

Legal Assessment

IPS COMMUNICATION FOUNDATION/BIANET AND
REPORTERS WITHOUT BORDERS

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LEGAL ASSESSMENT – MEDIA OWNERSHIP MONITOR TURKEY

I.1. Legal framework

- Which laws are supposed to **prevent media concentration and monopolies**? On what hierarchy level of law (e.g. constitution, civil code, special laws or decrees; national/regional) is media concentration being addressed?

Media concentration is regulated under Law on Establishment of Radio and Television Enterprises and their Media Services, for audio-visual media. Furthermore, Competition Authority is entitled to take action against distortion of competition according to Law on the Protection of Competition.

- What **types of media** are included in or excluded from the regulation? Is there regulation for **digital media**?

Audio-visual media is included under Law on Establishment of Radio and Television Enterprises and their Media Services, and Competition Authority is entitled to take action against distortion of competition in any sector. There is no specific regulation on digital media.

- If no – or not sufficient – legislation exists: is there **legislation in the making**? What is the status quo of the political process?

Not that I am aware of.

- Please, describe how the **law defines media concentration** (e.g. cross-ownership; audience share, circulation, turnover/revenue, the share capital or voting rights). Are **family members** included in the conflict of interest rules? How is their affiliation considered in the definition of ownership?

Private media service providers must comply with provisions stated on Law on Establishment of Radio and Television Enterprises and their Media Services regarding their company structures and share percentages. According to Article 19, *'a broadcast license may be granted to joint stock companies established in accordance with the provisions of the Turkish Commercial Code for the purpose of exclusively providing radio, television and on demand broadcast service. The same company can only provide one radio, one television and one on demand broadcast service. Media service providers cannot insert any provisions against the principles in this article into their articles of association after the broadcast license has been granted, either. Changes in the articles of association shall be notified to the Supreme Council within one month.'* Furthermore, *'a broadcast license cannot be granted to political parties, labor unions, professional organizations, cooperatives, associations, societies, foundations, local administrations, any companies which are established by them and of which they are direct or indirect shareholders and capital market institutions and real persons and legal entities who are direct or indirect shareholders of these institutions. These companies cannot be direct or indirect shareholders of media service providers.'* Additionally, *'one real person or legal entity can directly or indirectly hold shares in a maximum of four media service*

providers. However, the annual total commercial communication income of media service providers in which a real person or legal entity is a direct or indirect shareholder cannot exceed thirty per cent of the total commercial communication income of the sector in case of holding shares in more than one media service provider. A real person or legal entity whose total commercial communication income exceeds this rate shall assign its shares in the media service providers in such a way that it will be reduced to the said rate within a ninety-day period given by the Supreme Council.' Family members also included in the Article as follows: *'for real persons, shares of spouses and blood and in-law relatives up to and including the third degree are also considered as held by the same person.'*

- Does legislation take into account **vertical integration** (i.e. control by a single person, company or group of some of the key elements of the value chain, i.e. production, aggregation, distribution and related industries such as advertisement or telecommunications)? How?

No.

- Have there been **changes in the legislation** on media concentration issues over the past 5 years? Have there been **any major new market entrants or mergers& acquisitions (M&As)**? How have these cases been handled? Have there been any important **conflicts**?

Law on Establishment of Radio and Television Enterprises and their Media Services has published and entered into force in 2011.

Saving Deposit Insurance Fund (SDIF) confiscated Çukurova Media Group's companies due to its debt to the state of 455 million USD. According to Taraf newspaper, the largest of the confiscated companies Show TV was priced at 402 million USD to Ciner Holding and SDIF has received at least 87 million USD from this transaction. However Istanbul 4th Administrative Court has cancelled such transaction due to its misfeasance by reason of not compensating public claims but covering commercial receivables.

- Is media concentration currently on the **agenda** on legislators and policy makers? What are the **blind spots** on media concentration legislation?

According to Law on Establishment of Radio and Television Enterprises and their Media Services, a real or legal person can be a partner directly or indirectly to maximum four media service providers; but annual total commercial communication revenue of those media service providers in which a real or legal person has direct or indirect shares, shall not exceed thirty percent of the total commercial communication revenue of the sector. However, since neither the media service providers nor the authorities declare the total commercial communication revenue of the sector stating such information as 'trade secret', and Supreme Council's decisions on concentration of media service providers are not public; monitoring whether media service providers notified Supreme Council for a share transfer or not is not possible to determine. Furthermore, there are no specific prohibitory regulation for press media and online media for ownership restrictions.

- Is there specific legislation on **foreign investment/ownership** within the media business?

Yes, according to Article 19 of Law on Establishment of Radio and Television Enterprises and their Media Services, *'the proportion of total direct foreign capital in a media service provider cannot*

exceed fifty per cent of the paid-in capital. A foreign real person or legal entity can directly hold shares in at most two media service providers. If foreign real persons or legal entities hold shares in companies that are shareholders of media service providers and become indirect shareholders of the broadcasters, the chairman, the vice chairman and the majority of the board of directors and the general manager of such broadcasters shall be Turkish citizens, and the majority of the voting rights in the general assemblies of such broadcasters shall belong to real persons or legal entities having Turkish citizenship.'

I.2. Implementation – control and monitoring of media concentration

- Is there an institutional **system to address media concentration in place**? What **sectors** – e.g. press, broadcasting or new media – are included? What are the **responsible bodies** governing media concentration? What are the **tasks, duties and responsibilities** of the authority/ies defined in detail in the law (e.g. grant licenses, compliance monitoring, sanctioning, other)?

Radio and Television Supreme Council is the authority for the regulation and supervision of radio, television and on demand media services which are under the jurisdiction of Republic of Turkey. Radio and Television Supreme Council; monitors and supervises the broadcasts of media service providers; makes and deploys the television channel and radio frequency planning in the framework of frequency bands for the terrestrial radio and television broadcasts; determines the required administrative, financial and technical standards for a broadcast license; grants broadcast licenses to those of such companies which fulfill the required qualifications; supervises them and revokes the broadcast licenses when required; and performs other functions and use its powers determined by the Broadcasting Law numbered 6112.

Competition Authority is the authority for the prohibition of cartels and other restrictions on competition, prevention of abuse of dominant position by an entity, which has dominance in a certain market and prevention of the creation of new monopolies by monitoring some merger and acquisition transactions. Competition Authority was established as per Article 20 of the Law numbered 4054, in order to ensure the formation and development of markets for goods and services in a free and sound competitive environment, to observe the implementation of the Law, and to fulfill the duties assigned to it by the Law.

- If there are **more than one authority assigned** (e.g. media authority, competition authority, etc.): how is the differentiation of competencies of the diverse authorities defined? Does it work or are there overlaps or blind spots?

Radio and Television Supreme Council solely regulates and supervises radio, television and on demand media services whilst Competition Authority in principle monitors all markets. For private media service providers there may seem an overlap, however, whilst Competition Authority has the authority to impose administrative fines, Radio and Television Supreme Council has the authority of giving penalties to the private media service providers, which may range from warning to the suspension of license.

- Are there any explicit constitutional or other **legal guarantees of independence** of the authorities (media, competition, telecommunication...) from political and/or commercial interference?

According to Law on Establishment of Radio and Television Enterprises and their Media Services Article 34, *'The Radio and Television Supreme Council is established as an administratively and financially autonomous, impartial public legal entity in order to regulate and supervise the radio and*

television and on demand media services. The Supreme Council shall independently perform and exercise the tasks and powers given to it in this Law and the legislation under its own responsibility.'

According to Law on Protection of Competition Article 20, 'The Competition Authority having a public legal personality, and an administrative and financial autonomy is established in order to ensure the formation and development of markets for goods and services in a free and sound competitive environment, to observe the implementation of this Law, and to fulfill the duties assigned to it by the Law. The Authority is independent in fulfilling its duties. No organ, authority and person may give commands and orders to influence the final decision of the Authority.'

- How are the **appointment procedures** for the authorities defined (e.g. transparent, democratic and objective and designed to minimize the risk of political or commercial interference, for instance by including rules on incompatibility and eligibility)? Are they **respected** in practice?

Radio and Television Supreme Council consists of nine members elected by the Turkish Grand National Assembly for six years. According to Article 35 of Law on Establishment of Radio and Television Enterprises and their Media Services, *'For election, nominees twice as many as the number of members to be determined in proportion to the number of members of political party groups shall be nominated, and members of the Supreme Council shall be elected by the Turkish Grand National Assembly from among these nominees based on the number of members for each political party group.'* Therefore, the number of nominees proposed by each political party who has chair in the Parliament is dependent on the number of their members.

The Competition Board is the decision making body of the Competition Authority and is composed of 7 members, one being the Chairman and the other being the Deputy Chairman. The Council of Ministers appoints the members from among the two candidates apiece, to be nominated from inside or outside the following institutions for each vacant membership: three members from the Ministry, one member from the Ministry of Development, one member from Turkish Union of Chambers and Commodity Exchanges, and one member from among the two candidates apiece, to be nominated from inside the Supreme Court of Appeals and Council of State. One of the members to be recruited from the quota of the Ministry of Customs and Trade is appointed from among the personnel of the Authority. Therefore, even though the Law states that the Authority is independent, the Council of Ministers' right to appoint the members of the Authority raises concerns about potential political influence in the operations of the Authority.

- Is the **budget adequate** and consistent for the authority to safeguard its independence and/or protect it from coercive budgetary pressures and to perform its functions?

The Radio and Television Supreme Council has its own budget in accordance with Article 41 of the Law and revenues of the Supreme Council are as follows:

'a) broadcasting licence fees to be collected from media service provider enterprises,

b) television channel, multiplex capacity and radio frequency annual usage fees to be collected from public and private media service provider enterprises broadcasting via the terrestrial environment,

c) provided that the provisions of the Electronic Communication Law No. 5809 and of the applicable legislation remain reserved, broadcast transmission authorisation fees to be collected from platform, multiplex and infrastructure operators as well as transmitter facility and operation company engaged in the transmission of broadcasts.

c) a three per cent share of monthly gross commercial communication revenues of media service providers excluding programme sponsorship revenues,

d) when needed, Treasury aid to be obtained from the budget of the Presidency of the Turkish Grand National Assembly,

e) other revenues.'

- What **sanctioning power** do the authorities have to accomplish its role (e.g. power to refuse license requests and to divest existing media operations where plurality is threatened or where unacceptable levels of ownership concentration are reached)? Are there **effective appeal mechanisms**?

The duties and powers of the Supreme Council are stated in the Article 37 of Law on Establishment of Radio and Television Enterprises and their Media Services. According to the Article, among its other duties and powers, the Supreme Council has the power of '*determining the required administrative, financial and technical standards for enabling media service providers to request a broadcast license; and granting broadcast license to those of such companies that fulfill these requirements, inspecting and when required cancelling such broadcasting licenses*'. Furthermore, the Supreme Council has power of '*imposing the relevant sanctions in case of finding non-compliance with the Law and other relevant legislation in the broadcasts of and in case of finding non-compliance with the broadcasting license requirements of media service providers and in the services provided by platform, multiplex, infrastructure operators and the transmitter building and operating company*'. Accordingly with its duties and powers stated in the Law, the Supreme Council has power (i) to impose an administrative penalties in proportion to advertising revenue for, (ii) to cease broadcast of programmes, (iii) to stop the media service provider's broadcast up to ten days, and (iv) to cancel broadcasting license.

Decisions of administrative sanctions imposed in accordance with the provisions the Law can be referred to the judiciary pursuant to the Administrative Trial Procedure Law within fifteen days from the notification of the action. However, a cancellation lawsuit has been initiated before administrative courts shall not stop the execution of the decision.

- Please describe the **method** and the criteria for assessing the level of **media concentration**. (e.g. thresholds based on objective criteria, such as audience share, circulation, turnover/revenue, distribution of share capital or voting rights; taking into account both **horizontal integration** (mergers within the same branch of activity) and **vertical integration** (control by a single person, company or group of key elements of the production and distribution processes, and related activities such as advertising).

According to Law on Establishment of Radio and Television Enterprises and their Media Services Article 19/1-d, '*a real or legal person can be a partner directly or indirectly to maximum four media service providers holding terrestrial broadcasting licenses. However, in case of partnership to more than one media service provider, annual total commercial communication revenue of those media service providers in which a real or legal person has direct or indirect shares, shall not exceed **thirty percent** of the total commercial communication revenue of the sector.*'

- Is the authority **accountable to the public** for its activities, (e.g. is it required to publish regular or ad hoc reports relevant to their work or the exercise of their missions)?

It is not required to publish reports nor it is accountable to the public by any other means according to the law.

- Can the Government arbitrarily overrule the decision of the authority? In what cases? Are there cases of **illegal state interference**?

The government cannot overrule the decisions of the authorities in principle and on paper. However since both authorities are not substantially independent there may be cases of state interference.

- Have there been **cases of merger and acquisitions** over the past five years? How proactive and how detailed has the authority **implemented the regulation** on media ownership? Have there been cases in which **regulators refused license requests, mergers** or forced divestment of existing media operations in order to avoid excessive concentrations of media ownership? What are the main **challenges** for the authority on the implementation?

According to TESEV Report 'Caught in the Wheels of Power', in 2012, in order to comply with this new requirement under the then-new regulation Law on Establishment of Radio and Television Enterprises and their Media Services, the biggest media group (Dogan Group) sold its second biggest television channel Star TV to Dogus Group. The same year, the second biggest media group in Turkey, Çalık Group put its biggest television channel (ATV) and biggest newspaper (Sabah) on sale. In addition to other foreign investors, the owner of News Corp. Rupert Murdoch showed an interest in bidding for these companies and shortly after met with Prime Minister Recep Tayyip Erdoğan in March 2012. In the case of acquisition of ATV-Sabah by Murdoch, he would become the biggest or the second biggest group in the Turkish broadcasting sector because he already owns another TV channel (Fox TV) (Kurban and Sozeri, 2012). On the other hand, considering that the ATV-Sabah is run by the Prime Minister's son-in-law, the meeting between Murdoch and Erdoğan reinforced the growing perception that investors who wish to invest in the Turkish broadcasting media need to contact the government directly (Sozeri and Guney 2011).

Supreme Council's decisions on concentration of media service providers are not public; therefore monitoring whether media service providers notified Supreme Council for a share transfer or not is not possible to determine.

- Does decisional practice of the authorities indicate that they **use their powers** in practice in **the interest of the public**? Have there been cases of the **abuse** of regulatory power? What, when? Are the authorities considered a political or technical body?

Since it is not transparent enough it is not possible to determine whether the implementations are abuse of power or not.

I.3. Transparency of media ownership

- Please describe binding (legal) and non-binding (voluntary) **transparency and disclosure practices of** media companies with regard to ownership, investment and revenue sources?

Media service providers who have been granted a broadcasting license shall notify the Supreme Council of the information on the names and surnames of the shareholders, its shareholding structure and the vote proportions subsequent to the share transfer within a period of thirty days as of the validation date of such transfer.

Media service providers are obliged to publish information on (i) the name of the company, (ii) its correspondence address, telephone and email address, (iii) its logo/call sign, (iv) their broadcasting license and broadcasting networks, (v) the name, surname and contract information of its accountable manager in an up-to-date manner in their websites and notify such information to the Supreme Council.

Media service providers declare their total annual commercial communication revenues in accordance with the provisions of the By-Law on the Principles and Procedures relating to the

Monitoring of the Commercial Communication Revenues obtained by the Media Service Providers and their Declarations and Payments of the Shares of the Supreme Council to be Made over these Revenues. The total annual commercial communication revenue of the sector shall be published in the Supreme Council's website until the end of the month March every year.

- **Which media organizations** are covered by the reporting requirements? **To whom** must disclosure be made? How often/ in what cases has the data to be updated?

Media service providers, which described in the By-Law as *'the legal person who has the editorial responsibility over his/her choice of the content of the radio, television and on-demand media services and determines the manner in which they are organized and broadcast'*, are covered by the reporting requirements to Supreme Council and update the information in case of any change.

- What **information** is required to be **disclosed**? (e.g. key persons/bodies and their functions in the media; details of shareholders and size of their holding, beneficial owners; interests of the people/body in other media / economic sectors; people influential to the programming/editorial policy; political or other affiliations of the owners and its family members; public advertising revenues, funding form other external sources)

Media service providers are obliged to publish information on (i) the name of the company, (ii) its correspondence address, telephone and email address, (iii) its logo/call sign, (iv) their broadcasting license and broadcasting networks, (v) the name, surname and contract information of its accountable manager in an up-to-date manner in their websites and notify such information to the Supreme Council.

- How **accessible** is the information **to the public**? In what manner is the information to be made available? Is it comprehensible for the general public?

The information media service providers publish on their website is accessible to the public.

- How is this **monitored** and **regulated**? Are there any **sanctions for the failure** to report?

According to Article 17 of By-Law on Administrative and Financial Conditions with which Media Service Providers and Platform and Infrastructure Operators are required to comply, *'The broadcasting license of an enterprise who has been ascertained by the Supreme Council after the grant of license that it did not comply with the obligations imposed by the laws and regulations or terminated its conformity in obtaining its license later on, and who has not corrected its positions within the period of time allowed by the Supreme Council and who has been detected that it acquired to ensure its conformity with the conditions of being granted a broadcasting license by fraudulent means, shall be cancelled.'*

- Transparency provisions: Does the responsible body monitor the fulfillment of the provision? Do the media fulfill the requirements?

I.4. Other state influence on media organizations

- Does the state impose prohibitive **taxes** or levies on media organizations? Does the state **tax policy and practice** discriminate against or favor specific private media outlets over others?

The state does not require VAT from newspaper sales. Other than that privilege for press media, there are not any discrimination against or in favor for media companies.

- What **entry barriers** does the regulatory and institutional system create for new entrants to the media market (e.g. start-up fees or other restrictions)?

According to Article 4 of By-Law on Administrative and Financial Conditions with which Media Service Providers and Platform and Infrastructure Operators are required to comply, in order to acquire a broadcasting license for the purpose of providing radio, television and on demand broadcast services media service providers are obliged to have a sum of paid-in capital not less than the sums as stated below:

a) For national terrestrial television	: 8.320.000-TL
b) For regional terrestrial television	: 1. 385.000-TL
c) For local terrestrial television	: 250.000-TL
ç) For national terrestrial radio	: 1.000.000-TL
d) For regional terrestrial radio	: 250.000-TL
e) For local terrestrial radio	: 70.000-TL
f) For cable television	: 275.000-TL
g) For cable radio	: 50.000-TL
ğ) For satellite television	: 275.000-TL
h) For satellite radio	: 50.000-TL
ı) For on demand broadcast service	: 100.000-TL

- Does media concentration play a role in the process of **spectrum allocation**?

The Supreme Council commissions the planning of television channel and radio frequencies under the frequency bands allocated to the Supreme Council for terrestrial radio and television broadcasts in the national frequency plan. There are no limitations regarding spectrum allocation, however a quota for Turkish Radio-Television (TRT). Media service providers which has a terrestrial broadcast license shall launch their broadcasts on all the channels, multiplex capacity or frequencies that have been allocated to them within two years according to Law.

- Is the **decision-making process** about the allocation of frequencies between public, private and community broadcasters **transparent, open, participatory** and overseen by an **independent regulatory authority**, which meets international standards and is free from political or commercial interference or control by any vested interest?

In 2002, a then-new law transferred the authority of frequency planning to Information and Communication Technologies Authority. However, the allocation of frequencies has never been completed in Turkey. In addition to the public broadcaster TRT, there are 23 national, 16 regional and 212 local television channels broadcasting with temporary licences currently in Turkey. (Kurban and Sozeri, 2012)

- Is the **state advertising** distributed to media fairly, for example proportionately to their **audience share**? How would you describe the **rules of distribution** of state advertising? Is it being monitored?

The Directorate General of Press Advertisement is an independent authority on paper for allocating official advertisements and announcements to the print media. The Directorate has power to prohibit advertisement and announcement as a sanction, therefore such power can create a self-censorship environment due to the Directorate's lack of autonomy. As a matter of fact, in October 2016 the Directorate has announced that it will not publish state advertisement to press media whose owners, partners or executives face terrorism charges.

Furthermore, the Directorate halted publishing state advertising proportions in 2014.

- Is there a **monitoring of advertising** allocation?

No.

- Are there **others laws** or **policies** by which the state/ government interferes in the media business (e.g. blocking of websites, censorship)? Which? Is **freedom of press and editorial independence** is guaranteed in law and respected in practice? (please elaborate only shortly)

Freedom of press and editorial independence is guaranteed in the Constitution, however it is hardly respected in practice.

Law No. 5651 on Regulating Broadcasting in the Internet and Fighting Against Crimes Committed through Internet Broadcasting regulates the terms on blocking websites. The state mostly blocs the opposing party websites and social media accounts. The freedom of press is guaranteed under the Constitution, however it is hardly respected.

- Have there been any major **changes** in these topics (state advertising, process of spectrum allocation, taxes for media outlets) over the past five years? Have there been conflictive **cases or law suits** on these topics?

Since the law does not strictly determine state advertising the state may easily change the publishers. As an example, the state cut allocating state advertisements to opposing newspapers such as Evrensel and Birgun.

Tax audits are always being used as an intimidation tool by the state. The Finance Ministry's tax authority fined firms controlled by Dogan Yayin Holding, which then held control over half of non-state media market, 2.5 billion USD in 2009 after being publicly condemned by then-prime minister Erdogan. Furthermore Taraf newspaper, was fined 2.2 million USD in 2014. The charge was due to lack of declaration of revenue from bulk paper sales. However, none of the media groups pay such tax in Turkey.