both the ICTA and RTSC are vested with certain regulatory powers. Finally, the Competition Authority is the main competition and antitrust monitoring authority, and the primary law applied is Competition Law No. 4054 (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.

Pursuant to article 6/1 of Law No. 5809, one of the powers vested in the ICTA is the undertaking of regulations so as 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 on other operators if necessary. However pursuant to paragraph 2 of the same article, it is stipulated that the ICTA, while inspecting competition breaches against the same Law with regard to 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, the 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 in order to guarantee freedom of expression and information, diversity of opinions, competition environment reserving the duties and powers of the Competition Authority and pluralism, and prevent concentration and protect the public interest.

Finally, both the RTSC and the ICTA must cooperate with the Competition Authority regarding matters relating to competition and anti-competitive practices. There have been cases where cooperation between the ICTA and the Competition Authority has been low, and there have been some disputes regarding the respective scopes of the two authorities. The 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.

### Appeal procedure

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

The Radio and Television Supreme Council, the Information Technology and Communication 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 above-mentioned 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 period to bring an action for nullity is 60 days from the notification of the decision. Under Law No. 2577, an action for

nullity against administrative decisions and actions can be brought forward under the following circumstances:

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

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

### Competition law developments

30 | 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.

One of the most important decisions rendered by the Competition Authority is the decision regarding Google LLC, Google International LLC and Google Reklamcılık ve Pazarlama Ltd Sti (Google). In the decision, dated 19 September 2018, the Competition Authority imposed an administrative fine in the amount of 98,354,027.39 Turkish lira on Google, and the decision was finalised as of 13 February 2020. The decision of the Competition Board was based on article 6 of Law No. 4054 on the Protection of Competition, stating that Google has abused its dominant position in the mobile operating systems sector. Additionally, the Competition Board granted Google three months to comply with certain obligations determined in its decision; however, Google has not complied with said obligations.

Another important decision regards Huawei Telekomunikasyon Dış Ticaret Ltd Sti (Huawei), dated 30 May 2019. The Competition Board, upon its investigations in relation to the base station hardware and software market and the base station antenna market, decided that Huawei did not abuse its dominant position in the mobile network sector by way of predatory pricing.

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