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TMT Insights

Turkey 2015

The 10 Most Significant Developments in Turkey.

POWER



RECEIVE



SEND



ONLINE



PG/ACTIVITY



STANDBY



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1. Rapidly growing e-commerce industry finally met its law

The volume of e-commerce in Turkey has exhibited a significant increase during the last decade. The obvious increase has been realized in online retail sales, which is generally known as Business-to-Consumer (B2C) e-commerce. According to the estimates in mid-2015, it has increased 35% compared with the previous year and reached a volume of 18.9 billion TRL (US\$ 8.25 billion).¹

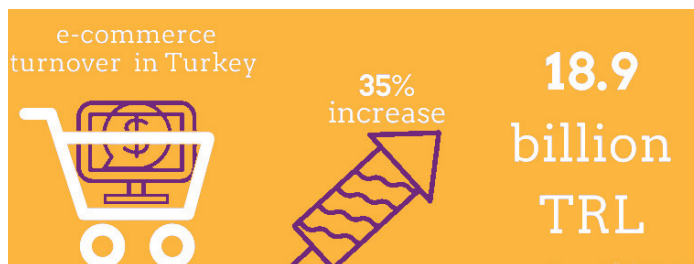
However, comparing Turkey's performance with that of other countries shows that Turkey fell behind the averages in terms of spending and share of e-commerce in GDP. For instance, China, USA and UK account for 60% of total B2C e-commerce sales in the world², and Europe seems mostly a mature market. But, some south-eastern European countries, including Turkey, have exhibited a lower profile.

According to estimates, there are more than 12.000 e-commerce web sites operating in Turkey³. The dominant e-commerce model is B2C model and the usage of Business-to-Business (B2B) model is immature.⁴ Although most of the e-commerce sites belong to the firms which aim to promote their own products, a great volume of e-commerce is conducted through private shopping clubs and online market places. While the private shopping clubs provide discounts to customers for various brands, online market places offer products provided by multiple third parties. Additionally, Consumer-to-Consumer (C2C) websites are very popular, in particular for real-estate and secondhand car sales.

There are many factors which determine the volume of e-commerce in a country. Among

them, internet penetration, tax rates, payment methods, and legal environment may play an influential role for the development of e-commerce. Although Turkey has experienced significant improvement in most of those areas, the deficiency of legal infrastructure had been a serious impediment in front of the development of e-commerce. Turkey had long been lacking a legal environment for its emerging e-commerce economy. Although the country follows the European Union (EU) acquis, necessary laws and regulations enacted recently. The e-Commerce Law was enacted in November 2014 and came into force by May 2015.

Under the enacted law, e-commerce is defined as commercial activities conducted through electronic environment without face-to-face



e-commerce in the world

	e-commerce share in GDP	average spending
China	5.2%	1,703\$
USA	2.8%	2,828\$
UK	5.7%	3,557\$
German	2.5%	1,604\$
Spain	1.5%	1,560\$
Turkey	1.6%	1,360\$

Source: Ecommerce Foundation (2015)

The enacted e-commerce law governs



■ Commercial relations



■ Liabilities of online service providers



■ Agreements to be executed through electronic devices



■ Obligation to provide information and sanctions



interactions between the parties. The law aims to protect consumers and encourage them to engage in e-commerce activities. To that end, the law regulates execution of contracts through electronic means and the obligations imposed on individuals and legal entities engaging in e-commerce transactions. It also regulates unsolicited commercial electronic messages, which is separately elaborated in this publication.

The law imposes certain obligations to online service providers for a clear communication of information concerning the formation of the contract. Accordingly, the service provider must ensure information on (i) different technical steps to be followed to conclude the contract, (ii) confidentiality rules applicable to contracting parties, (iii) whether the concluded contract will be kept by the service provider, and (iv) alternative dispute resolution mechanisms, if any.

Although the law came into force by May 2015, the regulation which is necessary to apply the law was published at end of August 2015.⁶ The business conduct of the firms in e-commerce industry has been changing since the publication of the regulation.



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2. Convergence is transforming the broadband market

In 2015 the number of broadband internet subscribers in Turkey has increased 18% compared with the previous year and reached more than 48 million subscribers⁷ in a population of 76 million. The lion's share belongs to the growth in mobile broadband subscription. In 2015, while DSL (Digital Subscriber Line) subscriptions lost ground in favor of fiber, broadband over cable TV network has sustained its growth, despite its limited coverage.

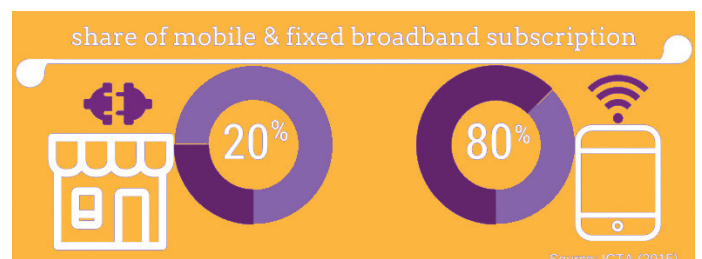
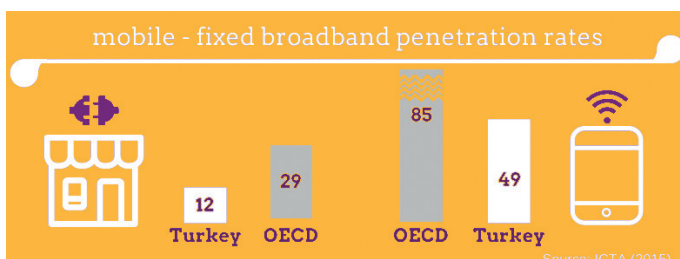
The reflection of the aforementioned increase in broadband subscriptions has created a similar pattern in penetration rates, which signify subscription per 100 inhabitants. Although there has been an incremental change in fixed internet access penetration, mobile penetration rate has increased dramatically. While the fixed broadband penetration has expanded from 11.5 in 2014 to 12 in 2015, mobile penetration has raised from 42 to 49 for the same period. However, more than a decade after the deregulation in fixed broadband market and six years after the introduction of 3rd generation technologies in mobile communications, Turkey still has the least penetrated broadband market in OECD.

In 2015, the main dynamic on the supply side of the broadband market has been the fixed-mobile convergence. One of the main players in fixed telecommunications services, Turk Telekom, its retail subsidiary TNET and its mobile arm AVEA have consolidated their operations under the name of Turk Telekom, by keeping their legal entities. A few years ago the dominant player in mobile market, Turkcell, and its retail broadband subsidiary Superonline had also unified their operations under the name of Turkcell-Superonline. Right before the transition to 4th generation (also called 4.5G or LTE-Advanced) technologies those movements constituted a particular importance for the development of the broadband market.

In 2015, an important topic on the agenda of the service providers is the fiber deployment. As an incumbent operator, Turk Telekom has relatively significant investment for fiber. Its fiber optic network increased from 188 thousand km in 2014 to 211 thousand km in 2015. (124 thousand of this is the backbone and the rest is the access) However, while Turk Telekom's fiber network spread over

the country, alternative operators' fiber network constitutes one fourth of the Turk Telekom's and mainly concentrated on backbone. By end of 2015 their total fiber network length has reached 52 thousand km with 43 thousand km backbone and nine thousand km of access network.

For the alternative operators, fiber deployment on the access part in urban areas requires close cooperation with municipalities, utility companies, and/or existing infrastructure owners. However, there have been significant obstacles for them to obtain administrative authorizations, rights of way and to access existing ducts. Even if those are accessible; the process generates a considerable amount of administrative and contractual costs. In fact, a secondary legislation concerning the fees, the rights of way, was enacted by the Ministry of Transportation at the end of 2012. The legislation stipulated promoting competition and investment through putting access obligations to the existing infrastructure owners. However, because of implementation lags, no significant contribution has gained yet in terms of fiber roll out in favor of alternative operators.



3. A new era in mobile communications with 4.5G

Turkey had pushed back its 4G auctions after Turkey's president said that "it is not necessary to waste time with 4G technologies" and that "Turkey should jump directly to 5G." Since then, the auction has been dubbed as "4.5G" by the public.

On 26 August 2015, the auction for 4G mobile communication networks was completed in Turkey. ICTA conducted the auction. In the auction, a total bandwidth of 390 MHz was put up for auction and the ICTA set a minimum price of €2.3 billion for the 20 separate frequency packages of 800, 900, 1800, 2100 and 2600 MHz spectrum.

In addition, a new operator was invited to bid at the auction only for the 2600 MHz spectrum. Avea, Vodafone, Turkcell, Netgsm and Huawei are the companies which had bought the tender documentation for the auction. However, Huawei did not join the auction and Netgsm decided not to make any bids and thus was not qualified for the auction.

The biggest winner of the auction was Turkcell, winning eight of the 18 packages sold and 172 MHz of spectrum for €1.62 billion (VAT excluded) across all five available bands. On the other hand, Vodafone acquired five of the 18 packages and 82.8 MHz of spectrum for €778 million across all bands except 2100 MHz. Finally, Avea secured five of the 18 packages and 110 MHz of spectrum for €955 million. Two presented packages and 15 MHz of 2600 MHz spectrum have remained unsold in the auction.

Following the auction, the current frequency allocated to mobile network operators increased from 183 MHz to 548 MHz. The frequency segments assigned with the auction have been put into service as of 1 April 2016. After the authorization, operators were required to extend their coverage range up to 95 percent of Turkish population within eight years.

One of the most important outcomes of the auction is related to technology neutrality. Technology neutrality is a widely accepted principle for efficient allocation of spectrum around the globe, and it ought to be embraced by regulatory frameworks. In this scope, during the auction process, members from the ICTA have stated that, by the new auction, Turkey will abandon issuing technology-specific licenses, requiring a license holder to use a specifically mandating technology when operating within that allocated spectrum.

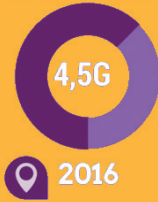
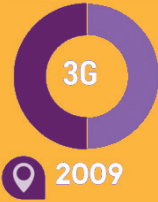
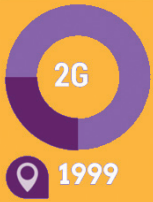
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On the other hand, Avea obtained frequency band in 900 MHz for the first time which will allow the operator to serve in a more technological band. 900 MHz spectrum has longer coverage range and more efficient penetration characteristics. Therefore, by the auction, Avea eliminated its disadvantageous position in relation to coverage and coverage costs.

Therefore, the new system in Turkey would provide maximum benefit from the use of its spectrum resources, given market-based approaches represent a key means to guarantee that spectrum is used to supply the services most in demand.

In conclusion, Turkey has taken a big step in its telecommunications industry. The "4.5G" auction is not only intended for 4G technologies but also acts as a transition to 5G. Within this context, explanations from ICTA indicate that Turkey is planning to be one of the first countries to adopt 5G technology. Moreover, the completion of the auction and launching of new technologies will reshape the competitive structure of the broadband industry. In addition to that, considering the coverage obligations of operators imposed by the auction, the nation-wide coverage will be completed in the very near future.

G history of Turkish mobile communications



Output of 4.5G auction

■ Turkcell

8 packages
172 MHz of spect.
1.62 billion EURO

■ Vodafone

5 packages
83 MHz of spect.
778 million EURO

■ Türk Telekom

5 packages
110 MHz of spect.
955 million EURO

■ Total

365 MHz of spect.
3.35 billion EURO



4. No news is bad news for MVNO



The Turkish mobile communication market is one of the most concentrated markets in Europe. The market is characterized by three operators—Turkcell, Vodafone and Turk Telekom—each enjoying a market share of approximately 46.2%, 30.4% and 23.4% respectively.⁹

Mobile Virtual Network Operator (MVNO) refers an organization which provides mobile telephony services to its customers, but does not have allocation of spectrum or its own wireless network and instead buys

a wholesale service from a mobile network operator.

Today, the world's Mobile Network Operators (MNO) host almost one thousand MVNOs around the globe. Moreover, MVNOs have long been encouraged in Europe by national regulatory agencies as a way to increase effective competition and reduce prices. However, in the current situation, there is no MVNO operating in the Turkish mobile communications market.

In Turkey, mobile operators are obliged to pay various special telecommunications taxes. In this scope, "treasury share" which is paid by the operators amounts to 15% of their gross revenues from mobile telecommunications operations and it is one of the most important reasons why there is no MVNO operating in Turkey. Treasury share regulation has caused endless debates for a long time. It is now one of the most fundamental evils of the MVNOs. It creates a significant amount of legal ambiguity in the market and negatively

affects the investment incentives of the operators.

First, the treasury share implementation in Turkey creates a competitive disadvantage for MVNOs compared to actual mobile operators owing to the determined amount that all operators must pay as treasury share. As a result of the implementation of this tax, MVNOs in Turkey are subjected to double-taxation which is not commercially viable for MVNOs.

In addition, the tax has been central to examinations of the Information and Communication Technologies Authority (ICTA) and courts many times. For instance, in 2013, the ICTA determined Turkcell as the operator holding significant market power (SMP) and imposed an obligation to publish reference access offer for MVNOs in its market analysis on Access and Call Origination on Mobile Networks referring that Turkcell creates entry barriers associated with its market power. Later, Turkcell filed

a lawsuit against the decision of the ICTA requesting the annulment of the market analysis. In its application, Turkcell mainly focused on the effects of treasury share practice stating that barriers to market entry arise from treasury share regulation in Turkey.

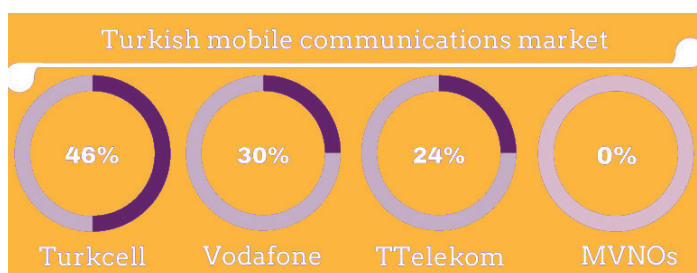
On the other hand, considering the regulatory frameworks in the EU, it should be stressed that there are mainly three goals relating to the regulatory framework for electronic communication sector:

- Strengthening competition in the electronic communication market
- Stimulating investment in the markets
- Fostering freedom of choice for consumers and enabling them to benefit from innovative services, quality etc.

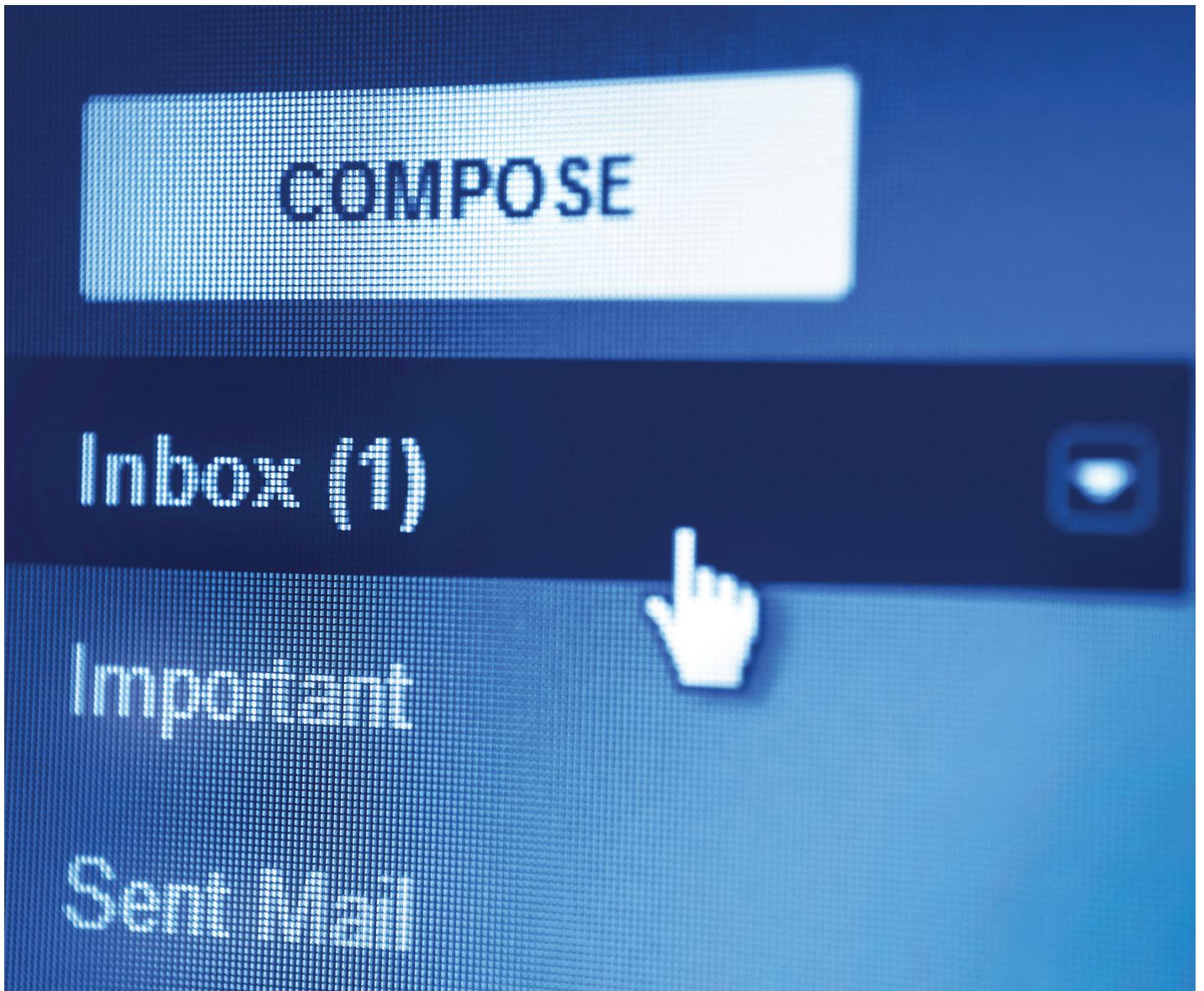
Whereas in the current situation, Turkey is trying to introduce regulations

consistent with the European Union (EU) framework in number of areas, there is no member state which applies a similar tax practice and contribution fee. Therefore, it can be concluded that the treasury share implementation is not aligned with the telecommunications framework of the EU.

In conclusion, the treasury share tax leads to an unequal financial burden on operators which explains the situation of MVNOs in Turkey. In addition, solving this problem is not only important for flourishing competition in telecommunication sectors but it is necessary for being compatible with the EU acquis. Therefore, Turkey should re-design its regulatory policies which negatively affect possible investments on telecommunications sector. In this scope, as in EU, Turkey should abandon collecting such treasury shares from operators. Without solving this tax-related problem, every analysis on the situation of MVNOs in Turkey would stay incomplete.



5. Firms can't send electronic messages as they used to



Electronic messages (e.g. e-mails, SMS etc.) are one of the most prominent tools for marketing in Turkey. However, due to the absence of any regulation concerning the use of electronic messages as a tool for marketing, consumers were complaining about excessive practices. The introduction of the Law Considering the Regulation of Electronic Trade and the Regulation

considering commercial electronic messages are important steps to limit the use of electronic messages for commercial purposes.

The most significant concepts introduced by the new legislation are the “explicit consent (opt-in)” and the “right to reject (opt-out).” The new legislation clearly states that service

providers may send commercial electronic messages to consumers only if the consumers allow them to do so. Moreover, the new legislation contains deterrent administrative fines for service providers who are in violation of these rules. The amount of the administrative fines to be imposed on the violators ranges between 300 and 5000 Euro. However, since

separate administrative fines would be imposed for each different violation, the total amount of such fines could be significantly high.

After the introduction of the new legislation, service providers started sending electronic messages, which state that consumers will continue to receive such messages unless they explicitly state otherwise (providing consumers with a right to opt out). However, the new rules actually require the service providers to acquire “explicit affirmative consent” of consumers for receiving these messages.

Furthermore, the new legislation states that service providers shall not send electronic messages to acquire the consent of consumers. The de-facto situation where all service providers are sending electronic messages to consumers in order to acquire their consent may seem to be in conflict with this rule. However, the new legislation foresees an exception for the databases that were formed prior to the entry into force of the Law.

The new legislation makes a distinction between two types of databases. The first group consists of databases that are formed by service providers themselves, whereby the electronic communication contact information of consumers was obtained directly by the service

providers (service provider database). The second group consists of databases that are formed by third parties who had acquired general authorization to use

the consumer information for the purpose of sending commercial electronic messages on behalf of other service providers (third party database). Third party databases are those that are formed by larger institutions such as mobile operators and banks, which are in a position to easily obtain a general authorization from their customers.

Legislation allows service providers to continue sending commercial electronic messages to consumers registered in a service provider database. The only requirement is that the consumer must be informed that he/she is a part of a database and he/she should be reminded of his/her right to opt out.

The rules concerning third party databases are different. Service providers, on behalf of whom the third party databases had previously sent electronic messages, have the right to send one electronic message to consumers to ask for their explicit consent for the continuation of these messages. In the case of third party databases, the Regulation makes it clear that the silence of the

consumer shall not be regarded as an implied consent.

The second important concept that is introduced by the new legislation is the right to reject (right to opt out). The new legislation provides that consumers who previously provided explicit consent to receive commercial electronic messages from certain service providers shall be given the right to opt out. These consumers shall be able to use this right whenever they want, freely and without having to show reasons.

Other than that, all service providers must include information to make themselves identifiable to consumers when sending commercial electronic messages.

The legislation draws up a strict legal framework and contains detailed rules and serious sanctions in relation to the sending of commercial electronic messages. According to the Regulation, consumers may use the e-government website or the website of the Ministry of Customs and Trade to make complaints.

The new legislation is an important step for the protection of consumers but the Turkish legislative framework could never be complete unless a general legislation concerning the protection of personal data is also introduced.

6. New developments in margin squeeze in Turkish Telecommunications markets

Alternative operators that compete with Turk Telekom, incumbent telecoms operator in Turkey, had been raising numerous complaints concerning margin squeeze practices in the markets for fixed voice and broadband internet since the liberalization of the market in early 2000s. Until late 2014, these complaints were mainly dealt with by the Turkish Competition Authority (TCA) on an ex-post basis via competition law investigations. Up until now, there was only one investigation that led to an imposition of an administrative fine.

In 2014 ICTA issued the "Procedures and Principles concerning Finding, Preventing and Remedying Margin Squeeze" (Procedures and Principles), which is a regulatory tool specially designed to tackle margin squeeze practices in telecommunications markets. Şahin Ardiyok, the head of the Regulation and Competition Law team in Balçioğlu Selçuk Akman Keki Attorney Partnership, acted as the key legal expert in the EU funded project for "Prevention of Anticompetitive Behaviors in the Electronic Communications Sector (EuropAid/133078/D/SER/TR)" and took active participation in the preparation of the Procedures and Principles. Hence 2014 is a significant cornerstone for the Turkish telecommunications markets

as it marks the transition to ex-ante regulation for dealing with margin squeezes.

According to the Procedures and Principles, an obligation concerning margin squeeze may only be imposed on vertically integrated operators that hold a significant market power (SMP) in the upstream wholesale market (especially in markets 3(a) and 3(b) as defined under European Commission's recommendation concerning telecommunications markets susceptible to ex-ante regulations). ICTA now has the authority to subject the flagship products (i.e. the tariffs and campaigns that generate significant revenue or have significant number of subscribers) of the vertically integrated operator to ex-ante margin squeeze tests. The tests are designed in accordance with the best practices recommended by the EU Commission. ICTA takes into consideration the regulated tariffs while calculating the upstream costs. For the downstream costs, ICTA calculates the costs of a reasonably efficient operator (REO). Adoption of the REO cost standard shows that ICTA aims to promote alternative operators even when they may not be as efficient as the incumbent operator.

A margin squeeze obligation is imposed on Turk Telekom only in the fixed voice

market. This obligation is a hybrid of ex-ante and ex-post regulations. It is not purely ex-ante since ICTA examines the tariffs after they are introduced. Yet, it is not purely ex-post since ICTA does not wait to see whether a given tariff restricts competition and apply the test for all the flagship tariffs introduced by the incumbent. In case a margin squeeze is found, ICTA allows the incumbent operator to either increase the retail price or decrease the wholesaler price. If the incumbent operator fails to remove the margin squeeze voluntarily, ICTA has the authority to intervene by reducing the regulated wholesaler tariffs.

Another important development concerning margin squeeze in Turkish telecommunications markets is a recent investigation initiated by the TCA. TCA is investigating whether "Pay TV + broadband internet" bundles and retention tariffs of TTNET lead to a margin squeeze in the broadband market. The investigation was actually re-opened due to the decision of an administrative court annulling the previous Board decision whereby it was held that the tariffs did contain margin squeeze but did not restrict the competition due to their narrow scope. This is a significant case that would be a precedent as to how margin squeeze tests for bundles should be conducted by the TCA.

FACTS ABOUT the MARGIN SQUEEZE OBLIGATION

- Imposed on Turk Telekom only in the fixed voice market



- Only applied for the flagship products



- Adoption of REO cost standards



- A hybrid of ex-ante and ex-post regulations



- Hasn't been imposed yet for the broadband market



7. Signs of change in digital TV broadcasting

Digital TV broadcasting in Turkey is unusually dominated by digital satellite technology. The intermodal competition is very weak given that digital terrestrial television (DTT) is yet to be introduced, home-pass of state-owned cable TV network is low and the IPTV has become a viable alternative only recently.

Currently, there are approximately 22 million households in Turkey in total. Given that there are approximately 5.35 million subscribers of all digital TV broadcasting platforms, the majority of the population still relies on free to air TV (especially in the form of free satellite broadcasting and analogue terrestrial broadcasting). Four million of those are subscribers of satellite platforms, whereas cable TV and IPTV platforms have 800,000 and 550,000 subscribers respectively. It is important to note that one satellite platform operator, Digitürk, has approximately three million subscribers. Thus it is clear that the competitive structure of the market is extremely weak in Turkey.

Lack of intermodal competition created a vicious circle for the competitive structure of the market. This is because most of the premium content (live sports events, recent movies and TV series, etc.) was accumulated in the hands of a single platform operator in an exclusive manner and this increased entry barrier even further, reducing the incentives of newcomers to invest.

One other significant problem in the market was related to the special communications taxes (SCT). Due

to a vagueness in the legislations, the state authorities argued that the amount of SCT to be paid by the platform operators shall be based on the revenues generated not only from the transmission services, but also the content based services. This significantly increased the financial burden of the companies that desire to be active in the digital TV broadcasting market.

However, the recent developments are quite positive, and we might witness a material change in the market structure.

First of all, the investment of internet service providers (ISP) to fiber optic networks increased the fiber capacity to a great extent, and the availability of IPTV infrastructure as well as the number of IPTV subscribers is increasing at a steady pace. Moreover, given that the major ISPs in Turkey belong to groups that are financially capable and active in different telecommunications markets, they also have access to sufficient funds to accumulate some premium content.

For example, Tivibu (IPTV platform owned by the incumbent telecoms operator) managed to acquire the live broadcasting rights of UEFA and Champions League. These are regarded as the second most valuable content in Turkey after the Turkish Super League.

Moreover, the transition to DTT is expected to be concluded soon. The 800 MHz spectrum frequency which used to be occupied by analogue terrestrial TV providers has been

reallocated to mobile operators for the provision of 4G (and any other mobile) services. Radio Television Supreme Council (RTSC) finalized the legal framework for transition to DTT and the market players are also keen on finalizing the transaction as soon as possible. The introduction of DTT would increase the reach of digital TV broadcasting significantly, making the market much more competitive.

Other than that, Turkish Competition Authority rendered a decision in 2016 forcing Digitürk to sublicense the live broadcasting rights of Turkish Super League. Although the sublicensing requirement is solely related with the 2016-2017 season, it is a significant decision to reflect the opinions of the TCA. This decision shows that TCA would no longer allow granting exclusive rights over the most vital premium content to the dominant operator. Hence, this decision might be regarded as a signaling tool, incentivizing newcomers to invest in the market.

Finally, the problems arising from SCT has also been resolved. The Ministry of Finance published a new Communiqué concerning Special Communications Taxes (Serial Number: 13). It is now certain that the content services may not be regarded as electronic communications services and be subjected to SCT. From now on, all platform operators would be required to pay SCT only for the revenues generated from transmission services. The long-awaited Personal Data Protection Law (Law) came into force in

Snapshot of the digital TV market



■ 5.35 million total subscribers



■ 4 million satellite platforms subscribers

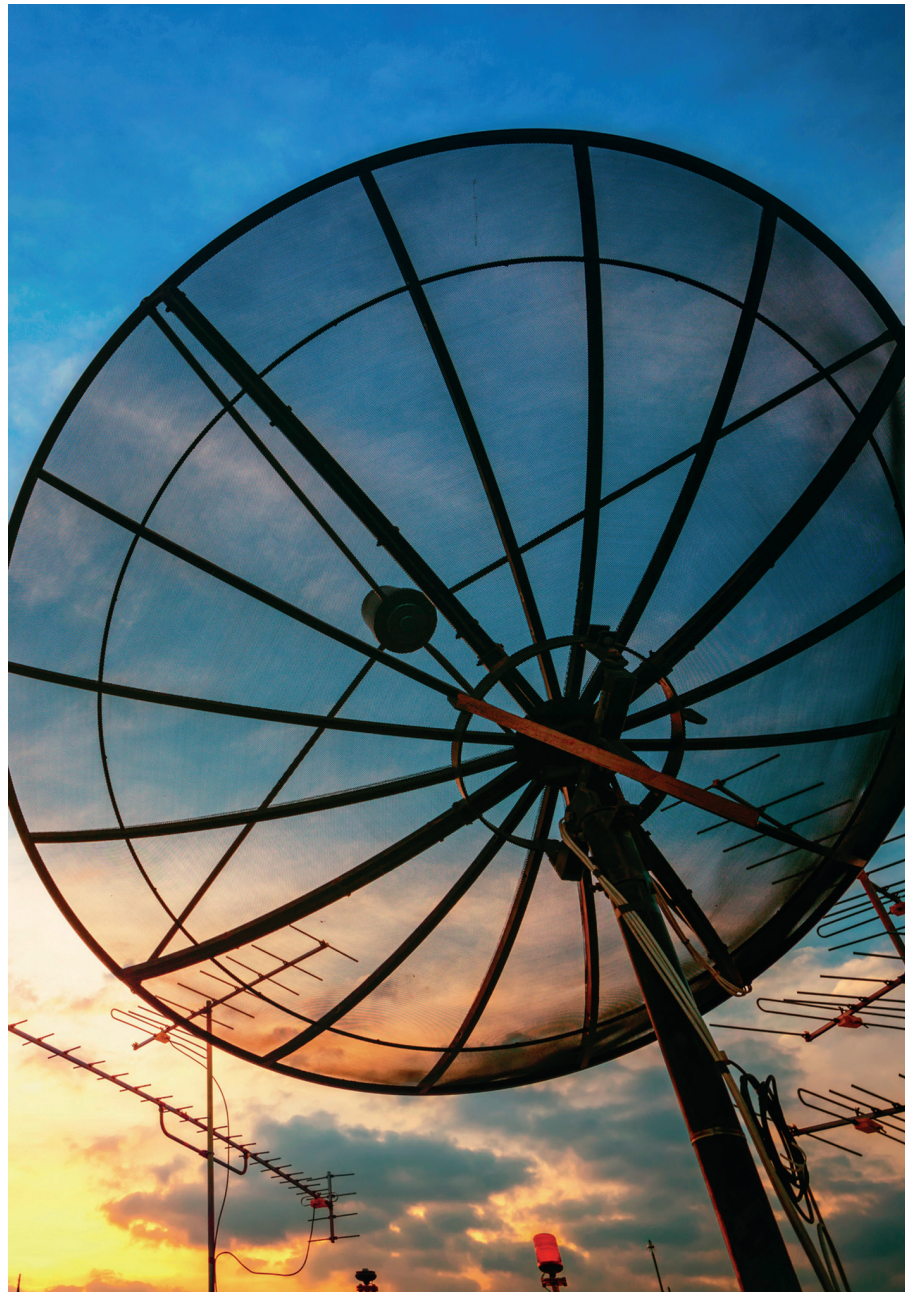


■ 800 thousand cable TV subscribers



■ 550 thousand IPTV subscribers

Source: ICTA (2015)



8. Law of Personal Data Protection

Turkey on 7 April 2016. Until now Turkey did not have one specific law governing the use of personal data.

The extent of processing covers a wide range of operations such as collection, recording, storage, preserving, alteration, and disclosure by transmission, dissemination, making available, alignment or blocking. The Law covers both automatic processing and non-automatic processing.

The purpose of the Law is to protect fundamental rights and freedoms in the processing of personal data and to set forth principles and procedures which bind any person who processes personal data. The Law describes personal data as "any information relating to an identified or identifiable natural person." Thus, the Law is limited to the protection of personal data of natural persons.

Data such as name, surname, birth date, birth place, phone number, address, ID number and social security number are classified as personal data. Moreover, data on race, ethnicity, religion, health,

attire and political associations are regarded as sensitive personal data. Overall, processing data without permission of the related person is prohibited by the Law, and explicit consent of the individual is required.

The Law lists exceptional circumstances where an explicit consent is not sought for data processing. First of all, personal data may only be processed with the explicit consent of the data subject in the conditions clearly specified under the laws. In case of objection by the data subject, data cannot be processed except for the fulfillment of obligations foreseen in the laws. Examples to these exceptional circumstances include situations where data processing is:


- Necessary to protect the life or the physical integrity of the related person who is not able to express his or her consent due to practical impossibility or whose consent is not valid
- Necessary for the signatory parties, provided that the

processing is directly related to establishment or performance of a contract


- Necessary for the data controller to fulfill his legal obligations
- Necessary to establish a right, use a right or protect a right
- Necessary for the legitimate interest of the data controller on condition that the processing will not violate any fundamental rights or freedoms of the related person.

As per the Law, an explicit consent of the related person is not required in situations where the person has already made available the data to public.

Moreover, until six months after the enforcement date, the Data Protection Board and Data Controller Registry must be established, and the Data Controllers must be registered with the Data Controller Registry. On the other hand, until 12 months after the enforcement date, the secondary legislation will be enacted, and until two years after the enforcement



The Law describes personal data as "any information relating to an identified or identifiable natural person"



The Law lists exceptional circumstances where an explicit consent is not sought for data processing.

date all personal data must be in complaint accordingly.

Data processing must be consistent with the principles of lawfulness and fairness grounded in Law. The processor is bound by these principles and its operations are limited and restricted to availability of an explicit and legitimate purpose.

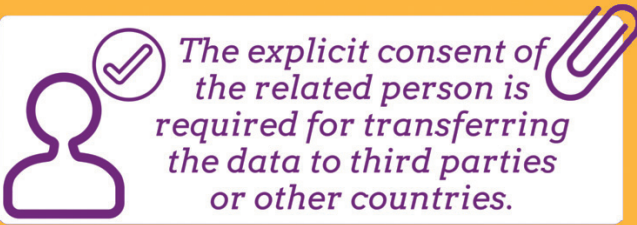
Pursuant to the Law, the definition of data processor includes a natural or legal person, public authority or any other body which processes personal data. In order to use the data, the processor is required to register with the Registry of the Data Controller monitored by the Authority and explain the purpose, content and place of use of data belonging to the related person prior to processing. Information must be provided on data planned to be transferred to third parties or other countries. Moreover, the precautions taken for the data security and identities and addresses of the data controllers must be explained.

As per the Law, data must not be kept for a longer period than

it is necessary. If the purpose of processing is no longer available, personal data shall be deleted, destroyed or anonymized upon demand by the data subject.

Transferring data to third parties or other countries is also regulated under the Law. Personal data can be transferred to third countries in the event that there is an adequate level of protection in the foreign country from which data is requested. The explicit consent of the related person is required for transferring the data to third parties or other countries; however, consent is not sought for under certain circumstances.

The Law stipulates that administrative fines will be imposed in infringement. In addition, the Law also makes reference to the Turkish Criminal Code, noting that Article 135 and the following provisions of the Code will be applicable if the act possesses a crime. In violation of the Law, the right to claim damages in accordance with the general provisions is reserved for the related persons.



The explicit consent of the related person is required for transferring the data to third parties or other countries.

9. New government program highlights building a digital society

The 64th Government Program was published on 25 November 2015, setting mark for Turkey's move towards a digital society. The Program sets forward some exciting yet ambitious steps in areas concerning digitalization as well as use of internet and technology. Let's have a look at few of these steps...

Under one of the headings, "Democratization and the New Constitution," the program lists pledges for better and more efficient governance. "Digitalization" is marked as one of the main components of the public administration reform. Other components underlying the public administration reform include the adoption of a smaller yet centralized administration, development of strengthened and accountable local governance and the endorsement of a more effective personnel regime. The implementation of these components is stipulated in order to help achieve a more transparent and participatory governing system. Within this framework, reference is made to the "Digital Turkey Project," a project which

seeks to develop a system that allows citizens to take care of their government and public authority related business online—through use of the Internet.

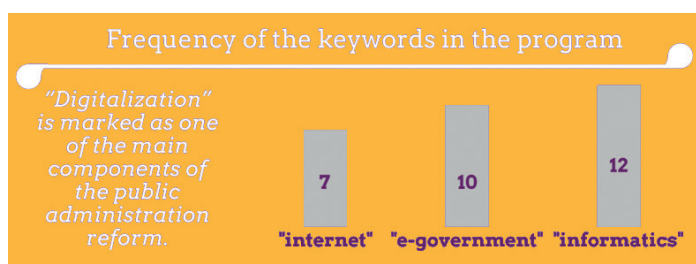
As a part of the "digitalization" concept, some other pledges which promote the move towards a digital society are announced. These include arrangement of electronic availability of national archive and use of modern technology to enable access to cultural resources through digital means.

The program further puts forth certain steps that have to be undertaken in order to raise awareness on the conscious use of the Internet, enhance access to the Internet and safeguard its effective use. Developments envisaged in this area target the young and the less privileged population in particular. Some of the pledges in this area are discussed under the heading "Humane Development and Qualified Society" and concern free access to the Internet for youth.

The pledges announced under the heading "Science, Technology

and Innovative Production" lay out steps for facilitating transition to an information society. Information and communications technology are marked as effective tools for evolution into knowledge based economy and development of qualitative employment. The Program notes that focus will be placed on investment towards implementation and adoption of the 2015-2018 Information Society Strategy and Action Plan. Some other important pledges in this area include supporting local and nationwide electronic communications developments, improving relevant communications infrastructure through technology assistance, indigenization of critical technologies which support growth of software/programming, digital content services and applications market and setting up internet exchange points.

All these steps require multi-layered and comprehensive planning. It will be interesting to track how all the planning will translate into action and how the move towards a digital society will start to develop.



10. Development in electronic payment methods

The evolution of the financial markets and the expansion of the e-commerce industry gave rise to new developments in the market for payment systems. With the evolution, the shopping habits of consumers also changed, and the Turkish society started to take wider steps towards becoming a “cashless society.” Coupled with the technological advancements, new electronic payment systems and instruments started to emerge, and banks as well as other institutions started to operate in the electronic payments and electronic money sector.

For example, the Interbank Card Center (BKM), recently established a national payment scheme, branded as “TROY” (which stands for Turkey’s Payment Method), in order to enhance electronic payments. The system is regarded to be an alternative to Visa and MasterCard which are used to clear payments made by electronic payment cards.

In order to keep up with the changes, new legislation regulating the activities and the players in the market developed. Law on Payment and Security Settlement Systems, Payment Services and Electronic Money Institutions numbered 6493 came into force in 2013 in order to clarify the definition of payment services, outline the operations and scope of activities of the current and new players in the market. A transitional period was run until June, 2015 to allow all the existing players in the market to align their operations and services with the Electronic Payments Law.

Following the enactment of the Law, two secondary legislative instruments were also introduced. These include Regulation on Payment Services, Electronic Money Issuance, Payment Institutions and Electronic Money Institutions and Communiqué on the Management and Inspection of Information Systems of Payment and Electronic Money Institutions. The Law as well as the secondary legislation adopted standards set out in the European Union Directives. The alignment of the regulation with European Union Directives is aimed to increase consumer protection and market transparency and enhance competition.

The Electronic Payments Law introduces new terms such as payment system operators, payment institutions and electronic money institutions. With the Law, the definition of the payment services is clarified, and many financial transactions are now considered to fall within the scope of payment services. Some examples include payments made by card or through use of online machines or micro payments made through mobile operators.

All in all, it is observed that the payment and electronic money services industry has emerged as a newly regulated market in Turkey, and we are yet to see how this market will further develop. The legislative changes are anticipated to increase commercial confidence and create various business models

based on establishment of new commercial relationships between different stakeholders. Speaking of new commercial relationships, the developments especially in the electronic payments area are prospected to support the creation of innovative mobile and digital solutions.

The electronic payment law introduces new terms

■ Payment system operators



■ Payment institutions

■ Electronic money institutions



End notes

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