OVERVIEW OF LEGAL LANDSCAPE

The provision of telecommunication services is subject to authorisation in Turkey. Under the Electronic Communications Law w. no. 5809, two types of authorisation procedures are stipulated;

1. authorisation by notification to the Information and Communication Technologies Authority (“Authority”) for services for which spectrum allocation is not required; and

2. authorisation by obtaining a licence for telecommunication services for which specific spectrum allocation is required.

It is fundamental that the electronic communication service and/or network or its infrastructure be met from the operators authorized by the Authority. However, in the following two cases electronic communication service and/or network or infrastructure is not subject to authorization;

a) Within any natural person’s or legal entity’s property under his/her own use, which do not exceed any property’s borders, which is used upon exclusively individual or organizational needs, which is not used for providing any electronic communications services to third parties, which is provided without any commercial intention and which is not publicly available,

b) Constructed pertaining solely to the services of public corporations and institutions in accordance with the specific laws thereof.

The roles and responsibilities of the Authority are stipulated in laws such as Law no. 5809 and Law no. 2813 on the Establishment of the Information and Communication Technologies Authority. Further, there are several pieces of secondary legislation which stipulate the detailed roles and responsibilities of the Authority, the licensing regime and the legal and technical requirements for operators.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The primary legislation governing telecommunications in Turkey is the Electronic Communication Law w. no 5809 which came into force on 11 October 2008. Further, there are several secondary laws and regulations drafted by the Authority that directly affect the telecommunications sector. These key laws/regulations are:

- Regulation on Authorisation in the Electronic Communications Sector dated 28.05.2009, published in Official Gazette no. 27241,

- Regulation on Tenders for Authorisation in the Electronic Communications Sector, dated 15.01.2010, published in Official Gazette no. 27463,

- Regulation on Consumer Rights in the Electronic Communications Sector dated 28.07.2010, published in Official Gazette no. 27655,

- Spectrum Regulation dated 02.07.2009, published in Official Gazette no. 27276,
• Regulation on Access and Interconnectivity dated 08.09.2009, published in Official Gazette no. 27343,

• Numbering Regulation dated 27.06.2009 published in Official Gazette no. 27271,

• Regulation on Service Quality in the Electronic Communications Sector dated 12.09.2010, published in Official Gazette no. 27697,

• Regulation on Number Portability dated 02.07.2009, published in Official Gazette no. 27276,

• Regulation on Network and Data Security in Electronic Communications Law dated 13.07.2014, published in Official Gazette no. 29059,

• Regulation on Electronic Communications Framework and Data Systems dated 13.07.2016, published in Official Gazette no. 29769,

• Regulation on Emergency Calls in Electronic Communications Sector dated 05.06.2012, published in Official Gazette no. 28314; and

• Regulation on Radio and Telecommunications Terminal Equipment dated 24.03.2007, published in Official Gazette no. 26472.

• Regulation on Internet Mass-use Providers dated 11.04.2017, published in Official Gazette no.30035

REGULATORY BODIES OR AUTHORITIES

The Information and Telecommunication Technologies Authority is the authority for regulating and monitoring the telecommunications sector in Turkey. It is an institution with special budget and with administrative and financial autonomy. The Authority is independent and regulates/supervises the telecommunications sector in Turkey with regards to authorisation, tariffs, access, numbering, spectrum management, licensing, market supervision etc. The Authority’s main address is in the capital Ankara at Eskiheir Yolu 10.Km No:276 Çankaya/Ankara – Turkey. The website of the Authority is www.btk.gov.tr

TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

There are two main types of activities regulated under Law no. 5809. These are:

1) the provision of electronic communication services; and

2) the establishment and operation of electronic communication networks and infrastructure. Therefore, entities which provide the aforementioned services are the primary parties that are subject to the rules and regulations under Law no. 5809.

1. Provision of electronic communication services: Law no. 5809 describes electronic communication services as the provision of services regarding 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, electromagnetic, electro-chemical, electromechanical and other types of transmission systems.

2. Establishment and operation of electronic communication networks and infrastructure: Under Law no. 5809, electronic communication infrastructure is defined as all kinds of network components, relevant facilities and the supplementary elements, including switching equipment, hardware and software, terminals and lines over or by which electronic communications is provided.

Further, the operation of electronic communications infrastructure is defined as the provision of infrastructure for use of operators and other third parties by the construction, hiring or procuring of the electronic communication infrastructure.

Both types of activities are regulated under Law no. 5809 and parties which provide either of these activities are deemed to be ‘operators’ and are subject to licensing/authorisation requirements.
OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES

Pursuant to Law no. 5809 and the Regulation on Authorisation in the Electronic Communications Sector, entities must obtain authorisation prior to commencing the provision of telecommunication services. However, authorisation is not required if the telecommunication service is exclusively used internally for individual or organisational needs within the entity’s property, does not exceed the property’s physical borders and the electronic communications service is not provided to third parties.

There are two types of authorisation:

1. Authorisation by notification to the Authority; and

2. Authorisation by obtaining a licence for those services which require spectrum allocation.

For services which do not require spectrum allocation, entities are entitled to automatic authorisation after notifying the Authority as to the commencement of the electronic communication services. If the entity meets the relevant conditions, such as being incorporated within the Republic of Turkey under Turkish laws, the entity will be authorised.

For services which require spectrum allocation or the allocation of limited resources, entities must obtain a licence from the Authority by requesting spectrum allocation. The Authority determines whether the number of use rights for these services should be limited. The Authority shall grant the right of use within 30 days following the duly application for the electronic communication services which are determined not to limit the number of use rights. The number of use rights may be limited only when resources need to be carried out by a limited number of operators and to ensure active and efficient use of resources.

Further, for services which must be provided by a limited number of operators (such as mobile telecommunication licences), the Authority provides licences following a tender process.

DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES

In order to provide electronic communication services in Turkey, entities must be established within the Republic of Turkey and must be incorporated under the laws of Turkey. Therefore, entities are required to have a permanent establishment in Turkey.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Pursuant to the Regulation on Access and Interconnectivity, all operators are obliged to "negotiate" interconnection with other operators with a view to reaching an agreement within a reasonable time. If the operators do not reach an agreement within a reasonable time, the Authority has the right to impose an interconnection obligation on the operators.

The Authority may decide to limit the interconnection obligation on the grounds that there are technical and commercial alternatives to the interconnection or that there are no resources to provide the interconnection.

In cases where an operator denies interconnection or imposes unreasonable terms and if the Authority decides that the actions of that operator damages competition or damages the interests of end-users, the Authority may oblige such operator to provide interconnection.

Further, the Authority may oblige operators with significant market power to provide interconnection/access. In such cases, operators are obliged to provide interconnection/access on a non-discriminatory basis and with the same conditions and qualities that apply to their subsidiaries or partners.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Under Law no. 5809, there is a distinction between consumers and other subscribers (non-consumers). Pursuant to this law, those who use electronic communication services for non-commercial purposes are consumers.

The rules that apply to operator – consumer relations are different to those which apply to operator – non-consumer relations, as
consumers have extended rights.

Pursuant to the Regulation on Consumer Rights in the Electronic Communications Sector, consumers have specific rights, including for example, rights relating to transparency, non-discrimination, service quality, specific requirements that protect consumers in subscription contracts, invalidity of unfair terms that are against consumers, number portability, switching operators and open and transparent billing etc.

The operators should inform consumers about the safe use of communication services. They should provide infrastructure-level services to protect consumers against illegal and harmful content at no additional cost.

**REGULATORY TAXES AND FEES**

Authorisation is subject to a certain fee which is determined annually by the Authority. Further, the fee changes depending on the type of authorisation requested. Also, the Authority requests a certain fee for the allocation of certain limited resources, which again is determined annually by the Authority and changes depending on the type of allocation and service.

**KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS**

The Authority has a wide range of powers and in practice, it chooses to actively enforce such powers.

If there is a breach of the laws or the requirements regarding authorisation and the right to use, the Authority may impose an administrative fine equal to 3% of the operator’s net sales during the previous year.

In the case of non-payment of authorisation fees, the Authority may cancel the operator’s authorisation.

Further, in respect of those operators which recently started their services, the Authority has the right to impose different administrative fines, starting from TRY 1,000 to 1,000,000 (approximately USD 260.00 to USD 260,000.00).

In addition to the above, commencing the provision of electronic communication services without obtaining authorisation or obtaining a right of use, could lead to the imprisonment of company officials.

**KEY CONTACTS**

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