

Operating as a Foreign Telecom ISP in Turkey: Legal & Regulatory Requirements

1. Licensing Under Electronic Communications Law (No. 5809)

Local Company Requirement: Turkey's Electronic Communications Law (ECL) No. 5809 and its secondary regulations require any telecom operator to be established in Turkey. In practice, a foreign company (like SpaceX/Starlink) cannot directly hold a Turkish telecom license in its home jurisdiction name. The company must incorporate a Turkish legal entity (either a joint-stock company (A.Ş.) or limited liability company (Ltd. Şti.)) under the Turkish Commercial Code (Law No. 6102) to apply for authorization ¹. This Turkish entity will hold the telecom license. Notably, there is **no requirement to partner with a local firm** – the local subsidiary can be wholly owned by the foreign parent ¹. In other words, foreign individuals or entities **may be the sole shareholders** of the Turkish telecom company, as Turkish law imposes no general foreign ownership cap in telecom licensing ¹.

Telecom Authorization Regime: All providers of “electronic communications services” (which includes internet service providers) must obtain authorization from the Information and Communication Technologies Authority (ICTA, known in Turkish as BTK) before operating ². The ECL No. 5809 introduced a two-tier authorisation regime: (a) **Notification** to ICTA for services that do not require scarce resources (like spectrum or numbering), and (b) **License (“Right of Use”)** from ICTA when scarce resources are needed ³ ⁴. A company intending to offer internet access would submit a notification (and if using radio frequencies, apply for frequency rights) through its Turkish entity. Crucially, **Article 7 of the Authorisation Regulation** (the secondary legislation under Law 5809) stipulates that the applicant **must be a company “founded under Turkish laws”** ⁵. In sum, a foreign telecom firm must set up a Turkish subsidiary to hold any ISP license; it cannot operate simply as a branch or foreign corporation entry.

2. Foreign Ownership and Investment Regulations

Foreign Direct Investment Law (No. 4875): Turkey's foreign investment regime is generally liberal. The Foreign Direct Investment Law No. 4875 (2003) establishes the principle of national treatment for foreign investors. In general, **there are no statutory limits on foreign ownership or control in Turkish companies**, including in the telecommunications sector ⁶. Foreign investors are free to own 100% of a Turkish telecom company's shares, unless a specific law provides otherwise. Importantly, the telecom sector is **not** subject to any special foreign equity cap by law (unlike certain other “sensitive” industries). For example, Law 6112 (on radio and TV broadcasting) caps foreign shareholding in media companies at 50% ⁷, but **no such sectoral cap exists for telecommunications operators**. In the telecom industry, foreign ownership is permitted up to 100% ¹, and many Turkish telecom operators (e.g. Vodafone Türkiye) are indeed wholly or majority foreign-owned, reflecting this openness.

Turkish Commercial Code (TCC): The TCC (Law No. 6102) does not distinguish foreign vs. local shareholders when establishing a company. It allows **single-shareholder** corporations and has no requirements of Turkish citizenship for shareholders or directors (unless another law requires it) ⁶ ¹.

Thus, a foreign telecom firm can incorporate a Turkish A.Ş. or Ltd. Şti. and hold all shares. There is **no legal requirement for Turkish individuals or entities to co-own** a telecom company. Similarly, there is **no requirement that board members or executives be Turkish citizens** for a standard telecom operator – those restrictions apply only in certain regulated sectors like broadcasting (which, for national media sovereignty reasons, requires the majority of board members and the CEO of a broadcasting company to be Turkish nationals) ⁸ . In pure telecommunications services, Turkish law does not mandate local partners or local managers, only that the operating entity itself is a Turkish-registered company.

Foreign Investment Screening: Turkey's FDI Law 4875 does not impose special pre-approval for telecom investments beyond the normal company registration and licensing. However, like any significant investment, acquisitions in the telecom sector might attract review if they implicate national security or competition (for instance, large foreign takeovers could be reviewed under competition law or strategic sector oversight). But **formally, neither the FDI Law nor the TCC set ownership percentage limits** in telecom. The main requirements remain sector-specific (licensing by ICTA) rather than ownership barriers. In summary, **foreign direct investment in Turkish telecommunications is allowed without equity restrictions** ⁶ , subject to meeting the licensing conditions of Law 5809 and related regulations.

3. National Security and Local Control Requirements

Turkey places emphasis on national security and sovereignty in the telecom arena, but this is achieved via regulatory oversight and technical measures rather than forcing local ownership. **No minimum Turkish shareholding or local executive quota is imposed on telecom infrastructure companies by law** – the focus is on ensuring government oversight over networks and data. Key national security and control requirements include:

- **Lawful Interception & Emergency Powers:** Under ECL No. 5809, operators must cooperate with law enforcement and intelligence authorities for lawful interception and national security needs. The ICTA (BTK) is empowered to enforce national security requirements. Notably, *Article 60* of Law 5809 allows the authorities to take extraordinary actions to protect national security or public order – including imposing fines, **suspending an operator's activities, revoking its license, or even taking over its facilities (with compensation) in critical situations** ⁹ . This means that if a telecom operator (foreign-owned or not) is deemed a security risk or fails to comply with security-related obligations, its authorization can be cancelled in the interest of national security. Telecom licenses typically include clauses requiring compliance with intelligence and emergency directives (e.g. providing lawful interception interfaces, subscriber data to authorities with proper warrants, etc., pursuant to Turkey's laws on electronic communications and security).
- **Data Localization & Traffic Routing:** Turkey has implemented measures to keep sensitive communications infrastructure and data within its borders. A **Presidential Circular 2019/12 on Information and Communication Security** directs that telecom operators **establish internet exchange points in Turkey and avoid routing domestic internet traffic through foreign networks when not necessary** ¹⁰ . In practice, this means an ISP should exchange domestic data locally (peering inside Turkey) to **"prevent the export of domestic communication traffic"** that can be kept internal ¹⁰ . This policy is aimed at protecting "digital sovereignty" – ensuring that Turkish users' data, especially government or critical data, does not unnecessarily traverse or depend on foreign infrastructure where it could be intercepted. A satellite ISP like Starlink might be required, for example, to route Turkish-to-Turkish internet communications through a local gateway or exchange

in Turkey, rather than beaming it via overseas gateways. Compliance with such routing rules would likely be a condition of its telecom license for national security reasons.

- **Critical Infrastructure Security Compliance:** Telecommunications is classified as **critical infrastructure** in Turkey, alongside energy, transportation, banking, etc. ¹¹ . Operators in these sectors must follow stringent security guidelines issued by the government. The Digital Transformation Office of the Presidency has published an **Information and Communication Security Guide** outlining cybersecurity and data protection measures for critical sectors ¹¹ . **Telecom operators are explicitly required to implement the measures in this national security guide** ¹¹ ¹² . These measures include protecting network integrity, storing and handling data securely (with an eye toward data residency for sensitive information), and having robust incident response plans. The ICTA has also issued a **“Network and Information Security Regulation”** for the telecom industry, which mandates operators to ensure the security of their networks and information systems ¹³ ¹⁴ . For example, ISPs must maintain business continuity plans, establish in-house cyber incident response teams, and coordinate with Turkey’s National Cyber Incident Response Center (USOM) ¹⁵ . They are also expected to take measures against cyber threats and inform users about cybersecurity issues ¹⁶ .

- **Data Retention and Local Data Storage:** In addition to the above, Turkish laws require telecom/ISP operators to log and retain certain data within Turkey. For instance, under the Internet Law (Law 5651) and related regulations, “access providers” (ISPs) must retain traffic logs (connection records) for a defined period (typically 1-2 years) and store them in Turkey for use by judicial or security authorities when needed. Moreover, personal data laws (Law 6698) restrict transfer of personal data abroad without safeguards. These rules effectively mean a licensed ISP must maintain its user and traffic data on servers accessible in Turkey (or otherwise comply with data transfer regulations), contributing to **data residency** from a legal standpoint. While not explicitly framed as a foreign ownership restriction, these obligations ensure that even a foreign-based service like Starlink operates in a manner where Turkish authorities have jurisdiction over data and network control for security purposes.

In summary, Turkey’s approach to national security in telecommunications is to **keep critical infrastructure under Turkish jurisdiction and oversight**, rather than requiring local equity. A foreign ISP must abide by Turkish licensing conditions that cover things like local network elements, compliance with surveillance requests, and local handling of communications. Failure to meet these can lead to license denial or revocation. As an example, Turkish officials have stated that Starlink **“needs to fully comply with Turkish regulations”** and requirements to be allowed to operate ¹⁷ ¹⁸ – emphasizing that digital sovereignty conditions (such as those above) must be satisfied. **No law mandates a minimum Turkish shareholding or Turkish directors for an ISP**, but effectively the company must operate under Turkish law and oversight, ensuring Turkey can assert control for security or public interest reasons.

4. Competition and Protection Against Incumbent Opposition

Turkish law provides mechanisms to ensure that dominant local telecom players (e.g. Turkcell, Türk Telekom, Vodafone Turkey) cannot unlawfully hinder new entrants like a foreign ISP. **Anti-competitive**

conduct is prohibited, and regulators have tools to prevent incumbents from abusing their market power or lobbying to exclude competition:

- **General Competition Law:** The Turkish Competition Law (Law No. 4054 on the Protection of Competition) applies in the telecom sector without exception. **Anti-competitive agreements, abuse of dominant position, or collusion** to block a new competitor are illegal and subject to enforcement by the Competition Authority. Article 7 of ECL 5809 explicitly states that ICTA's authority to regulate competition in telecom is **"without prejudice to the provisions of Law No. 4054"**, confirming that telecom companies are fully subject to antitrust scrutiny ¹⁹. There are no special immunities allowing incumbents to keep out foreign entrants – any attempt to, say, form a cartel to refuse dealing with a new ISP or to predatory price to undermine it would violate Law 4054. The Competition Authority has in the past investigated and sanctioned telecom firms (including Türk Telekom) for anticompetitive practices, reinforcing that dominant operators must play fair under the law.
- **Telecom Regulator's Pro-Competition Powers:** Separately, the ICTA (BTK) is entrusted by Law 5809 with actively **promoting and protecting competition in the electronic communications sector**. The law charges ICTA with **eliminating practices that "are obstructive, disruptive or limitative for competition"** in telecom markets ²⁰. ICTA can act on its own initiative or upon complaints to investigate any anti-competitive behavior by operators ¹⁹. In addition, ICTA conducts market analyses to identify operators with **"Significant Market Power" (SMP)** in defined markets. If an operator is dominant (SMP), ICTA is empowered to **impose special obligations on that operator to prevent abuse of dominance and to foster effective competition** ²¹. For example, ICTA can require a dominant ISP or telco to offer interconnection or wholesale access at regulated terms, refrain from discrimination, or abide by price controls for certain services. Article 7(3) of Law 5809 authorizes ICTA to tailor pro-competitive obligations on SMP operators *"with the aim of ensuring and promoting an effective competition environment"* ²¹. These ex ante regulatory obligations are a legal protection for new entrants: an incumbent can be compelled by ICTA to cooperate and cannot leverage its dominance to unfairly block competition. If an incumbent were to use **political lobbying** to try to delay or prevent ICTA from granting a license to a newcomer, ICTA's mandate and the law still require decisions to be based on objective criteria. In short, the legal framework favors market entry and competition, and does not give incumbents any formal veto power over new licenses.
- **Interconnection and Access Rights:** Turkey's telecom regulations ensure that a new provider can interconnect with existing networks. The **Regulation on Access and Interconnection** (issued under Law 5809) obliges operators to negotiate interconnection in good faith. **Incumbent operators cannot refuse to interconnect or provide necessary facilities to a new licensed operator without legitimate reason**. If the parties cannot reach agreement, ICTA can step in and **mandate interconnection on reasonable terms** to prevent incumbents from blocking network access ²². Likewise, a dominant infrastructure owner (such as Türk Telekom, which controls fixed line infrastructure) is typically designated with SMP in wholesale markets and is required by ICTA to offer facilities like local loop unbundling or bandwidth resale to other ISPs. These regulations, backed by ICTA's enforcement, mean that a foreign entrant like Starlink would have legal recourse if, for instance, a terrestrial ISP tried to deny it network peering or if a competitor attempted an anti-competitive boycott.

- **Regulatory Oversight and Appeal:** All ICTA licensing decisions and regulations are subject to administrative law principles, and ultimately judicial review by Turkish courts. This provides additional protection: if a dominant player somehow influenced a regulatory decision that unfairly harmed a new entrant, the entrant could challenge it through legal channels. Moreover, ICTA's Board is tasked with making impartial decisions in the sector's long-term interest. The law explicitly tasks ICTA with **ensuring fair competition** and gives it sanction powers (including fines up to 3% of annual revenue for breaches) to deter anti-competitive conduct ⁹. Thus, there is a legal expectation that ICTA will not favor incumbents without basis, and any overtly protectionist blocking of a qualified foreign entrant would contradict the competitive objectives set by law.

In conclusion, **Turkish laws and regulations are designed to facilitate fair competition in telecom.** Dominant local telecom companies have no legal right to bar foreign entrants beyond voicing their opinions. While they may attempt to lobby informally, the **law provides safeguards:** ICTA must adhere to objective licensing criteria, and both ICTA and the Competition Authority can penalize any **“obstructive or limiting” anti-competitive practices** by incumbents ²⁰. New entrants are protected by a combination of general antitrust law and sector-specific rules imposing interconnection, access, and non-discrimination obligations on the existing giants. For example, if Turkcell or Türk Telekom tried to use their market power to undermine Starlink's entry (whether through denial of access or other anti-competitive tactics), such behavior would violate multiple provisions of Law 5809 and Law 4054 and could be met with regulatory sanctions or legal injunctions. **In sum, Turkey's framework welcomes foreign telecom investment under a Turkish entity, and provides legal protections to ensure incumbents compete on fair terms rather than shutting out new ISP services** ²¹ ²⁰.

Sources:

- Law No. 5809 (Electronic Communications Law) – Articles 7, 8, 9, 60 (Official Gazette, 2008) ¹⁹ ²¹ ⁹.
- Authorisation Regulation under Law 5809 – Article 7 (ICTA, 2009) ⁵.
- Law No. 4875 (Foreign Direct Investment Law, 2003) – general principle of equal treatment for foreign investors ⁶.
- Law No. 6102 (Turkish Commercial Code, 2012) – requirements for forming A.Ş./Ltd. companies.
- Presidential Circular 2019/12 on Information and Communication Security Measures (published in Official Gazette) ¹⁰ ¹¹.
- Information and Communication Security Guide (Digital Transformation Office, 2020) – cybersecurity and data residency measures for critical sectors ¹².
- ICTA's Network and Information Security Regulation (Official Gazette No. 31236, 2020) – obligations on telecom operators ¹⁴.
- Law No. 4054 (Competition Law, 1994) – general competition rules applying to telecom (administered by Turkish Competition Authority).
- Regulation on Access and Interconnection (ICTA, 2010) – ensures fair interconnection for telecom operators ²².
- Law No. 6112 (Media Law, 2011) – *for contrast*, imposes foreign ownership and board member limits in broadcasting (not applicable to ISPs) ⁸.
- **ICTA/BTK Statements:** ICTA and Digital Transformation Office officials' comments on Starlink's license application (Anadolu Agency, Sept 2023) ¹⁷ ¹⁸. (Reaffirming that Starlink must meet Turkey's regulatory and security requirements fully to operate).

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