T.C.
GALATASARAY ÜNİVERSİTESİ
SOSYAL BİLİMLER ENSTİTÜSÜ
İKTİSAT ANABİLİM DALI

THE PROBLEMATIC OF NATURAL MONOPOLY IN TELECOMMUNICATIONS SECTOR AND THE COMPETITION IN THE TURKISH TELECOMMUNICATIONS SECTOR (FIXED LINE SERVICES MARKET)

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EYLÜL 2010

FOREWORD

The key factors behind an economic development as is the same in social and human development are information and knowledgeable people. The major importance of the information has been increasing due to the developments in the technology and removed barriers between economies. The 21th century is the century of Information and information based economy. It is also important to mention that in the twentieth century it is recognized by the international community via the Article UN Declaration of Human Rights that, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. The ability to use information and to communicate is fundamental to human welfare.

Today, ICTs have been an engine of transformation to achieve a desired, fast developing, high-technology and industrialized state. The importance of ICTs have been mentioning in many reports of international organizations, such as UN, UNCTAD, UNDP, ITU, WTO, EU Commission, WB and OECD.

Nevertheless, the ICTs have a role of maintaining and sustaining the competitiveness power of businesses in a country. Once the country has the cost-effective access to information with speed, the competitiveness power increases as well.

Telecommunication is the major sector in the communication and access to information in ICTs. In telecommunications, there are two main sectors; mobile and fixed line services. In the thesis, the argument was made on fixed line services. The reasons behind my choice of fixed-line services has two basic reasons;

1- Voice telephony services over fixed network can reach to the full population of the country through its infrastructure and to this respect it concerns everybody in a country.

2- Fixed line services market has the natural monopoly characteristics and it is subject to deregulation. It has a close relation with human and social welfare.

In Turkey, the liberalization process in telecommunications sector has started in 1994. The big attempts were made in 2000. All the rules and legislations which were adopted from the EU regulatory framework aimed to open the fixed line market up to competition and to sustain the competition in the market. However, it couldn't. In reality, the only thing sustained was the majority of Turk Telekom and TTnet. Turk Telekom and its subsidiary company enjoyed the monopoly situation in the market through many anti-competitive practises such as monopoly pricing and cross-subsidization. Consumers could not benefit from the liberalization process of the fixed line market many years because of the lack of alternatives in voice telephony market. No legislation by itself could have contributed consumer satisfaction. Because the factor of human who implements the law and to this respect, the monitoring process of liberalization was underestimated.

The liberalization of the market in the benefit of consumers has vital importance for business life and individually at both, especially in developing countries such as Turkey where a high percentage of people who live under minimum wage. According to a statistics made by Turkish Statistics Institute, in recent years the communication expenditures constituted the biggest share in the household expenditures which means even more than food, heating an even health expenditures. In this respect, this indicates a real problem.

For sustainable development which can contribute to social welfare in an economy, the economy must have competitiveness power at global level in the sectors where it has comparative advantage.

It has been accepted as a key factor to lower the costs of telecommunication and have the modern technology in communications which would help to maintain a significant increase in competitiveness power.

I would like to express my sincere thanks to my supervisor Prof. Seyfettin Gürsel and Ms. Armasari Soetarto, Mr. George Lipimile, Dr. Hassan Qaqaya, Prof.

İzak Atiyas for any kind of their efforts for helping me to develop my thesis and i have my special thanks for Mrs. Elizabeth Gachuiri and dearly husband Mr. James Gachuiri for the editorial contributions and for helping my thesis to develop and flow. I hope my thesis would motivate next generation to study on telecommunication regulations and the competition in this market.

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

Art: Article

ECTA: European Competitive Telecommunications Agency

EFD: Essential Facilities Doctrine

ERG: European Regulators Group

EU: European Union

ISP: Internet Service Provider

IP: Internet Protocol

KIK: Public Tenders Authority

LDTS: Long Distance Telephony Services

LRIC: Long Run Incremental Cost

NRA: National Regulatory Authority

OECD: Organization for Economic Development

OIB: Republic of Turkey Prime Ministry Privatization Administration

SEE: State Economic Enterprise

SMP: Significant Market Power

TUSIAD: Turkish Industrial Businessmen's Association

VANS: Value Added Network Services

UNCTAD: United Nations Conference on Trade and Development

WTO: World Trade Organization

TABLE LIST

ABSTRACT

In a natural monopoly market, it is not possible to create a liberal and competitive market only with economic regulations. In such kind of markets, there is a need for sectoral and legal regulations which determine the rights and obligations of the suppliers and the relationship between the incumbent provider which has the national infrastructure and network and alternative service providers. However, the regulations may not be sufficient to create a competitive market in case of lack of implementation. In this respect, the monitoring unit in the sectoral regulation system has a key role to prevent anti competitive practices such as predatory pricing, cross-subsidization or any other kinds of entry or exit restrictions which arises from the incumbent's behaviors in the market.Telecommunication sector is one of the markets which has the characteristics of natural monopoly. In this thesis, the liberalization and regulation process in the Turkish telecommunication fixed-line services will be analysed through regulations and it aims to give an answer whether the fixed line market is competitive and if not, why competition could not be created in Turkish Fixed Line Telecommunications Market and what kinds of policies could be adapted in order to create competition in Turkish Fixed Line Telecommunication Market.

ÖZET

Doğal tekel piyasalarında yalnız ekonomik regülasyonlarla rekabetçi bir ortamın yaratılması mümkün değildir. Bu tip piyasalarda, şebeke ağının sahibi olan hizmet ya da mal sağlayıcısının diğer sağlayıcılarla olan ilişkilerini düzenleyen ve gerekli olduğu ölçüde ağ sahibinin haklarını piyasada rekabetçi bir yapının oluşturulması maksadıyla kısıtlayan sektörel ve yasal düzenlemelere ihtiyaç duyulmaktadır. Bununla birlikte, söz konusu yasal ve sektörel düzenlemeler de piyasada etkin şekilde tatbik edilmediği müddetçe rekabetçi bir ortam yaratılması da mümkün olmayacaktır. Bu gerekçeyle, düzenlenen piyasalarda piyasayı denetleme işlevini yerine getiren birimler çok önemli bir rol üstlenmektedirler; piyasadaki giriş ve çıkış kısıtlamalarının ya da piyasada meydana gelen hakim durumun kötüye kullanılmasının örnekleri olan tekelci fiyatlandırma ya da çapraz sübvansiyon pratiklerinin önlenmesi gibi. Telekomunikasyon piyasasının bazı bölümleri de doğal tekel özelliği göstermektedir. Bu tezde, Türk Telekomunikasyon Sektöründe doğal tekel özelliği gösteren sabit hatlar sisteminde liberalizasyon ve regülasyon süreçleri incelenecektir ve amaçlanan söz konusu düzenlemeler neticesinde Türk Telekomunikasyon Sabit Hat Piyasasında rekabetin oluşup oluşmadığına dair bir yanıt getirerek bunun nedenleri üzerinden bu piyasada rekabetin oluşturulması için bazı politika önerileri sunmaktır.

INTRODUCTION

The development in the telecommunication and information technology sectors has improved and increased the connectivity between and within countries thereby removing barriers of time and spatial separation. This in turn has resulted in increased integration of markets, improved commerce and geo-political relations.

At global and regional level, a number of initiatives aimed at increasing the development and use of information and communication, technology (ICT) have been developed. The major drivers include the United Nations, the World Trade Organization, the International Telecommunications Union, and the Universal Postal Union. Turkey`s membership to the European Union is still pending and it is expected that once admitted telecommunication regulations for the EU shall apply. On the other hand, Turkey is a member of the OECD and therefore the European practices in the telecommunication sector are being adapted in Turkey.

Turkey has participated in a number of global events that are focusing on ICTs as a tool for sustainable growth and development. The country is fully committed to Millennium Development Goals and it is envisaged that ICTs can be harnessed to achieve the following goals;

i) Eradication of poverty
ii) Access to primary education
iii) Gender balance and economic empowerment of woman.
iv) Decrease in child mortality rate
v) Material health care
vi) To fight HIV/AIDS and other diseases
vii) Promoting sustainable environment

It is evident that the fundamental difference between the developed and the developing countries is that the former are rich in information and have a well informed citizenry which is able to adopt quickly to changing social and economic trends, hence utilizing opportunities to overcome development challenges. In this

regard, information is treated as a product commodity which has potential to make significant changes in many aspects of our social and economic development.

In various forums, it has emphasized that ICTs can be used to bridge the digital divide within the context of globalization. The digital divide presents barriers to international, regional and local trade, by denying business the vital information and knowledge.

Turkey has an opportunity to make a difference by adopting and using ICT as a tool to reduce the development divide thereby increasing the chances of improving quality of life of its citizens. A well ICT Policy provides for an opportunity to build an information centered society where everyone can create, access, utilize and share information and knowledge leading to greater productivity, competitiveness and sustainable economic growth.

The ICT sector in Turkey can be generally categorized into four main subsectors namely; telecommunications, information, technology, electronic media and postal communication system.

Liberalization process in the Turkish Telecommunication Sector started in the 80s with outlining the way with the country was to be integrated into the global economic community. The Decree of 24 of January 1980 started the process towards transformation from a closed and state-based economy to an open market economy**.** Since the economic revolution, Turkey adopted a set of rules which were harmonized with EU directives as a guide to liberalization in many sectors. In this context many public economic entities were privatized.

Privatization was perceived as a threat to consumer welfare in particular and a loss to the well-being of the society by a large majority of population in Turkey. In addition, privatization of natural monopolies in Turkey was always a point discussion by policy makers, academics, industry leaders and trade unions and opposes of the globalization effort at the time. The telecoms privatization took a center stage from the society and entrepreneurs. The main factor behind this was that telecom is a natural monopoly and it directly affects the welfare of the society. In

accordance with the general accepted view by many academics' and country-specific results, a monopoly has always the potential to harm the consumer welfare and a natural monopoly is not an exception. However a private monopoly is a worse choice due to its profit making objectives as opposed to preservations of society welfare.

The telecommunication industry in Turkey has gone through a number of significant changes since 1995. An independent authority to manage the sector was established in 2000, and role of government was limited to policy making. The monopoly privilege of the incumbent operator, Turk Telekom over fixed line infrastructure and voice services was terminated in 2003. The operator was privatized in 2005. Overall, competition in the fixed-line segment of the industry has not been created as expected and has been very slow especially in comparison to the EU and US.

Privatization did not change the market structure as it was expected. Despite the fact that the monopoly privilege come to an end in 2003, the monopoly still exists. Competition in the market was not enhanced after privatization in 2005. Turk Telekom remained a vertically integrated private monopoly enjoying cream skimming privileges in the market. It took 4 years to partially open the voice services to competition. The international and domestic voice telephony services were open to competition local call service was close to competition. As a result, many claims were brought to court including cross-subsidization, distortion price and other types of competition failures which restricted competition in the market.

In this thesis, the discussion is limited to the current status of the fixed line services in Telecommunication Sector and it examines the interface between competition, regulation and privatization and presents an overview of the evolution of the competition in fixed line services since the beginning of the liberalization process in telecommunication services. The main conclusion of the thesis is that the development of competition in the fixed line services has been slow. It further asserts that even in the most potentially competitive segments in the market regulations and privatization process did not bring about the expected welfare benefits to consumers and attempts to explain the reasons why in an analytical perspective.

The first chapter presents a brief description of the importance of telecommunication sector in the Turkish economy. Market characteristics will be defined under a theoretical framework and the following issues will be addressed; i)the need for regulation in telecommunication sector; ii) openness of the market to competition; iii) market integration vertical/horizontal; iv) the role of competition law in the restructuring of telecommunication sector v) the need for a regulatory body. Further, a brief description of free market economy, competition, natural monopoly, and the relationship between the competition board and the telecoms regulatory body will be presented.

The second chapter gives a historical and legal overview of the Turkish Telecommunication system and recognizes the economic and legal regulations present in the sector. Turkey has implemented a series of regulations adopted from EU directives. The Turkish model is not different from many European regulatory frameworks; the legal provisions are quite conducive to promoting competition in the market. Many of the legal instruments such as regulation of access and interconnection, pricing policy, local loop unbundling regulations are being implemented.

The third chapter examines privatization as part of liberalization process, why Turk Telekom needed to be privatized and how it was done. The mode of privatization has a great impact on the liberalization process to the extent that shapes the market structure. Turk Telekom was also privatized in order to raise revenue to defray the public budget deficit.

The fourth chapter focuses on Turkish Information and Communication Technologies Authority and the shared jurisdiction with the Competition Authority and the review of Telecommunication Authority's decisions during the process of liberalization in telecommunication industry in Turkey.

The fifth chapter looks at the evolution of competition in the fixed line voice telephony services. It examines how competition in the market was adapted to the new regulatory framework and whether the application of the legal frameworks effectively enhanced consumer welfare. The analysis of the market structure will be

discussed using OECD and ITU criteria which are regarded as best practices many countries and academics.

Chapter six brings together the findings of the thesis and makes some conclusions and suggestions to address the issues raised by way of policy recommendations for shaping the future of Telecoms industry in Turkey.

CHAPTER I

1. REGULATION AND COMPETITION

1.1. The Importance of Telecommunication Sector

Telecommunications is generally defined as the assisted transmission of signals over a distance for the purpose of the communication.[1]Telecommunications can reach consumers mainly through broadband telecommunication lines, digital television, and the Internet. The term electronic communication refers to all kinds of communication by electronic means such as telephone (fixed or mobile), facsimile, internet, cable and satellite.

According to the Article 1 of the Law No.4502[2], telecommunications is defined as; *"...telecommunications transmission, emission and reception through cable, wireless, optical, electric, magnetic, electromagnetic, electro mechanic, electro chemical and transmission systems of all kinds of sign, symbol, voice and image and all kinds of data which can be converted into electric signals.*" The definition of telecommunications has been changing due to the developments in the communication services. In past, communication was limited to the postal services, telephone, telegram and facsimile. With time, the need to communicate and the advent of technological innovation increased, leading to major changes in the types and means of communication. Today's terminology, communication which can be converted into signals is known as telecommunication. The telecom service in Turkey had first been provided by telephone over fixed-line cable network, then satellite platform operation activities by national and foreign operators were introduced in the market and today, the most cost-efficient way to provide telecom service is via fiber-optic. Therefore, it can be inferred that the definition can be enlarged due to the technological improvements in transmission types.

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[1] EuropeanCommissionwebsite:
http://ec.europa.eu/competition/sectors/telecommunications/overview_en.html

[2] "*Law amending Certain Articles of the Telegram and Telephone Law, Law on Organization and Responsibilities of the Ministry of Transport and Communications and Wireless Law, Law on Savings and Aid Fund of the Posts Telegraphs and Telephone Administration and Organizational Charts attached to the Decree with the Force of Law on the General Cadrees and Procedures*", No.4502, Dated 27/01/2000.

This thesis mainly focuses on the services provided over fixed-line network and therefore excludes rest of telecommunication services.

The EU Commission was instrumental in opening up the telecoms market to competition through the creation of a new regulatory framework which was implemented in 2003 by all Member States. The EU Commission also aimed to help to regulate network operators and service providers within the common market. Firstly, DG Competition in co ordinance with DG Information and Society and Media aims to ensure that national regulators correctly apply the regulatory framework so as to promote effective competition. Secondly, DG Competition applies the general competition rules of the EU Treaty. It tackles anti-competitive practices such as restrictive agreements between telecoms undertakings (Art. 81), abusive behavior of dominant telecoms operators (Art. 82), and State measures contrary to the EU Treaty Rules (Art. 86 & 87).

To deal with mergers, restrictive agreements and abusive behavior in the telecoms sector, DG Competition cooperates closely with national regulatory authorities through the European Regulators Group (ERG).

Telecommunication sector provides individual communication and also constitutes the main infrastructure for business operations and has an economic value at the stock markets. With advent of technological developments, the effort to maintain the provision of these services by public sector became insufficient for sector development due to changing economic conditions.

The new telecommunications community aimed of providing services in competitive environment to the private sector. In such an environment it is possible for the economies to accelerate the rate of economic development and to provide maximum social and economic benefits to their people. Therefore there is a worldwide view to abandon the traditional monopolist and state controlled structure; in its place, a competitive free market structure in which private initiatives are encouraged.

Technological transformations also require changes in national institutions and systems. Today, developed countries' efforts to restructure their organizational arrangements and systems give important clues for the new dimensions that may be brought through transformation and competition.

In Turkey, telecommunication industry has been the backbone of the whole economy in the last ten years. Great evolution in restructuring of the industry has motivated the entrepreneurs both local and foreign to enter the market. It also created forward and backward linkages. The major economic features of the industry include its multi-product nature, the non-storability of its output, time-varying demands, sunk costs, capacity constraints, externalities, and elements of natural monopoly.

The main element of market failures in the telecoms market are the natural monopoly characteristics and unforeseen externalities. Therefore, this supports the rationale for policy intervention.[3]

A positive network externality between users arises because existing subscribers benefit when new subscribers join.[4]This may have policy implications for pricing structure, for possibly justifying a subsidy to rental charges to encourage new users to join network, and its fundamental for policy on interconnection a small network would be severely disadvantaged relative to a large one. The wider social benefits of telecommunications - for example provision to sparsely populated areas and emergency services-are another kind of positive externality in the broad sense. These activities could be financed by direct subsidy out of public funds or by cross-subsidy for more profitable activities. Negative externalities may arise from network congestion, i.e. the inability of some users to make calls due to capacity constraints on links and exchanges. This is an important aspect of quality and a key influence upon time-of-day pricing.

In addition to the traditional telephones, the apparatus attached to the public network by users includes mobile phones, radio-pagers, telex and fax machines, TV

[3] George K.Yarrow, Piotr Jasinski, "Privatization: Critical Perspectives on the World Economy", p. 181.
[4] A.g.e, p. 182.

sets and computing equipment. Moreover, many private networks are attached to the public network. The services provided over the network are the basic voice-telephone service and the value-added network services (VANS) -such as electronic mail, recorded messages, data services, TV services.

The importance of the telecommunication industry can be shortly introduced as:

- telecommunication sector is subject to universal service.
- telecommunication sector supports other industries, for example; a company lacking in modern telecommunications systems cannot effectively participate in the global economy. In this case telecoms sector supports the competitiveness of businesses.
- telecommunications in the modern global economy offers a new dawn of economic opportunity for developing countries.
- telecommunications provides the infrastructure for the information society, improved technological and knowledge economy.
- the development of telecommunications sector promotes the emergence of new derived sectors which in turn contributes to the development of the country through the creation of employment opportunities.

1.2. Free Market Economy and Competition

A free market economy accompanied by a competitive environment can bring about the desired benefits to the economy. The major elements of sustaining competition in the markets are;

i) entrepreneurs must have competition power.

ii) there has to be a legal framework which supports competition and promotes both entry and exit conditions.

iii) continuity of the rules and regulations governing competition and sector regulation.

iv) both the Competition Authority and the Sectoral Regulatory Authority must coordinate their activities to dealing with anti-competitive practices.

In the medium term at least, competition cannot be relied upon to contain market power in all parts of telecommunications industry, the control of pricing is central to regulatory policy.

Competition is the backbone of an improved innovation and increased efficiency in the telecommunications industry as it is for the any industry but its importance is much more important for today's new information society or the information economy. It is also the key to promoting technological progress. Due to rising importance of the telecommunications, for instance EU promotes increased competition through a series of regulatory rules. The major benefits attributable to competition is raising quality in the product market and lowering costs and reducing prices. It promotes innovation in the market; due to that the cost structure decreases and by putting in force the regulatory rules the prices get quickly adapted to the costs. Today, in all over the world, the liberal markets cannot function efficiently the regulatory economics is the Adam Smith's invisible hand of the economy.

Competition provides opportunities for innovative companies, particularly in a sector that has experienced intense technological progress in recent years. However, market forces are not always sufficient to generate growth, protect consumers and ensure a level playing field for new entrants in the telecoms sector, where imperfect competitive conditions exist due to legacy of national, often state-run monopolies. For that reason, EU Commission sees continued regulation as essential in order to counterbalance the significant market power of former monopolies, ensure universal service and protect consumers, especially those social groups that may otherwise face exclusion. To ensure that telecoms market benefit from continued market regulation, the Commission oversees the correct implementation and enforcement for the directives.

The OECD Competition Committee debated the essential facilities concept in February 1996. An essential facility doctrine specifies when the owner(s) of an "essential" or "bottleneck" facility must provide access to that facility, at a reasonable price.

Topics covered include the access regime, interoperability (that different systems, products and services work together transparently) and standards, the importance of market definition in defining an essential facility, single versus joint ownership of an essential facility, legitimate reasons to deny access and possible remedies.

There is an important distinction among public, private but regulated and private unregulated facilities because mandatory access can diminish private incentives to invest and innovate.

The term "essential facilities doctrine" originated in commentary on United States antitrust case law and now has multiple meanings, each having to do with mandating access to something by those who do not otherwise get access.

The concept of "essential facilities" requires there to be two markets, often expressed as an upstream market and a downstream market. Typically, on firm is active in both markets and other firms are active or wish to become active in the downstream market. A downstream competitor wishes to buy an input from the integrated firm, but is refused. An EFD defines those conditions under which the integrated firm will be mandated to supply.[5]

While essential facilities issues do arise in purely private, unregulated contexts, there is a tendency for them to arise more commonly in contexts where the owner/controller of the essential facility is subject to economic regulation or is state owned or otherwise State-related. Hence, there is often a public policy choice to be made between the extension of economic regulation and an EFD under the competition laws. Further the fact of regulation of pricing through economic regulation, State-control, or a prohibition of "excessive pricing" in the competition law, has implications for the nature of an EFD. There are different formulations of the EFDs in developed countries that could be used as an example for developing countries, such there are different formulations of EFD in different continents' developed countries such as in the United States, Australia, and the European Union.

[5] OECD, Policy Roundtables, "*The Essential Facilities Concept*", Paris,1996, p.7-9.

As it is mentioned above, essential facilities doctrine varies among different legal regimes. The variation may depend on different instruments, such as the types of "facilities", ownership and market structures to which they may apply, and according to who makes the determination that a facility is "essential".

The US essential facility case is *MCI Communications Corp. V. AT&T.* According to US system, there were four elements necessary to establish liability under the essential facilities doctrine:

1-The control of the essential facility by a monopolist,

2-A competitor's inability practically or reasonably to duplicate the essential facility,

3- The denial of the use of the facility to a competitor,

4- The feasibility of providing the facility.

1.3. Natural Monopoly

Natural monopoly refers to an industry in which one firm can produce a desired output at a lower social cost than two or more firms, enjoying economies of scale[6]. A natural monopoly doesn't mean that only one firm is providing a particular kind of good and service by law, rather it's the assertion that it is less efficient more than one to provide a good or service. It doesn't always refer to statutory monopoly, where government prohibits competition by law.

A natural monopoly exists when;

a) consumer can derive maximum benefit by paying the lowest price for goods and services,

b) resources could be allocated most efficiently, which results as an increased welfare in the society.

The economic characteristics of the service and the technology constraint in the market are the main factors behind a regulation need.

[6] OECD, "Report on Restructuring Public Utilites for Competition", 2001 For further information: http://www.oecd.org/dataoecd/6/60/19635977.pdf

The basic examples of natural monopolies are the infrastructure services. Infrastructure services, such as electric, telecommunications, railway, water supply are some examples of the network industries and these industries all have the network effect on the allocation of resources. Without a regulation in network industries, the resources become wasted and the effective allocation cannot be achieved.

In telecommunication sector, there are also segments where natural monopoly exists and the network effect is recognized. It is useful to distinguish between (i) the public network and its operation (ii) customers' apparatus attached to the network and (iii) services provided over the network. The network connects users by a combination of exchanges and transmission links. Networks are typically configured hierarchically with users connected to local exchanges, which in turn are linked by trunk or long-distance lines to regional exchanges, and ultimately to the international network. Both wire and radio methods of transmission are increasingly able to transmit digital rather than analogue signals, and convergence with computing technology is becoming ever more important. Moreover, fiber-optic and forms of satellite communication become more prevalent there is increasing convergence with parts of the broadcasting and entertainment industries. As well as the public network(s) the national telecommunication system contains numerous private networks, for example university internal networks.

The major aspects of infrastructure services are;

- Infrastructure Services are a part of public utilities,
- Infrastructure Services generally operate in a network. They exhibit characteristics of both negative and positive externalities. This means that one consumer`s demand can be affected by the demand of the others. For example, in telecommunication services, as the number of the existing subscribers on a telephone network increases, then the new subscribers prefer the same network.

- In infrastructure services, the payment for use the service is generally paid by consumers. It may be concluded that there is an externality and so that the service is not for free.
- Infrastructure services provision are subject to public interest so the government meet the basic needs of the society without discrimination in either qualitative or quantitative as a means of its responsibility.
- In some infrastructure services, the quality of service and the effectiveness of its provision services increase as the number of users increase. The telecommunications services can be given as an example.
- Infrastructure services generally require high fixed costs at the beginning of the investment. That is due to its capital-incentive nature. In short term, fixed costs are sunk costs.
- Infrastructure services are for long-period use.
- There are economies of scale and scope in infrastructure services.

Due to improvements in the technology, it has been possible to sustain competition in some areas of the market which had been accepted to be a natural monopoly before. “Contestable Market” theory gives the explanation of the methods of creating a competitive environment in an analytical perspective.

According to the market theories, natural monopolies quite differentiate from competitive markets in terms of the determination of supply and determination of prices. The main reason is there are initial investment costs (sunk costs) at natural monopolies. In addition the fact that they are infrastructure services means that there is a fixed plant. Despite the fact that there are high investments associated with natural monopolies, it is possible to introduce competition with access regulations at the different levels of market.

Today, with the development in technology and theoretical advances created new dimensions in natural monopoly markets, the changes can be summarized as;

- scale of economics was reduced in many infrastructure services
- it is possible for some operations in the natural monopoly market to be divided into subsections where some can be competitive.

- provision of services can be in a more efficiently manner anymore.

Access regulations were brought to new regulatory framework to create competition at different levels of market.

The reason why there is a need for regulation of natural monopolies is the dilemma between the efficiencies of production and allocation in the markets. In spite of the fact that it is the most efficient way to produce through having only one firm in the market, it is not an efficient way to allocate resources.

Regulation in general terms is a subset of economic and legal regulatory reform in the imperfect markets in order to eliminate market failures completely or partially. It is a way to create free market conditions for a functioning competitive market which promotes productive and allocation efficiencies for the benefit of consumers. The basic goal of regulation is to provide economic efficiency in terms of production and allocation and in this way to avoid wastage of resources in a country.

Indeed a liberalized utility service is of interest to competition policy in general, since it provides fertile ground for monopolistic behavior and anticompetitive practices.

In telecommunications, technological change and demand growth have significantly diminished the domain of natural monopoly and enlarged the potential for competitive market forces. At a general level there has been a reassessment of the importance of regulatory failure in relation to market failure.

Network industries (utilities) include;

i) Naturally monopolistic activities, such as transmission networks,

ii) Potentially competitive activities, such as the provision of services over the networks, which may not actually be competitive, for which access to activities of type (i) is an essential ingredient.

Thus, in telecommunications, activities of type (i) include local-fixed link network services, for the short term at least, and those of type ii include many long-distance services.

The reason of a deregulation is that if there are exempted areas which cannot be subject to competition to open these areas up to competition will be economically inefficient because of economies of scale, economies of scope and network externalities. Exempted areas are not subject to competition law. In such a case, the major problem which may arise is monopolistic pricing and low quality of services by the incumbent. Deregulation process brought institutions that deal with sector-specific regulation which has sector-specific knowledge.

The basic goal of the regulation is to sustain price efficiency and/or cost efficiency and dynamic efficieny in the market. Cost efficiency refers to the cost minimization under a given quality.

Price efficiency refers to a level where the production and the allocation is efficient.

Secondary goals of the Regulation can be held as follows;

- the provision of Universal Service.
- to prevent monopoly or deteriorating pricing in the market . Therefore, it would be able to maintain the services at an affordable, competitive price in the benefit of users.
- to create a competitive environment for investors so they could be attracted to enter the market.
- to create confidence through institutional commitments on the future of the sector regarding institutional and legal framework in the market with leading to an increase the incentives of the investors.

The term “dynamic efficiency” refers to the question whether the allocation of resources between today and future is efficient or not. In long term, one of the most important sources of growth is increase in the productivity. Therefore dynamic efficiency focuses on the questions whether the undertakings are engaged adequately

in Research and Development activities and whether the economic environment stimulates innovation and technological progress or not.

Deregulation has sets of solutions to achieve a competitive environment in the sector. Currently, the major solutions that one can identify are;

- Giving access to the new entrants.
- Sharing lines
- Setting competitive, fair tariffs that increase the incentives of the entrants.

1.4. The Sharing Role of Telecommunications Regulatory Body and the Competition Authority in Maintaining a Well-Functioning Telecommunication Industry

The application of the sector specific rules and the competition rules is one of the major problems in regulation policies. Country examples give a foresight to what proportion of regulatory rules from each regulator would be for a well-functioning industry and what would lead to a bad-functioning industry. Countries with fully liberalized telecommunications markets have adopted different mixes of antitrust and sector-specific regulatory instruments. Drawing on the experiences of Australia, Chile, New Zealand, the United Kingdom, United States and among many other countries, the balance between the two approaches matter for competitiveness. Countries that get the right balance tend to have more competitive telecommunications markets.

The United States has relied primarily on sector-specific rules applied by a sector-specific institution. By contrast, New Zealand relied until 2001 almost exclusively on antitrust law. And Australia, Chile, and the United Kingdom chose combinations of antitrust and sector-specific regulation lying somewhere between those two extremes.

Experience in these countries suggests that sector-specific rules remain desirable for tackling some pricing and other operational issues in the sector. Antitrust rules, for their part, are essential for preventing anticompetitive behaviors, ensuring merger reviews, and filling gaps in sector-specific regulatory regimes. Experiences also suggests that a specialized entity- a sector- specific agency or an

economy wide antitrust entity that possesses sufficient expertise in telecommunications- is needed to deal with some of the most complex regulatory issues.[7]

It's also important in which way and how much the different combinations of competition and sector-specific regulations affect market share and prices in different segments of the telecommunications market. There have been many investigations conducted on trying to provide an answer to the question. A short brief answering to the question in different segments of the market is presented below.

In fixed line local services, new entrants have gained only a modest share of the market; 4 percent in New Zealand, 5 percent in Australia, and 8.5 percent in the United States.

In this market, it is not the balance between antitrust and sector-specific regulation that seems to account for the differences, but other, unrelated factors. All five countries have capped the prices of fixed local services. In some, the caps are so low as to substantially limit the profitability of providing services, and thus act as a deterrent to potential new entrants. This helps to explain why it is in the countries where the prices of local calls are highest- Chile and the United Kingdom- that new entrants strived to capture the largest share of the market.[8]

In long distance services, the provision of fixed national long distance services appears to be very competitive (especially Chile, the United Kingdom, and the United States). In Chile, the incumbent's market share had fallen below 50 percent as early as 1995, while in the United States AT&T has dropped to 38 percent by 2000. Price comparisons confirm that the Chilean, U.K., and U.S. markets are more competitive than the Australian and New Zealand markets.

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[7] Kumbar, Amitabh; "*Relationship between Competition Authority and Sectoral Regulator, Competition Commission of India",* Presentation, Safir Workshop, Lahore, 25-26 March 2006 Online:http://www.competition-commission india.nic.in/speeches_articles_presentations/9-PPT_Lahore_06.pdf

[8] UNCTAD, "*The Relationship between the Competition Authority and The Sectoral Regulators-JFTC`s Experiences"* UNCTAD`s Seventh Session on Intergovernmental Group of Experts on Competition Policy Law and Policy, Geneva, 30 October to 2 November 2006 Online: http://www.unctad.org./sections/wcmu/docs/c2clp_ige7p8_en.pdf

Differences in emphasis on antitrust or sector-specific regulation appear to explain at least some of the variation. Australia, Chile, the United Kingdom, and the United States all benefited from having specific rules on long distance interconnection and specialized regulatory authorities to apply those rules.

In Chile and the United States the vertical separation imposed between local and long-distance markets prevented local incumbents from competing directly with long-distance providers, which removed the incumbent's incentives to discriminate among those providers. Chile has also greatly benefited from a sophisticated interconnection system -put in place since 1994- that enables users to choose their long-distance carrier for each call.

In New Zealand, by contrast, competition in long-distance has probably been hampered by the lack, until 2001, of clear interconnection rules and specialized regulatory authorities.

In internet services, the United States and Australia arguably have the most competitive markets for dial-up internet access they have the most internet service providers (ISPs) relative to population as well as the lowest prices for internet access. The ISPs affiliated with incumbent operators hold only a small share of the market. The U.K. market appears to rank somewhat lower in competitiveness. The markets in Chile and New Zealand rank even lower: they have smaller numbers of ISPs and the highest prices for Internet access, and they are still largely dominated by the ISPs affiliated with incumbent operators.

Internet prices tend to be high in Chile in part because of the metered pricing of local calls (which means that users must pay for each call to connect their ISP). Differences in emphasis on antitrust or sector-specific regulation also account to some extent for the variation among countries. For example, in the United States and to some extent in the United Kingdom strict interconnection pricing rules have fostered competition between ISPs: in the United States no interconnection charges are imposed on ISPs, while in the United Kingdom the regulator forced the local incumbent to provide interconnection services to ISPs at an unmetered (or flat rate).

And in Australia the regulator responsible for applying economy wide antitrust law as well as telecommunications specific rules has repeatedly prevented mergers that would have limited competition between ISPs.[9]

Turkey has a separate Law on the Protection of Competition which is enforced by the Competition Authority. The CA has taken a number of significant decisions in the telecommunications industry involving cases of abuse of dominant position by incumbents in both the fixed and wireless segments. There is some ambiguity in the relevant laws regarding the jurisdiction between the ICTA and CA, and the two agencies have not been able to develop a productive relationship. The degree of complementarities between the two agencies is low, exchange of the opinions are rare and not fruitful when they occur. The evolving tendency is that the CA will not investigate allegations of competition law violations when actions in question are in areas regulated by the ICTA. [10]

The TCA has developed a reputation as one of Turkey's most effective autonomous agencies, winning respect and support from leaders in the business community and playing a critical role in moving the Turkish economy forward to greater reliance on competition-based and consumer-welfare oriented market mechanisms. The TCA, however, faces a number of obstacles. Public understanding of and appreciation of competition policy is deficient, agency law enforcement efforts are slowed by inexperienced judicial review systems, and support from other organs of the government is less than complete. The report's analysis and recommendations are particularly timely because effective implementation of national competition policy is an important element of Turkey's program to achieve formal membership in the European Union.

By its provisions, Competition Act appears to cover all forms of economic activity. However, a significant portion of Turkish commerce is beyond the TCA's jurisdictional reach, because standard rules of statutory construction and

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[9] OECD, *The Relationship Between Competition Authorities and Sectoral Regulators (Background Note by the Secretariat, Session 2*) , Global Forum on Competition, DAF/COMP/GF(2005)2, (Paris: OECD, February 2, 2005),
Online:http://www.olis.oecd.org/olis/2005doc.nsf/0/30ba5041a9d33f2ec1256f9c0053b0e4/$FILE/JT00177871.PDF

[10] Atiyas İzak, TEPAV Report, 2005

administrative law override the Act. For example, if a state ministry displaces competition by exercising statutory authority to regulate the price of a commodity, the TCA has no power to act, except in a competition advocacy role, because the competition statute is not applicable to state agencies and organs acting in a governmental capacity.

CHAPTER II

2. GENERAL OVERVIEW OF TURKISH TELECOMMUNICATIONS SECTOR: HISTORICAL, LEGAL AND ECONOMIC DEVELOPMENT

2.1. Historical Overview

Communication service in Turkey has a history of centuries that go back to the establishment of the Republic of Turkey in 1923, while the first Postal Organization on 23 October 1840.

Box 1. **A Brief History of Prior Years before the establishment of the Republic of Turkey in 1923**
1840 The Ministry of Post Services was established 1855 Directorate of Telegraph was established 1871 The Ministry of Post and the Directorate of Telegraph were merged 1901 Money order transactions were started 1909 After the commencement of the telephone services, the institution was turned into the Ministry of Post, Telegraph and Telephone.

Source: General Directoriate of Turk Post[11] website.

After the establishment of Turkish Republic in 1923, the first legislation to regulate communications services was the law no. 406, Telegram and Telephone Law 4/2/1924. In 1936, the General Directorate of Post was established in order to provide communications services. In the period of 1923-1934, telephone and telegram services were operated by foreign firms. With an amendment to law no.406, rights to provide the related services were transferred from foreign firms to public administration. In 1939, the General Directorate of Post was transferred to the Ministry of Transport and Communication. General Directorate of PTT, which

[11] For further information http://www.ptt.gov.tr/tr/kurumsal/tarihce.php/

became a State Economic Enterprise (SEE) in 1954, was transformed to the status of State Economic Establishment (SEE) by the Decree Law No. 233 on Reorganization of the State Enterprises in 1984.

By the Law dated 18.06.1994 and no.4000, the General Directorate of PTT was restructured and divided into entities, namely; the General Directorate of Posts and Turk Telekom. Since the enactment of the Law No. 4000 amended on law no.406 in 1994, telecommunication services have been carried out by Turk Telekom Co.

2.2. Legal and Regulatory Framework

2.2.1 New Regulatory Framework of EU

The EU regulatory framework for electronic communications services (the "EU Regulatory Framework") entered into force in July 2003. The framework adopts the general principle that exante regulation should only be imposed where there is ineffective competition, i.e. in markets where there are one or more undertakings with significant market power ("SMP") and where competition law remedies are not sufficient to address the problem. In essence, this approach is intended to align the sectoral regulation of the electronic communications market with general competition principles. Following a consultation process in 2006, the European Commission published proposals to reform the EU Regulatory Framework in November 2007. The European Commission expects the proposed changes (mentioned below) to build upon the initial set of regulatory rules by improving the regulation of competition in the sector, completing the single market in electronic communication.[12]

The EU Regulatory Framework for electronic communications networks and services currently consists principally of:

[12] Global Legal Group, The International Comparative Legal Guide to; Telecommunication Laws and Regulations 2009. www.ICLG.co.uk

a) Directive on a common regulatory framework for electronic communications networks and services (the Framework Directive);

b) Directive on the authorization of electronic communications networks and services (the Authorization Directive);

c) Directive on access to, and interconnection of, electronic communications networks and associated facilities (the Access Directive); and

d) Directive on universal service and users' rights (the Universal Service Directive).

This framework is informed and supplemented by the Commission's Radio Spectrum Decision, Privacy and Data Protection Directive and the Commission Directive on Competition in the market for electronic communications networks and services.

The EU Regulatory Framework does not cover the content of services delivered over electronic communications networks.

Since 2003, the European Commission has commenced several rounds of infringement proceedings against Member States which have failed to transpose the Directives into national law or failed to implement them fully. The implementation process in most Member States has involved the enactment of new legislation, although some amended pre-existing national laws. The delay in enacting transposing legislation has, in the case of some Member States, had an impact upon the NRA's ability to undertake market reviews, which require the exercise of statutory powers only available after legislative reforms are completed.

Each of the four key directives and supporting recommendations and decisions related to these directives is described in more detail below.

The Framework Directive concerns the more structural and procedural elements of the EU Regulatory Framework. It covers; the establishment, objectives and procedures of NRAs; rights of appeal from NRA decisions; management of radio frequencies; numbering and addressing; rights of way and facility sharing; and the

regulations of undertakings with significant market power(SMP).[13] The Framework Directive requires NRAs to promote competition in the provision of electronic communications networks, services and associated facilities and services.

- Removing remaining obstacles to the provision of networks and services
- Ensuring that there is no discrimination in the treatment of service providers
- Co-operating with the Commission to ensure the development of consistent

regulatory practice.

Article 7 of the Framework Directive sets out the procedure under which NRAs must analyse the competitiveness of national communications markets. Where one or more service providers is dominant or has the SMP on an affected national market, NRAs must propose appropriate regulatory remedies to ensure that competition is sustained. Article 14 (2) of the Framework Directive provides that *"an undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers"*[14].

In accordance with article 15 of the Framework Directive, an initial Recommendation on relevant markets and guidelines for market analysis and the assessment of SMP was adopted in 2003 and it was revised in 2007. According to the Framework, NRAs must take account of the Recommendation and the guidelines, are required to define relevant markets appropriate to national circumstances and assess the extent to which a relevant market is effectively competitive and whether undertakings with SMP in those markets.[15] In the case of finding that there are undertakings with SMP in relevant markets, NRAs must determine whether to

[13] Directive 2002/12 of the European Parliament ans of the Council of March 7, 2002 on a common regulatory framework for electronic communications networks and services (2002, O.J. L 108/33)
[14] Directive 2002/21 of the European Parliament and of the Council of March 7,2002 on a common regulatory framework for electronic communications networks and services.
[15] Commission guidelines on market analysis and the assessment of the significant market power under the Community regulatory framework for electronic communications networks and services (2002, O.J. C165/3).

impose special obligations on such undertakings as followed under the Universal Service Directive[16] and the Access Directive.

In order to ensure transparency and consistency throughout the Community, NRAs must notify their findings and proposed measures to the Commission and other NRAs in accordance with Article 7 of the Framework Directive and the Commission's Recommendation on proposed national regulatory measures. The Commission has the power to veto measures proposed by NRAs where it believes they would create a barrier to the single market or it has serious doubts to their compatibility with Community Law.

In accordance with Article 15 of the Framework Directive, the Commission adopted a Recommendation on Relevant Markets in 2003 which was revised in 2007. The purpose of the Recommendation is to identify the product and service markets at wholesale and resale level in which it is recognised by the Commission that exante regulation may be warranted because the market is not yet effectively competitive. The following communication markets are identified in the Annex to the Recommendation as revised in 2007[17];

Retail Level

i) Access to the public telephone network provided at a fixed location for residential and non-residential customers.

Wholesale Level

i) Call origination on the public telephone network provided at a fixed location.

ii) Call termination on individual public telephone networks provided at a fixed location.

iii) Wholesale (physical) network infrastructure access (including shared or fullly unbundled access) at a fixed location.

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[16] Directive 2002/22 of the European Parliament and of the Council of March,7 on universal service and users' rights relating to electronic communications networks and services. (2002, O.J. L108/51).

[17] Commission Recommendation or relevant product and service markets within the electronic communications sector susceptible to exante regulation in accordance with Directive 2002/12/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services (2007, O.J. L344/65).

iv) Wholesale broadband access.

v) Wholesale terminating segments of leased lines, irrespective of the technology used to provide leased or dedicated capacity.

The Recommendation aims to give notice to industry participants of the markets in which exante regulation is likely to continue to be applied. It sets out the cumulative criteria which should be used by NRAs when identifying markets applicable to exante regulation. The criterias are; the presence of high and non-transitory entry barriers (whether of a structural, legal or regulatory nature); the structure of the market not tending towards effective competition emerging; and the application of competition law alone not adequately addressing the market failures concerned.

NRAs can also intervene in the markets that are not listed in the Recommendation on Relevant Markets when it is ensured that such a market is defined on the basis of competition principles under the Commission Notice on the definition of relevant market for the purposes of Community competition law.[18]
According to the Authorization Regime of the New Regulatory Framework, the provision of communications networks or services may only be subject to a general authorization.[19]

Another key issue in the Framework is the access and interconnection. The Access Directive rules that Member States must ensure that there are no restrictions preventing negotiations taking place between commercial undertakings regarding the technical and commercial arrangements for access and interconnection.[20]

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[18] Commission Recommendation on relevant market product and service markets within the electronic communications sector susceptible to exante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services.(2002, O.J.C497)

[19] Directive 2002/20 of the European Parliament and of the Council of March 7, 2002 on the authorization of electronic communications networks and services.

[20] Proposal for a Directive of the European Parliament and of the Council amending Directives 2002/21/EC on a common regulatory framework for electronic communications and services,2002/19/EC on access to, and interconnection of electronic communications networks and services and 2002/20/EC on the authorization of electronic communications networks and services COM (2007) 697, November 13, 2007, Directive 2002/19 of the European Parliament of the Council of March 7,2002 on access to, and interconnection of, electronic communications networks and facilities.

Under the Competition Directive, Member States are obliged to remove exclusive and special rights for the provision of all electronic communications networks to the extent that they have not already done so. [21]

2.2.2. Turkish Legal Framework

The Telegram and Telephone law numbered 406, dated 4th of February 1924 is the first law of the Republic of Turkey enacted in the fields of communications. This law is the law constituting the General Directorate of Post, Telegraph and Telephone. However, there have been major changes since the enactment of the law since 1924.

The major amendments to the Law no. 406 have started with the law no. 4000 in 1994, which separated the administration of the telecommunication services and the services related to post, telegram facilities and operation into two different administrations. According to the amendment of the Law no. 4000, services related to post and telegram facilities and operation would be carried out by the General Directorate of Postal Administration of the Republic of Turkey and telecommunication services would be carried out by Turk Telekom. Besides that, the mentioned amendment was also bringing about a change to the status of Turk Telekom. After the enforcement of the amending Law no. 4000 to the Law no. 406 on 10th of June in 1994, the proceedings to change the status of Turk Telekom were started. Turk Telekom was excluded from the scope of Public Tenders Authority and and started acting as a joint stock company actively on 24th of 1995.

In 2000, the amending Law no 4502[22] to the Law no. 406 brought about structural and administrative changes in the telecommunications sector. The Law no. 4502 introduced the deregulation process in Turkish telecommunication sector. According to the legal grounding of the amending Law numbered 4502; "*This law*

[21] Commission Directive 2002/77 of September 16,2002 on competition in the markets for electronic communications networks and services.

[22] Law Amending Certain Articles of the Telegram and Telephone Law, Law on Organizations and and Responsibilities of the Ministry of Transport and Communications and Wireless Law, Law on savings and Aid Fund of the Posts Telegraphs and Telephone Administration and Organisational Charts attached to the Decree with the force of Law on the General Cadrees and Procedures, Law 4502, Date of Acceptance 29 January 2000. According to the article 27 of the Law no. 4502; *"This Law enters into force on the date of its publication"*. Hence, the Law entered into force on the date of issue on the Official Gazzette.

was enacted to deregulate the telecommunications sector in a way which meet ever increasing needs caused by new technological progress within the frame of public service qualification, in an efficient, reliable and productive manner. In recent years in the World, the most remarkable progression is the separation of functions of policy making, issuing administrative regulations and business administration in telecommunications sector and the fact that every of the functions have been carried out in due form proper to the qualification of that function. Within this frame, the sectoral structure being practised in the developed countries embodies in general that the determination of the sector policies and general principles and targets of telecommunications sector are a part of responsibility of government which is generally under the political responsibility and a regulatory body which is autonomous in its functions governs the responsibility of issuance and implementation of technical administrative regulations, however the business activities are carried out by the business organizations within the frame of the economic principles."[23] In line with this legal grounding, the Information and Communication Technologies Authority was founded under the amending Law numbered 4502.[24] The article 14 of the Law numbered 4502 states it as; "*…Information and Communication Technologies Authority is founded, as a public legal entity with public administrative and financial autonomy and special budget, in order to fulfill the duties and exercise the powers assigned to it by laws*". Continuing, the law states that; *"the Authority should act independently while performing its duties. No organ, authority, institution or person can give orders or instructions to the Authority"*. With this provision, the legislator aimed to disenable all the pressures of the powers such as political pressures being in the first place. With the Law no. 4502, the provision of telecommunication services and establishment and operation of telecommunication infrastructure had been subject to the Law no. 406. In parallel with this provision, the authorization, access, interconnection and tariff regime was enacted under the amending Law no.4502.

According to the authorization regime introduced by the amending Law no. 406, Turk Telekom was authorized to provide all kinds of telecommunication services and operate telecommunication infrastructure at both. This states that a vertical integrated market model was accepted for the future shapening of the

[23] www.belgenet.com

[24] Article 5 of the Law on Establishment of the Information and Communication Technologies Authority, numbered 2813(Amended: 27/1/2000_4502/14 Art.)

telecommunications sector. The rights and obligations of Turk Telekom in relation to the foregoing authorization would be set out in the authorization agreement and/or authorization agreements which would be executed by the Ministry of Transport and Communication Technologies. Besides, Turk Telekom was kept under the obligation to provide universal services set out in their authorization agreements since the enforcement of the amending Law no. 4502.

However, the operators other than Turk Telekom could provide all kinds of telecommunication services including the value added telecommunication services[25] and the services within the scope of additional article 18[26] of the Law no.406 and the services within the scope of monopoly rights after the expiration of such monopoly period set out in paragraph (c) of the article 2 of the Law no. 406 and/or establish and operate an infrastructure, by being authorized by the Ministry of the Transport and Communications with one of the authorization types mentioned in the article 2 of the Law no. 4502. There had been four types of authorization introduced by the Law no. 4502 which were; authorization agreement, a concession agreement, a telecommunication license or a general authorization obtained by the Ministry of Transport and Communications. Without being authorized by the Ministry, no one would be able to provide telecommunication services or establish and/or operate infrastructure services. Otherwise, the sanctions stated in the article 8 of the Law numbered 4502, amending the article 18 of the Law numbered 406 were ruled to be applied. According to the related provision stated above, *"Telecommunication facilities of the persons who, by way of breaching the paragraph (a) of the Article 2, establish and operate without a concession agreement or an authorization agreement shall be closed by the relevant administrative authority having jurisdiction in the relevant district, upon a request by the Authority and their operation shall be ceased"*. The sanction of providing services or establishing and/or infrastructure services without being authorized is not only that they are ceased but also the

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[25] Value added telecommunication services was defined per article 1 of the amending Law no. 4502 to article 1 of the Law no. 406, as; " *value added services shall mean the telecommunication services which employ computer processing applications that act on format, content, code, protocol or similar aspects of the subscriber's transmitted voice, data and all other types of messages; provide the subscriber or the user additional, different or restructured messages; or involve subscriber interaction with stored messages"*.

[26] Services within the scope of additional article 18 were only be provided with a concession agreement and or a telecommunication license as per paragraph (a) of article 3 of the Law numbered 406. The services within the scope of additional article 18 are operating services of mobile phone, pager phone, data network, cable tv, payphone, satellite systems, smart grid, directory print and similar value added services.

perpetrators of such acts would be subject to heavy fines[27] and such persons even would be subject to imprisonment. It is important to note that the determination whether the authorization should be made through a concession agreement, telecommunication license or a general authorization and under which conditions, and how such authorization should be made and the principles and procedures applicable to such authorization was being made by the Ministry of Transport and Communications, upon receipt of the opinion of the Authority within the framework of the Law numbered 406.

The Law no. 4502 also introduced a legal monopoly period. According to the article 2 of the amending law no. 4502 amending the article 2 of the Law no.406, Turk Telekom would carry out telephone services which are provided through telecommunication networks and including national and international voice telephony, establishment and operation of all telecommunications infrastructure, other than private telecommunication networks and telecommunication infrastructure which is contemplated to be established by the relevant operator pursuant to their concession agreements, as a monopoly until 31.12.2003 within the framework of the Law no. 406 and authorization agreement. During the monopoly period, requests of other operators and individuals using private telecommunication networks to interconnect to the public telecommunications network and their requirements to benefit from the telecommunication facilities were going to initially be met by Turk Telekom. If the need of an operator or an owner of a private telecommunications network would not be able to met by Turk Telekom, such operator or the owner of a private telecommunications network had had the opportunity to establish the necessary infrastructure facility himself pursuant to terms of its concession agreement or telecommunication license or the Ministry might grant a concession or a telecommunication licence for the establishment of such infrastructure. After the expiration of the monopoly rights of Turk Telekom, capital companies other than Turk Telekom would also be authorized to provide telecommunication services and to operate infrastructure in the scope mentioned above under the condition that such authorization had been considered appropriate.[28]

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[28] Paragraph (d) of the article 2 of the Law Amending Certain Articles of the Telegram and Telephone Law, Law on Organisation and Responsibilities of the Ministry of Transport and Wireless Law, Law on Savings and Aid Fund of the Posts Telegraphs and Telephone Administration and Organisational Charts attached to the Decree with the Force of Law on the General Cadrees and Procedures

According to the article Law numbered 4502, the operators which are responsible to interconnect was being determined by the Information and Communication Technologies Authority and Turk Telekom was under the obligation and duty to provide interconnection in all circumstances. Besides, the principles of equality, non-discrimination, transparency, cost-orientation, reasonable profit and under the same conditions and equality as interconnection providers or their shareholders, affliates or partnerships provide for their own services were introduced as per article 6 of the amending Law numbered 4502, amending the article 10 of the Law numbered 406.

The Law no. 4673[29] which came into force in 23 May 2001, made amendments to the Law no. 406 and Law on Organization and Duties of the Ministry numbered 3348.[30] With the law, the authority to issue general authorization or telecommunication license or to conclude authorization agreements or concession agreements and all regulations regarding this authority and all attributes regarding all kinds of duties was transferred from the Ministry of Transport and Communications to Information and Communication Technologies Authority. And again, pursuant to the amending Law no. 4673; *"The Telecommunication Regulatory Authority is authorized to take necessary measures in order to ensure abidance by the conditions of general authorizations and telecommunication licenses it issued and contracts it concluded with operators including Turk Telekom, to monitor and control undertaking of activities in accordance with the legislation and authorization and concession agreements, telecommunication license or general authorization conditions, to implement administrative fine up to 3% of the annual turnover of the previous calendar year of the related operator in case of contradiction, to take necessary measures in order to undertake national security, public order or public service as necessary, to have the possession of facilities in return of compensation when necessary or to abolish the concession agreement, telecommunication license or general authorization in case of heavy negligence".*

Besides, the plans regarding authorization for telecommunication services and infrastructure undertaken by concluding concession agreement would have to be prepared by the Information and Communication Technologies Authority. These

[29] Law on Amending the Telephone and Telegram Law, Law on Savings and Assistance Fund of Postage, Telephone and Telegram Administration and Organization and Duties of the Ministry of Transport, numbered 4673, Date of Issue: 23 May 2001, Official Gazete Number: 24410

[30] Paragraph (g) in Article 13 of the Law on Duties and Organization of Ministry of Transport dated 9/4/87 numbered 3348 is abrogated.

plans should have also been approved by the Council of Ministers with the proposal of the Ministry of Transport and Communications.

The regulations other than laws in telecommunications are arranged below in order to point the progress in the legal framework.

Notification on the Principles and Procedures concerning the implementation of Ceiling Price Method in Turkish Telecommunications Joint Stock Company's Tariffs came into effect as of 11th of January 2002. On 28th August 2001, Tariff Regulation came into effect.[31]

On 11th of July 2002, a "Consumer Complaints Center" was established for the acceptance, evaluation, conclusion of customer complaints and to ensure their transformation into statistical data. However, the Regulation on Consumer Rights in the Telecommunications Sector came into effect two years after on 22nd of December 2004.[32]

Regulation on the administrative fines that would be applied to the operators by the Telecommunications Authority came into effect as of 1st of July 2002.[33] Regulation on the Administrative Fines, Sanctions and Measures to Apply for Operators came into effect on 5th of September 2004[34] by revoking the regulation stated above.

Cooperation Protocol between the Telecommunications Authority and Competition Authority was signed on 16 September 2002.

The Telecommunications Authority Regulation on the Access and Interconnection came into effect on 23rd of May 2003. Regulation for Access and Interconnection which came into force in 2003 was modified on 7th of January 2007.[35] Access and Interconnection Regulation came into effect as of 14th of June

[31] Published in the Official Gazzette No.24507 of 08.28.2001
[32] Published in the Official Gazzette No. 25678 of 12.22.2004
[33] Published in the Official Gazzette No.24833 of 08.01.2002
[34] Published in the Official Gazzette No. 25574 of 09.05.2004
[35] Published in the Official Gazzette No. 26396 of 01.07.2007

2007.[36] Notification on the Principles and Procedures concerning the Local Network Distributed Access came into effect on 20th of July 2004. It was modified on 14th of June 2007.[37] Regulation Relevant to Procedures and Principles for Granting Operating Certificate to Access Providers and Location Providers by Telecommunications Authority came into effect as of 24th of October 2007.[38] It was modified as of 1st of March 2008.[39]

Notifications on the Principles and Procedures concerning the Establishment of Operators having a Dominant Position and an Efficient Market Power -separately- were published on 3rd of June 2003. [40] The Communiqués for Procedures and Principles for Determination of Administrators who are Dominant and who have Efficient Market Power were revoked on 7th of January 2007 and Regulation for Procedures and Principles for Determination of Administrators who have Efficient Market Power came into force in the same day. The Comminiqué relevant to the Procedures and Principles for some of the Services' Tariffs' Maximum Price Method and Its Approval of Administrator Having Efficient Market Power in Concerned Market for Access to Fixed Phone Network or Calling from Fixed Telephone Network came into force as of 16th of January 2007.[41]

Notification on the Principles and Procedures concerning the Common Settlement and Facility Sharing was published as of 31st of December 2003.[42] It was modified on 14th of June 2007.[43]

Regulation on Numbering and Regulation on the Confirmed Institutions came into effect as of 26 February 2004.[44] Regulation for Number Portability came into force on 1st of February 2007.[45]

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[36] Published in the Official Gazzette No. 26552 of 06.14.2007
[37] Published in the Official Gazzette No.26552 of 06.14.2007
[38] Published in the Official Gazzette No. 26680 of 10.24.2007
[39] Published in the Official Gazzette No. 26803 of 03.01.2008
[40] Published in the Official Gazzette No. 25127 of 06.06.2003
[41] Published in the Official Gazzette No. 26405 of 01.16.2007
[42] Published in the Official Gazzette No.25333 of 12.31.2003
[43] Published in the Official Gazzette No.26552 of 06.14.2007
[44] Published in the Official Gazzette No. 25385 of 02.26.2004
[45] Published in the Official Gazzette No. 26421 of 02.01.2007

Regulation on the Market Observation and Supervision came into effect as of 27th of February 2004.[46]

The first licences for LDTS Operation were given on 17th of May 2004. Regulation on the Authorization for the Telecommunication Service and Infrastructure came into effect on 26th of August 2004. It was modified as of 16th of September 2008.[47]

The Electronic Communication Law numbered 5809 came into force on 10th of November 2008. In accordance with the Law, the name of the "Telecommunications Authority" changed into "Information and Communication Technologies Authority". While the Law 5809 came into force, the fundamental laws numbered 406 and numbered 2813 were in force, as well. By the enforcement of the new Law numbered 5809 in 2008, there have been amendments in the Telegraph and Telephone Law numbered 406 under which the telecommunication sector was regulated and the Law numbered 2813 under which the Information and Technologies Authority was founded. According to the second article of the Law numbered 5809, the provision of electronic communications services and the construction and operation of the infrastructure and the associated network systems thereof; 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, authorization, supervision and reconciliation activities relating to such issues have been subject to the Electronic Communications Law numbered 5809.

The objectives of this Law are;

-to create effective competition,

-to ensure the protection of consumer rights,

-to promote the deployment of services throughout the country,

-to ensure efficient and effective use of the resources,

-to promote new investments and technological developments in communications infrastructure, network and services.

[46] Published in the Official Gazzette No. 25386 of 02.27.2004
[47] Published in the Official Gazzette No. 26999 of 09.16.2008

To this regard, the tools of the Information and Communication Technologies Authority in order to maintain the purpose of this Law has been determined as regulations and inspections in electronic communications sector and determination of the principles and procedures.[48]

With the Law, the authorization regime changed. According to the amendments of the Law numbered 4502 to the Telephone and Telegram Law numbered 406, there were four types of authorization; concession agreements, authorization agreements, telecommunication licences, general authorization. In addition, again according to the ex-regulations, the ICTA was the competent authority to authorize the operators. With the new Law, authorization has been based on the notification or rights of use principles. In addition, according to the new Law numbered 5809, ICTA is still the competent authority to authorize the operators however the Ministry's strategies and policies should be taken into consideration.[49] With respect to the article 9 of the Law numbered 5809, if the companies willing to provide services and/or establish or operate electronic communications network or infrastructure do not the assignment of resources such as number, frequency and satellite position for electronic communications network or infrastructure, they will be authorized upon the notification to the Authority.

With the enforcement of Law numbered 5809, the major changes have been in the fields of authorization, numbering and numbering portability, access and interconnection, local network distributed access and tariffs. Due to these changes, many new regulations have been enacted in accordance with the Law numbered 5809.

Regulation on the Authorization for the Telecommunication Service and Infrastructure was modified on 25th of May 2009.[50]

Regulation on Numbering came into effect on 27th of June 2009.[51]

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[48] Article 2 of the "Electronic Communications Law" numbered 5809.

[49] First paragraph of the article 8 of the Law numbered 5809 states that*; (1) Electronic communications services could be provided and/or electronic communications network or infrastructure could be constructed and operated by taking into consideration the strategies and policies of the Ministry, upon receiving authorization from the Authority"*.

[50] Published in the Official Gazzette No. 27241 of 05.28.2009

On 2nd of July 2009, Regulation on Numbering Portability came into effect.[52]

Regulation on Access and Interconnection came into effect on 8th of September 2009.[53]

On 1st of September 2009, Regulation for Procedures and Principles for Determination of Administrators who have Efficient Market Power and Determination of Obligations will be applied for Administrators who have Efficient Market Power came into effect.[54]

On 12th of November 2009, Regulation for Tariffs came into effect.[55]

On 19th of January 2010, Comminiqué on the Procedures and Principles for Local Network Distributed Access came into force.[56]

Regulation on Authorization for Electronic Communication Sector was amended.

Regulation on Consumer Rights in Electronic Communication Sector came into effect on 28th of July 2010.

2.2.3. Institutional Framework

In accordance with Law no. 4502; the institutions established to regulate the sector including responsibilities are outlined as follows;

According to the Electronic Communications Law numbered 5809, the competent bodies in electronic communications sector are; the Ministry of Transport and Communications, Information and Communications Technologies Authority and the Competition Authority. There is no amendment in respect of the competent bodies in the sector since 2000, however the roles and duties and obligations of the competent bodies have changed significantly during the liberalization period.

The Ministry

Currently, the Ministry competent in the electronic communications sector is the Ministry of Transport and Communications. According to the Electronic

[51] Published in the Official Gazzette No.27271 of 06.27.2009
[52] Published in the Official Gazzette No. 27276 of 07.02.2009
[53] Published in the Official Gazzette No. 27343 of 09.08.2009
[54] Published in the Official Gazzette No. 27336 of 09.01.2009
[55] Published in the Official Gazzette No. 27404 of 11.12.2009
[56] Published in the Official Gazzette No.27467 of 01.19.2010

Communications Law, the Ministry is involved with the activities of strategies and policies that are based on scarce resources in the sector. It also competent to determine the objectives, principles, policies towards the aim of encouraging the development of electronic communications sector in free competitive market. In this respect, the Ministry has a sharing role in maintaining a free competitive environment in this sector with ICTA and the Competition Authority.

It also is competent to determine the policies towards construction and development of electronic communications infrastructure, network and services. In determination of its policies, the Ministry should take into consideration the technical, economic and social needs and the national security objectives and the public interests and should ensure their operation in a complimentary manner.

In electronic communications equipment industry and electronic communications systems, the Ministry has the competency and duty to contribute to the creation of policies regarding this industry towards taking measures which encourage domestic production of the equipments.

The Ministry should also ensure the continuity of electronic communications in the case of natural disasters and extraordinary situations.

In conclusion, the Ministry has a role limited with determining policies in certain fields -determined by law- in this sector in accordance with the Electronic Communications Law numbered 5809.

However, before the enactment of this law, the role of Ministry was not limited with the determination of policies. From the enforcement of the Law numbered 4502 to 23rd of May 2001, the Ministry of Transport and Communications was competent to authorize the operators in the sector. Hence, the involvement of the government has lasted one year more after the establishment of the Information and Communication Technologies Authority.

According to the Law numbered 4502, the responsibilities of the Ministry of Transport and Communications were determined;

- to determine the general policy regarding telecommunications sector.
- to install and extend lines and wires and to construct telegram centers where it deems necessary; to determine the period and type of the operations to be performed therein and to rent such wires to third parties.
- to authorize, install and regulate its telegram connections with foreign countries and to this end, to implement international or special treaties, and

to determine, amend and collect the communication and call fees based on such treaties.

In this respect, Ministry of Transport and Communications had no role in the technical and economic regulation in accordance with the Law numbered 2813.

Information and Communication Technologies Authority of Turkey

The Information and Communication Technologies Authority of Turkey is responsible for regulating the provision of telecommunications products and services in the country. Its specific functions include issuing licenses and promoting competition amongst providers of telecommunications services and products, promoting the interests of consumers and other uses of ICT services, as well as ensuring that the benefits of the sector accrue to the nation at large.

The Information and Communication Technologies of Turkey was founded under the amended Law numbered 2813[57] as per article 5; *"as a public legal entity with public administrative and financial autonomy and special budget, in order to fulfill the duties and exercise the powers assigned to it by law"*.

The Service Units of the Authority include main service body composed of legal consultancy, departments and directorates; advisory and support services units and local body units which were organized under the name of regional directorates.

The Information and Communication Technologies Board is the decision-making body of the Authority. The Board is composed of seven members in total, one Chairman and six members. Chairman of the Board is also the President of the Authority.

The establishment of the Authority has been important ensuring continuity of sector regulations, order, reliability and transparency in the sector.

The main purpose of the Information and Communication Technologies Authority (ICTA) is to ensure a complete liberalization of the sector. Accordingly, as per article 6 of the Electronic Communications Law, major competencies of ICTA are;

[57] Law on the Establishment of the Information and Communication Technologies Authority, numbered 2813, Date of Acceptance : 4/5/1983, Date of Issuance :7/4/1983, Official Gazzette No : 18011. It was repealed on 1/27/2000 with the Law numbered 4502 and on 11/5/2008 with the Law numbered 5809.

- to make regulations, to create and protect competition and to eliminate the practices which are obstructive, disruptive or limitative for competition,
- to impose obligations on operators with significant market power in the relevant markets and on other operators when required,
- to inspect the breaches of competition in electronic communications sector which are against the Electronic Communications Law numbered 5809,
- to impose sanctions and to take the opinion of the Competition Authority on the issues regarding the breach of competition in this sector,
- to approve the reference tariff access offers,
- to enact by-law, communiqué and other secondary regulations pertaining to the authorizations granted by the law,
- to make the necessary technical and economic regulations regarding the electronic communications sector such as authorization, tariffs, access, interconnection, national roaming and so on.

It is important to note that while the Authority has a regulation-focused function in the liberalization process; this function will be kept to minimum at the end of the process and it will focus more on the inspection and arbitration functions in an efficient way to ensure sustainable competition in the sector. (The functions of the Authority will be discussed in the fourth chapter.)

Turk Telekom

In 1993, the Decree Law numbered 509 on the Establishment of Turkish Telecommunication as a Joint Stock Company was accepted pursuant to the empowering law numbered 3911.[58] With the decree law, Turk Telekom was founded as a joint stock company which was subject to the Turkish Commercial Code. In addition, it was resolved that 49% of Turk Telekom's capital shares at maximum

[58] Published in the Official Gazzette, Dated: 9/14/1993, Numbered: 21698.

could be subject to transfer to third parties in the decree law.[59] However, the empowering law numbered 3911 which form the ground of the decree law numbered 509 was revoked and so the decree law, as well. The attempts to pave the way to make Turk Telekom prepared for privatization has lasted on and the Law numbered 4000 was enacted in order to establish Turk Telekom as a joint stock company responsible of telecommunication activities. However, the Law numbered 4000 was also revoked by the Information and Technologies Authority. The Supreme Court pointed out the vagueness of the competencies of the Ministry of Transport and Communications on the sale of the shares of Turk Telekom in its decision revoking the Law.

Consequently, the Law no. 4502 changed the statute of the Turk Telekom in 2000. With the Law, Turk Telekom was excluded from the scope of Public Tenders Authority (KIK) statute and has become a joint stock company subject to the law no. 4502 and private law provisions and the legislation applicable to public institutions, establishments and a partnership, including public economic enterprises, with capitals in which public share exceeds fifty percent is not applicable to Turk Telekom.

Pursuant to the Law,

- Turk Telekom is authorized to provide all kinds of telecommunications services and operate telecommunication infrastructure within the law no 4502.
- Turk Telekom has the ownership of and usage right on the core network.
- It is important to note that *the monopoly period* of Turk Telekom was defined as follows; "Turk Telekom will carry out *telephone services which are provided through telecommunications networks and including national and international voice telephony* as a monopoly, until 31.12.2003. (Additionally, Turk Telekom has the legal monopoly right to establish and operate all telecommunication infrastructure, other than private telecommunications networks and telecommunication infrastructure which are to be established by

[59] Çavuşoğlu, Ahmet Erdinç, "Telekomunikasyon Hizmetlerine İlişkin İmtiyaz Sözleşmelerinden Doğan Uyuşmazlıklarda Tahkim", İstanbul, 2007, p.17.

the relevant operators pursuant to concession agreements or telecommunication licenses or general authorizations.[60]

- According to the law, requests by other operators and individuals using private telecommunication networks to interconnect to the public telecommunications networks to benefit from telecommunication infrastructure facilitates shall be addressed by Turk Telekom during the monopoly period.
- Turk Telekom is under obligation to provide interconnection.
- The ownership right of Turk Telekom on the telecommunications core network is implemented to be continued after the expiration of the term of authorization agreement.

Turk Telekom was privatized in 2005 and currently functioning as a joint stock company.

Turkish Competition Authority

Competition Authority was established as per Article 20 of the Act No. 4054[61], in order to ensure the formation and development of markets for goods and services in a free and sound competitive environment. Within the Competition Act, the main duty of the Competition Authority is to prevent any threats to the competitive process in the market for goods and services through the use of the powers granted by law. Ensuring the fair allocation of resources and increasing social welfare by the protection of the competitive process constitutes the basic foundation of the mission of the Competition Authority.

The purpose of the Act no. 4054 (Turkish Competition Act adopted on 1994) is to prevent agreements, decisions or practices distorting or restricting competition in markets for goods and services, and to abuse of dominance by the undertakings dominant in the market, and to ensure the protection of competition by enforcing the necessary regulations and supervisions to this end. Accordingly, the transactions under the scope of the Turkish Competition Act are listed under three headings:

[60] Article 10 of the Law numbered 4502.
[61] The Act on the Protection of the Competition numbered 4054, dated 7/12/1994

i) Agreements, practices and decisions between all kinds of undertakings operating in or effecting markets for goods and services within the borders of the Republic of Turkey which may prevent, distort or restrict competition,

ii) Abuse of dominant power by undertakings which hold dominant position in a market,

iii) All legal transactions and behavior in the nature of mergers and acquisitions which aim to create dominant position or strengthen existing dominant position and which will significantly decrease competition as a result.

Pursuant to the Act numbered 4054, agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services are illegal and prohibited.

The main definitions of anti-competitive practices are stated in law as follows[62];

1) Abuse of dominance

- Preventing, directly or indirectly, another undertaking from entering into the area of commercial activity, or actions aimed at complicating the activities of competitors in the market,
- Making direct or indirect discrimination by offering different terms to purchasers with equal status for the same and equal rights, obligations and acts,
- Purchasing another good or service together with a good or service, or tying a good or service demanded by purchasers acting as intermediary undertakings to the condition of displaying another good or service by the purchaser, or imposing limitations with regard to the terms of purchase and sale in case of resale, such as not selling a purchased good below a particular price,

[62] For further information http://www.rekabet.gov.tr/index.php?Sayfa=sayfaicerik&icId=165 Competition Authority/Legislation/no.4054

- Actions which aim at distorting competitive conditions in another market for goods or services by means of exploiting financial, technological and commercial advantages created by dominance in a particular market,
- Restricting production, marketing or technical development to the prejudice of consumers.

2) Mergers and Acquisitions:

Merger of two or more undertakings, aimed at creating a dominant position or strengthening their dominant position, as a result of which, competition is significantly decreased in any market for goods or services within the whole or a part of the country, or acquisition, except acquisition by way of inheritance, by any undertaking or person, of another undertaking, either by acquisition of its assets or all or a part of its partnership shares, or of other means which confer it/him the power to hold a managerial right, is illegal and prohibited.

3) Exemptions:

The Board may decide to exempt agreements, concerted practices between undertakings, and decisions of associations of undertakings from the application of the provisions of Article 4 if ever the legal conditions stated below are met;

a) Ensuring new developments and improvements, or economic or technical development in the production or distribution of goods and in the provision of services,

b) Benefiting the consumer from the above-mentioned,

c) Not eliminating competition in a significant part of the relevant market,

d) Not limiting competition more than what is compulsory for achieving the goals set out in sub-paragraphs (a) and (b).

The Competition Act is applied to both public and private undertakings and across all sectors without exception. The Competition Authority has the mandate to take action against anti-competitive practices in all sectors of the economy. Also, the

mergers or acquisitions exceeding TL 25.000.000 and/or 25% market share require the approval of the Competition Authority.

Operators and Consumers

At the operator level, the major players can be classified as follows;

1) Telecommunication Services:

The telecommunication sub-sector is composed of traditional fixed telephony and mobile communication based on the Global System of Mobile (GSM) communication standard. Another category in this area includes internet service providers. Equipment installation and other services constitute of a small component of the sub-sector.

2) Information Technology:

This category comprises businesses involved in office automation and networking solution such as supply and installation of computers and networks, system including and user training and distributorship. Over the years the number of projects in this category is dominated by multinational companies, leaving local companies to provide limited services to clients.

3) Postal Services:

The PTT (Turk Post) is the major player in this category. However, a number of private sector competitors have entered the market especially in the courier services business. Due to the introduction of technologies such as internet on the market, the letter based system has continued to register downward trend over time. However, given the potential of e-commerce in the country due to increased internet use, there is now great potential for the postal system to contribute significantly to e-commerce penetration in the country. Hence, re-engineering of the sub-sector is required to fit the new business environment.

4) Broadcasting Services:

Radio and TV form a key component of the sub-sector. The traditional approach to broadcasting has changed significantly over the years, satellite and

internet technologies have created new opportunities and challenges for policy makers, broadcasters and regulators. This requires a lot of coordination given the roles between radio/television and telecommunication services. In the current scenario technology and market convergence are driving diverse industries to merge. Currently, electronic content can be carried irrespective of the technology whether it is radio/TV telecommunication transmission networks. Therefore innovation in the sector is changing the legal and regulatory framework required to administer the sub-sector.

2.3. Regulation Provisions of the Turkish Telecommunication Act

Regulation Provisions of the Turkish Telecommunication Act mainly consists of service provisions, regulation of access and interconnection, regulation of pricing policy (tariffs) and regulation of unbundling.

2.3.1. Service Provisions

The services in electronic communications sector is comprised of satellite communication service, satellite platform service, infrastructure operating service, internet service provision, fixed telephony services, wired broadcasting services, GMPCS Mobile Phone Service, mobile virtual network service, public access mobile radio service and directory service in accordance with the Turkish legislation.

The operators other than Turk Telekom can provide electronic communications services and/or construct or operate the network or the infrastructure, as well. Hence, they may be active in the wholesale and retail levels of the market, at both.

Currently, according to the law in force, the operators other than Turk Telekom can provide electronic communications services upon receiving authorization from Information and Communication Technologies Authority. Up to today, since the transfer of the competencies of Ministry on authorization was left to ICTA in 2001, ICTA has been competent with the authorization in all levels of

markets in this sector. However, the regime was changed with the enactment and enforcement of the Electronic Communications Law numbered 5809.

According to the article 10 of the Law numbered 4502, four types of licences were introduced in order for maintaing the authorization in this sector. Those were; authorization agreement, concession agreement, telecommunications license, general authorization.[63] An authorization agreement would set out the rights and obligations for Turk Telekom in respect to the provision of telecommunication services and the operation of telecommunication infrastructure. After the expiration of the monopoly rights of Turk Telekom, authorization agreements continued for a year and after the privatization of Turk Telekom, the authorization type of agreements have been transformed into concession agreement.

Telecommunication services were provided upon request by operators through concession agreement, a telecommunication license or general authorisation issued by the Telecommunications Authority. These types of authorisations were distinguished in law as follows;

1) Concession Agreement: a contract between The Telecommunications Authority which authorises the operators to provide telecommunications services and/or to establishing and operating telecommunication infrastructures.

2) Telecommunications License: permission given by the Telecommunications Authority for the provision of telecommunications services and/or establishing and operating telecommunication infrastructures.

3) General Authorization: permission given by the Telecommunications Authority which authorises the operators to provide telecommunication services and/or to establish and operate telecommunication infrastructures other than above.

A concession agreement was differentiated from a license in that the former is used when i) authorization involves the allocation of scarce resources such as

[63] The Article 10 of Law no. 4502 states that; "*All telecommunication services, including the value added telecommunication services and telecommunication services within the scope of monopoly rights after the expiration of such monopoly period can only be provided through an authorization agreement, a concession agreement, telecommunication license or general authorization as the relevant service requires* ".

frequency, satellite position and numbering; ii) when granting particular or special rights and obligations to each operator is necessary; or iii) when the service in question has to be offered by a limited number of operators for some reasons. Also a concession repurposes a nation-wide network.

Telecommunication License had two sub-categories. The first type was for the services and/or infrastructures that require limitation in the number of operators for local markets. However, the other type did not require such limitation. The forms of specific authorization to offer were determined by ICTA.

In accordance with the Law numbered 4502 amending the Law numbered 406, licences were not subject to the approval of the Ministry to take effect. However the minimum value of the licences should have been approved by the Council of Ministers to be valid.

Pursuant to the article 3 of the Law no 4502, some activities were determined not to be subject to a concession agreement, a telecommunication license or a general authorization. The law stated them as follows;

"*1) Personal telecommunication networks of an individual or a legal entity which are within immovable in its use and do not exceed the borders of each of these immovable, and which are used exclusively for personal or institutional needs and which do not involve the provision to third parties of any telecommunication services.*

2) Telecommunication facilities established exclusively for the purposes of the services entrusted to public entities and organizations pursuant to special laws relating to such entities and organizations.

The Authority is empowered to inspect such facilities in respect of them being compliant with the principles under this article to determine the applicable terms and procedures and to detect the compatibility of the equipment to the standards if and when interconnection is requested, the equipment used in respect of compliance with the standards, and to cause the removal of non-compliant facilities and equipment".

With the enactment and enforcement of the Electronic Communications Law in 2008, the authorization regime changed. An easier and prompt legal procedure took effect. The authorization is issued on two different bases of; notification or rights of way, since 2008. The application of one of those procedures depend on whether the company willing to provide electronic communications services need the assignment of resources such as number, frequency and satellite position for electronic communications services and/or network or infrastructure they plan to provide. If company willing to provide services need the assignment of those resources, then they are authorized upon receiving the right of use from the Authority. If they don't need the mentioned resources, they will be authorized upon the commencement of their authorization.

The authorization is also subject to a fee which is determined by the Authority. However that charge cannot exceed five per thousand of the operator's previous year's net sales.

2.3.2. Regulation of Access and Interconnection

According to the law in force, the issues under the scope of access in fixed line electronic communications services are;

- access to the components of electronic communications networks, including unbundled access to the local loop and bit stream access,
- access to the physical infrastructure including buildings, ducts and poles considering the available access options,
- access to virtual network services,
- interconnection between two electronic communications networks,
- access to fixed and mobile networks including national roaming,
- provision services on a wholesale basis for the purpose of resale,
- other access methods to be laid down in Authority's regulations.

Within this frame, the Authority determines the ones that will be subject to the obligation to access and the scope of the obligation. Once the Authority decides to impose the obligation, the obliged operator should accept the access requests of other operators. Otherwise, they may be subject to administrative fines. In its decision, the Authority considers whether the behaviour of the operator in the

direction of not allowing other operators to access will prevent the formation of a competitive environment or be against the interests of end-users. In other words, the Authority considers whether the access to the related service is an essential facility for the other operator.

According to the decision of the Board, Turk Telekom is under the obligation to provide access in publicly available local, national and international telephone services market provided at a fix location, in the full unbundled access market (including shared access) to copper network for the purpose of providing broadband and voice services, in the wholesale leased line market and in the wholesale broadband access market including bitstream access market.[64]

The Board may also impose the obligations right below on operators which are notified for providing access in order to have reasonable access demands of other operators demands met. Those obligations are [65];

- equality,
- non-discrimination,
- transparency,
- clarity,
- to be based on cost,
- to be based on reasonable profit,
- to provide access services with fair conditions and with the same quality which they provide for subsidiaries or partners or partnerships.

However, Turk Telekom is under the obligation to provide access in a non-discriminative and transparent manner in the markets mentioned above.

Interconnection is connection of two networks for the realization of telecommunications traffic between two separate telecommunications networks and a part of the issue under the scope of the access.

Between two separate networks, the two operators have to agree to interconnect. The guarantee to interconnect is an important factor for the entry into market. In order to create a competitive environment, the Information and Communication Technologies Authority has guaranteed the interconnection under the Electronic Communications Law numbered 5809. Within the part 2 and section 2

[64] ICTA, Annual Reports, 2009, p.39, available online: http://www.btk.gov.tr/eng/pdf/fr2009en.pdf
[65] Article 16/5 of the Electronic Communications Law numbered 5809.

of the law, a legal framework is envisaged in the area of access and interconnection by laying down the essential regulatory topics in this regard, and the pertinent rights and obligations of the operators are set out generally. On the other hand, Ordinance on the Access and Interconnection, after being published in the Official Gazzette dated 8th September 2009 has entered into force in view of the transposition of the EU Regulatory Framework into the legislation of Turkey.

Within the framework of the said Ordinance, many important amendments such as allowing conclusion of dispute resolution in a more effective and accelerated manner, expansion of the scope of access, introduction of remedies that are more transparent, differentiated and enabling creation of competition within the meaning of access regulations, giving the way to implement other methods that long-run incremental cost of efficient service provision in access pricing were put into force.[66]

In accordance with the law in force, all operators are under the obligation negotiate on interconnection with each other.

Turk Telekom (in all circumstances) and the operators with significant market power are obliged to respond to all interconnection requests of all the operators. The operators with significant market power were determined by Telecommunications Authority. Significant Market power was referred to "*..any position enjoyed in a related telecommunications market by one or more enterprises by virtue of which, those enterprises have the power to affect economic parameters such as the price of services supplied to other operators and users, the amount of supply and demand, the market conditions, the main telecommunications networks elements used for supplying telecommunications".* The methods of determining the Significant Market Power is under the SMP communiqué which is issued by the Telecommunications Authority.

The guarantee to interconnect is not valuable to achieve the goal of competitive market by itself without the determination of the principles of interconnection services. Because the purpose of this ordinance says;" *the ordinance on access and interconnection was implemented in order….that encourages the*

[66] A.g.e, p. 37-38.

applications ensuring that the users draw maximum benefit from the telecommunications services and networks". The maximum benefit is referred to "*a reasonable price, the provision of efficiency and sustainable competition in telecommunications sector and incentives for investment in infrastructures to constitute competitive environment in so far it serves the long-term benefit of end-users*." The conditions of interconnection are also important for entry. The conditions of interconnection may impose barriers to entry. In order to avoid that, the principles of interconnection are subjected in the Ordinance as;

"*Interconnection requests must be provided based on the principles of equality, non-discrimination, transparency, cost-orientation, reasonable profit, non-discrimination, transparency, cost-orientation, reasonable profit, and under the same conditions and quality as interconnection providers or their shareholders, affiliates or partnerships provide for their own services. As is it is important to subject the guarantee of providing interconnection for all requests*"

Interconnection is provided through the interconnection agreement which includes;

1) Tariffs
2) Technical Provisions and Conditions

Pursuant to the law, a certified copy of all of such agreements, their annexes and amendments should be submitted to the Authority. All interconnection agreements executed and maintained at the Authority should be publicly available provided that the Authority shall take various precautions to protect commercial secrets of the parties.

The tariffs and the technical provision and conditions are executed between operators and they are submitted to the Authority before taking effect.

If the interconnection agreement cannot be agreed within maximum of two months[67] from the date of the initial request, the requesting party can request the intervention of the Authority and in this case, the Authority may impose on operators the obligation to provide interconnection. In case that no contract is signed between the sides within maximum two months beginning from the demand of access or in case that any dispute under the scope of this Law occurs due to the current access contract then the Authority is entitled to initiate dispute resolution procedure between parties upon the request of any party and within the principles it will determine, and/or take other measures which it considers necessary in terms of public interest including determination of the interim rates or reject the dispute resolution request. This is valid for all types of access contracts, as well.

In case that the parties do not reach an agreement during the dispute resolution process, the Authority shall be entitled to determine the provisions, terms and charges of the access contract, which constitute the subjects of dispute, within two months except for the specified exceptional cases. The determined provisions, terms and charges shall be applied until otherwise decided by the operators within the frame of the legislation and Authority regulations.

Access contracts are submitted to the Authority after signing. The Authority may request from the operators to make amendments in the contracts in case of violation of the relevant legislation and Authority regulations. In the event that the operators request amendments in the contracts, the operators are under the obligation to fulfill the amendment request of the Authority.

The Authority may also impose obligation on operators, who are subject to the obligation to provide access, to set their access tariffs on cost basis. Upon the request of the Authority, the obliged operators must prove that their tariffs are set on cost basis. If ever the tariffs are not set on the cost basis, the Authority may set the tariffs and/or introduce price ceilings.

[67] Before the enforcement of the Electronic Communications Law, the time period envisaged was three months in accordance with the amended Law numbered 406 with the amending Law numbered 4502.

2.3.3. Pricing Policy

Price regulation in telecommunication services is also under the responsibility and competency of the Information and Communications Technologies Authority.

The law clearly states that operators freely determine the tariffs under their possession. However, the tariffs they determine should comply with the regulations of the Authority and the relevant legislation.

In accordance with the article 13 of the Electronic Communications Law; *"tariffs may be determined as one or more of; subscription fee, fixed charge, call charge, line rental and similar various price items"*.

In case that an operator is designated as having significant market power in the relevant market, the Authority is entitled to determine the procedures regarding the approval, monitoring and supervision of tariffs as well as the upper and lower limits of the tariffs and the procedures and principles for implementation and to make necessary arrangements to prevent anti-competitive tariffs such as price squeezing and predatory pricing and supervise the implementation.

Currently, Turk Telekom is the only operator designated as having dominance and price approval is only needed for the prices set by the Turk Telekom and it is subject to Price Cap Communiqué.

The Principles set forth for the tariffs in accordance with the law in force are as follows;

- the practices which enable the users to benefit from electronic communications services in return for a reasonable charge should be promoted.
- tariffs should be fair, transparent without making unjustified discrimination among users in equivalent conditions, without prejudice to the circumstances of providing easiness with a definite scope and limits exclusive to those stated in clause (c) of first paragraph of Article 3 of Law no. 5369 who are in need and cannot afford.

- tariffs should reflect the costs of relevant electronic communications services to the possible extent.
- the cost of a service should not be supported or covered by the price of any other service.
- tariffs shall not be determined in a manner not to cause to hinder, damage or limit competition.
- international practices shall be taken into consideration to the appropriate extent.
- tariffs should promote technological developments and investments which enable the use of new technologies with reasonable prices.
- consumer interests should be protected.
- consumers should be well informed regarding the tariff issues.
- the Authority should also take into account the prices of electronic communications services which are basic inputs that the competitors will request from the operator with significant market power whilst providing electronic communications services to their own users.

The tariffs which are approved by the Board must supplement the conditions below;

i) to be based on the cost of efficient service provision,

ii) to correspond to the tariffs under effective competition,

iii) to be fair and non-discriminative among similar users,

iv) shall not give the possibility for financing the cost of some services by the tariffs

v) to take into account the prevailing prices of telecommunication services which are the basic inputs for telecommunication services demanded by competitors from the operator, which has dominant or significant market power, to provide their own users with.

One of the most important criteria is the one which states; *"...shall not give the possibility for financing the cost of some services by the tariffs".* That is the order forbidding cross-subsidization in the sector.

In the approval of tariffs, there are some principles to be obeyed. Tariffs cannot (unless there is objective justification);

i) contain excessive charges which could prevail solely as a result of the operator's significant market power,

ii) contain discounts which could aim to restrict the competition,

iii) create any discrimination among users in relation to other users of identical or similar telecommunication services.

There are two types of methods introduced by the Tariff Ordinance applied in the determination of tariffs;

1) Price Cap
2) Reference Offer

In price cap method, the determination of prices is more flexible than the determination in the reference offer method. The Authority doesn't need to change the price each time when Turk Telekom changes the prices and it is flexible to change the prices within the price cap.

Price Cap method is applied for the tariffs paid by the consumers. It's a method for the retail level; domestic calls, local calls, international calls. The method used by the regulator to approve Turk Telekom`s tariffs has been through a Consumer Price Index - Productivity Factor formula. Each service was being considered as a separate basket.

Reference Offer (Single Tariff Approval) is the tariff which is applied the whole sale level. Single Tariff has to be approved by the Telecommunication Board each time Turk Telekom changes the prices. Reference offer is for the whole sale level; interconnection, unbundled local loop and leased lines. The reference tariff is determined by the Authority. It should comply with the reasonable and non-discriminatory terms, through regulations, communiqués and other rules.

2.3.4. Regulation of Local Loop Unbundling

The Local Loop Unbundling (LLU) is an access method which enables alternative operators to offer voice and broadband services (internet access, IPTV, data) utilizing the local loop (the part of the PSTN network consisting of copper wires from the exchange offices to the customer premises) owned by Turk Telekom at the wholesale level. Currently two types of LLU, namely "full access" and "shared access" have been implemented in Turkey.

According to the decision of the Board[68], Turk Telekom is obliged to provide unbundled access to the local loop under non-discriminated, fair, transparent, conditions as it provides for itself.

The law also states that; *"...while granting an access to the operators who provide services under the same conditions, Turk Telekom is obliged to provide services and information under the same conditions and of the same quality as it provides to its own shareholders, partnerships, affiliates and itself reference offer."*

[68] ICTA Annual Reports, 2009, available online: http://www.btk.gov.tr/eng/pdf/fr2009en.pdf

CHAPTER III

3. THE PRIVATIZATION OF TURKISH TELECOM

Until the 1980s, telecommunication services in most countries were public enterprises. In all countries, both developed and developing, restructuring the telecommunications sector is a major goal in microeconomic reform. This reform process which began in 1980s, notably increased in the 1990s. In this sector, the reform process involved commercialization, corporatization, privatization and liberalization. Privatization as the main tool to reach defined targets has generally been accepted.

After the 1980s, privatization was the common case for many countries. This change resulted from several basic reasons:

- Services were supplied inefficiently. The traditional tendency in the telecommunications area was to build the largest possible network at the lowest possible cost, without taking into account the updating and upgrading requirements.
- Since state enterprises often need to rely on government subsidies, the unavailability of incentives to ensure productivity and efficiency in the state enterprises causes ineffectiveness in management.[69] This case has created a supply/demand gap for services in both technology and capacity.

The first stage of reform in the telecommunications sector is Commercialization and Corporatization. Commercialization is defined as the restructure of government departments and functions so as to ensure accountability and economic efficiency in government commercial activities. Corporatization means the conversion of a state owned organization into a company operating under the same legal conditions as a private enterprise. Sometimes, the corporatized enterprise is described as a private firm due to fact that it may be organized under the private law conditions, but the control of enterprise is governmental.

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[69] Cullis, J.G and Jones P.R., **How Big Should Government Be?**, ed. Lewis, A.,Cambridge University Press, UK, 2008

Privatization and liberalization are the main stages of the reform. Privatization involves the total or partial sale of the assets to the private sector. Liberalization includes more pronounced changes in market structure, changing the nature of the markets and the power of the established suppliers, providing equipment and services for entry.[70]

When privatization is realized in a natural monopoly if appropriate structural reforms are not carried out prior to or during the privatization, possibly entrenching the monopolistic structure of the industry, the privatization is less likely to offer significant benefits.[71]

Major privatization in the industry began in the UK in 1981, and since than many countries, both developed and developing, have followed suit. In some countries, attempts to privatize state-owned telecommunication sector have failed because of insufficient preparation and wrong timing. Other countries such as Argentina, Mexico and Venezuela successfully privatized public telecommunications monopolies, but postponed opening up the sector fully to competition. As a result, they faced slower sector growth and higher prices than other countries.[72]

In order to promote the sale of employees, there are different implications. For example, the British Government offered 54 free shares to each eligible employee in British Telecom in 1984. In France, one free share for every ten shares purchased was offered.[73]Many countries, especially European countries, mostly use public offering.

In Turkey, block sale method was preferred to privatize Turk Telekom.

According to the Information and Communication Technologies Authority, privatization process in telecommunications can be justified through micro, macro and political factors integrated together. Micro factors behind privatization are related with the Turkey's economic stability and the investment capacity of public

[70] (OECD, 2002).
[71] (Telstra: To sell or Not to Sell ?, 1996; 4).
[72] (Wellenius, 2004).
[73] (Ramanadhan, 1975:75)

services. Penetration rate, consumer satisfaction, service differentiation and quality can be illustrated as the macro economic factors supporting privatization. The last factor behind the process is political situation, i.e. reform advocates' determination and ability and view of the opposition.[74]

The philosophy of privatization determined by the Turkish Privatization Administration is to confine the role of the state in certain areas of the economy like health, basic education, social security, national defense, larger scale investments; contribute to the freedom of enterprises to operate in the market and thus increase their productivity and value added to the economy by ensuring more efficient organization and management of the enterprises that should be commercialized. This ensures that the enterprises are competitive in the market.[75]

According to the law 4046[76], privatization must prevent the negative effects resulting from a monopolistic structure that may occur and the law contains several rules regarding this issue.[77] One of the targets of the Privatization Program is to provide efficient allocation of resources.[78]

In Turkey, the decision-making body the Privatization High Council and Privatization Administration has served as an executive organ. Also there are various privatization methods; especially sale and transfer of operational rights. In sales, there are two types of sale methods; asset sale and share sale. Turkish Telecom's privatization, block sale method was preferred and block sale is a method of share sale. Another type of sale methods is public offering. This method is mostly applied in EU privatization process. In Turkey, Turk Telekom's 55% shares were privatized according to the Block Sale method and it amounted to US $ 6.55 billion. The closest

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[74] ICTA, Sectoral Research and Strategies Department, "Özelleşme Serbestleşme ve Düzenleme Etkileşimi", May 2003, p. 5-6.

[75] http://www.oib.gov.tr/baskanlik/felsefe_eng.htm Republic of Turkey, Privatization Administration Home Page.

[76] http://www.oib.gov.tr/baskanlik/yasal_cerceve_eng.htm Republic of Turkey, Privatization Administration home page.The new privatization law,no.4046 has been enacted on 27 November 1994. There are many specific changes by the new law,numbered 4046, due to the committements made to the IMF. The law rules that the proceeds of privatization can not be used for general budget expenditures and/or investments and brings new rulings for the public management. It is also important to note that it is possible to creat privileged State shares for strategic shares which is newly introduced under this law.

[77] The law no.4046, dated 27 November 1994, Principles, Article 2.

[78] http://www.oib.gov.tr/baskanlik/ozellestirme_amac_eng.htm The Republic of Turkey Privatization Administration Home Page.

bid was US $ 6.5 billion offered by ETISALAT-ÇALIK Joint Venture Group.[79] For 15% of shares, public offering method was applied and the shares were sold at IMKB as a public offering in local and international financial markets in 2008. The sale of shares in 2008 was amounted US $ 1.8 billion. Turk Telekom's privatization revenue has been the highest amount generated in contrast to the all Turkish privatization implementations up to today. According to the 2009 Annual Report of the Privatization Administration, the strategy for the sale of remaining shares of the Company held by Turkish Treasury has not yet been determined.[80]

As we look through the distribution of privatization implementations according to the methods, the highest proportion is 53% share block sales in 2009 and as a sum up, the share of the international investors in the privatization implementation between 1986 and 2010, is 59% of sale was made to local investors, the rest of shares were sold to foreign investors.[81]

Privatization of Turk Telekom has been subject to discussions as all the other privatization processes in Turkey before, on different levels of political approach.

Pro-privatization propositions can be summarized as;

i) Turkey liberalization process started with transition from a closed economy to an open economy in 1980. Turkey chose to integrate into the global economy and liberalization is the way to do it. Due to the liberalization process, government involvement in the economy was minimized. Privatization has been a step for a fully liberalized market which brings competition into market.

ii) The experience in Turkey and international practices demonstrate where resources are left to the Government for reallocation, the management of such resources has been inefficient. Consequently it was reduced and accepted that for the management of Turk Telekom to be efficient, there was need to attract the private entrepreneurships by way of privatizing it.

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[79] The Republic of Turkey, Privatization Administration, Publications, "Türkiye'de Özelleştirme-1", p. 19, Online: http://www.oib.gov.tr/yayinlar/yayinlar.htm
[80] A.g.e, p.26
[81] A.g.e, p. 27

iii) Innovations in telecommunication which develops telecommunication service could be more easily adapted in the case of private entrepreneurs.

vi) Due to the fact that Turk Telekom market value is higher compared to the other state-owned and private-owned companies, revenue accruing from privatization would impact public finance a considerably to the positive side.

v) Turk Telekom`s market value is expected to drop in future due to fully liberalization in mobile sector in line with international markets. Therefore Turk Telekom needed to be privatized as soon as possible if any considerable privatization revenue is expected to be raised to the benefit of public finance. In other words, there will be an opportunity cost in delaying the privatization of Turk Telekom to an uncertain future timing.

vi) Privatization which is a step towards full liberalization of the market will have a positive effect to maintain a well-functioning, competitive market. Privatization has to be implemented to open up the market to competition which means in this ideology, privatization is a pro-competition policy.

Although there had been many supporters leading to different hypothesis for privatization of Turk Telekom, there have been many more opinions against privatization with different theories.

Propositions against privatization can be summarized as follows;

1) Telecommunications service is public utility so privatization has been a subject of public concerns in terms of services' continuity, quality and costs to users.

2) After privatization, Turk Telekom as a private monopoly will have the power to regulate prices and the prices will increase due to monopolistic behavior of the private owned company and cause harm to users.

3) In terms of national security, telecommunication is utility and a strategic sector for national security and private ownership could be seen as a threat on the government role as a provider for national security and a loss of public gains.

4) Turk Telekom is one of the two highest tax-payers in terms of corporate tax and a considerable share of its revenue is transferred to the public finance covers. The opinion is that Turk Telekom has been efficiently functioning to the benefit of

users and the whole public as a state-owned company so there is no need to privatize and open up the market to competition.

Privatization of Turk Telekom (From "Turk Telekom" to "Turk Telekom Co."):

Turk Telekom has been the dominant telecommunications provider and leader in the telecommunications sector from the past to the present. Turk Telekom was established in a public tender in 1994 and functioned as a monopoly on all the services until the establishment of telecommunications authority.

Based on Law 4000 that allowed up to 49% of Turk Telekom to be privatized, a new law (law 4107) was enacted to provide further frameworks for the privatization of the company in May 1995. The main reason for Law 4107 was to provide a break-down of how the 49% was to be privatized: 10% to the General Directorate of Posts for free, 34% to strategic and institutional investors, and 5% to Turk Telekom`s employees and small investors. However, some of the articles that granted the Privatization Administration the authority to undertake the privatization of Turk Telekom were invalidated by the Constitutional Court, which necessitated the enactment of another law (Law of 4161, 1996). As a result the mandate of the Privatization Administration was limited to making a proposal regarding the sale strategy and the authority for the approval of the sales strategy was granted to the Council of Ministers.

Following Law 4161, the government proceeded with two phased privatization strategy: the first phase was called "Sector Reform and Company Valuation" and the second "Actual Execution of the Sale". The first phase consisted of a detailed analysis of the telecommunication sector and the value of Turk Telekom, including a developing strategy. A value Assessment Committee was established for this purpose, and the Committee submitted its proposal to the Council of Ministers for its approval in February 1998. According to this plan, 20% of the shares were to be privatized via block sale to a strategic partner, followed by a public offering of 19%.

The process then shifted to the second phase to sell the shares under the responsibility of the Tender Committee. The first tender for the 20% block was offered on 13 June 2000. The attached conditions specified that the block would be sold to a strategic core investor consortium that had to have one or more international basic telecommunications operators representing the majority within the expertise and experiences of a global telecommunications operator. Although interest was expressed by domestic institutions for this block, there was no bid from the international telecommunications operators by the closing date of 15 September 2000, and the Tender Committee had to open a second tender on 14 December 2000. This time 33.5% of the shares with increased management rights were offered, but again despite interest from Turkish conglomerates international interest was not sufficient to attract bids.

After the unsuccessful attempts on privatization, and compounded by further pressure from the IMF, a new legislation was enacted in 2001.This law revised the sale strategy of Turk Telekom`s shares, according to which 5% of the shares were to be sold to small domestic investors and employees of Turk Telekom and the Postal Administration through a domestic public offering instead of free offer of 10% to them after a successful sale to a strategic consortium. For the remainder of the shares, the sales strategy was determined by the Council of Ministers by April 2002 together with clarification on the scope of the golden shares. Pursuant to the act No. 4673, the golden share has the right to vote and approve on issues like amendments in the articles of association for protection of national interests, establishment of new companies or participation to existing companies, participation to international telecommunication unions or being a party to international agreements, transfer of registered shares that shall have an impact on control of management and registration of transfer of registered shares in the share register. And it has been mentioned in law as the Under Secretariat of Treasury shall have a member in the Board of Directors of Turk Telekom that represents the golden share. The possessor of golden share shall not be involved in capital increases and shall not have profit share.

To attract the world-class partners for Turk Telekom with a view of increasing efficiency and service quality as well as executing the privatization process on a timely basis responding to market conditions. In search of an interactive

process, a market testing study has been undertaken during September and October 2003, in order to design the most pertinent privatization strategy for Turk Telekom. Following the market testing strategy, the Council of Ministers Decree encompassing feedback received during the above mentioned market testing study was issued on November 13, 2003. Accordingly, minimum 51% of Turk Telekom shares were to be offered as a block sale of company shares, while following the block sale the remaining shares could be privatized under various privatization methods including the public offering. Turkey has secured an investment friendly environment for privatizations with regulations matching European standards. With the enactment of Law 5189, the foreign ownership restriction on the part of foreign investors has been lifted, the scope of the golden share has been restructured and the satellite business has been taken out of Turk Telekom to function as a separate public entity.

In this framework, an Informatory Process was launched prior to the official tender announcement whereby, the Privatization Administration informed the interested parties about the forthcoming process and delivered information about Turk Telekom. Eleven national and international companies registered to the Process and they were provided with operational, legal and technological data of Turk Telekom as well as the upcoming privatization process. Participation to the Informatory Process was not a pre-requisite to participate in the official block sale tender.

The Council of Ministers Decree dated October 15, 2004 number 7931 resolved the sale of 55% of Turk Telekom Tender Commission for the application of pre-qualification criteria during the tender process.

The formal tender process for the block sale of 55% of Turk Telekom commenced with the tender announcements on November 25, 2004. Accordingly, in order to submit bids, bidders were required to satisfy the pre-qualification criteria determined by the Tender Committee. Applications for pre-qualification were delivered to the Privatization Administration until January 11, 2005 where 13 national and international bidders qualified. The due diligence and data room process was conducted in February, March, and April 2005. Four bids were submitted on the bidding deadline for the privatization of 55% of Turk Telekom shares. The Tender Committee first evaluated the business plans and all four bidders who received

scores over 75 points from such evaluation, were invited to the opening of the financial bids on July 1, 2005. After the joint bargaining process, Oger Telecoms Joint Venture Group submitted the highest bid, with US $ 6.55 billion and the Etisalat Joint Venture Group submitted the second highest bid with US $ 6.5 billion for the block sale of 55% of Turk Telekom shares. The result of the tender has been approved by the Council of Ministers and was published in the Official Gazette dated 02.08.2005 and has become effective.

The Share Sale Agreement, the Shareholders Agreement, the Share Pledge Agreement and the Concession Agreement were signed on November 14, 2005. With the signing of these agreements, 55% of Turk Telekom shares were transferred to Ojer Telekomunikasyon A.Ş. *(Consortium led by Saudi Oger and Telecom Italia)* and consequently, Turk Telekom ceased to be a public company.

The Concession Agreement was signed on the same day between Turk Telekom and the Telecommunications Authority.

Finally, the Council of Ministers Decree dated November 13, 2003 number 2003/6403 stipulated that the percentage and the timing of the public offering would be determined following the block sale. Following the completion of the block sale, preliminary studies regarding the privatization of the some of the remaining shares owned by the Treasury commenced. Within this framework, the Council of Ministers Decree dated December 10, 2007 number 12973 stipualted that; 15% of Türk Telekom shares would be privatized through public offering until December 31, 2008.

Pursuant to the provisions of Law 406, requiring 5% of Turk Telekom shares to be allocated to the employees of Turk Telekom as well to those of the General Directorate of Postal and Telegram Services as well as small retail investors, the Council of Ministers Decree dated December 10, 2007 stipulates that 3% of Türk Telekom shares will be allocated to the aforementioned employees and small retail investors.

40 % of Turk Telekom shares were offered to domestic investors, while 60% of the shares were allocated to foreign institutional investors. 2.1 million shares out of 5.25 million shares were sold to domestic investors, while 3.15 million shares were sold to foreign institutional investors.[82]

Turk Telekom by being privatized could be subject to private law in some areas as a private company. The Current Shareholding Structure of Turk Telekom is given below.

The Current Shareholding Structure of Turk Telekom;

Oger Telekomunikasyon Kurumu	55%
Undersecretariat of Treasury	30%
Free float at ISE	15%

Table 3.1.Current Shareholding Structure of Turk Telekom

Source: OIB website, http://www.oib.gov.tr/telekom/turk_telekomunikasyon.htm

- Turk Telekom is functioning as a private firm and as a monopoly.
- Turk Telekom has the ownership and usage right on the only fixed line network.
- **Turk Telekom subsidiary companies** ;

Business Name	Scope of Activity	Paid-In / Issued Capital	Capital Share of Company	Unit of Currency	Capital Share of Company (%)
AVEA	Mobile Services	7.024.870.000,00	5.699.233.000,00	TL	81,37
TTNET	Broadband Internet Services	500.000.000,00	499.999.996,00	TL	100,00
INNOVA	IT Services	3.900.000,00	3.899.999.996,00	TL	100,00
ARGELA	Telecom Operators'	715.000,00	714.996,00	TL	100,00

[82] Republic of Turkey Prime Ministry Privatisation Administration, http://www.oib.gov.tr/telekom/turk_telekom.htm/

	Solutions Services				
SEBIT	E-education Solutions Services	8.025.000,00	8.024.996,00	TL	100,00
CETEL	The Incumbent Operator in Fixed-line in Albania	59.200.000,00	11.840.000,00	TL	20,00
ARGELA USA	Advertisement-Based Communication Services	200.001,00	199.921,00	USD	99,96
AssisTT	Customer Services and Call Center	100.000,00	99.960,00	TL	99,96
SEBIT	Education Technologies Services	10.000,00	9.996,00	USD	99,96
IVEA	IT Services	17.500,00	17.500,00	USD	100,00

Table 3.2 : Subsidiary Companies of Turk Telekom.

Source: Public Disclosure Platform[83], an electronic system through which electronically signed notifications required by the capital markets and ISE regulations are publicly disclosed.

- 81% shares of the mobile operator, AVEA, which is one of the mobile operators in internal market of Turk mobile telecommunications.
- 100% shares of TTNET
- 100% of ARGELA
- 100% of Innova
- 100% of ASSISTT

Political background of Privatization:

Privatization process of Turk Telekom was a point of discussion for more than ten years since 1994 and is based on different political justifications, because in this period, five different political powers governed Turkey.

[83] Within the framework "Comminiqué Regarding Principles of Submitting Electronically Signed Information, Documents and Notifications to the Public Disclosure Platform" of Capital Markets Board of Turkey's (CMB), all information and documents to be publicly disclosed must be sent to the PDP. For more information: :http://www.kap.gov.tr/yay/English/Sirket/Sirket.aspx?sirketId=1473&btnAra=Go

The most remarkable legal arrangements that commenced most relevant reforms in the field of telecommunications is structured in the 57th political power governing Turkey from 1999 to 2001. In this period, a coalition of three parties; DSP, MHP and ANAP governed Turkey.

This coalition government signed the 18th Stand-By Agreement with IMF. It is a reality that this government formed its policy action plan according to the negotiations with IMF.

Privatization of Turk Telekom and telecommunications sector liberalization process are a part of the conditions that IMF imposed for release of its remaining finance and the overall economic reform of Turkey.

But, it was not only a decision taken by the 57th government itself and/or neither just only an IMF imposition. It can be concluded that, there were drafts of an establishment of a framework regarding telecommunications before the 57th government. Due to these drafts, it can be inferred that Turkey had a will to commence regulatory reforms for quite some time, so regulation has always been a part of political culture of Turkish public administration. In every public administration in Turkey, there is a regulatory (control) unit.

From the foregoing, we can say that Turkish privatization policy is mostly shaped by the pressure from IMF, rather it was also shaped by international organizations and national commerce associations, such as TUSIAD[84]and TUSIAD`s relationships with multinational corporations and also negotiations with EU.

Following the liberalization process, Turk Telekom has been privatized under one party government in 2005.

It was evident that, Turkish society was not much ready for the liberalization process. After years of lots of economic crisis and living in an inflationary environment, the involvement of the international organizations on the policy

[84] TUSIAD is the Turkish Industrialists' Businessmen's Association.

decisions of the national policies was necessitated by concerns of society and society`s reaction towards liberalization process. Consequently, the government made some amendments on the basic law by taking into consideration society fact and the armed forces concerns.

This political will to make amendments to Law No. 406, within a short time before privatization process begin due to public concerns on communications guarantee and national security.

According to the Article 1 of the Law No. 5071[85] amending the Law 406, *"…there has to be a member representing the privileged share in management board of Turk Telekom. This member is appointed to the management board by the Ministry of Transport and Communicationsation. And this member has the right to participate the meetings of the management board and to give opinions to the Board and the member cannot take share from the profit*."

[85] The Law No.5071, amending the Law 406.Dated 21.04.2004.

CHAPTER IV

4. INFORMATION AND COMMUNICATION TECHNOLOGIES AUTHORITY OF TURKEY

The central task of regulation must be to keep a check on the dominant provider's market power and to help new competitors enjoy the same opportunities. Hence the government's approach goes beyond just the ex-post control of anti-competitive practices. The regulatory tasks are so specialized that they cannot be resolved with the tools of a general competition law alone. That is why sector-specific regulation is necessary until workable competition has been established in the telecoms market.[86]

Turkish Information and Communication Technologies Authority were established as a legal public entity with public administrative and financial autonomy and special budget due to the Law no. 4502 2000.[87] It started to function as of 15 August 2000.[88]

The main purpose of the Turkish Information and Communications Technologies Authority is determined to ensure a complete liberalization in the ICT sector. While the Authority has a regulation-focused function in the liberalization process; its regulation function will be kept at minimum at the end of the process. The inspection and arbitration functions of the Authority are enhanced to ensure that the competition in the sector is sustainable. The main objective behind the establishment of a sector regulator for the ICT sector in Turkey is to ensure continuance, order, reliability and transparency in the liberalization process in this sector. The two targets for the authority are to increase the employment in Turkey and the increase of the ICT revenue percentage in country's budget. [89]

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[86] http://www.bundesnetzagentur.de/cln_1932/sid_0544B10841B433565E257C560E43E521/EN/Areas/Telecommunications/telecommunications_node.html Bundesnetzagentur, Federal Agency of Germany for Telecommunications Sector, webpage.

[87] The Law No.2813(Dated 5.5.1983) Law on the Establishment of the Information and Communication Technologies Authority Article 5.

[88] http://www.tk.gov.tr/Eng/abo_boa/history.html Information and Communication Technologies Authority webpage, History.

[89] http://www.tk.gov.tr/Eng/abo_boa/establishment.html Information and Communication Technologies webpage, Establishment.

An amendment was made on the Law No.406 with the Law No. 4673 of 2001[90]. According to this law the authorization function was transferred to Information and Communications Authority.

According to the sixth article of "Regulation on the Organizations and Functions and Working Principles and Procedures of ICTA"; the Board of ICTA is constituted by totally five members with one president and one vice president.

The President and members are appointed for five years by Council of Ministers. And the President and the other members of the Board can only be hired before the expiration of the tenure by Council of Ministers, if and only if, under the cases mentioned in the related regulation.[91]

The President of the Board, the member representing radio services and the member representing the telecommunication services are appointed out of two candidates each who are determined by the Minister of Transport and Communication.

The member representing the telecommunications sector are appointed out of one each of the candidates who are determined by the operators operating in the telecommunications equipment and system manufacturing, telecommunications service or operating infrastructure in Turkey and also has %10 market power in the related telecommunications service market in line with this Act.

The members representing the consumers are appointed out of the two candidates each who are determined by the Ministry of Industry and Commerce and Turkish Union of Chambers and Exchange Commodities.

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[90] Law on Amending the Telephone and Telegram Law, Law on Savings and Assistance Fund of Postage, Telephone and Telegram Administration and Organization and Duties of the Ministry of Transport and Communications, Dated 12.05.2001.

[91] Article 8 of the Regulation on the Organizations and Functions and Working Principles and Procedures of ICTA

4.1. Basic Functions of the Authority

Information and Communication Technologies Authority of Turkey gives opinions on the concession contracts to be signed for telecommunication services and/or infrastructure concerning the capital companies established in Turkey and on telecommunication licenses to be issued by the Ministry of Transport and Communicationsation; making proposals to the Ministry on the preparation of general permissions; inspecting the implementation of provisions and conditions of the said concession agreement and telecommunication licenses and their conformity with the general permissions.[92]

ICTA defines the general criteria on price tariffs and contract provisions for the end-users and the other operators for their use of interconnection between different telecommunication networks. ICTA also has the mandate and is under obligation to examine and evaluate the tariffs. While doing these, ICTA must take into account the Directives on Access and Interconnection and Directives on Tariffs of EU. The Authority must maintain the competition in the market through fair and competitive tariffs in the benefit of end-users and also must maintain a fair competition environment which does not restrict the entry conditions and does not harm the competition in the market.

ICTA ensures that the commercial aspect in the provision of services, in the operation of infrastructure and in the manufacture and sales of various telecommunication equipment and tools can carry out their services and activities in conformity with the laws in a full competitive environment and taking encouraging measures to protect consumer rights as well. In parallel, ICTA has the responsibility to issue regulations on issues related telecommunication services and infrastructure operation.

It also examines the issues concerning the provision of telecommunications services and operation of infrastructure; the conducts, plans and practices contradicting with competition in these services and telecommunications sector in its own capacity or upon complaints it has the authority to demand the information and

[92] For further information: http://www.btk.gov.tr/Eng/abo_boa/func_authority.html, ICTA webpage.

documents in its area of authority. It provides opinions on all decisions of the Competition Authority, including the decisions concerning the examinations and inspections to be made on the telecommunications sector as well as company mergers and take over, before they are made.

ICTA is also under the duty and obligation to take measures to ensure that agreements, concerning the standard reference tariffs, network interconnections and roaming, do not have results that prevent free competition in the provision of telecommunication services and operation of infrastructure; and to refer to the Competition Authority within the scope of the provisions of Law No. 4054 dated 12.7.1994, if required.

ICTA makes the arrangements concerning the operators' provision of telecommunication services and/or charges that they may take in return for infrastructure operation. It defines the calculation methods and upper limits of the charges, including the line and circuit rentals in the following cases**:**

i) in case there is an obligation to cover the costs of some services with the costs of other services of Turkish Telecom or another operator, including the minimum services that it is obliged to provide as per the principles of public service;
ii) in case it is determined by the Authority that an operator is a legal or actual monopoly or it has a dominance in the related service or regional market.

4.2. Allocation of Role and Jurisdiction between Turkish Competition Authority and Information and Communication Technologies Authority in Promoting Competition in Telecommunications Sector

Liberalization of the telecommunications sector in Turkey increased the involvement of the Competition Authority in the sector, and necessitated close co-operation and coordination between the Competition Authority and the Information and Communication Technologies Authority.

The Act on the Protection of Competition numbered 4054 is applied to all sectors in Turkey and there are not any legal proceedings that impede implementation of Act numbered 4054 precisely or implicitly excluding an exception of some mergers and acquisitions at a level in banking sector.[93]

Before the Law numbered 4502 amending the Fundamental Law numbered 406 came into force and Information and Communication Technologies was founded in 2000, the Competition Authority was actively functioning and monitoring the competition in telecommunications sector as in nearly all other sectors in Turkey. Because Turk Telekom which was the owner of the Turkish telecommunications infrastructure was the only operator in fixed line services and so there was no operator other than Turk Telekom, Turkish Competition Authority was involving with the cases subject to the Law. However, before the enforcement of the Law 4502 amending the Law numbered 4502, the Competition Authority was the only authority responsible for monitoring competition in telecommunications sector.

The law numbered 4502 introduced the term "competition" in telecommunications sector. After the Law numbered 4502 came into force and Information and Communication Technologies Authority (Thereafter, ICTA) was founded, ICTA was also provided with the duty to maintain and sustain competition in telecommunications sector besides the Competition Authority. The provisions of the regulations in telecommunications provide a framework in determining the sharing role and jurisdiction between the Competition Authority and ICTA.

Before the enforcement of the Law numbered 5809, the responsibilities of the Information and Communication Technologies were determined under the Law numbered 2813. According to the subsection (ı) of the amended article 7 of the Law numbered 2813 with the Law numbered 4502, one of the responsibility was determined as; *"ı) to provide that the provision of telecommunication services and operation of telecommunication infrastructure by the operators and other*

[93] According to the article 19 entitled "Merger, Demerger and Exchange of Stock" numbered 5411 of the Banking Law, *"Under the condition that the share of total assets of the banks which are subject to the merger and acquisitions under Turkish Commercial Code numbered 6762 in cases of mergers, demergers and transfers in accordance with this Law, does not accede 20% in this sector, the articles 7, 10 and 11 of the Act numbered 4054 cannot be applied."*

individuals who are trading in such field pursuant to this Law and that the services and activities of the producers and traders of telecommunication apparatus and equipment are realized in Turkey in a completely competitive environment and to take the necessary promoting measures". With the regulation stated, ICTA had also been provided with the duty to take the necessary measures to prevent anticompetitive conducts and to monitor on whether the services and activities in the sector were operated in a completely competitive environment or not and if not, to eliminate the mischief aroused by anticompetitive conducts and thus to maintain sustainment of the competition in the market.

Also according to the article 7 of the Law numbered 2813[94] in which the functions and duties of the Information and Communication Technologies Authority are aligned, ICTA was empowered to investigate either at its own initiative or upon anti-competitive behaviors, plans and applications in both telecommunication services and in the telecommunications in general.[95] The law stated that; *"The Competition Authority shall initially take into consideration the Authority's opinion in investigations and scrutinies it shall carry out within the telecommunications sector and before taking any decision in relation to the telecommunications sector including decisions about mergers and acquisitions".*

The role of ICTA in attaining and sustaining competition in the sector was also underlined under the laws numbered 406 and 2813. According to the paragraph (ı) of the article 4 of the Law numbered 406 amended with the Law numbered 4502, where the principles regarding the operation of the telecommunication services and/or operation of the telecommunication infrastructure and regulations would be enacted in this respect, ICTA was provided with the duty to provide and to protect

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[94] Amended by the article 16 of the Law numbered 4502.

[95] The article 7 of the Law numbered 406, amended with the Law numbered 4502 states that;*"The Authority is empowered to investigate either at its own initiative (ex officio) or upon complaints relating to the provision of telecommunication services and operation of infrastructure and anti-competitive behaviors, plans and applications in both such services and in the telecommunications sector generally and to require provision of information and documents in relation to the matters coming under its mandate. Before issuing regulations and taking any other general administrative action in relation to telecommunications services and infrastructure, the Authority shall take such steps as may be necessary to allow interested parties to submit representations which shall be publicly disclosed and on which interested parties may comment. The Authority shall also take the necessary measures to protect the interests of consumers."*

free competition environment.[96] However the provision stated that besides the monopoly rights of Turk Telekom, determined by Law, the application of the Act on the Protection of Competition numbered 4054, dated 7.12.1994 were also reserved which means that the duty of ICTA in providing and protecting free competition environment in telecommunications sector does not abolish the application of Act on the Protection of Competition numbered 4054 and the function and responsibility of Competition Authority in this sector.

In another provision of the Law numbered 406, amended with the Law numbered 4502, the obligation of mobile telecommunication, data operators and operators of other services and infrastructure on satisfying roaming requests was regulated.[97] With this provision, ICTA was provided with the duty to publish and amend standard reference interconnection tariffs which relevant operators may incorporate in their standard terms and conditions and also issue regulations for determination of standard reference tariffs, the principles for interconnection and roaming agreements. However, if ICTA needs to ensure whether the free competition will be impeded by standard reference tariffs which are determined by ICTA or the agreements of interconnection of networks and roaming or not, ICTA may apply to the Competition Board.[98]

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[96] The paragraph (ı) of the article 4 of the Law numbered 406, amended with the Law numbered 4502 states that; *"Unless otherwise stated in this Law, for authorizations through concession agreements or telecommunication licenses and as a whole in all types of telecommunication fields, to provide and to protect free competition environment under the condition that the provisions of the Act on the Protection of Competition numbered 4054, dated 7.12.1994 and the monopoly rights of Turk Telekom, determined by Law are reserved"*.

[97] According to the article 10 of the Law numbered 406, amended with the Law numbered 4502, "*Within the content of this Article, mobile telecommunication, data operators or operators of other services and infrastructure as determined by the Authority are also required to satisfy reasonable, economically proportionate and technically feasible roaming requests of other operators working in the same field for permitting the use of the customer equipment of the requesting operator on their telecommunication system"*.

[98] According to the second paragraph of the article 10 of the Law numbered 406, *The Authority shall publish and amend from time to time standard reference interconnection tariffs which relevant operators may, as appropriate, incorporate in their standard terms and conditions. The Authority shall issue regulations setting out the principles of implementation of this provision and the details to which standard reference tariffs, interconnection and roaming agreements are subject, and, if needed, may apply to the Competition Board pursuant to provisions of Law dated 7.12.1994 and numbered 4054 in order to ensure that standard reference tariffs or the agreements for interconnection of networks and roaming do not impede free competition in provision of telecommunication services and operation of infrastructure."*

With respect to the relationship between the Competition Authority and the ICTA, the Protocol on Cooperation between the Competition Authority and the ICTA was enacted in 2002.

The purpose of the The Protocol[99] are; to determine the procedure regarding for dealing with the issues which are under the competency and the duty for both authorities in attaining and sustaining a free and sustainable competitive environment in telecommunications sector; and/or to prevent undertakings' conducts by way of conveying their complaints and notices to both authorities or one of the authorities in order for gaining a contrasting decision with one another or a decision which is the most appropriate for themselves; to insure commonality in interpretations of related regulations and terms and to maintain decisions which provide information transfer between authorities.

The most notable requirement is that when carrying out investigations and analysis in the telecommunications sector, the Competition Authority must initially take into consideration the opinion of the ICTA. It also has to consider the ICTA`s opinion before taking any decisions consider the ICTA`s opinion before taking any decisions on mergers and acquisitions. On the other hand, the telecommunication regulator may request the Competition Authority to provide its opinion in order to ensure that the standard reference tariffs or the agreements for interconnection of networks and roaming do not impede free competition.

Pursuant to the article 8 of the Protocol, the Authorities should also submit the enquiry reports regarding the telecommunications sector to each other besides the concerned parties to take their opinion. Pursuant to article 9 of the Protocol, Competition Authority should also take ICTA's opinion before its decisions regarding mergers and acquisitions in telecommunications sector and regarding applications on negative clearance and exemptions in this sector.

Pursuant to the article 6 of the Law numbered 5809, the regulations of ICTA must create and protect competition in the telecommunications sector. Because, as is

[99] The legal grounding for this protocol is the amended articles 4, 10,29, 30 of the Law numbered 406 and the amended article 7 of the Law numbered 2803 and the articles 27 and 30 of the Act on the Protection of Competition numbered 4502.

stated in the first article of the Law numbered 5809, the main purpose is to create effective competition and to ensure the protection of consumer rights and to promote the new investments and technological developments in communications infrastructure, network and services. The tools to achieve these goals have been stated by law are the regulations, relevant principles and procedures prepared and issued by ICTA and inspections in the sector.

However, there may appear practices which are obstructive, disruptive or limitative for competition. ICTA should also inspect the breaches of competition in electronic communications sector which are against the Law and against regulations based on the Law numbered 5809 and can also take the opinion of Competition Authority on the issues regarding the breach of competition in electronic communications sector. If ever these anticompetitive conducts appear in the market, ICTA is under to obligation to eliminate them and in this case, even may impose obligations on operators with significant market power which are determined by ICTA under the provisions of the regulations in the relevant markets and on other operators if required.

Two of the most important issues in creating and sustaining competition in a vertically integrated telecommunication market are the access and interconnection regulations. According to the article 7 of the Law numbered 5809, the procedures and principles concerning access including interconnection and national roaming are determined by ICTA. The regulations of ICTA regarding access should not reserve provisions which constrain the competition which may be in the forms of breach of legislation or consumer interests in order for supporter legislation for competition in telecommunications sector.

Pursuant to the first paragraph of the article 7 of the Law numbered 5809 entitled “Provision of Competition”, the Authority is also entitled to perform examination and investigation of any action conducted against competition in electronic communications sector, on its own initiative or upon complaint, however the Competition Board while performing examinations and supervisions and while making any decisions on electronic communications sector, including decisions

about mergers and takeovers, takes into consideration primarily the Authority's view and the regulatory procedures of the Authority.

There should be ensured an effective competition environment in telecommunications sector as per provisions of the Law numbered 5809. Having regard to the provisions stated above, if an effective competition environment in telecommunications sector cannot be ensured in telecommunications sector, both authorities particularly ICTA will be responsible for anticompetitive environment and violation of consumer rights in telecommunications sector. Because the provisions of the Law regarding the competencies of ICTA provides ICTA with any kinds of opportunity to ensure competition in the market, these opportunities include preparing regulations by themselves, the competency to inspect anticompetitive conducts, to impose sanctions in the breach of competition, to take opinion of Competition Authority, the competency to perform examination and investigation and to ask for information from Competition Authority.

4.3. Review of Decisions of Information and Communication Technologies Authority of Turkey

Turkey has an administrative court system and parties contesting the Authority`s decisions could turn to it only for review of procedural aspects of the decisions but also for review of substance. More specifically, there are two levels within the administrative court called the High Administrative Court. A decision of the Authority has a possibility to be challenged up to the latter level. Appealing to the Court does not automatically stop implementation of the original decision and instead the question of suspension or implementation while the matter is in the court is decided for each case. [100]

There are many studies dealing with the relationship between Institutions Score and Regulatory performance. According to the Report of European Competitive Telecommunications Agency (ECTA); Turkish Information and Communication Technologies Agency had weak grades based on a number of

[100] The OECD Report 2002/ Regulatory Reform of Telecommunication in Turkey

criteria on average. The study was indicated that general institutional environment, market entry enablers, regulatory process, application of regulation by the Authority, regulatory and market outcomes scored lowly. Each issue was evaluated also based on a number of criteria. The ECTA Report 2010 indicates that Turkish ICTA got strong grades only on general institutional environment which were including implementations, appeals procedure, scope and scale of Dispute Settlement Procedure. The independence of the institution and enforcement powers of Turkish ICTA were not strong and were graded as neutral under the criterion of general institutional environment.

The second criterion measuring the effectiveness of the ICTAs was the market enablers. Market enablers are formulated by implementations, rights of way and frequencies' development. Due to the developments in numbering, Turkish ICTA got neutral grades which were weak until 2009. Numbering procedure's importance on the market entry cannot be underestimated. However Turkish ICTA still has a long way towards maintaining a strong market enabler mechanism due to the weak grades on frequencies and rights of way.

Regulatory process in Turkish ICTA has better performance in contrast to the other criteria while market analysis of Turkish ICTA has been indicated as a weak part of the Authority.

Application of Regulation in Turkey is done through a number of criteria. One of the criterions is to examine whether Turkish ICTA has been functioning discriminatively or whether leverage has been prevented and the performance of accounting system, operational conditions and whether ICTA has adopted a forward-looking approach in its functions. The only part which is not indicated as a weak part of the Authority under the application criterion is accounting separation. The rest of the criteria find out that the Application of Regulation is weak despite the fact that the legal procedures for deregulation are implemented. In other words, ECTA found out that Turkish ICTA is discriminative while carrying out its duties.

The last criterion is the Regulatory and Market Outcomes. Regulatory and Market Outcome criterion consists of narrowband voice services, business services,

broadband services and mobile and wireless services. The results of this criterion are that the market and regulatory outcomes are all weak. As a conclusion, Turkey has the worst grades across the EU countries and effectiveness of Turkish regulatory framework is the worst one across the EU countries.

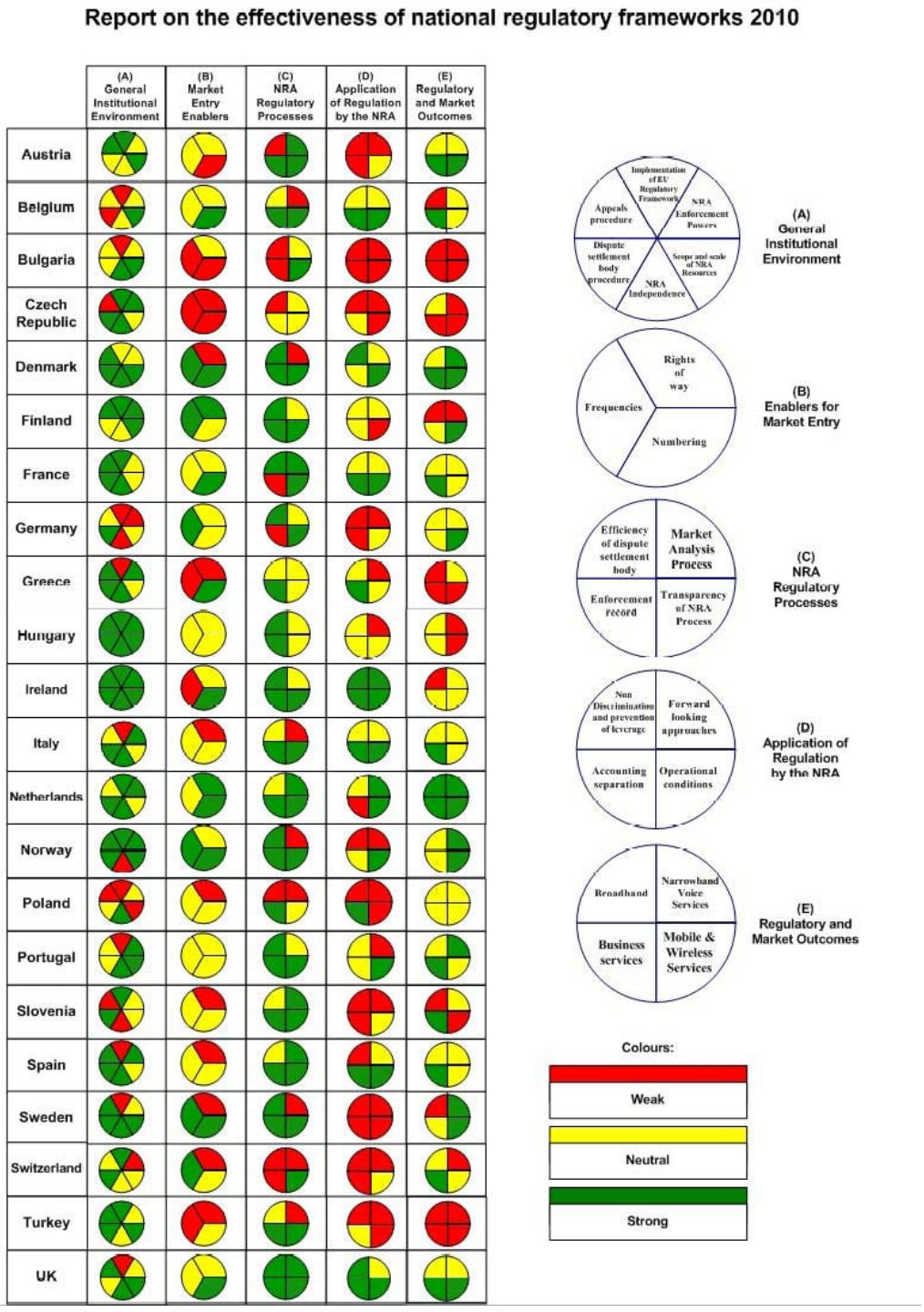

Table 4.1.ECTA Scorecard 2009.

CHAPTER V

5. EVOLUTION OF COMPETITION IN TURKISH FIXED-LINE SERVICE MARKET

Market analysis related to fixed, mobile and broadband started in Turkey in 2005. Every three years, market analysis is ruled to be done at least once. However, the Authority can do market analysis before three years on its own initiative. In 2006, 16 out of 18 relevant markets in EU Recommendations were examined and operators with significant market power were identified.[101]In all types of fixed-line markets, Turk Telekom was determined to be the only operator having significant market power as of 2006 according to the "Ordinance on Principles and Procedures for Determination of the Operators with Significant Market Power. The mentioned relevant fixed line markets were; markets related to call services over fixed network, access to fixed telephone market, call origination and termination markets in fixed network, markets related to leased lines, wholesale call termination market on fixed public telephone networks, wholesale broadband access market including bit stream market, full unbundled access (including shared access) to copper network for the purpose of providing broadband and voice services. In 2009, within the context of second round market analysis, previous market analysis was reviewed and some remedies were imposed on the operators which were determined to have significant market power (thereafter SMP). Turk Telekom was determined to be the only operator having SMP in all types of fixed-line markets excluding call termination markets in fixed network. Turk Telekom has been found to have the SMP in call termination markets in fixed network with fixed telephony operators who have been assigned a number. The relevant markets on which Turk Telekom has SMP include; publicly available local, domestic and international telephone services provided at a fixed location, full unbundled access (including shared access) to copper network for the purpose of providing broadband and voice services, wholesale leased lines, wholesale broadband access including bit-stream access. Turk Telekom is imposed with responsibility to provide access through shared lines or LLU, or wholesale broadband access (xDSL IP/ATM level bit stream, ATM, FR, Metro Ethernet, internet resale), Naked ADSL/VDSL wholesale broadband access (IP level bit stream

[101] ICTA, 2009 Annual Report, p. 37-40.

access) and interconnect with the alternative operators, under transparency and non-discriminative conditions. Turk Telekom is also supposed to set the prices on cost-oriented basis.

In fixed line telephony markets, the number of subscribers decreased to 16.53 million in 2009 from 18.92 million in 2003 with a declining trend in penetration rates from 26.7% to 23.1%. Turk Telekom had 95.81% of total call volumes that are originated from fixed networks while the alternative operators had 4.19% in total. Market share of Turk Telekom is 90% in total voice services market based on revenues in 2009. The share of calls over fixed network has decreased significantly from 74.1 billion minutes in 2003 to 22.7 in 2009 while there is a significant increasing trend in the volume of calls over mobile network. Mobile to mobile calls has the greatest share in the call traffic distribution with 78.3% as fixed to fixed calls and fixed to other calls have decreased separately.

In internet and broadband services, there is a huge increase in subscriber numbers from 2004 to 2009. The subscriber number reached to 6.782.657. More than 90% of the internet subscribers are using ADSL. However, there is a noteworthy decrease in the growth rate of subscriber numbers. In terms of broadband access speed, 62% of subscribers prefer 1 Mbps connection with 4GB quota, 33.87% use 8Mbps connection. Turk Telekom Net (thereafter TTNet) which is a subsidiary company of Turk Telekom has the largest share with 85.3% in broadband market in 2009 in terms of usage volume while the alternative operators have 6.3% of share. In terms of revenue, TTNet had 91% in broadband market, which is even twice time higher than the EU average.[102] Although there is increase in subscriber numbers, Turkey has the lowest penetration rates in comparison to the EU 9% and 22% respectively.

The fact in general in the fixed line market was told above. In more details, it will be discussed in the following parts. Before a conclusion whether the market is competitive or not, it is important to know what is referred by “competition” so a clear definition of ‘competition’[103] must be developed. In this analysis, the term

[102] EU 14th Progress Report, January Data for EU, December Data for Turkey.
[103] ITU 2010, ICT Regulation Toolkit, http://www.ictregulationtoolkit.org/en/Section.1672.html.

competition refers to perfect, effective and sustainable competition in the market. Perfect competition is an ideal model of a competitive market, unlikely to occur in practice but brings out a standard basis for market analysis. In a perfect competitive market; i) there is a large number of buyers and sellers, ii) all buyers and sellers enjoy freedom of entry and exit the market at will and without incurring additional costs, iii) there must be no economies of scale. Where economies of scale exist it is more efficient for a single firm to produce a given volume than for two or more firms to produce the same total volume. iii) There must not be economies of scope. *Economies of scope arise when different products have significant shared fixed costs, so that one single firm can produce them using a common facility than to produce them separately iv) there must be no externalities.* Beyond a perfect competitive market, competition in the market must necessarily be effective. In an effectively competitive market;

i) buyers and seller have enough information to know how the other buyers and sellers are behaving in the market,

ii) sellers can access to products they need to purchase without any legal hindrance or restraint from their competitors and all other interest groups,

iii) the market price is determined by the buyers and the sellers,

iv) price differentials are dictated by changes in production cost. The third attribute to competition is its sustainability, which refers to competition occurring on 'a level of playing field' where consumers and operators adhere to the rules of the game and are protected from anti-competitive practices. If competition in the market is effective and sustainable, it should work for the benefit of consumers. The competition analysis in this thesis will utilize the OECD, ITU and other agencies criteria. The competition in the fixed line market will examined through these criteria respectively in voice telephony service and internet.

5.1.Competition in Fixed Line Voice Telephony Services

The monopoly privilege on fixed line services ended on 31st December, 2003. Liberalization in fixed line voice telephony services has started on 1st January, 2004. Many operators have been authorized in domestic and international call services. Despite the fact that authorization in domestic and international call

services had started, ICTA haven't yet authorized operators to provide service on local calls. Turk Telekom has remained as the only operator with a absolute monopoly power in local call services. Since liberalization on 1st January, 2004, fixed line services' revenues have increased continously. Turk Telekom's revenue has increased to 10.568.461 TL in 2009 from 7.383.947 TL in 2005. 89% of Turk Telekom's revenue was due to the activities in local call services.

The table right below shows evolution in revenue and investment in mobile and fixed line services from 2003 to 2007. Compared to mobile sector, revenue increase in fixed line services has been lower. Turk Telekom remained the only operator having significant market power in domestic and international call services and have absolute market power in local call services. The share of LDTS in revenue terms increase has been negligible compared to local call services.

(Billion $)	2003	2004	2005	2006	2007
Fixed Revenue	6,37	6,15	5,54	4,95	6,36
Mobile Revenue	3,68	4,47	6,43	6,75	10,34
LDTS Revenue	-	-	0,07	0,22	0,50
Fixed Investment	0,23	0,37	0,35	0,38	0,53
Mobile Investment	1,83	0,65	1,04	0,76	1,02
LDTS Investment	-	-	0,01	0,01	0,01
Total Revenue	10,05	11,5	12,73	12,21	17,45
Total Investment	2,06	1,02	1,4	1,15	1,56

Table 5.1: Fixed-Line and Mobile Service Revenues

Source: ICTA 2009 Annual Report

Apart from Turkey many countries still have a monopoly in their telecoms market. Table 2 exemplifies the state of competition in telecoms sectors in selected countries by region. The number of countries with fully competitive markets in the local call services is 90 in the world, in domestic and international call services, orderly 88 and 87. The EU has the highest number of countries at 41 seconded by US with 17 States in the fully competitive local call services category. It is also worthy to note that the regions which constitute developing countries, such as in Africa, Arab States or Asia Pasific, fully competitive markets in telecoms are quite few compared to developed regions in terms of number of countries. In general, the statistics show that mobile and internet services in many countries are operated in a fully competitive manner. Although Turkey has implemented EU telecoms directives, it is still lagging behind other EU countries which exhibit fully competitive markets in fixed line services.

	Local Service	**Domestic Long Distance**	**International**	**Mobile**	**Internet Services**	**Leased Lines**
Africa (42)						
Monopoly	16	17	16	3	3	13
Partial Competition&Duopoly	11	11	12	15	4	8
Full Competition	12	13	13	23	32	16
Arab States (21)						
Monopoly	11	10	11	4	3	8
Partial Competition&Duopoly	4	4	4		5	4
Full Competition	6	6	6	7	10	7
Asia Pasific (38)						
Monopoly	14	14	15	4	1	10
Partial	10	11	11	10	11	7

Competition&Duopoly						
Full Competition	14	13	12	18	19	14
Americas (31)				7		
Monopoly	11	12	10	5	3	13
Partial Competition&Duopoly	5	3	3	7	3	8
Full Competition	17	17	18	21	23	16
Europe and CIS (52)						
Monopoly	7	12	9	2	2	7
Partial Competition&Duopoly	5	3	6	15	0	6
Full Competition	41	38	40	35	44	40
World						
Monopoly	59	65	61	18	12	48
Partial Competition&Duopoly	35	32	37	54	23	28
Full Competition	90	88	87	104	128	96

Table 5.2: Competition By Sector and Region

Source: ITU World Telecommunications Indicators Database, 2009[104].

5.1.1. Supply-Side Market Indicators

[104] http://www.itu.int/ITU-D/ICTEYE/Default.aspx.

Supply side indicators measure the competition in the market through entry and exit conditions, the change in revenues in the incumbent and the alternative operators.

- **Number of Operators at the market**

The monopoly privilege on telephone services including local, domestic and international voice telephony ended on 31.12.2003. However the monopoly privilege on national telephony services was not applied to local voice telephony services. As mentioned earlier in Chapter II, the Authority has the mandate to authorize the operators requiring provision of services in the market. Without an authorization by the Authority, no operator can provide service at the local voice telephony market. The Authority rejected applications from operators that require providing local telephony services until today. Authorization for domestic and international voice telephony started in 2004. In 2004, following the end of monopoly privilege, 42 new operators were authorized to provide domestic and international voice telephony services. This was perceived to be a progress in the voice telephony market. In 2005, the number of operators decreased to 40 and following years, a declining trend was in the number of operators at the long-distance voice telephony market[105] until 2009. In 2009, there was a major progress in the application of the rules adopted for the voice telephony market. The Authority declared that it would open the local voice telephony market to competition. The number of operators sharply increased to 88 from 32 in 2009. The development in the number of players operating at the fixed-line telephony market is shown in the Table below.

[105] Long distance telephony services (LTDS) embraces the introduction of inter-provincial and/or international telephony service to the users over any telecommunications network and infrastructure belonging to the operators by use of any technology. In other words, operators can supply inter-city and/or international telephone service to the users over another fixed, mobile or developing network by any technology they wish to use.

Years	Operators providing long-distance services
2004	43
2005	40
2006	35
2007	32
2008	32
2009	88

Table 5.3 The number of operators in the long-distance call service market.
Source: ICTA Annual Report 2009

The increase in the number of operators could be used as an indicator in measuring competition in the voice telephony market but it is by itself has no measurable value to reach a conclusion that there is competition in the market. There lays two basic reasons behind it. One of them is that the number of operators authorized does not necessarily lead to the number of operators actively providing service at the market which means there may be some operators having a certificate from the Authority but not actively functioning in the market. It is a fact at the market that some operators obtain a certificate in order to sell it in the future with a profit. Here, the role of the certificate is the same as a stock or an asset of a firm or an individual who purchase a certificate. As a result, competition cannot be achieved if the operators do not actively function at the market. Therefore, not the number of the operators authorized but the number of operators functioning at the market would be a reliable indicator in measuring competition at the market.

Nevertheless, the operators having the power to affect the market indicators must be known for a better reliable data to reach a conclusion whether the competition is sustained or not. In case the operators have no power to affect the prices and the supply at the market and again, they are price-takers where the prices are set by Turk Telekom, there will be no effect thereof the authorization of operators at the market. It may be concluded that competition cannot be achieved only by

authorizing the operators but the Authority has to maintain the operators'-other than Turk Telekom- ability to affect the prices and the supply at the market. Otherwise, the monopoly lasts by leading to ineffectiveness at the market. The operators' inability may be a result of various reasons attributable to the operators' financial power and competitive position to Turk Telekom or the technological capacity but the Authority has been charged with the duty to sustain competition in the market so whatever the reason is, ICTA has to take precautions for a functioning competitive market and analyse the reasons behind an uncompetitive market which serves to the advantage of consumers including the operators benefiting the service of Turk Telekom at the retail market. It may be concluded that there still exists entry barriers at the market. The only operator that was determined to have significant market power at the voice telephony market is Turk Telekom until 2010. Significant market power refers to the ability to affect the prices and supply at the market.

- **Market Share**

The market share is an important variable in measuring the competition in the market. In the process of liberalization in a regulated market, it is expected that the market share of the incumbent decreases in time to a level where the alternative operators have the power to affect the prices and the supply of the service. Up to today, Turk Telekom was determined to be the only operator having the significant market power in all types of fixed line voice services. This means that competition is not introduced in the market and there still needs regulation in these markets. Turk Telekom has the highest proportion in all types of fixed line market such as call origination, call termination, access and so on with a proportion averagely more than 90%. In fixed line market, the market share of the alternative operators did not change much in time; the percentage of the alternative operators in fixed line services was 10% in 2009. The dominant position of Turk Telekom remained in years. The development in the market shares are given in figure.

Table 5.4 The market share of TT and FTSP

Source: ICTA Annual Report 2009

The table below is also another indicator showing the allocation of market share between Turk Telekom and alternative operators.Turk Telekom also remained to be dominant in call origination as well with 95.81%, nearly an absolute dominance in the market.

Table 5.5 FTS-TT shares' in total call origination on fixed line.

Shares of FTS operators and Turk Telekom in total call volumes that originated from fixed networksare given in Figure 15. While the share of FTS operators is 3.17% in 2008, its share reached 4.19% in 2009.

The rates in contrast with the European countries are given in table right below. Turk Telekom has had the largest share with 89% in the telecommunications market between the incumbents in EU. The monopoly power remained in years. The

share of Turk Telekom in the market significantly differs between the shares of the incumbents in the EU market.

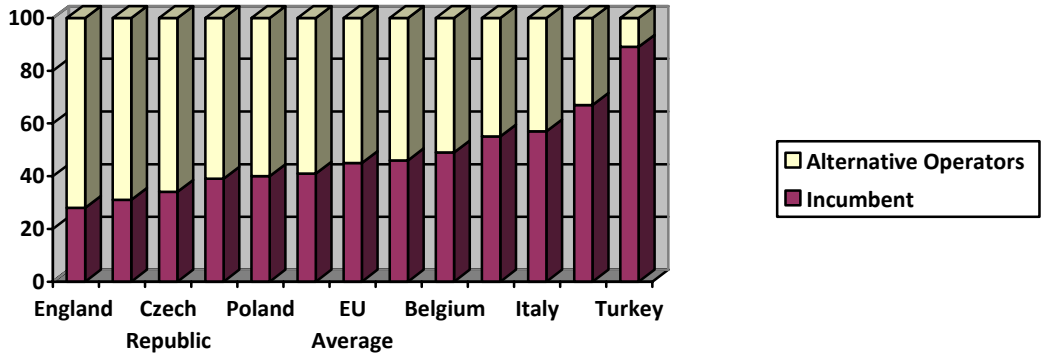

Table 5.6 The Share of the Incumbent in the Fixed Line Market in Turkey and in EU. Source: EU Monitoring Report, 2010 Datas, June Data for Turkey is included.

- **Numbering portability regulation and Switch-off prices**

In accordance with Electronic Communications Law numbered 5809, Numbering Ordinance came into force as of June 27th, 2009.[106] In accordance with Board Decision[107] new national destination codes for every city in the country were opened. In addition to this, 850 number range was opened for nomadic services. In 2009, 460.000 geographical and 452.000 nomadic numbers were assigned within the scope of the fixed telephony services authorization. In accordance with Electronic Communications Law, studies regarding preparation of Numbering Ordinance were carried out in 2009 and came into force on 2nd of July 2009. Following the Numbering Ordinance, "Principles and Procedures Regarding Numbering Portability" was reconsidered and approved by Board Decision.[108] The number portability was first introduced in 2008 in the mobile market. From 2008 to 2009, 9.422.384 mobile numbers were ported. The application of fixed number portability was started on September 10th 2009. However, only 138 fixed numbers were ported [109].

[106] Numbering Portability Ordinance, No. 27271, Dated 27/06/ 2009.
[107] The Board Decision, No. 2009/DK-08/328, Dated 24/06/2009.
[108] Board Decision, No. 27276, Dated 09/09/2009
[109] ICTA, Annual Report 2009, Page 58-60.

- **Interconnection Fees**

The interconnection agreements and the settlement of interconnection disputes are crucial in order to create a competitive telecommunications market.[110] Interconnection fee is one of the most important cost-component of the telecoms operators. Interconnection fee is charged to the operator in the case where the operator gets connected with the other. In other words, only a call which is interconnected can be terminated at another one. The interconnection fee is passed on to the end-user in the pricing of calls. High interconnection fees or costs affect the profit margins and are as an administrative barrier. New entrants don't have significant market power to dictate the market conditions (such as price and quantity of services), and therefore will not be able to reflect the interconnection fees to the price and the margin they get will decrease which in turn results to exit from the market. In another case, prices will rise due to the increase in interconnection fee and loss of consumer welfare. The interconnection agreements' conditions play a crucial role determining the level of competition at the market. The interconnection regulation which is competition friendly can support the fixed network to be effectively used, promote the investment and vice versa.

In the case of Turkey, interconnection charges are one the most important determinant on the entry and exit conditions.[111] As required by the provision of Article 20 of Electronic Communications Law No.5809. "*The Authority may impose obligation on operators, who are subject to the obligation to provide access, to set their tariffs on cost basis. Upon request of the Authority, the obliged operators must prove that their tariffs set as cost oriented. 2) In case, the Authority notices that the obliged operators have not set their tariffs as cost-oriented, the Authority shall be entitled to set the tariffs and/or introduce price ceilings considering the implementations of other countries to the appropriate extent. It is obligatory to comply with the tariffs set by the Authority*." The Authority approved the Interconnection Tariffs for access and these tariffs shall remain in force until a new

[110] Göktaylar Bilge, ICTA Telecommunications ExpertiseThesis, "The Analysis of Interconnection Agreements from a Legal Aspect: Interconnection Dispute Settlement Procedures in Telecommunications Sector"
[111] ICTA, Annual Report, Pg.33

version is published.[112] By the law, it is inferred that operators set the prices on cost basis and the Authority monitors whether the tariffs are cost-oriented. Turk Telekom is the only provider in local call services and has been determined to be the only operator having significant market power on domestic and international call services since 2009.[113] Negotiation for interconnection fees does not take place in fixed line services. The Authority publishes reference tariff offers in order to be a guide for the operators who have the significant market power and reference tariff does not include an exact rate thus in that way it is different from price cap and it only shows the cost components and a guide on how to calculate the cost of the service and interconnection fee by giving examples. Price Cap shows the tariff that Turk Telekom can set at the maximum so Turk Telekom can set the interconnection fees up to the Price Cap determined by the Authority. Turk Telekom determines its tariff by considering the reference tariff and while determining the tariffs Turk Telekom must rely on cost-basis method and reference tariff guides for the calculation. Turk Telekom being the only operator, the Authority has to show a special sensitivity while monitoring the interconnection fees in order to sustain competition in the wholesale market. The Authority confirms a tariff which is equal or under the price cap and the tariffs confirmed should not include excessive prices that may arise from monopoly power of the operator or price reductions that aim at restricting competition.[114] The Authority considers the cost components in other regions (especially EU rates) and compares them with Turk Telekom rates. If the Authority does not effectively monitor the costs of the service and the price, Turk Telekom can abuse its monopoly power and can set an interconnection fee (it can be below cost or predatory pricing) which damages competition in the market. Below are the Interconnection Charges for Turk Telekom effective from 1 May 2009.

Local	Domestic	International
1.39	1.71	2.70

Rates indicate net values (before tax).

Table 5.7 Rates for call origination/termination on Turk Telekom's network (Kr/MN)

[112] ICTA, 2009 Annual Report, Pg.40

[113] Authority Decision No.2009 DK-07/228 of 16.12.2009 and No. 2010/DK-10/659 of 07.01.2010 http://www.btk.gov.tr/Duzenlemeler/Hukuki/kurulkararlari/kkararlari.htm-
http://www.btk.gov.tr/Duzenlemeler/Hukuki/kurulkararlari/kkararlari2009.htm

[114] ICTA, 2001 Annual Report, Tariffs.

Source: ICTA, 2009 Annual Report, 2008 Annual Report, 2007 Annual Report, 2006 Annual Report, 2005 Annual Report

Interconnection fees are an important component of cost structure of the competitors in telecommunication services. Hence, it could be useful to indicate the benchmarking of Turkey and EU average in order for reaching to a conclusion on whether the interconnection fees are reasonable or distorting competition in the market. The table below shows the interconnection fees in fixed line services in Turkey and EU at both. According to the table, the interconnection fees are even twice of the rates in EU Average.

Effective During	TTAŞ Network				EU Average		Exchange Rate
	In zone area (per min)		Out-zone area (per min)				
	Ykr	Eurocent	Ykr	Eurocent	Single Transit	Double Transit	
01.10.2004-31.12.2004	4,1	2,21	5,9	3,18	1,01	1,61	1,8557
01.01.2005-30.09.2005	3,4	1,86	5,1	2,78	0,94	1,39	1,8321
01.10.2005-01.03.2007	2	1,23	3,7	2,28	0,86	1,25	1,6232
01.03.2007-01.04.2008	1,89	1,01	3	1,6	0,87	1,18	1,8736
01.04.2008-01.05.2009	1,71	0,82	2,7	1,3	0,86	1,16	2,0473
01.05.2009-01.04.2010	1,71	0,81	2,7	1,28	0,79	1,09	2,1133

Table 5.8 Standard Interconnection Tariffs

Source: ICTA Annual Reports and EU Monitoring Reports.

Part 2 and Section 2 of the Electronic Communications Law numbered 5809, a legal framework is envisaged in the area of access and interconnection by laying down the essential regulatory topics in this regard, and the pertinent rights and obligations of the operators are set out generally. On the other hand, Ordinance on Access and Interconnection entered into force on 8th of September 2009in view of the transposition of the European Regulatory Framework into the legislation of our

country, the requirement of detailed regulation as regards the issues confronted in the context of implementation, the need to transpose the issues, that would enrich efficiency and competition, not prevailing in the Law by taking experiences into account.

- **Access Prices**

There are two types of access method in fixed line services in Turkey. An operator can have access through shared lines or local loop unbundling. If the operator does not have a contract with the incumbent, then it cannot access to fixed voice telephony. The conditions of shared lines and local loop unbundling (thereafter LLU) are determined in the lease agreements or the unbundling contracts. The operators in Turkey share the lines owned by Turk Telekom and they pay a rent for the access. The rent for the access is an important cost component of the alternative operators. The transmission can be through copper wires or fibre-optic wires. Local loop unbundling enables alternative operators to offer voice and broadband services (internet access, IPTV, data) utilizing the local loop (the part of the PSTN Network consisting of copper wires from the exchange offices to the customer premises) owned by Turk Telekom at the whole sale level.

	LLU	IP BSA	Re-Sale	TOTAL
Number of subscribers	14,836	6,197,157	42,191	6,254,184

Table 5.9 Number of Subscribers by Type of Access (end of December 2009).

Removal of the “Interconnection service fee” that is charged for all the provinces that operators are interconnecting with Turk Telekom, clarification of the amounts, terms and conditions of “letter of guarantee”, removal of uncertainties regarding the procedures and sanctions in case of breaking the payment obligations can be classified among the main updates within the new RIO providing developments for the operators having interconnection with Turk Telekom.

Another study that will allow the subscribers to switch their x DSL provider easily with the least possible cut-off period has been undertaken. The migration

process, which will cover both switching of broadband internet operators for subscribers and switching of broadband access models for operators, is expected to be finalized and approved in 2010.

Apart from the regulations mentioned above, one off connection fees and monthly rental charges were approved as 68 TL and 74 TL which are too high in comparison to EU.

- **Evolution in the Incumbent's Net Sales Revenue and The Profit**

Profit rates are an important indicator in measuring competition in telecommunications market. In competitive markets, profit rates should be at a reasonable rate which supports new investments. If the profit share does not correspond with the decrease in costs and/or increase in investment, there appears an uncompetitive structure which causes consumer dissatisfaction.

TL	Sales Revenue	Operating Profit Before Tax	Profit Rate (%)- Sales Revenue/O.Profit Before Tax	Total Operating Cost Before Tax	Profit Rate (%)- Cost/O.Profit Before Tax
2009	10,568.461	2,324,965	21,9	8,243,496	28,2
2008	10,194.947	2,136,144	20,9	8,718,428	24,5
2007	9,423.567	3,001,442	31,8	7,365,521	40,7
2006	7,534.206	2,208,323	29,3	6,252,952	35,3
2005	7,383.947	2,953,610	40,0	5,849,644	50,4

Table 5.10 Turk Telekom Sales revenue, Operating profit before Tax, profit rate, Total Operating Cost

Source: Turk Telekom Annual Report, KAP Reports.

Despite the fact that there was an economic crisis all over the world in 2009, -and in Turkey also-, Turk Telekom has not been affected by the crisis. In Turkey, there has been many firms shutting down and also many firms seriously been affected and profits decreased sharply. However, not only the profits but also the profit rates of Turk Telekom increased during the period.

The profit rate has a decreasing trend in years two years after privatization.

Despite the fact that total cost has been decreased only 0.05%, profit has increased 1% which means twenty times more than cost increase rate. We can arrive at a conclusion that the profit rate cannot be explained with the decrease in the total cost.The profits and the profits rate cannot be explained with the changes in the cost because the cost of service was increasing from 2005 to 2009.

The table 5.11 below indicates the profit rates of Incumbent operators comparing the profit rates of Turk Telekom with Germany and UK. As is stated before, Turkey has been adapting its telecommunication legislation with EU legislation due to its international obligations for a full-membership to EU. Hence, the countries which have a similar legislation can make a contrast between the profit shares of the incumbent operators and thus put forward whether the profit rates of Turk Telekom are reasonable or a significance of an unquestionable indicator of an uncompetitive market. Considering in this context, the first thing the table shows that there is an decreasing trend in the profit rates of the incumbent operators. However, if it's benchmarked, it is obvious that there is a huge difference between the profit rates of Turk Telekom and the two other operators, Deutsche Telekom and British Telekom. Comparing the rates of 2005, the profits of Turk Telekom is nearly half of its revenues, 40% while the rates are 12% and 15%, respectively in Germany and in UK. Eventhough the rates have a declining trend, the structure of proportion to the profit rates of Deutsche Telecom and British Telecom does not change. This fact has lasted up to today as is shown in the Table. This table also proves that the profit rates in Turkey are not reasonable and the profit rates of Turk Telekom are quite high comparing its similars in EU and hence the market in Turkey is quite uncompetitive in contrast to Germany and UK.

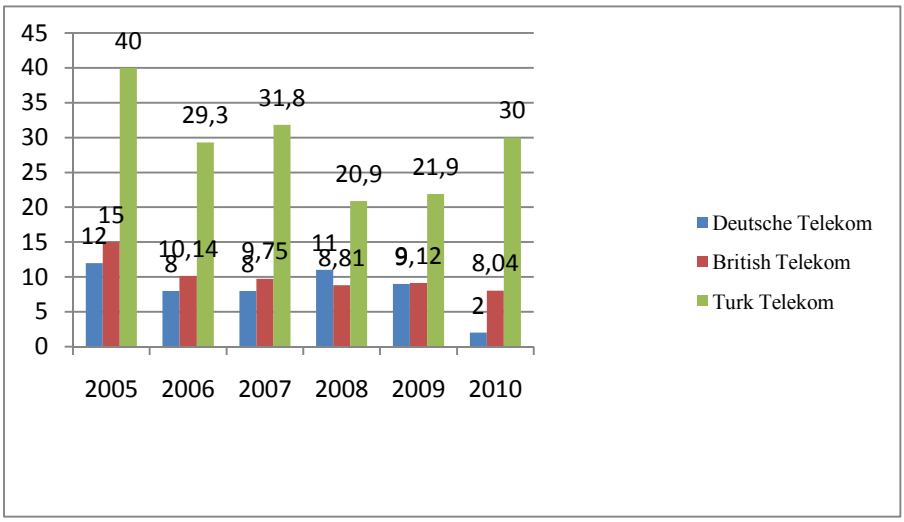

Table 5.11 Benchmarking of Profit Rates of Incumbent Operators in Germany, UK and Turkey

Source: Annual Reports 2005-2010 of Turk Telekom, British Telecom, Deutsche Telecom

5.1.2. Demand-Side Market Indicators

- **The number of Subscribers and Penetration rates**

Penetration rate is one of the market indicators which measure competition at the voice telephony market.

Table 5.12 The Number of Subscribers and Penetration Rates in 2009.

The table above shows us that there is a decreasing trend at both subscriber numbers and the penetration rates.While in 2003, the subscriber number in the fixed

The table above shows us that there is a decreasing trend at both subscriber numbers and the penetration rates.While in 2003, the subscriber number in the fixed voice telephony was 18.92, and the number of subscribers has decreased to 16.53. The penetration rates were also decreased from 26.7 to 23.1 from 2003 to 2009.

5.2. Competition in Internet Services

5.2.1. Supply-Side Market Indicators

- **The Market Share of the Incumbent**

The market share of the incumbent in the broadband services has not much changed in years. The majority of TTnet which is the subsidiary company of Turk Telekom has remained since the beginning of the liberalization process. In 2006, TTnet had 95,6% in broadband services while the alternative operators had only 3,2%. The increase in the alternative ISPs market share was a minimal increase that the market structure has not changed, TTnet had 85,3% of market share in broadband services in 2009, while the alternative ISPs have 6,3% share in the broadband market.

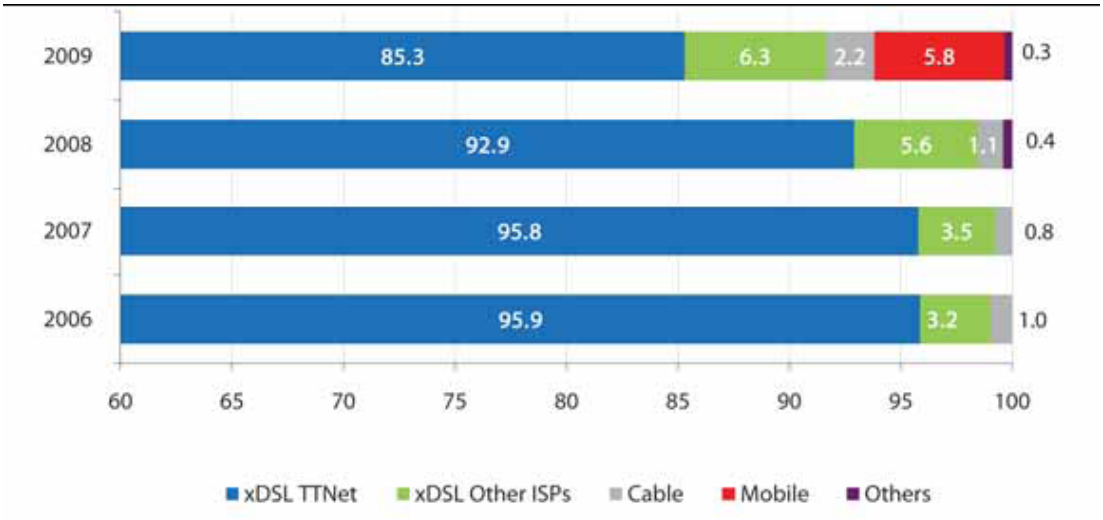

Table 5.13 Market Shares of Broadband Operators.

The breakdown of broadband technologies in Turkey and EU are compared in the table below. The share of DSL technology in Turkish broadband market is 97,3% whereas it has a share of 79,4% in EU. The share of cable modem technology in Turkey and EU are 15,3% and 2,3% respectively.

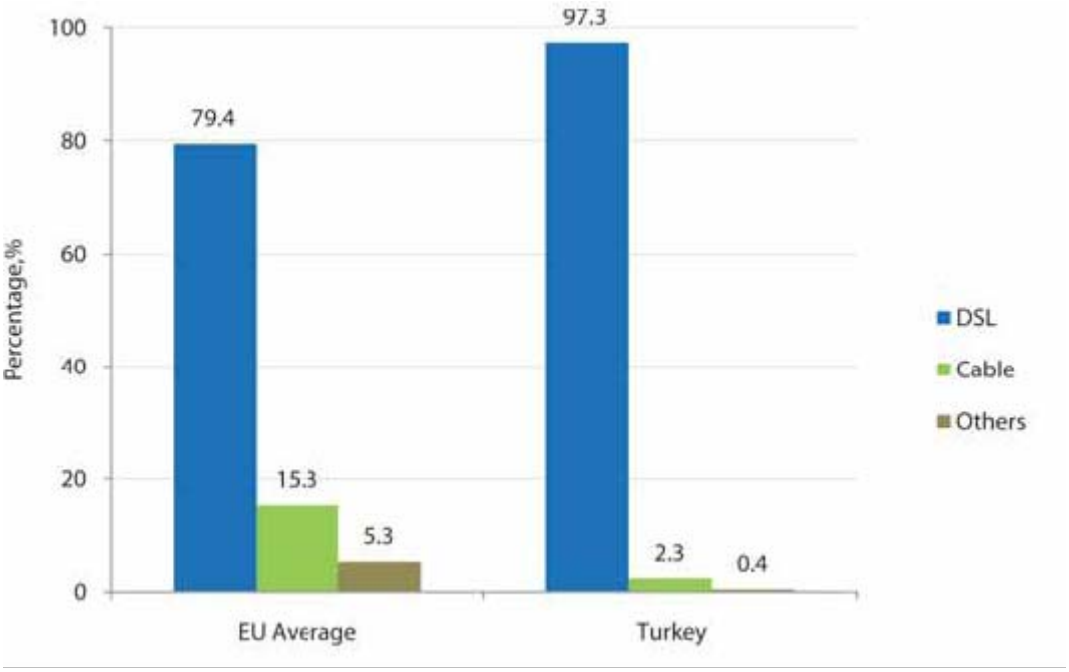

Table 5.14 Shares of Broadband Technologies in Turkey and EU

Source: January 2009 Data for EU, December 2009 Data for Turkey

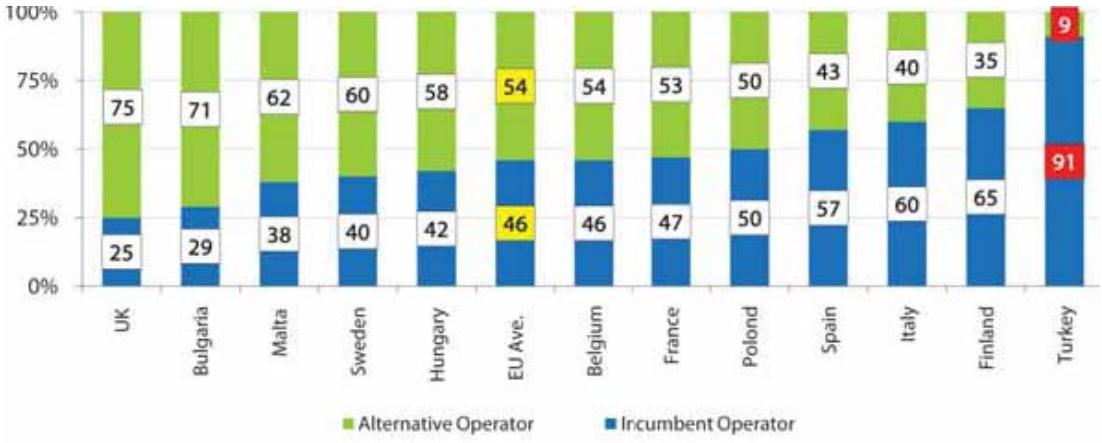

Table 5.15 Shares of Incumbents and Alternative Operators in Retail Broadband Services in Turkey and Some EU Countries

Source: EU 14. Progress Report, January 2009 Data for EU, December 2009 for Turkey.

The table above shows that the incumbent operator in Turkey has the highest market share in EU. UK has the lowest degrees with 25 % and indicated to have a full competitive market in broadband Technologies according to the ITU statistics. In

addition, the incumbent share in the broadband market in EU average is 46% TTnet has 91% share in the broadband market which is too high an deven more than two times of EU average. The rate refers to an absolute dominance in the market. It's seen that Turkey has a long way for a competitive broadband market.

5.2.2. Demand-Side Market Indicators

- **The Subscriber number and the Penetration Rate**

The subscriber number -differently from the fixed voice telephony services- increased from 2004 to 2009 with a decreasing level. The table below shows the evolution in the number of subscribers in different broadband technologies. ADSL technology has the majority in the demand of consumers. From 2004 to 2005, there has been a huge increase in the subscriber with 213% growth rate, and the increasing trend continued until today. In 2009, the number of subscribers reached to 6.782.785.

	2004	2005	2006	2007	2008	2009
ADSL	452.398	1.539.477	2.813.143	4.545.795	5.894.522	6.216.028
Cablo Internet	37.404	31.729	27.804	41.109	67.408	146.622
ISDN	14.005	14.298	14.535	15.297	17.096	16.570
Satellite	2.203	2.823	7.164	6.884	7.075	7.074
Total	508.014	1.590.332	2.864.652	4.609.085	5.986.101	6.782.657
Growth Rate		213%	80%	61%	30%	13%

Table 5.16 Number of Internet Subscribers

Source: ICTA 2009 Annual Report

By the end of 2009 number of internet subscribers in Turkey reached up to almost 6,8 million.

Turkey has the lowest penetration rates in broadband Technologies in EU with 9%. Denmark has the highest rates with 37,3 and EU average is 22,9% which indicates to more than two times of the Turkey penetration rates.

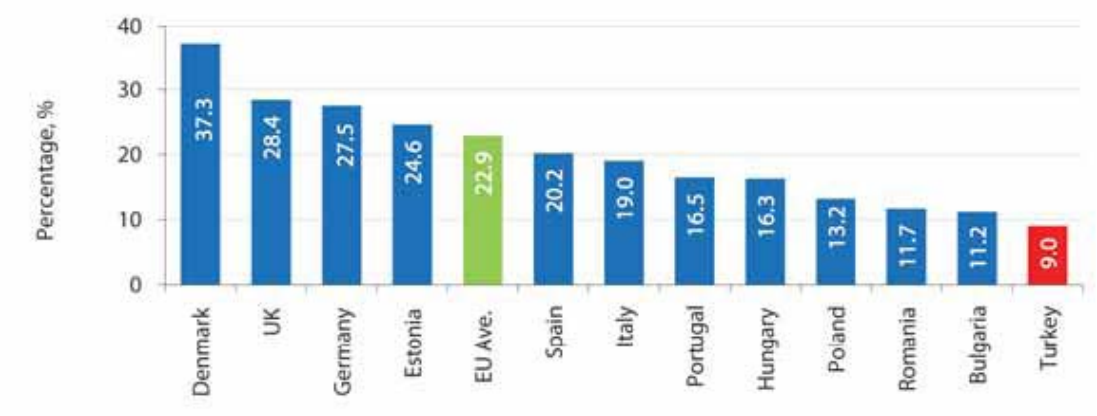

Table 5.17 Broadband Penetration Rates in Turkey and Some EU Countries
Source: EU 14. Progress Report July 2008 data for EU, December 2009 data for Turkey.

5.3 Anticompetitive Practices in the fixed line services

According to a study of UNCTAD on the effects of anticompetitive practices in developing countries, the statistics indicate that anticompetitive practices has worse effects on consumer benefit and decreases the consumer welfare.

The Case of Abuse of Dominance of Turk Telekom in internet access and services markets in 2002

As is referred in the second chapter of the thesis, abuse of dominance is illegal and prohibited under the Act on the Protection of Competition numbered 4054 in Turkey. In this respect, one of the anticompetitive conducts brought before the Competition Authority and was decided on in telecommunications market is relating to the abuse of dominance of Turk Telekom in the markets containing the required infrastructures for internet access service and in the internet access services markets. In the concrete case, the Competition Authority decided that Turk Telekom abused

its dominance in the markets containing infrastructures for broadband internet access service, for narrowband internet access service to local users, for broadband access service to local users and in the market containing royalties regarding long-distance data transfer and also decided that Turk Telekom would be penalized with administrative fine. However, the decision of the Competition Authority was annulled by the High Administrative Court upon the file suited by Turk Telekom A.Ş. in 2005 on account of the fact that in the final decision of the Competition Authority, one of the member of the investigation committee of the Authority had contributed to the meeting for the final decision and had also voted for the final decision. The High Administrative Court declared in its justified decision that the attendancy of the member of the investigation committee to the meeting and especially voting to the final decision of the Authority inhibits the principle of "objectiveness" of the Authority, prescribed by law.

In the concrete case, the Competition Authority ascertained that Turk Telekom abused its dominance arising from its monopoly situation in the infrastructure market through determining the tariffs of broadband internet services market which Turk Telekom serves under the name of TTnet for corporate users and the tariffs of narrowband internet services market over the national internet backbone which is owned by Turk Telekom for local users below the tariffs that Turk Telekom applies to competitors for infrastructure services in the same market (which is also one of the cost component for competitors). Besides these, Competition Authority also examined and ascertained that Turk Telekom also abused its dominace in the market containing royalties regarding long-distance data transfer by way of marking the tariffs of the royalties received by satellite earth station service providers up between the rates of 2,4 to 63 times and in this way obstructing the competitors' activities in the market where there is no existence of monopoly right of Turk Telekom and also by way of refusing the demand of leased-lines above a certain level of capacity of the other re-sellers or corporate users while it uses itself and determining high tariffs for low capacities which are leased by it and hereby deteroriating the competition conditions in the satellite earth station market in its favor and to the detriment of the satellite earth station service providers and in this way limiting internet service providers ability to provide outzone services. For the anticompetitive conducts in every three markets mentioned above, in compliance

with the article 16 of the Act numbered 4054, the Competition Authority decided that Turk Telekom would be penalized with 1.136.376, 80 TL which was calculated over the net sales of the year 2000, which is the date of the anticompetitive conduct was determined to be appeared at the rate of five per ten thousand.

However, this decision was appealled by Turk Telekom A.Ş. before the High Administrative Court and the Court cancelled the decision of the Competition Authority on the account of the fact that Competition Authority had not asked for the opinion of ICTA. In its justified decision, the Court underlined the amended article 7 of the Law numbered 2813 which states that; "*The Competition Authority shall initially take into consideration the Authority's opinion in investigations and scrutinies it shall carry out within the telecommunications sector and before taking any decision in relation to the telecommunications sector including decisions about mergers and acquisitions "*. The Court considered that it was a statutory obligation for Competition Authority to take Authority's opinion in investigations and scrunities within the telecommunications sector and before taking any decision in relation to the telecommunications sector and to this respect, the Competition Authority had decided without taking the opinion of ICTA despite of the fact that the investigation was relating to telecommunications sector. Therefore, the Court ruled the Competition Authority's decision to be cancelled.

The Case of Price Squeeze and Predatory Pricing Practice of Turk Telekom in the broadband internet markets in 2007

According to the Decision of the Turkish Competition Board dated 07.05.2007[115], in accordance with the Report of the reporters on the investigation executed on Turk Telekomunikasyon A.Ş. and the TTNET A.Ş. and the Additional Opinion and obtained proves, written defences, explanations at the oral defence meeting and investigated case, the Authority decided on the following orders;

1. *" The economic integration composed of Turk Telekomunikasyon A.Ş. and TTNET A.Ş. has absolute dominance in the wholesale broadband internet access services and retail broadband internet access services markets,*

[115] Turkish Competition Authority, Decision Number: 07-38/411-M.

2. *The economic integration composed of Turk Telekomunikasyon A.Ş. and TTNET A.Ş. has abused its dominant position through price squeeze in the wholesale broadband internet access services and retail broadband internet services markets, so in this way, it has violated the provision 6 of the Act on the Protection of Competition numbered 4054,*
3. *The economic integration composed of Turk Telekomunikasyon A.Ş. and TTNET A.Ş shall avoid from the practises which may lead up to price squeeze, within the frame of the principles determined in the assessment section of the decision,*
4. *It is decided by majority of votes that Turk Telekomunikasyon A.Ş. and TTNET A.Ş. shall be fined conjointly in accordance with the provision 16 of the Act on the Protection of Competition numbered 4054 with an administrative fine on the rate of % (...) over their total sales which amounts 12.394.781, 16 YTL, because of the contrary to the article 6 of the same Act."*

Upon the decision of the Competition Authority, the defendant parties at both, Turk Telekom and TTnet claimed for the issue of the stay order to the The High Administrative Court. The High Administrative Court ordered non-suit of their claims stating that there was no contrariety to laws in the Authority's decision on imposing administrative fine in 25.12.2009. Thereupon, the defendant parties at both again appealed the decision before the Plenary Session of the Chambers for Administrative Cases of High Administrative Court. The Plenary Session of the Chambers for Administrative Cases of High Administrative Court refused their oppositions against the decision of non-suit by the Court. Upon the final decision of the Plenary Session which is the appeals authority for the suits of which the High Administrative Court is competent to judge as first instance courts, the Competition Authority's decision on this case was finalized and hence Turk Telekom A.Ş. and TTnet were fined conjointly with an administrative fine of 12.394.781, 16 TL.

The Case of Cross-Subsidization Practise of Turk Telekom in local call services market in 2006

In 2007, Turk Telekom due to its authorization regarding tariffs announced the new tariffs, enforceable as of 01.03.2007 to the public. According to the

recognization of the new tariffs, it was announced that the tariffs of fixed fee and local call services would be increased due to the increase in inflation and the tariffs of LDTS services and mobile services would be decreased. After the approval of the tariffs by the Telecommunication Board, TELKODER[116] brought a lawsuit against Telecommunication Authority. The case was resulted with some ignorable adjustifications in the tariffs.

The related laws and regulations regarding this Case could be explained in briefly as follows;

In order to provide a service in Long Distance Telephony Services market, the LDTS operators has to use some services provided by the Turk Telekom. As is Turk Telekom which has the ownership right on the landline also has the dominant position in the sector, is authorized to provide;

1) Access
2) Interconnection
3) Service to rent to the local loop.

Pursuant to the Telegram and Telephone Act/ article 4;

"a) Promotion of practices which shall provide access by every person to telecommunication services and infrastructure at affordable prices."

The purpose of this act is to enforce the Authority to make regulations which creates incentive to access the telecommunication services. Additionaly, the provision of the service has to maintain and protect the free competition environment and its reflected in law as;

"ı) Attaining and maintaining a competitive environment in authorising….generally in all telecommunication fields, provided that the provisions of Law No. 4054 dated7.12.1994 on the Protection of Competition are reserved and without prejudice to Türk Telekom's monopoly rights as set out herein."

[116] TELKODER is the association of free operators providing telecommunication services

In this frame, Turk Telekom`s obligation to provide interconnection and other services are distinguished in law as;

"Turk Telekom is under the obligation and duty to provide interconnection in all circumstances…

Interconnection providers are required to satisfy the interconnection requests…based on the principles of equality, non-disrimination, transparency, cost-orientation, reasonable profit and under the same conditions and quality as interconnection providers or their shareholders and under the same conditions and quality as interconnection providers or their shareholders, affiliates or partnerships provide for their own services."

It may be concluded that on the one hand, LDTS providers are the providers of the overseas and the internal telephony services, on the other hand they are the buyers of the service through interconnection, access and renting the local loops provided by Turk Telekom.

The major problems highlighted in the Case were as follows;

- While Turk Telekom increased the tariffs of the local call services which have not been open up to competition yet, it went to a reduction in the tariffs of the Long Distance Telephony Services.

Turk Telekom Tariffs subject to the case as of 01.03.2007 were as follows;

	Standart Hatt			Hesapli Hatt	
	Before[117]	After	Change	Before	After
Internal Calls	14,83	6,86	-53,71%	23,31	10,00
International Calls	20,68	8,98	-56,56%	32,46	13,56
Local Calls	5,42	5,75	6,00%	8,47	8,98
GSM	33,64	28,56	-15, 11%	63,73	33,81
Fixed Cost	8,64	10,64	23,04%	5,42	6,69

Table 5.18 Turk Telekom tariff rates for Standard Hatt and Hesapli Hatt
The terms are in TL[118].

	Konuskan Hatt			Sirket Hatt	
	Before	After	Change	Before	After
Internal Calls	13,56	6,69	-50,63%	12,37	6,69
International Calls	18,98	8,31	-56,25%	17,20	6,86
Local Calls	5,00	5,30	6,00%	4,49	4,76
GSM	25,42	24,92	-2,00%	23,05	21,56
Fixed Cost	8,64	10,64	23,04%	5,42	6,69

Table 5.19 Turk Telekom tariff rates for Konuskan Hatt and Sirket Hatt

[117] Before the tariff applied.
[118] Turkish Liras

Decomposition of Turk Telekom`s number of calls;

	The Number of calls as of 2006	**The share in the Total Amount**
Local Calls	38	50%
Domestic Calls	14	17%
International Calls	3	4%
Mobile Calls	22	29%
Total	77	100%

Table 5.20 Allocation of call volume in fixed line services.

The components of the Turk Telekom`s annual revenue is as follows;

	2006 Revenue/ US $	**The Share in the Total Revenue**
Internal	505.000.000	13%
International	127.000.000	3%
Local Calls	1.436.000.000	36%
Call to GSM	830.000.000	21%
Total	2. 898.000.000	73%
Fixed Cost	1.120.000.000	27%

Table 5.21 The components of the Turk Telekom's Annual Revenue as of 2006.

These tables indicate that Turk Telekom`s revenue`s 63% of share consists of the local calls and fixed cost. And Turk Telekom`s main source of the revenue is the revenue provided by the local call services. While it increased the tariffs of the local calls in which it has monopoly position-in other words, there is no competition; it decreased the tariffs of the Long Distance Calls in which there is competition.

One another thing the tariff brought about is the increase in the tariffs of the fixed cost. But it's important to figure out that while Turk Telekom increased the tariffs of the fixed fees of the subscribers which are using the service of HesapliHatt

and Yazlik Hatt in which there is no competition much more than the increase in the tariff rates of service of SirketHatt in which there are competitors.

- Turk Telekom also changed the duration of the tariffs.
- As a last sentence in the new tariffs, it was added that;

"*The subscribers of the HesapliHatt and Yazlik Hatt can not switch off to another operator"*. This is a binding rule for the consumers and it is evidence for an incumbent putting restriction on consumer preference in practise.

- Turk Telekom exempted the subscribers providing service through Hesapli Hatt and Konuskan Hatt in which Turk Telekom is the only operator to benefit the competition in the market.

The told new changes that brought about by that tariff were as much as important as the increase in the call fees. These restrictions caused two things together:

1) It caused invisible increases in the tariffs which lead to higher prices in the harm of users,

2) It restricted the consumer choice.

In this case, while being Turk Telekom with abusing its dominant position increased the local call tariffs, it decreased the prices of the long distance calls with a sharp decline of 55% in which there are competitors, as well. It is not only an anti-competitive practise which is subject to the Competition Law, its also against the means of evidence denoted by the State of Council, which says; *" one service cost shall not be covered by another service revenues"* [119] *(Cross-subsidization).*

With the Tariff adopted as of 01.03.07, it resulted as a sharp decrease in the number of the entry into the market and the exit of the firms that are actively operating in the market.

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[119] The decision of Chamber 13 of the High Administrative Court of Republic of Turkey, Date of Decree: 2007/1056, Docket No: 2007/1056, Decree Number: 2009/7041

The number of the companies willing to provide service in Long Distance Telephony Services sharply declined.While there were 43 operators that were granted by telecommunication licences, in 2005 and in 2006, just only one operator was granted by licence to provide LDTS. And also, 12 operators exited the market. This means while the entry into market has declined, the exit of market has decreased the number of operators existing in the market, as well.

On the other hand, Information and Communication Technologies Authority which is authorized to provide a competitive environment, which means it has a legal responsibility on new tariffs by its own nature being as the administrative and regulatory role on the sector. Pursuant to the related ordinance, it has to approve the tariffs which are offered by Turk Telekom and the operators which having significant market power.

The role of confidence to the regulators and the rule-makers is one of the major determinants for new investor to take the decision to enter into the market or not. The tariff case discussed above has caused the Information and Communication Technologies Authority to lose confidence and the incentive to enter the market has lowered.

CHAPTER VI

6. CONCLUSION AND POLICY RECOMMENDATION

Major structural and administrative changes in line with liberalization process in Turkish telecommunications sector has begun as of January, 2000 with amendment in Law 406 with the Law 4502. There have been many changes in regulations on telecommunications sector in Turkey since 2000. The major changes can be summarized as; i) a sectoral regulatory body (ICTA) which regulate and monitor the markets in telecommunications sector in Turkey was established; Turkey has adopted a series of laws and regulations in conformity with EU Directives on telecommunications and sector regulations since the establishment of Information and Communication Technologies Authority (ICTA) in 2000; the responsibility of regulating the telecommunications sector was transferred to ICTA from the Ministry of Transportation and Communications, thus broadening the role of the Information and Communication Technologies Authority in the sector; the mandate to take the necessary measures to ensure national security, public order and public service was transferred to the Authority from the Ministry one year after the establishment of the Information and Communication Technologies Authority and the privatization process of Turk Telekom were ended up in 2005.

Even though there have been many attempts to liberalize market, they were insignificant and ineffective in qualitative manner. ICTA announced that the fixed line markets were opened up to competition in 2004. However, the reality was so much different than how the society was informed. The authorizations in local telephony services market which has a major market share in fixed voice telephony market were started in 2009, five years after the expiration date of monopoly privilege. This fact indicates that there were *de facto* entry barriers which prevented competition in fixed line markets for nine years since 2000.

After the privatization in 2005, Turk Telekom had operated with 25% profit rate in average and the profit rate a year after the privatization in 2006 was 40% which is at least five times of the profit rate of an incumbent provider in a country in EU. In addition, high profit rates in Turkey did not correspond with neither the

increase in the costs of telecommunication services nor the rates of investment but only with the illicit earnings generating the monopoly pricing. This fact did not only caused the consumer welfare to decrease but also the alternative operators could not compete with Turk Telekom and hereby, the number of operators in domestic and international voice telephony services markets declined significantly from 2004 to 2009. The majority of Turk Telekom remained at both domestic and international voice telephony services markets with its market share at the lowest of 89% in years after privatization. Turk Telekom is the incumbent telecommunication services provider which operated with the highest market share in all EU countries. In EU average, the incumbent providers' market share is 45% while in Turkey it is %89. (Based on some other markets, Turk Telekom has more than 90% market share, i.e. in call origination market, it has 90% market share, in total call volumes the share of Turk Telekom is over 90%).

One another failure in creating competition in fixed line markets is the partially opening up the fixed line voice telephony market into competition. This fact affected the consumer choice and consumer welfare. Numbering portability and switching to another operator was lately started in fixed line services. Additionally, because Turk Telekom was the only operator providing service in any kinds of fixed call market, consumers did not have alternative providers in local telephony services to switch to and they could only take local telephony services from Turk Telekom while they complained about the prices. In addition statistics show that a low number of consumers switched to another operator after the regulation on number portability. This fact indicates that consumers did not want to take the different services from different providers but wanted to provide a service only from one operator in other words, the fixed call market is a unique market itself. Unless you provide all types of call service by only one operator, consumers shall not want to switch to another operator. In this respect, partially opening up the fixed line voice telephony market into competition supported Turk Telekom not only to hold the monopoly power in local telephony services market, but also to hold the monopoly power in other segments of the markets.

Access and interconnection conditions and the tariffs in the market play an important role in maintaining a sustainable and effective competitive fixed line

market. As is stated in the first chapter, Essential Facilities Doctrine theory explains that the incumbent provider owning the infrastructures must necessarily give access to the operators to maintain competition and to sustain it at the market. In Turkey, for many years since 2000, the tariffs for access and interconnection have been high. Access was only being provided through contracts on share lining between the incumbent and the alternative operators for many years. The local loop unbundling was lately introduced in 2009. An alternative operator could provide service through a line sharing contract in which the conditions were determined between the two parties. The determined rent is a cost component of the alternative operators. Not only they pay a rental rate, but also they pay an interconnection charge in order to have connection with another operator. Despite the fact that there is no legal barrier on access or interconnection, the problem appears when the rental rates or the payment for bundling is high for the operators willing to provide service or already serving in the market. The tariffs determined caused restrictions on entry and forced the existing operators to exit the market. In this respect, it could be concluded that ICTA which has a key role in maintaining fair and competitive prices which does not restrict or distort the competition in the fixed line services failed to perform its duties and obligations on monitoring access and interconnection tariffs.

In internet services, the fact was not much different than in voice telephony market in Turkey. Turkey had the lowest penetration rates in EU. While the penetration rate in EU average was 22.9% in broadband internet services market, Turkey had a penetration rate of 9%. Turk Telekom's subsidiary company, named TTnet had an absolute dominance in the broadband internet services market with 91%, with the highest level in EU. The market share did not change during the liberalization process.

One of the things to criticize is the failure in implementing the law. Every law is a commitment to the society. The role of the government and the judicial system is to watch whether the laws are implemented in the sector. As is stated in the chapter five, many claims against Turk Telekom and its subsidiary company, TTnet were brought before the Competition Board. However, less of them were ended up with a decision of "violation". The noteworthy thing to point is that the violation decisions of the Competition Board which are few in numerical terms was many times

cancelled on the procedural grounds by the High Administrative Court or the Plenary Session of the Chambers for Administrative Cases even though, it was determined by the Competition Board that Turk Telekom and/or TTnet had violated the Competition Law in material respect. In this regard, this fact also points to a major failure in the judicial system. That is the ignorance by the High Administrative Court and the Plenary Session of the Chambers for Administrative Cases of the destructive effect of their decisions regarding infrastructure sectors in an economy.

The thesis aims to show that competition in fixed line services market in telecommunication sector was not achieved and was very slow in introducing competition to this market as of 2010 in Turkey. Seven years after the expiration of monopoly privilege, the majority of Turk Telekom in all fields of activity is thought provoking. The thesis indicates that cross subsidization cases and other kinds of anti competitive practices of Turk Telekom were not prevented by the responsible authorities which are ICTA and the Competition Authority and the failure in performance of these authorities led to distortion and lose in consumer welfare in the fixed line market.

Another important issue is the State Aids which is a part of competition policy. The EU has Recommendations on State Aids. But Turkey has not adopted any legislation regarding this issue because the competition file in the accession negotiations has not yet been negotiated. In this respect, government must accelerate the process for competition file to be negotiated and the competition rules and legislations to be totally adopted in Turkish legislation system. Until the completion of the adaptation period, government can subsidy the new entrants through fiscal policies, such as;

In the importation of the telecommunication equipment needed to provide service;

i) Customs duty can be decreased for the new entrants or the operators already existing in the market.

ii) VAT rates in import can be lowered.

iii) The Resource Utilization Support Fund can be removed for alternative operators existing and willing to enter the fixed line market.

Another thing is that public institutions constitute the biggest share in the demand of telecommunication services. Schools, hospitals, public institutions provide telecommunication services. In this regard, government can give commitment to provide service from one or more alternative operators by a tender.

Despite the fact that Turkey is committed to the WTO and EU Action Plan, the market has not yet been even liberalized and is not competitive. Therefore, Turkish Information and Communication Technologies Authority must maintain the competition in all types of services in fixed voice telephony and internet services market as immediate as possible. In order to realize that, ICTA has to be transparent while making its decisions and treat as an independent authority which embraces competition and consumer benefit as a priority in its decisions and at the center of its policies.

The cooperation of ICTA and Turkish Competition Authority must be developed for the creation of a competitive market. In addition, there has to be the involvement of the associations relating Consumer Rights.

Turkish society has not assimilated a competition culture in the market yet, in this context the Competition Authority and ICTA assume to a lead role in awareness creation on the needs of competition creating in the market.

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