Communications: regulation and outsourcing in Turkey: overview

Yasin Becen, Tuğrul Sevim and Erdem Aslan
BTS & Partners

THE TELECOMMUNICATIONS MARKET

1. Give a brief overview of the structure of the telecommunications market in your jurisdiction. Briefly set out any major recent developments, such as mergers and acquisitions, restructurings and insolvencies.

Market structure

Background. In 1924, ownership and control of telecommunication services in Turkey was managed by the Mail, Telephone and Telegram Directorate (Posta, Telefon ve Telgraf) (Directorate). Control of telecommunication, mail and telephone services continued under the Directorate until 1994, when it was made separate under Law 4000.

The first step towards privatisation occurred under Law 4000 when control over telephone services was handed to a public corporation, Türk Telekomunikasyon AŞ (Türk Telekom) and the Directorate continued to offer services in mail and telegram areas. Türk Telekom retained a monopoly over the set up and management of Turkey’s entire telecommunication infrastructure until 31 January 2003 (subject to certain exceptions, such as the management of fixed network voice services for national and international voice transmissions).

The second fundamental change occurred with the Decree of the Council of Ministers dated 15 April 2004. Under the Decree, the Council of Ministers agreed a block sale of 55% of Türk Telekom’s shares. Further, on 12 December 2007 the Council of Ministers agreed to the privatisation of 15% of Türk Telekom’s shares by 31 December 2008 by public offering. The ownership of Türk Telekom is now divided as follows:

- 55% of the shares belong to Oger Telekomunikasyon AŞ.
- 30% of the shares belong to the Undersecretariat of Treasury (state share).
- 15% share ownership is open to the public.

In 1996, Turkey introduced mobile telecommunication technologies for the first time with the NMT-450 Nordic Mobile Telephony. In 1994, the first GSM networks were set up, with profit-sharing agreements signed between Türk Telekom and Turkcell and Telsim (a former GSM operator acquired by Vodafone). In 1998, these agreements were turned into licences and concession agreements were signed by the two enterprises. These developments were especially important for the national telecommunication sector, as it was the first time the private sector could offer direct services in Turkey.

On 5 June 2008, a 3G tender took place with the attendance of three operators. Turkcell won the 45MHz frequency band with the highest offer, and the other two operators, Vodafone and Avea, won the 35MHz and 30MHz bands respectively. Today, all operators offer 3G services.

The first wide area network (WAN) in Turkey was set up in 1986 and was called the “Turkish Universities and Research Institutes Network”. Turkey’s first internet connection was made on 12 April 1993, with a 64Kbps capacity line from Ankara (Middle East Technical University) to Washington (National Science Foundation Network). In 1996, Türk Telekom founded Turnet as a national provider of internet services. However, this did not last for long. In 1998, a new internet service provider called TTNET was set up by Türk Telekom. In 2003, TTNET began offering ADSL services, and following the privatisation of Türk Telekom (see above), TTNET became a separate stock company in 2006 (yet it is still a subsidary of Türk Telekom). Today TTNET offers ADSL, dial-up, wi-fi, G.SHDSL, metro ethernet, ATM and frame relay internet services.

The International Mobile Telecommunications-Advanced (IMT-Advanced) service tender took place on 26 August 2015. The auction raised EUR3.36 billion with the participation of the country’s three official operators (see www.btk.gov.tr/tr/ TR/Kurumdan-Haberler/45-Cihalesi-Ankara-Yapildil). In a statement to the stock market, the largest mobile operator Turkcell announced that it had acquired 2 x 10 (20MHz) frequency in the 800MHz band for EUR49.7 million, Vodafone Turkey (the second largest market player in the mobile market) will spend EUR47.7 million, securing 82.8MHz of spectrum in total. The company, as the leading bidder for 800MHz (according to early reports), bought 2 x 10 MHz in the band for EUR330 million. The spectrum acquired by Vodafone Turkey will enable it to significantly improve the speed, coverage and capacity of its mobile data services and therefore make it more competitive in the market.

Avea will invest EUR955 million on licences and will obtain the 900 MHz bandwidth frequency, and will therefore enhance its ability to provide efficient communication services.

Also, today ADSL and G.SHDSL are available from other internet service providers and can offer services to customers as resellers. By the end of the first quarter of 2015, other internet service providers providing xDSL services had a growing market share in the broadband internet services market (13.4%).

Total revenue of operators was TRY35.3 billion for 2016. The total revenue of operators was TRY12.01 billion for the first quarter of 2017 and TRY12.46 billion for the second quarter.

Fixed line telecommunications. In fixed line services, Türk Telekom holds significant market power and presently owns all the telephone exchange, distribution network and transmission infrastructure in Turkey.

At the end of the second quarter of 2017, there were 10,967,444 fixed voice subscribers in Turkey. Given that the average household size in Turkey is 3.4 persons, almost the entire domestic population can access fixed voice services, with a certain saturation point having been reached.

Mobile telecommunications. In mobile services, the leading companies are Turkcell, Türk Telekom and Vodafone. In the second
quarter of 2017, Turkey had 76.6 million mobile phone subscribers and the penetration ratio reached 108.2% (penetration ratio is 106% when the 0-9 year old population and MO2 communication are excluded). Also, Turkey has the longest monthly average mobile voice call duration, 441 minutes.

To set up competition and get services to improve, number portability (that is, the ability to transfer telephone numbers between different operators) was enacted in 2008 and as of 4 August 2017, 106,540,028 million portability transactions had been made.

Internet services. There are more companies providing internet services compared to mobile services. TTNET, Superonline, Vodafone Net, Doğan TV Digital and Turknet are the largest companies. The most common technology is xDSL, although investors are currently focused on fibre optic interconnecting technologies. Internet service providers give service on a notification basis, and as of the second quarter of 2017, there were 100 authorised providers in Turkey. In terms of broadband, there are 66.4 million total subscribers, of which 11.1 million are fixed broadband and 55.3 million are mobile broadband. The increase rate between 2017 Q1 and 2017 Q2 is 20.1%. Also, the total length of fibre cables reached 304,534 kilometres as of the second quarter of 2017, compared to 277,758 kilometres in the same period in 2016.

Recent developments

The Regulation to Amend the Regulation on Authorisation in the Electronic Communication Sector was published in the Official Gazette on 11 June 2016 (Amendment Regulation). The Information Technologies and Communications Authority (ICTA) adopted the Amendment Regulation and published a press release on its impact on 22 June 2016. ICTA’s supervision power is increased particularly in relation to authorising operators (see Question 4).

State of emergency in Turkey. On 15 July 2016, there was an attempted military coup led by a minority of the Turkish army. The attempted coup was stopped by civilian resistance and intervention of the military and police forces.

As a precautionary measure, on 20 July 2016, the government declared a three-month state of emergency under Article 120 of the Constitution. The state of emergency came into force after parliament’s approval and was published in the Official Gazette on 21 July 2016. Although it is a temporary measure, the state of emergency can be extended for periods of up to four months each, on the Council of Ministers’ request after it has been approved by parliament. Parliament extended the ongoing state of emergency for the fifth time, becoming effective as of 15 October 2017. The extended state of emergency shall continue until 19 January 2018.

Under Article 15 of the Constitution, during a state of emergency, exercise of fundamental rights and freedoms can be partially or entirely suspended. Also, measures can be taken to the extent required by the urgent needs of the situation. These can derogate from the rights in the Constitution, provided that obligations under international law are not violated.

The most important implications of the state of emergency are as follows:

- Under Article 120 of the Constitution, the Council of Ministers (led by the President of the Republic) can enact state of emergency decree laws. These are subject to parliament’s approval and have the same force as ordinary laws enacted by parliament. The main objective of state of emergency decree laws is to expedite the legislative procedures by suspending debates and commission sessions that are part of the ordinary legislative procedure.
- State of emergency decree laws must:
  - be adopted exclusively to eliminate the conditions deemed to make the state of emergency necessary, and to restore the ordinary situation;
  - not violate Turkey’s obligations under international law; and
  - be repealed on termination of the state of emergency, without the need for any further legislative or judicial act.

State of emergency Decree Law No. 671. When this Decree Law entered into force, Turkey’s Presidency of Telecommunications was closed. All references to the Presidency of Telecommunications in any relevant regulations are considered references to the ICTA. The Presidency of Telecommunications’ main duties included, among others:

- Conducting operations for determining, listening and recording communications made through telecommunications.
- Evaluating and recording signal information within the scope of the related legislation.
- Transmitting data and information obtained from these activities, depending on the subject, to the:
  - National Intelligence Organisation;
  - General Directorate of National Police;
  - General Command of Gendarmerie; and/or
  - courts and the republic prosecutor offices on request.

Under the SoE Decree Law No. 671, wiretapping based on the Code of Criminal Procedure is done by the ICTA (not the Presidency of Telecommunications).

The measures taken by the SoE Decree Law are:

- Urgent measures. The prime minister is entitled to directly ask the ICTA to take necessary technical measures without judicial authorisation. The process is as follows:
  - the prime minister will directly ask the President of the ICTA to take necessary measures where a delay could be prejudicial and if the matter relates to reasons of national security, public policy, prevention of crimes, public health and public morality, or protecting the rights and freedoms of other persons;
  - the President of the ICTA will then immediately deliver the necessary measures to operators, access providers, data centres and any relevant content and hosting providers;
  - the parties to whom the measures are delivered must take the necessary actions within two hours;
  - the necessary measures must be brought before a criminal judge of first instance within 24 hours. The judge must then declare his/her judgment within 48 hours. If the judgment is not declared within 48 hours, the necessary measure will be automatically revoked.

- Measures against cyber attacks. The ICTA can take any necessary measures against cyber attacks.

- Information requests by the ICTA. The ICTA can access any information that it requests to fulfil its duties under relevant legislation.
  - The ICTA can collect information, documents, data and records from any legal entity, natural person and public institution. The ICTA can use archives, electronic information processing centres and communication infrastructure, contact such centres and take necessary measures or require them to take such measures.
  - No one can refuse such information requests from the ICTA on the basis of professional confidentiality obligations. Anyone that refuses to respond to an information request by
the ICTA is subject to an administrative fine of up to TRY1 million.

Other developments. These include:

- In September 2017, The Competitive Telco Operators’ Association (TELKODER) (including Turkcell’s Superonline, Vodafone and Türkşat) published a report concerning Satellite Communications Services in Turkey which analyses the existing challenges in the satellite communications market and examines the necessary actions to be taken to achieve growth. The report puts strong emphasis on the revised Article 191(l)(n) of the Regulation on Authorisation Regarding the Electronic Communications Sector requiring operators providing satellite communications services to carry traffic data relating to their subscribers through satellite earth stations established within Turkey, which constitutes an impediment to the complete and efficient use of satellite capacity.

- The regulation regarding the indication of four-digit operator codes in alpha-numeric short messages and multimedia messages entered into force on 12 April 2016. However, operators were allowed to make necessary arrangements until 11 December 2016. From this date, operators are required to indicate the Number Portability Routing Code allocated by the ICTA, in order to determine the operator through which the SMS or MMS is sent and the relevant recipient subscriber.

- The Draft Taxation Laws Amendment Bill, which is in the Plenary Agenda of The Grand National Assembly of Turkey from 8 November 2017, proposes an exemption from radio licence and annual usage fees concerning machine-to-machine (M2M) subscriptions and regulates that the ICTA is authorised to determine the procedures and principles applicable to the exemption practice. The proposal for establishing a licence exempt operation structure for equipment containing M2M communications model will most likely have further benefits in the connectivity of such equipment to communications networks, as well as for the subscribers concerned with the utilisation of number portability.

- On 28 October 2017, ICTA published the Regulation on Consumer Rights in the Electronic Communications Sector, specifying consumers’ rights and principles and procedures to be followed by licensed operators. Articles 7(l) and 7(9) of the regulation, allowing subscription contracts to be made in electronic environments, entered into force as of the publication date. Other provisions of the regulation, introducing a wide scope of obligations to operators from informing the subscribers to carrying the burden of proof regarding value-added services and providing amendments to existing billing and number portability procedures, will be applicable as of 28 April 2018.

REstrictions on Foreign Ownership

2. Are there any restrictions on foreign companies entering the telecommunications market in your jurisdiction?

The process and principles for the authorisation of electronic communication services, networks and infrastructure are set out in both the Electronic Communications Law No. 5809 (Electronic Communication Law) and the Regulation on the Authorisation regarding Electronic Communications Sector (Authorisation Regulation) (see Question 3).

Under the Electronic Communications Law, the applicant company must be founded under the legal status of either a joint stock company or limited company under the laws of the Republic of Turkey. This condition may be considered a restriction on foreign companies entering the telecommunications. Foreign companies can therefore only be founders or shareholders of companies incorporated subject to Turkish laws.

REGULATORY FRAMEWORK
Legislation and regulatory authorities

3. Give a brief overview of the regulatory framework for telecommunications in your jurisdiction. Which authorities regulate telecommunications services in your jurisdiction? Is there a separate regulator for competition law issues in this sector?

Regulatory framework

The main regulation is the Electronic Communications Law No. 5809 (Electronic Communications Law). This regulates the:

- Provision of electronic communications services.
- Construction and operation of the infrastructure and the associated network systems.
- Manufacture, import, sale, construction and operation of all kinds of electronic communications equipment and systems.
- Planning and assignment of scarce resources (including frequency and the regulation) and the authorisation, supervision and reconciliation activities relating to such issues.

The Electronic Communications Law also has some important secondary regulations, including the:

- Regulation on Numbering.
- Regulation on Consumer Rights in the Electronic Communications Sector.
- Regulation on Tariff.
- Regulation on Market Analysis.
- Regulation on Authorisation Regarding the Electronic Communications Sector.

The other regulation is the Law on Regulation of Broadcasts via Internet and Prevention of Crimes Committed through Such Broadcasts No. 5651 (Internet Law), which:

- Defines the responsibilities of content providers, hosting providers and access providers.
- Regulates the conditions of blocking access to websites.

The Internet Law also established the Union of Access Providers. This authority was established to enable the enforcement of court orders for the blocking of websites.

Regulatory authorities

The three regulatory institutions for telecommunications in Turkey are the:

- Ministry of Transport, Maritime Affairs and Communications (Ministry). This is responsible for policy making for telecommunications.
- Information and Communications Technologies Authority (ICTA). This is responsible for the regulation of the telecommunications sector. The ICA is an independent institution and has the power to enact bye-laws, communications and other secondary regulations pertaining to the authorisations granted by the Electronic Communications Law. The ICTA is also authorised to carry out activities for the protection of competition (see below, Competition law). ICTA’s functions also include:

  global.practicallaw.com/communications-guide
• conducting operations for determining, listening and recording communications made via telecommunications;
• evaluating and recording signal information within the scope of the related legislation;
• transmitting the data and the information obtained from the above activities to the National Intelligence Organisation, the General Directorate of National Police, and the General Command of Gendarmerie (depending on the relevance of the subject), or the courts and the republic prosecutor offices upon request.
• conducting activities to prevent internet activities and broadcasting which contains content considered criminal under the Internet Law. The ICTA can also take the necessary measures provided under the Internet Law regarding blocking access to internet.

**Competition Law**

Under the Electronic Communications Law, operators must avoid activities and conduct that would violate competition law. The main regulatory authority for regulating the competition of the telecommunications sector is the Competition Authority. This is established under the Law on the Protection of Competition No. 4054 (Competition Law). The Competition Authority:

• Supervises and performs examinations into the telecommunications sector.
• Makes decisions relating to mergers and takeovers of telecommunications operators (primarily taking consideration of the views/findings of the ICTA and its regulatory procedures (see below)).

When making a decision on a merger or acquisition in the telecommunications sector, the Competition Authority must give priority to the views and regulatory acts of the ICTA. Without prejudice to the provisions of the Competition Law, the ICTA can examine, investigate and conduct analysis into the market and identify the operators with significant market power. The ICTA can also take precautions to sustain the stability of competition in the telecommunications market. In the case of an illegal act against competition in the telecommunications sector, the ICTA is empowered to request information and documents from operators.

**AUTHORISATION AND LICENCES**

4. What notification, authorisation and licences are required to provide telecommunications services? What is the licence application procedure and fee?

The Information Technologies and Communications Authority (ICTA) has adopted the Amendment Regulation (see Question 7). ICTA’s supervision power has been increased, and the authorisation regime for the Turkish electronic communications market has been significantly reformed.

In line with the EU regime, authorisation requires both:

• An operator providing electronic communications services and/or electronic communications networks to be registered with the Information and Communications Technologies Authority (ICTA).
• The ICTA to grant certain rights and obligations specific to electronic communications services to the operator.

After the amendments, ICTA can reject authorisation applications on the grounds that the application can jeopardise any one of the following:

• National security.
• Public order.
• Public health.
• Public interest.

Also, the ICTA can evaluate an application by performing an audit to verify the accuracy of the documents submitted by the applicant.

According to the Regulation on the Authorisation regarding the Electronic Communications Sector (Authorisation Regulation) providing authorisation to new network operators should help to:

• Create a competitive environment by increasing the number of operators.
• Establish a reliable environment in the sector.
• Foster domestic and foreign investment.
• Provide a healthy development of the sector.
• Use national sources effectively and efficiently.
• Diffuse the services.
• Provide services with a determined quality of service.
• Protect the rights of consumers.

If the operator does not require an allocation of resources to carry out their activities, the operator can obtain authorisation through a simple notification to the ICTA and start providing services from the date of notification. Notification is free. However, if the operator requires telephone numbers and/or radio frequencies, a “right of use” authorisation must be obtained from the ICTA. This is subject to costs determined by the ICTA each year.

The minimum share capital requirement that was previously applied to fixed line telephone network operators has now been extended to all companies. Under an announcement by the ICTA, the minimum paid capital for a company to apply for an electronic communication licence is TRY1 million.

Before the Amendment Regulation, it was sufficient for an applicant that had not applied for a right of use to make a simple notification to be deemed authorised under the Authorisation Regulation. The operator could then start its operations from the date it submitted the relevant application documents to the ICTA. However, after the amendments, the applicant company can only be deemed authorised after the ICTA declares that it meets all requirements under the Authorisation Regulation.

This provision significantly deviates from the former authorisation regime, which had been drafted in conformity with EU legislation. Under the recently adopted regime, applicant companies should wait for the ICTA’s final approval, even if they have already filed all required documents.

The ICTA has also removed the 15-day time limit for assessing applications. Therefore, its assessment period for authorisation applications is not limited by any set timescale.

There are three types of right of use for frequencies which are not scarce:

• For radio with shared usage service.
• For Local/Regional Radiolink Frequency.
• For National Radiolink Frequency.

The calculation method of the fee by the ICTA is based on four parameters:

• Constant value, which depends on the type of the frequency which will be used.
• Number of channels in the frequency.
• Frequency value co-efficient.
• Economic development coefficient.
The economic development co-efficient is designed in a manner that includes the scale of the transmission. In addition, if the telephone numbers and/or frequencies required are considered to be scarce with limited availability, the authorisation can only be obtained through a public tender organised by the Ministry of Transport, Maritime Affairs and Communications and the ICTA. If the number of authorisations has not been exceeded, authorisation should be granted both:

- Within 30 days of notification.
- For a period of up to 25 years.

The ICTA charges an authorisation fee on telecommunication operators equal to 0.35% of the operator’s net sales. Authorisation can legally be transferred between operators, but any transfer must first be approved by the ICTA.

To request authorisation, the operator must send a notification to the ICTA requesting the right of use. When requesting authorisation, the operator must satisfy the following requirements:

- The operator must be a company incorporated as either a joint stock company or limited company under the laws of the Republic of Turkey.
- The scope of business activities in the company’s articles of association must include the words “providing electronic communication/telecommunication service and/or building and operating electronic communication/telecommunication network or infrastructure” or the electronic communication activity for which it seeks authorisation.
- Individual shareholders holding at least 10% of the company’s shares (including through legal entities: this was added by the Amendment Regulation) and persons authorised to manage or represent the company must not have committed the following offences and been sentenced for them:
  - crimes in the information and communication technologies sector, specifically under Chapter 10 of the third section of the Penal Code No. 5237, dated 26 September 2004, excluding unintentional crimes; and
  - penal servitude or imprisonment for more than five years, or legal fraud, corruption, bribery, theft, confidence tricks, misfeasance, forgery, abuse of trust, fraudulent bankruptcy, crimes of smuggling, bid rigging, money laundering, or tax smuggling or participating in tax smuggling crimes.

After the amendments, share transfers of at least 10% of a company’s shares are subject to prior permission by the ICTA. If less than 10% of the shares will be transferred, the operators must notify the ICTA two months in advance.

If the requested authorisation has a cap/limitation on the amount of right of use application that can be sought, it will be subject to additional conditions, as follows:

- The company must be founded within the time limit specified in the tender’s specification.
- The company must be incorporated according to the laws of Turkey and for the purpose of executing only the activities within the scope of the authorisation.
- All of the company’s shares must be nominative.
- All conditions specified under the relevant legislation and/or tender specification must be met.

Under the recently adopted regulation, the ICTA can (for public security reasons) take over or suspend the activities of an operator, temporarily or permanently, and entirely or partially.

The Draft Taxation Laws Amendment Bill, which has been on the Plenary Agenda of The Grand National Assembly of Turkey from 8 November 2017, proposes an exemption from radio licence and annual usage fees concerning machine-to-machine (M2M) subscriptions and regulates that the ICTA is authorised to determine the procedures and principles applicable to the exemption practice. The proposal for establishing a licence exempt operation structure for equipment containing M2M communications model will most likely have further benefits in the connectivity of such equipment to communications networks, as well as for the subscribers concerned with the utilisation of number portability.

5. How long does a telecommunications licence typically last and what are the usual conditions attached to it? Can conditions be varied? Are licences available for public inspection?

The use period can be granted for up to 25 years, depending on the qualification of the network and service and the request of the applicant. The length of the use period is determined by the Council of Ministers.

Certain types of authorisation are subject to other conditions set out in a document issued by the Information and Communications Technologies Authority (ICTA) entitled “Definition, Scope and Periods of Electronic Communication Service, Network and Infrastructure”. Right of use authorisations are limited for these types of services.

Licences are accessible to the public. An online database listing all authorisations granted by the ICTA is available on the ICTA’s website (http://yetkilendirme.btk.gov.tr/Yetkilendirme/).

**PENALTIES FOR NON-COMPLIANCE**

6. What are the consequences of non-compliance with the telecommunications regulations?

**Administrative sanctions**

The amount of an administrative fine can vary depending on the:

- Type of violation.
- Frequency of the violation.
- Size of the violator company.

Administrative fines are regulated under the Electronic Communications Law and certain other regulations (mainly the Regulation on Administrative Sanctions). Some examples of administrative fines are set out as follows:

- If an operator applying for a licence does not have the required legal documents to carry out telecommunication operations, the Information and Communications Technologies Authority (ICTA) will send a written notice to the applicant about this situation. This notice will be sent to the operator within 15 days of the application. If the applicant does not provide the lacking documents, the ICTA can charge an administrative fine or impose other sanctions.
- In the event of a merger, acquisition or share transfer which does not comply with the regulations, the ICTA can charge an administrative fine or impose other measures.
- If the operations of a company are in violation of the telecommunications regulations, the ICTA can charge an administrative fine or impose other measures.
- In the event of violations of provisions relating to the company’s auditing process (intended to protect values like good faith, transparency and correctness). In the event of violation to these

---

global.practicallaw.com/communications-guide
regulations, the ICTA can charge an administrative fine or impose other measures.

Under the telecommunications regulations, the ICTA is authorised to:

- Take over a company's telecommunication facility (by paying compensation).
- Cancel or revoke a company's authorisation/licence.

However, these sanctions will only be used for serious violations, and the ICTA must consult the opinion of the Ministry of Transport, Maritime Affairs and Communications before cancelling the authorisation/licence of a national provider.

**Criminal sanctions**

**Judicial fines.** For certain violations (for example, providing services unlawfully) the Electronic Communications Law foresees judicial (criminal) fines. In order to impose a judicial fine, the competent court must conduct trials and render a judicial decision.

**Imprisonment.** The Electronic Communications Law imposes prison sentences for only two types of activity (in such cases the act must not require imposing another criminal sanction):

- Unauthorised provision of telecommunications services (for example, illegal broadcasting).
- Use of radio equipment and systems against national security.

Prison sentences of up to one year can be imposed. However, such short prison sentences are often postponed or turned into judicial fines by courts.

**APPEALS**

7. Can decisions of the regulators be appealed and on what grounds?

Decisions of the regulators can be appealed to the administrative courts or the Council of State, depending on the type of transaction. In general, the administrative courts are the first instance courts, and the Council of State is the final appellate body. However, in certain circumstances the Council of State acts as the court of first instance.

As a general rule, all decisions of administrative bodies can be appealed to the administrative courts. However, the regulatory transactions that are applicable in all of Turkey (such as regulations, communications and decisions of the Information and Communications Technologies Authority (ICTA)) can only be invalidated by the Council of State. In such cases, the Council of State acts as a court of first instance.

The two types of appeals generally heard by the administrative courts and the Council of State relate to:

- Requests for the invalidation of a transaction.
- Requests for compensation.

Both type of request can be claimed in a single case. The grounds for these cases can be either a violation of a law or the Constitution.

**UNIVERSAL SERVICE OBLIGATIONS**

8. Is the incumbent provider or other large providers with significant market power subject to specific regulations? Do universal service obligations apply? Are there provisions for the structural separation of a network?

**Regulations for large providers**

The Information and Communications Technologies Authority (ICTA) determines which companies have significant market power. The main regulations for these companies are the:

- Electronic Communications Law.
- Regulation on Market Analysis.

According to these regulations, the companies with significant market power (as determined by the ICTA) are Türk Telekom, Turkcell, Avea and Vodafone.

**Universal service obligations**

The rules relating to universal service obligations are provided in the Universal Services Law, No. 5369, which was enacted in 2005. However, in the context of the Universal Services Law, there is no directly enforceable provision for companies with significant market power. The provisions of the Universal Services are mostly applicable to public services such as:

- Fixed services (written or electronic).
- Phone book services.
- Payphone services.
- Internet services.
- Emergency call services.
- Security on navigation.
- Maritime transport.

However, the universal service obligations have not been fully implemented as required under the Universal Services Law. The principles ruling the universal service phenomenon laid out by the Universal Services Law, such as equality in terms of access by every citizen to the service and the reasonable pricing policy, have not been fully realised. This is due to various reasons, mainly because many regions in Turkey lack the required infrastructure.

**Structural separation**

There are no legal provisions for the structural separation of a network.

**GENERAL CONDITIONS**

9. What general conditions apply to telecommunications services? Which other regulations must be complied with?

The general conditions governing electronic communications are set out under the Electronic Communications Law and the relevant regulations issued by the Information and Communications Technologies Authority (ICTA).

The main other regulations applicable to telecommunications services are the:

- Regulation on the Authorisation regarding Electronic Communications Sector.
• Regulation on Processing of Personal Data and Protection of Confidentiality in the Electronic Communication Sector.
• Regulation on Numbering.
• Regulation on Consumer Rights in the Electronic Communications Sector.
• Regulation on Tariff.
• Regulation on Market Analysis.

In relation to service specifications, licence scope and further details, the ICTA uses legal instruments and issues communications, procedures and other decisions in order to determine market regulations that the main legal instruments do not provide.

One of the most important decisions is the ICTA decision entitled "Definition, Scope and Periods of Electronic Communication Service, Network and Infrastructure", which focuses on the scope of licence which can be granted to operators (see Question 3).

SPECTRUM USE

10. Which authorities allocate spectrum use and how is it managed?

Spectrum use is allocated to operators by the Spectrum Management Department of the Information and Communications Technologies Authority (ICTA). If an electronic service requires the use of a specific frequency, the Department can assign and allocate the spectrum pursuant to the Regulation on Spectrum Management issued by the ICTA.

The Department also issues and defines the National Frequency Plan to be deployed nationwide. As Turkey is a member of the International Telecommunication Union, the ICTA determines the frequency plan to maintain international consistency among the members of the Union. The National Frequency Plan prepared in accordance with the Electronic Communications Law No. 5809 (Electronic Communications Law) and the Regulation on Spectrum Management was revised and made available to public consultation on 30 October 2017. In addition, according to one of the ICTA’s bye-laws, the ICTA and the Department must also consider EU legislation when determining the National Frequency Plan.

11. Can spectrum use be traded or sublicensed?

The trading of spectrum frequencies is allowed and is regulated under the Regulation on the Authorisation regarding Electronic Communications Sector (Authorisation Regulation) and its secondary regulations. There is no regulation on the sublicensing of spectrum use rights.

The transfer of a spectrum frequency can only be performed if the party that wishes to take over the use right has an operator licence issued by the Information and Communications Technologies Authority (ICTA). The spectrum trade can be either a:
• Total transfer.
• Partial transfer.

The main procedures on the trading of spectrum use are set out below.

Total transfer
The following rules are applicable to total transfers of spectrum frequencies:
• Only spectrum frequencies whose numbers are not limited can be traded between operators.
• If the spectrum use right is to be transferred within a merger or an acquisition, the receiving party must apply to the ICTA for permission for the transfer. If the company taking over the whole frequencies and telephone numbers is an operator, the right of use application form is not required.
• When making its decision, the ICTA may consider market conditions, competition conditions, market shares, and other relevant issues.

Partial transfer
The following rules are applicable to partial transfers of spectrum frequencies:
• Where the operator intends to transfer part of its frequencies under the framework of spectrum trading, if the company taking over the frequencies is an authorised operator, the ICTA will only initiate the transfer process once it has received and approved an application for authorisation request from both transferring parties.
• If one of the transferring companies is not already a telecommunications operator, it must follow the conditions for applying for an operator licence and apply to the ICTA for approval regarding transferring the frequencies.
• If the ICTA approves the transfer, a right of use authorisation will be granted to the transferee company within the one-month period following the date permission is granted.

INFRASTRUCTURE AND NETWORK MANAGEMENT

12. Do communications providers have any powers to place their equipment on third party sites?

Article 22 of the Regulation on the Authorisation regarding Electronic Communications Sector (Authorisation Regulation) and the Regulation on Right of Way in the Electronic Communication Sector (Right of Way Regulation), allows operators to use public or third party property if such use is required to establish electronic communication infrastructure and/or the provision of telecommunication services. The owner of the property is obliged to accept the intervention on the property, provided:
• The construction does not cause permanent damage on the property.
• The construction does not consistently hinder his/her right to use the property.

Under the Electronic Communications Law and the Right of Way Regulation, without prejudice to other relevant regulations, the general rules on freedom of contract will prevail between the parties. The Information and Communications Technologies Authority (ICTA) can always ask the operator for information on the terms of such agreement.

The main obligations of the parties are as follows:
• The property owner must allow the operator to take all necessary measures and to execute the works provided the operator covers the expenses.
• The property owner must abstain from any kind of activity that will endanger or damage the electronic communications network and the activities of the operator.
• Operators with rights of way must compensate the property owner for any damage which results from the execution of the rights of way.
• The property owner can refuse the operator's request to use the land on the grounds that the intended intervention might cause
permanent damage on the property and it consistently hinders his/her right to use the property.

**ACCESS AND INTERCONNECTION**

13. Does access to infrastructure and a network have to be given to other providers?

Whether an operator is required to give access to its network or infrastructure depends on the level of market competition in the relevant market. Telecommunication operators that are identified as entities with significant market power in a determined market can be subject to certain pre-determined obligations (Electronic Communications Law; Regulation on Access and Interconnection). Therefore, after conducting some market analysis, the Information and Communications Technologies Authority (ICTA) can impose any of the following obligations on telecommunications operators with significant market power:

- The provision of access and/or interconnection.
- The publication of reference access and/or interconnection offers.
- Facility sharing.

The ICTA can impose an obligation on the operator to meet the other operators' requests for access if it considers that an operator with significant market power in the relevant market would hinder the emergence of a competitive market by either:

- Denying another operator's access request.
- Imposing unreasonable terms and conditions.

Operators obliged to provide access to other operators must unbundle the network in a way which enables access to transmission, switching and interfaces, requested from them. The ICTA determines the scope of obligation of providing unbundled access to all network elements, including the local loop.

14. Is the interconnection of networks required? Are interconnection prices regulated and how are interconnection disputes resolved?

As with the obligation to provide network access (see Question 13), the Information and Communications Technologies Authority (ICTA) can impose an obligation on the operator to meet the other operators' requests for access if it considers that an operator with significant market power in the relevant market would hinder the emergence of a competitive market by either:

- Denying another operator's access request.
- Imposing unreasonable terms and conditions.

Operators without significant market power must negotiate with each other on the interconnection upon request. If the parties cannot reach an agreement, the ICTA can impose an obligation on an operator to provide interconnection (even if the operator does not have significant market power).

In general, the parties are free to negotiate the terms and conditions of their interconnection agreements. However, if the ICTA decides that an operator with significant market power may hinder the emergence of a competitive market by imposing unreasonable prices and/or conditions on the competitors, it can require the operator to publish a "Reference Access Offers" of which the ICTA determines the content. Unless otherwise specified by the ICTA, reference offers must be renewed annually and submitted to the ICTA until the end of February. However, operators can propose amendments to the reference access offers submitted to the ICTA if required due to changing market conditions and technologic developments. Existing reference offers must remain valid until the new offers have been approved.

**DATA PROTECTION AND SECURITY**

15. What data protection or consumer privacy regulations apply to the telecommunications sector, including both generally applicable and sector-specific laws? Are communications providers required to retain communications data? If yes, which data and for how long? What are the penalties for breach of these regulations?

**General**

The Personal Data Protection Law is drafted fully in accordance with the Data Protection Directive and entered into force when it was published in the Official Gazette on 7 April 2016. The Law regulates all operations performed with personal data, including obtaining, recording, storage and transfer to third parties or abroad. Under the Law, a national data protection authority will be created that will be responsible for interpreting the law, supervision and enforcing legal sanctions. Five of its board members have already been elected by parliament, and the other four will soon be nominated by the Council of Ministers and the President of the Republic. The sector-specific regulation, the Regulation on Processing of Personal Data and Protection of Confidentiality in the Electronic Communication Sector, which has more specific provisions for the communications market, will continue to apply to operators.

The Regulation on Protection and Process of Personal Data in the Electronic Communications Sector, drafted in parallel with Directive 2002/58/EC on the protection of privacy in the electronic communications sector (E-Privacy Directive), has been adopted by the Information and Communications Technologies Authority (ICTA) and entered into force on 24 July 2012.

However, by its decision dated 7 August 2017, the ICTA published its revised Regulation on Processing and Protection of Confidentiality in the Electronic Communication Sector for public consultation. Within the purpose of compliance with EU's regulatory framework for electronic communications, Turkey restructured its electronic communication legislation during the mid-2000's. In line with this, after the entrance into force of the first regulation relating to privacy in the electronic communications sector in 2004, the draft will be the third e-privacy regulation in Turkey.

**E-privacy regulation in Turkey**

Since Article 20 of the Constitution provides that "regulations regarding data protection may only be adopted by means of law", the Turkish Constitutional Court annulled Article 51 of the Electronic Communications Law, which was previously the legal basis for such regulation. After Article 51 was annulled, the government prepared a draft law reconstituting the annulled Article 51 of the Electronic Communications Law. On 27 March 2015, Article 51 was amended according to the previously mentioned decision, and all general principles mentioned in the annulled regulation were reintegrated into the new Article 51. Currently, while the ICTA has introduced a new Regulation in relation to E-privacy, Article 51 of the Electronic Communications Law outlines the main provisions regarding personal data protection in electronic communications. The most important aspects of the current Article 51 are as follows:

- Personal data must be:
  - processed fairly, lawfully and for specific, clear and legitimate purposes;
  - accurate and up-to-date and necessary, relevant, limited and proportional to the purpose of the processing; and
- kept only for the duration necessary for the purposes of processing.
- Ensuring the confidentiality of communications and the related traffic data is essential. Listening, tapping, storage or other kinds of interception or surveillance of communications without the consent of the parties of communication is strictly prohibited, without prejudice to judicial decisions.
- Traffic and location data can only be processed:
  - on the prior explicit consent given by related subscribers/users after having been informed of the type of traffic data to be processed and of the duration of such processing, or after being rendered anonymised; and
  - only with the purpose of marketing either electronic communication services or the provision of value added electronic communications services.
- Personal data can only be exported abroad with the data subjects’ prior consent.

Within the purview of Article 51, Regulation on Processing and Protection of Confidentiality in the Electronic Communication Sector was reconstructed to ensure consistency with the Personal Data Protection Law (see Question 1). In terms of categories of personal data classified under the revised regulation, a retention period of two years is envisaged starting from the date of communication, without prejudice to the legal periods of limitation. The retention period for personal data subject to inspection, examination, investigation or dispute, will be retained until the relevant period has been completed.

Additionally, operators are obliged to obtain the approval of the ICTA on the erasure of personal data with regards to national security, public order, and prevention of terrorism, under the revised regulation.

The Regulation to Amend the Authorisation Regulation (published in the Official Gazette on 11 June 2016) introduced new data categories subject to the retention obligation. Internet service providers and operators offering telephony services must retain traffic data for two years. The recently introduced data sets that must be retained for two years are the:

IP address,
- Port Interspace.
- ID information.
- Service type.
- Quantity of the data used.
- Account name.
- The start and end times of service periods.

Also, under the recently adopted regulation, if an operator asks for its authorisation to be revoked, it must provide to the ICTA subscriber information and records of its business activities for the previous five years.

16. What are the rules relating to the interception of calls? How and on what grounds can government authorities require disclosure of communications data? What are the penalties for breach of these rules?

General

Telecommunications network operators are generally prohibited from intercepting telephone calls and/or tapping the users of their networks. Depending on the scope of violation, non-compliance with these legal reasons are punishable with (Turkish Penal Code No. 5237):

- Prison sentences of between six months and three years.
- Judicial fines. The fine for recording without consent a private conversation varies between TRY3,600 and TRY73,000 in 2015. For disclosure without consent of a private conversation, the fine varies between TRY14,600 and TRY400,000.

The distribution of telecommunication information unlawfully obtained via audio or visual press can cause the sanction to be doubled.

Depending on the circumstances, electronic communication providers who do not comply with the interception orders may either:
- Be subject to judicial fines and/or
- Have their authorisation/licence revoked.

The interception of telephone calls is permitted in certain cases (for example, for reasons of national security, gathering intelligence, or conducting investigations) and is regulated under specific legal instruments. However, these decisions are taken by the relevant competent authorities and sent to relevant operators through the ICTA (see below, Judicial Issues and Intelligence-related Issues).

Judicial Issues

The legislative instruments applicable to the interception of the calls are:

- Penal Procedure Law No. 5271.
- Regulation on Application of Measures Regarding the Supervision of Telecommunication, Confidential Investigator and Technical Surveillance as Prescribed in Penal Procedure Law.

Telephone calls can be intercepted during an investigation where both:

- There is no other way to collect evidence.
- There is a strong suspicion regarding the crime committed.

The decision to intercept calls should be made by a judge, unless in an emergency, where the public prosecutor can make the decision provided he/she presents the decision to the judge at the first convenient time. The judge must deliver a decision within 24 hours. If the decision is reversed or not given at all, all interception actions must stop immediately. The telecommunication between a suspect and a possible witness with a probability to withdraw cannot be intercepted. Interception decisions can be provided for a maximum period of three months and can be prolonged only once. If the decision to intercept relates to organised crime, it can be prolonged without limitation, but for only one month in each time. When the action is ceased, the records and their content must be destroyed under the supervision of the public prosecutor within a maximum of ten days.

Intelligence-related Issues

The legislative instruments applicable to the interception of the calls in intelligence-related issues are:

- Law No. 2559 on Duties and Powers of Police Forces.
- Law No. 2803 on Organisation, Duties and Powers of Gendarme Forces.
- Law No. 2937 on State Intelligence Services and National Intelligence Institution.

The interception of calls can be conducted within the scope of the above laws as a preventative and protective measure concerning state security, national sovereignty, disclosure of state secrets, spying, terror, disruption of public order, or territorial integrity. In such cases, the decision to intercept calls should be made by a judge, unless in an emergency where (based on the ICTA) the
decision can be made by any of the following (or their deputies) and must be presented to the judge at the first convenient time:

- Chief General of Police Forces.
- Police Intelligence Chief.
- Commander-General of Gendarme Forces.
- Gendarme Intelligence Chief.
- Undersecretary of National Intelligence Service.

The judge must deliver a decision within 24 hours. If the decision is reversed or not given at all, all interception actions must stop immediately.

In such cases, interception decisions can only be given for a maximum of three months and can be prolonged only three times in any three-month period. If the interception relates to organised crime, terror or spying as the issue at hand, the decision can be prolonged without limitation for periods of three months.

When the action is ceased, the records and their content must be destroyed under the supervision of the public prosecutor within a maximum of ten days, with minutes for any possible future inspections by authorities on the instances where interception was conducted.

17. Are there any network or data security obligations imposed on communications providers?

General
The Information and Communications Technologies Authority (ICTA) strictly regulates the network and information security in the ICT sector. The Regulation on Network and Information Security in Electronic Communications Sector (Security Regulation) was recently adopted by ICTA and entered into force on 13 July 2014. The Security Regulation defines the principles and procedures, which operators must follow in relation to maintaining the network and information security.

On 23 January 2013, the ICTA fined one of the leading communication and convergence technology providers in Turkey for its failure to meet certain standards provided under ISO/IEC 27001 during configurations of a device (Standards). In addition, the ICTA recently sent official warning letters to two telecommunications operators, due to the fact that they didn’t certify their conformity with the Standards. The ICTA requested that the two operators obtain and submit their certificates of conformity with the Standards within six months. In the same decision, the ICTA decided to send an official warning letter to the other two operators that certified their conformity with a delay. This decision shows both:

- The serious approach and attitude taken by the ICTA towards certification of conformity with the Standards.
- The sanctions available to the ICTA when operators fail to provide, or are delayed in sending, their conformity with the Standards.

Security obligations
Under the Security Regulation, two types of security structures are applicable depending on the size of the operator. The Security Regulation therefore foresees:

- Obligations applicable to all regulators.
- Obligations applicable only to operators with specific authorisations (see below) and whose annual net sales exceed TRY10 million. These additional obligations apply to:
  - infrastructure services;
  - miscellaneous telecommunications services by a concession agreement;
  - GMPSC mobile telephony services;
  - GSM/IMT-2000/UMTS services by a concession agreement;
  - GSM1800 mobile telephony services on aircraft;
  - service providers;
  - fixed telephony services;
  - MVNO Services, Satellite Communications Services; and
  - satellite and cable TV services by an authorisation agreement.

Obligations applicable to all operators
The Security Regulation provides certain obligations applicable to all operators. The most significant obligations are as follows:

- The operator must establish an information security management system (ISMS) covering all of its services and critical infrastructures.
- The operator must issue an ISMS policy.
- The operator must perform an annual security risk assessment.
- The operator must have a separate confidentiality agreement or confidentiality clauses regarding their outsourcing agreements. The Security Regulation also defines the agreements.

Additional security obligations
If the operator is subject to specific authorisations (see above, Security obligations), the operator is subject to additional security obligations. Under these rules, the operator must do the following by the end of March each year:

- Establish disaster recovery backups.
- Obtain security conformity certification.
- Prepare a security report.

In addition, the operator must immediately notify the ICTA of any event that could:

- Affect the operator’s network by 5% or more.
- Cause the operator to cease business continuity.

PRICE REGULATION

18. How are prices and charges regulated?

Price tariffs for telecommunications are regulated under the Regulation on Tariff, which is based on the Electronic Communications Law. Price tariffs should be transparent and should not affect competition between the providers or violate equal opportunities for end users. Price tariffs are regulated in one or more of the following ways:

- Being subject to the notification procedure.
- Setting lower and/or upper limits for the tariffs within the framework of the procedures and principles determined by Information and Communications Technologies Authority (ICTA).
- Approval in accordance with the cost-based method.
- Approval in accordance with the minimum/maximum price cap method.

Tariffs and all related charges are subject to the notification procedure, unless otherwise stated by ICTA. According to the notification procedure:

global.practicallaw.com/communications-guide
• Tariffs must be notified to the ICTA at least 15 days prior to their entry into force (temporary tariff changes must be notified seven days prior).
• The notification must contain detailed information and the confirming documents (including general terms and conditions of the operator) must be provided in a clear and understandable manner demonstrating that the tariff complies with the ICTA’s requirements, especially concerning the protection and maintenance of competition.

Operators are obliged to announce their tariffs to the public before enabling them. The announcement to the public must be provided in a clear and understandable manner. The ICTA can determine a certain time prior to which the relative providers are obliged to make the public announcements regarding tariffs. The ICTA is also authorised to continuously control the tariffs for any of the following reasons:
• To ensure correction of the tariff or general terms regarding the tariff.
• To temporarily suspend the implementation of the tariff.
• To revoke the relevant tariff if it deems it does not comply with the requirements.

**TELEPHONE NUMBER AND SUBSCRIBER MANAGEMENT**

19. How are telephone numbers allocated and managed in your jurisdiction?

**General**

The Electronic Communications Law is the main regulatory framework concerning the allocation and management of the telephone numbers. Further regulations on the allocation of telephone numbers are provided in the Electronic Communications Law’s secondary legislation, namely the:

• Regulation on Authorisation Regarding Electronic Communication Sector (Authorisation Regulation).
• Regulation on Numbering.

The Regulation on Numbering is the specific regulation for the allocation of number blocs, based on the basic principles set out in the Regulation on Authorisation Regarding Electronic Communication Sector. Telephone numbers are allocated under the supervision of the Information and Communications Technologies Authority (ICTA). Companies wishing to be authorised concerning the numbers should apply to the ICTA, which will evaluate the application and decide whether to assign a right to use to the applicants. To be authorised, the applicants must meet the necessary criteria according to section 4 of the Regulation on Numbering. The ICTA evaluates applications based on the applicable legislation, the National Numbering Plan and the National Frequency Plan (among other conditions (see below, Conditions for number allocation)). Authorised applicants must deposit the cost of the right to use within two months following their authorisation or their authorisation will become void. Authorisation is granted by the ICTA and can be granted for up to a maximum term of 25 years.

The operator’s application for number allocation is made either:
• Alongside its application for authorisation.
• After the authorisation application is obtained.

Applicants should present the documents confirming payment regarding right to use is made during their application for number allocation. The ICTA will provide its decision on number allocation within 30 days, unless the ICTA asks for extra documents.

Allocations are made by the ICTA and are made for a term which must not exceed the authorisation term.

**Conditions for number allocations**

Number allocations are subject to the following conditions from the ICTA:

• The number allocation application must be in accordance with the National Numbering Plan.
• It must be possible to allocate the requested number(s).
• The demanded numbers must be compliant with the related service description and geographical scope.
• The technical capacity, investment plan and sector projections must be sufficient for the amount of demanded numbers.
• The applicant must be duly authorised according to the rules of the Regulation on Authorisation Regarding Electronic Communication Sector.
• If the operator is demanding an additional allocation in the same type or area code, the applicant must have already reached a 65% fill factor in its allocated bloc.
• Any other condition required by the ICTA must be satisfied.

The ICTA also applies the following conditions to number allocations once the numbers have been allocated to the operator:

• Allocated numbers must be used according to the Regulation on Numbering and application forms.
• Additional allocations should be made in accordance with the purpose of the first allocation.
• Allocated numbers must not be used in a way which violates competition law or consumer rights.
• Allocated numbers must not be transferred to or benefited from by third-party applicants without the prior consent of the ICTA.
• The ICTA issues regulations on this subject during possible mergers and acquisitions.
• Allocated numbers must be used in accordance with the tariffs regulations concerning their types.
• Allocated numbers must be presented to service within one year following the allocation unless the ICTA decides otherwise.
• Any other non-allocated and non-authorised numbers from the National Numbering Plan must not be used.
• Allocated numbers must not be used in a way which could result in confusion with other numbers in the National Numbering Plan.
• The calls made in accordance with a calling plan to a specific number must be addressed to that number, except for call forwarding or any other similar reason.

20. Does access have to be provided to certain services, such as the emergency services and directory enquiries?

**General**

The applicable legislation relating to specific services is set out within the scope of the Electronic Communications Law. This law states that all allocations for this purpose must be conducted by considering emergency situations. Therefore, the Electronic Communications Law establishes a regulatory framework by stating that all calls directed to 112 (that is, the short code of emergency number for ambulances in Turkey) and any other number determined by the Information and Communications Technologies Authority (ICTA) must be free of charge. All applicants authorised by the ICTA to operate as an operator are
obliged to provide its subscribers free access to such numbers within the same quality and scope it does for its general services.

Emergency services

The main obligations for operators ensuring its subscribers are provided with access to emergency services are determined by the Regulation on Emergency Call Services in Electronic Communication Sector (Emergency Call Regulation). According to the Emergency Call Regulation, operators offering publicly available telephone services, and which are able to make their subscribers call the numbers contained in the National Numbering Plan, must ensure free access is available to the following emergency numbers:

- 110 Fire brigade.
- 112 Ambulance.
- 122 Disaster and Emergency Management Authority.
- 131 Turkish railways emergency report.
- 136 Reporting customs trafficking.
- 151 Coastal safety.
- 155 Police.
- 156 Gendarme.
- 157 Reporting and aid for victims of human trafficking.
- 158 Coast guard.
- 159 Highways.
- 168 Turkish Red Crescent.
- 177 Reporting forest fires.

To carry out the above obligation, operators must gather the relevant address and/or location of the relevant emergency services (for example, the address of the local fire brigade) so they can communicate it to the relevant emergency line. Operators are obligated to keep such information for one year.

Furthermore, the Regulation on Authorization Regarding Electronic Communication Sector defines emergency call services as "the fastest and most appropriate manner to reach [the] fire department, security forces, health institutions or other related instances in relation to issues of emergency such as fire, health, natural disaster, security" and instructs that:

- Emergency numbers must be accessible without the need to pay within the scope of the National Numbering Plan.
- Operators must execute the necessary actions to adopt their infrastructure for this purpose.

In addition, the Regulation on Numbering supplements the National Numbering Plan, where the numbers are separated into the blocks. According to the National Numbering Plan, short numbers begin with "1" and the access to the ones that are related to emergency services should be provided free of charge. Moreover, the area code that begins with "800" are non-geographical numbers and should also be provided for free. The ICTA can also determine new number blocks which should be provided according to the National Numbering Plan.

Directory enquiries

The ICTA document entitled "Definition, Scope and Periods of Electronic Communication Service, Network and Infrastructure" regulates directory enquiries. These are supposed to operate on a paid-for basis and are not free of charge. Operators with the relevant authorisation have the right (but not an obligation) to provide this service to their subscribers.

---

21. Are there regulations relating to specific consumer services, such as acquiring and transferring subscribers, number portability, complaint handling, and nuisance and silent calls?

Number portability

Number portability is regulated by the Regulation on Number Portability. Portability is intended to be an easy transaction with minimum possible cost. All geographical, non-geographical and mobile numbers that exist within the National Numbering Plan can be ported.

A number portability application is made by the subscriber to the receiving operator with a form. The form should include:

- All rights of the subscriber.
- The subscriber's identification information.
- Information relating to the outgoing operator.
- The preferred porting time.

The application will cause the current subscription contract between the subscriber and the outgoing operator to be terminated. The receiving operator then conducts the porting transaction on behalf of the subscriber through a number portability system. The outgoing operator confirms the identity of the subscriber and designates a porting time which must be between at least one and at most two days from the date of receiving the porting application. All operators must adjust their systems while checking the porting time through the number portability system. The porting must be conducted in a manner which ensures that the inactive transfer period between operators is kept to a minimum.

Subscribers must not be restricted from porting their numbers. In particular, the outgoing operator must not demand any fee (either periodically or as one-off charge) for porting a telephone number. However, the various operators can freely decide on costs charged to each other for the porting of numbers.

The porting of numbers can be rejected for the following reasons:

- The number to be ported belongs to another subscriber.
- The subscriber requesting porting has a request to change his/her number within his/her existing operator.
- The identity information of the subscriber is incorrect or missing, and therefore there is insufficient proof of the subscriber's identity.
- An already-initiated or still-continuing number porting process exists for the requested number.
- The subscriber requesting porting has a request in writing for the cancellation or transfer of the subscription agreement with the existing operator.
- The subscription agreement with the subscriber is less than three months old.
- Any other reason for rejection reasons designated by the Information and Communications Technologies Authority (ICTA) concerning geographical and/or non-geographical number portability.

Complaint mechanisms

Consumer complaints are regulated by the Regulation on Consumer Rights within Electronic Communication Sector. All telecommunications operators must establish and manage a complaint handling mechanism that is transparent, fast and easily reachable, and which presents the related information to consumers in a transparent and accessible way. All complaints and
the related responses must be kept within the operators' records for at least two years and in a secure manner.

The ICTA is also authorised to:

- Determine the minimum criteria for operators concerning their complaint handling mechanism.
- Examine and regulate a situation from which most of the complaints arise and/or such complaints cause damage to the consumer.
- Directly examine subscription contracts upon any complaint.
- Determine the means on how refunds shall be made to consumers.

**Nuisance and silent calls**

There is no specific regulation on nuisance and silent calls except for one provision of the Regulation on the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector. Under this Regulation, the operator must provide subscribers with the option of blocking their calls ID making calls. This option must be provided in a simple manner and must be free of charge. Conversely, operators must also provide persons receiving calls with the option of blocking calls that withhold their caller ID. This option must also be provided in a simple manner and must be free of charge.

---

**22. Are consumer telecommunications contracts subject to specific regulations?**

**General**

Consumer contracts are regulated by the Regulation on Consumer Rights in the Electronic Communications Sector, which was introduced as secondary legislation under the Electronic Communications Law. On 28 October 2017, ICTA published the Regulation on Consumer Rights in the Electronic Communications Sector and Articles 7(1) and 7(9) of the regulation, allowing consumers to make telecommunication contracts in electronic environments, entered into force at its publication date (see Question 1).

To ensure consumers' contractual security and reduce risks arising in connection with the establishment of subscription contracts in physical environments, the revised regulation requires operators to take all necessary measures concerning the establishment and enforcement of contracts signed in electronic environments and provides that the ICTA is authorised to determine the principles and procedures concerning such contracts. Additionally, operators are obliged to provide an original copy of the telecommunication subscription contract to the subscriber either in physical or electronic environments, in accordance with the establishment of the relevant contract.

The other provisions of the revised regulation providing for amendments to the operators' obligations to inform subscribers and to carry the burden of proof regarding the provision of value-added services, billing and number portability procedures enter into force on 28 April 2018.

**Minimum content**

A consumer telecommunication contract must include all of the following:

- Content of the contract.
- Date and place of the contract.
- Identity and address of the parties.
- Obligations of the parties.
- Duration of the contract.

- Renewal and termination conditions.
- Definitions of the services to be provided.
- Quality of service level and supply time for initial connection.
- The maintenance services offered.
- Particulars of prices and tariffs.
- Means to obtain information on up-to-date applicable tariffs and maintenance costs.
- Compensation and refund structure for the cases where the undertaken service level quality is not met due to the operator's fault.
- Conditions regulating late payments and/or non-payments of the bills by the consumer.
- Tariff and subscription package chosen at the time of the contract's execution.
- Out-of-court mechanisms for consumer complaints.
- Information about the necessary technical equipment and apparatus to get the service.
- Necessary measures to be taken by both operator and/or the consumer against security threats during the services.
- Date of approval by the ICTA if the subscription contract needs approval.
- In terms of services requiring equipment provision, information regarding operator's responsibility for the defect in such equipment.
- In cases where a security deposit is obtained from the consumer, information regarding the amount and the refund structure of such payment.
- In cases where the consumer is required to return the equipment upon termination, information regarding the return process and the procedure to follow in the event of a malfunction.

**Termination**

Consumers reserve the right to terminate their contracts at any time without having to pay any extra cost. To terminate the contract, a termination notice must be sent by the consumer (this must be written and can be sent via fax or e-mail with electronic signature or can submitted in person). The operator must stop the services within seven days and comply with the termination. The operators must then send the last bill to the consumer within four months. Any advance payments received from the consumer must be offset against the operator's final bill.

If the operator wishes to terminate a consumer contract, it must notify the consumer 24 hours before it stops providing services.

Within the purview of the revised regulation, operators are obliged to provide for the return of the equipment and reimburse the security payments within fifteen days, upon termination.

**Unjust conditions**

The Consumer Rights Regulation explicitly states that telephone contracts must be interpreted in favour of the consumer. The Consumer Rights Regulation also determines certain conditions to be unjust and forbidden from being included in the contract. These provisions include:

- Conditions stating that the operator can perform their obligations according to their own designated provisions while consumers must perform their obligations under any circumstances.

global.practicallaw.com/communications-guide
• Conditions requiring the payment of a disproportionately high sum of compensation when consumers fail to fulfil their liabilities.

• Conditions authorising the operator to terminate the contract on a discretionary basis (and where the same right is not granted to the consumer) and/or enabling the operator to terminate or alter an open-ended contract excluding fair causes without warning.

• Conditions exempting the operator from the legal liability to give a warning or to giving additional time to the consumer.

• Conditions granting consumers more than 30 days to notify the consumer’s demand to not extend the fixed-term subscription contract or in the absence of extension notification the contract shall extend by itself.

• Conditions which require consumers to cancel fixed-term subscription contracts more than 30 days before the end of the contractual period, or in the absence of any extension notification, where the contract will extend by itself.

• Conditions that irrevocably bind consumers to terms with which the consumer had no real opportunity to become acquainted before the contract.

• Conditions granting the operator, in its sole discretion, the right to alter the attributes, duration, charges and provision of services against the consumers’ interest.

• Conditions that grant operators the right to alter or decline its liabilities without the subscribers’ consent unless this consent is anticipated.

• Conditions granting the operator the right to keep contractual performance without a subsequent performance, or to collect charges for services without giving service, after termination of the subscription contract.

• Conditions granting the operator the right to determine or raise the charges during the provision of the service.

• Conditions enabling the operator to execute a penalty clause against consumers that demand to terminate their subscription contract or contract tariff.

• Conditions granting the operator the right to determine whether contractual performance is in conformity with the subscription contract or any exclusive right to interpret the terms of the contract.

• Conditions requiring consumers to fulfil all their liabilities while the operator is not required to perform its liabilities.

• Conditions excluding or hindering the consumers’ right to take legal action or exercise any other legal remedy.

23. Are there restrictions on the use of Voice over IP technology in your jurisdiction?

The Electronic Communications Law defines electronic communication as "the transmission, exchange and receiving of all kinds of signals, symbols, sounds, images and data which could be converted into electrical signals, by means of cable, radio, optic, electric, magnetic, electromagnet, electrochemical, electromechanical and other types of transmission systems". This definition would include communication through Voice over IP technology. Therefore, operators providing Voice over IP technology should obtain authorisation as a fixed telephony service (like any other fixed telecom operator), as no exception for Voice over IP is outlined in the relevant legislation.

Furthermore, according to a decision of the former Presidency of Telecommunications, all operators authorised to provide fixed telephony services should send all point-of-presence (POP) related traffic to the former Presidency of Telecommunications's location through internet protocol. According to the decision, operators who do not comply with this obligation are subject to administrative fines.

24. Are there regulations relating to the maintenance of net neutrality in your jurisdiction?

There is no specific legislation or legislative instrument relating to the maintenance of net neutrality in Turkey. However, a decision from the Information and Communications Technologies Authority (ICTA) has been indirectly linked to the subject of net neutrality. In the decision, the ICTA fined a major internet service provider for slowing down web traffic and access to certain websites (especially video/streaming services). In its reasoning, the ICTA considered the action to be a denial of access to the websites. Within the scope of Turkish legislation, the decision was based on the Internet Law on Regulating Broadcasting in the Internet and Fighting against Crimes Committed through Internet Broadcasting, which provides that denial of access to a website can only be based on the content of the website itself.

The ICTA's decision was interpreted as being based on the principles of net neutrality, as it considered slowing down the traffic to be a denial of access, even if the websites themselves were not easy to access.

OUTSOURCING AND TELECOMMUNICATIONS

25. Are there specific regulations for the outsourcing of telecommunications services or the management of these services?

There is no specific framework for regulating the outsourcing of telecommunication operations in Turkey. However, certain provisions can have a restrictive effect on the provision of such services, as they provide limitations on third parties.

Personal data can only be exported abroad where the data subject gives explicit consent (Regulation on Processing of Personal Data and Protection of Confidentiality in the Electronic Communication Sector).

Operators should ensure third parties agree to keep all information relating to the operator confidential by ensuring the agreement with the third party includes a confidentiality clause. Operators should also regulate the third party employer's access if the third party employee has access to the operator's critical systems for the purpose of conducting maintenance or repairs (Regulation on the Network and Information Security in the Electronic Communication Sector).

26. Briefly set out the current trends in outsourcing transactions in the telecommunications sector.

Mobile networks

Since the IMT-Advanced tender took place in August 2015 (see Question 1, Recent developments), the mobile telecommunications market faces a broad reconstruction in medium term.

All market players and specialists welcomed the tender as a big breakthrough in the Turkish communications market, as it will provide the infrastructure for innovation in every aspect of daily business life. The operators that obtained the relevant licences in the tender are expected to commence 4.5G IMT-Advanced services
from 1 April 2016. However, the technical specifications and coverage liability as set out in the tender document will pose challenges to operators.

Although the technical conditions and the technical document of the tender are not publicly available, the Information and Communications Technologies Authority (ICTA) announced that the operators that secured their licences are required to cover 95% of Turkey and 90% of the city and village population in eight years, starting from the date of the tender.

As this commitment requires a huge investment in mobile infrastructure, operators are expected to begin installing their mobile networks and/or upgrading the existing ones. The tender is therefore one of the most important enablers for outsourcing in the electronic communications market.

**Fixed line networks**

In addition to investment in 4.5G, the fixed line market has made significant investment into fibre infrastructure. In particular, the technical conditions required for fibre infrastructure in new buildings might have a positive impact on the market in the short or medium term.

**27. Who are the key providers of outsourced telecommunications?**

We are unable to provide statistical data on the market shares of the current outsourcing players in Turkish telecommunication services. However, we can state that global players are very active and have a long-standing collaboration with the service providers in the Turkish market. Some of the most important market players in network and transmission infrastructure are Ericsson, Alcatel-Lucent, Huawei, and Nokia Networks.

In addition, the Ministry of Transport, Maritime Affairs and Communications (in its capacity as the national research and development (R&D) department) has required operators that obtained the IMT-Advanced licences to use network and transmission devices produced by Turkish firms. However, since the tender document is not publicly available we are unable to provide a certain percentage or device category.

**28. What are the current technologies influencing or affecting outsourcing by telecommunications operators?**

Current technologies influencing or affecting outsourcing by telecommunications operators includes:

- Providing technical infrastructure for other companies (such as base stations, cable networks and so on).
- Smart home and smart office services controlled by mobile devices.
- Field management services based on GPS.
- Consulting on customer experience management and customer services management (such as target audience analysis, usability analysis and experience management strategies).
- Cloud computing systems. This provides companies with the ability to mobilise networks for various business purposes. These can even be customised for municipal services.
- Market players have a great interest on big data analytics projects.
- Data centres and collocation services.
- International internet connectivity and IP-based transmission services are important for Turkey, as it holds a significant position in its region. Turkey also does not have an Internet exchange point and some global players are reportedly considering investing in this area.

**29. From a contractual perspective, what are the key issues in a typical telecommunications outsourcing transaction in your jurisdiction?**

Since there is no framework regulation on outsourcing agreements in Turkey, operators are free to determine the terms and conditions of outsourcing agreements. The scope and conditions of the services are therefore defined and settled by private law contracts.

However, there are certain principles in the applicable legislation that are designated to be followed by the operators (for example, the Regulation on the Authorisation regarding Electronic Communications Sector itself, the regulations stated within this article based on the Electronic Communications Law, and the relevant decisions from the Information and Communications Technologies Authority (ICTA)). Consequently, parties to outsourcing agreements must respect certain general principles, including:

- Provisions relating to personal data protection and in particular, the transfer of personal data to third parties (see Question 13).
- Service level agreements and service level commitments by the operators (as designated by the ICTA) should be considered and respected.
- If the content or data from an outsourcing agreement are subject to IP rights, the relevant IP provisions should be included and respected.
ONLINE RESOURCES

Turkish legislation
W www.mevzuat.gov.tr

Description. Official government website where up-to-date legislation, case law and rules can be obtained in Turkish. However, the Turkish Constitution's official English translation is available at http://global.tbmm.gov.tr/docs/constitution_en.pdf.

Information and Communications Technologies Authority (ICTA)


Ministry of Transportation Maritime Affairs and Communications
W www.ubak.gov.tr/

Description. Official website of the Ministry of Transportation Maritime Affairs and Communications.
Practical Law Contributor profiles
Professional qualifications. İstanbul Bilgi University Institute of Social Sciences - Economy Law, LLM, 2005; Marmara University Faculty of Law, LLB, 2001

Areas of practice. Commercial transactions, including outsourcing agreements and other procurement arrangements; general advice on contentious, non-contentious and transactional information and communication technologies; IP law issues including information security, investments, privacy, new products and services, digital media, payment services, e-commerce.

Recent transactions
- Microsoft Nokia safeguard investigation on mobile phone imports project.
- Facebook assistance for compliance to various regulations.

Languages. Turkish, English

Professional associations/memberships
- Turkey Informatics Foundation (TBV), Chief Legal Counsellor.
- Turkish Informatics Industry Association (TÜBİSAD), Chief Legal Counsellor.
- Information and Communication Technologies Authority National ccTLD.
- Information and Communication Technologies Authority National Electronic Signature Coordination Committee Law Working Group.
- Information Security Association/Founder and Member.
- Ministry of Trade and Industry Turkish Commercial Code Secondary Legislation Preparation Committees, Vice President.
- International Bar Association, Technology Law Committee Member.
- ItechLaw Member.

Publications.
- Online Intermediaries Case Studies Series: Turkey (eBay Case), The Global Network of Internet & Society Research Centers, 2015 (http://cyberlaw.harvard.edu/node/98684).
- Science Park Model Legislation in the light of International Science Park Regulations and Models prepared for the Turkey Informatics Foundation (TBV) and Turkish Industrialists’ and Businessmen’s Association (TÜSIAD) to submit their joint proposal to Ministry of Trade and Industry, September 2008.
- Analyzing E-Invoice Business Models Within EU and Making a Proposal For Turkey’s National E-Invoice Business Model, Opinion Report, prepared for the Turkish Information Technology Services Associations (TÜBİSAD), Turkey Informatics Foundation (TBV) and e-Güven AS to submit their joint proposal to Turkish Revenue Administration Electronic Invoice Working Group, March 2008.
- Comprehensive Study Of Legal Infrastructure of E-Invoice Systems and Regulations, Opinion Report, prepared for the Turkish Information Technology Services Associations (TÜBİSAD), Turkey Informatics Foundation (TBV) and e-Güven AS to submit their joint proposal to Turkish Revenue Administration Electronic Invoice Working Group, March 2008.
Tuğrul Sevim, Partner
BTS & Partners
T +90 212 292 7934
F +90 212 292 7939
E erdem.aslan@bts-legal.com
W www.bts-legal.com

Professional qualifications. Galatasaray University, Faculty of Law, LLB, 2013

Areas of practice. IT and communications law, with a focus on telecommunications, data protection and privacy.

Languages. Turkish, English and French