

Competencies of the Information and Communication Technologies Authority in Turkish Telecommunication Sector

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Over the last two decades, the telecom industry has shown an incredible growth and has considerably changed the way people interrelate. Providing the infrastructure for information society, telecommunication sector has become a strategic sector worldwide in a short while. Due to the rapid and constant advancements in technology and current economic circumstances, public sectors have begun to fall short in maintaining telecommunication services and in development of the sector.

As a result of such development in a global context, there is a growing tendency in the world towards abolishing monopolist and state-controlled structure of telecommunication community and open up the market to the free competition of private sector, because governments aim to have a stronger telecommunications sector which will provide the maximum benefit. On the other hand, states face the pressing need of adjusting their institutions and legislations accordingly, in order to keep up with the developments occurring at a speed which has never been seen before.

Undergoing through a substantial transformation in the area of Telecommunication, Turkey did not act exceptionally and tried to update its legislation. In this context, the most important structural transformation for Turkish telecommunication sector is the Law numbered 4502 amending the main laws which used to regulate the sector. Law separated the task of strategy and policy setting for the Telecommunication sector, which was naturally left to Ministry of Transport (“Ministry”) from the task of regulating and administering the sector. Furthermore, the Law has established the Telecommunications Authority to perform the regulatory and administrative functions. Following the Law numbered 4502, the Electronic Communications Law (“ECL”), enacted on December 10, 2008, numbered 5809, renamed the Telecommunications Authority as the “**Information and Communication Technologies Authority** (the “**Authority**”).

Since its establishment, the Authority holds a very significant role and position for the future of Telecommunication Sector in Turkey.

In Turkey, Turk Telekomunikasyon A.S. (“Turk Telekom”), one of the leaders in telecommunication market had witnessed one of the most important developments in its history when Oger Telecom had purchased 55% of Turk Telekom shares after its privatization in 2005. Currently the remaining 30% of the shares belongs to Under-secretariat of Treasure of Turkey and 15% of shares has been offered to public.

Competencies and Duties of the Authority

As an independent regulatory body, the Authority has an absolute autonomy while performing its duties and competencies under relevant laws. In other words, assigning its own powers and responsibilities under public law, it is not in a hierarchical relationships with or responsibility towards other governmental institutions.

As per the ECL and relevant laws, the main purpose of the Authority is to ensure a complete liberalization of the sector. While the Authority has a regulation-focused function in the process; at the end of the day, the Authority is expected to keep its determining role on the sector at minimum as a result of this liberalization policy, but it will, of course, pursue the inspection and arbitration functions in an efficient way to ensure a sustainable competition in the sector.

The establishment of the Authority has an importance for ensuring continuity, order, reliability and transparency of the sector. Additionally, the establishment of a sustainable competition may also be expected to help new enterprises and investors to take their places in the sector, which will eventually contribute to the economy of the country.

As portrayed above, the Authority's particular task is to regulate the sector so as to create and maintain a fair competition-ground for the private enterprises.

Major competencies of the Authority are as follows;

- In the electronic communications sector; to make regulations to create and protect competition and to eliminate the practices which are obstructive, disruptive or limitative for competition; to this end, to impose obligations on operators with significant market power in the relevant markets and on other operators when required, and to take measures stipulated by the legislation;
- To inspect the breaches of competition in electronic communications sector, which are against the ECL and other dependant regulations; to impose sanctions when necessary and to take the opinion of Competition Authority on the issues regarding the breach of competition rules in electronic communications sector, if specified by the legislation;
- Within the framework of general principles regarding telecommunication sector, to prepare the required plans in this sector, to present them to the Ministry and to supervise the concerned institutions and establishments as well as individuals and legal entities for their related operations;
- To make necessary arrangements and supervisions pertaining to the rights of subscribers, users, consumers and end users as well as p protection of privacy;
- To make the Board decisions and their rationale concerning the operators and consumers available to public;

- To conduct a dispute resolution procedure between the operators when necessary, and to take necessary and binding measures in case of no settlement, until otherwise decided by the related parties;
- To implement necessary regulations and inspections including authorization, tariffs, access, right of way, numbering, spectrum management, licensing for the installation and use of radio equipments and systems, monitoring and inspection of the spectrum, market surveillance; by taking the strategies and the policies of the Ministry regarding electronic communications into consideration;
- To request all kinds of documents and information from the operators, public authorities and institutions, natural persons and legal entities which deemed necessary pertaining to electronic communications and to keep necessary records, to present them to the Ministry upon their request when they need in determining the strategies and policies towards electronic communications sector;
- To participate in the works of international associations and organizations regarding electronic communications to follow the implementation of the decisions and to ensure the coordination;
- To inspect and/or to have external auditors to inspect the compliance of operators to the legislation; to set the relevant procedures and principles to apply in case of non-compliance and to impose sanctions when needed;
- To take measures specified by the legislation to ensure that the national security, public order or public service principles are duly maintained in electronic communications sector;
- To enact by-law, communiqué and other secondary regulations pertaining to the authorizations granted by this Law.

Examples of Awards ruled by the Authority

Article 60 of Electronic Communications Law states that, the Authority shall monitor and inspect the adherence to the legislation, right of use and other authorization requirements; to charge operators with administrative fine with the amount up to three percent of the previous calendar year's net sales in case of non-adherence. Pursuant to the aforesaid article of ECL, the Authority charged administrative monetary penalty to Turkcell Iletisim Hizmetleri A.S. and Vodafone A.S. on May, 2010 because of the consumer complaints.

As per the Regulation on The Procedures and Principles With Regard to The Inspection Activities of The Telecommunications Authority and Regulation on Administrative Monetary Penalties to be Imposed by Telecommunication Authority on Operators and Other Sanctions and Measures; the Authority charged administrative monetary penalty to Turk Telekomunikasyon A.S. The Authority decided that Turk Telekomunikasyon A.S. was in breach of the Concession Agreement by not fulfilling the obligation of renewing the Directories at latest once in every five year.

On May 18, 2010, the Authority decided that Turk Telekomunikasyon A.S. should present its reference access offers which are compulsory for the services; partial leased lines (including Metro Ethernet) and wholesale line rental.

On May 12, 2010, the Authority decided to conduct an investigation for the purpose of taking statement of Avea Iletisim A.S. and Vodafone Telekomunikasyon A.S. regarding the discrepancies and mistakes in their data declarations presented to the Authority. Furthermore, the Authority has also decided to conduct an investigation for the purpose of taking statement of Turkcell Iletisim Hizmetleri A.S. regarding the discrepancies and mistakes such as its declarations presented to the Authority, its retarding attitude in the process during the on-site supervision, removing some documents prepared during the on-site supervision and not signing the minute prepared by the Supervision Council.

On April 13, 2010, the Authority has given a decision on the penalty clauses of the letter of undertaking signed by the operators and the subscribers regarding electronic communication services. According to some articles of these letters of undertaking, in case the agreement is terminated before the termination date, then the subscribers is obligated to pay the remaining months' price as a penal clause or penalty. This practise has resulted in a situation where the subscribers have to pay for a service, which they do not actually receive and consequently, they suffer an economic loss. On this regard, in order to protect the economic interests of the consumers and to protect them against such unjust treatment and to equip the customers with bargain power in the competitive market, the Authority ruled that customers should be informed separately and clearly regarding the penal clauses and penalties; subscribers do not have to pay a price for a service which they have not taken so the operators should terminate this application; also, the subscribers shall refer the letters of undertaking to the Authority before execution.

To Conclude

Especially with the new legislation in 2008, the Turkish telecommunication sector has shown a rapid development and in parallel there have been new regulations in order to satisfy and regulate the demands coming from the operators as well as from the customers. In this process, the Authority has extensive competencies and is the major regulatory body for the telecommunication sector. However, given its extensive competencies and the updated legislations, the Authority, being cautious, is not that active in applying these regulations ,due to perhaps lack of established practises in the field. As a result, despite the sufficiency of the regulations in the telecommunication sector, Turkey still remains behind its rival countries in Europe, yet, it offers a great potential to keep up with the phase of its development trend.