

# ORDINANCE ON ACCESS AND INTERCONNECTION

## PART I

### General Provisions

#### Purpose

**Article 1** - The purpose of this Ordinance is to set out the principles and procedures regarding access to telecommunications networks including interconnection to encourage the applications ensuring that the users draw maximum benefit from the telecommunications services and networks in return for 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.

#### Scope

**Article 2** - This Ordinance covers rights and obligations of operators of telecommunications with regard to access and interconnection, and the principles and procedures applied in the fulfillment of the obligations in question.

#### Legal Basis

**Article 3** - This Ordinance is prepared in accordance with the Telegram and Telephone Law No. 406 and the Wireless Law No. 2813.

#### Definitions

**Article 4** - The terms used in this Ordinance shall have the following meanings:

The Authority: Telecommunications Authority,

The Board: Telecommunications Board,

Türk Telekom: Türk Telekomünikasyon Anonim Şirketi,

Operator: A capital-stock company including Türk Telekom providing telecommunications services and/or operating telecommunications infrastructure under an authorization agreement or a concession agreement entered into with, and/or a telecommunication license or a general authorization obtained from the Authority,

Sub-local Loop: Partial local loop connecting the network termination point at the end user's premises to the concentration point or definite interval access point in the fixed telecommunications network,

Interconnection: Connection of two networks for the realization of telecommunications traffic between two separate telecommunications networks,

Operator Obligated to Provide Interconnection: Türk Telekom and other operators who are designated by the Authority to provide interconnection,

Unbundling: Provision of services separately from each other by an operator given on his network in a way permitting access to only demanded network components and demanded type of access including transmission, switching and interfaces,

Access: Making available of infrastructure and/or services of telecommunications by an operator to another operator, under defined conditions in this Ordinance,

Access Network: Part of the network consisting of traffic-insensitive components of the network dedicated to a particular customer such as copper pair providing connection to the conveyance network, line cards and ports located in concentrators and/or switches,

Significant Market Power: Any position enjoyed in a related telecommunications market by one or more operators by virtue of which, those operators have the power to influence economic parameters such as the price of services supplied to other operators and users, the amount of supply or demand, the market conditions, the main telecommunications network elements used for supplying telecommunications services and the control of access to users,

Accounting Separation: Separation of revenues, expenses and costs related to each activity and business unit including internal transfer payments,

Retail Business Unit: Business unit executing the activities of providing telecommunications services to the users commercially,

Network: All kinds of transmission system including switching equipment and lines between two or more termination points to provide telecommunication between such points,

Core Network: Part of the network consisting of components changing in capacity and/or number depending on the conveyed voice traffic and amount of data in the network based on common usage,

Carrier: Operator providing the services of call origination, termination or conveyance wholly or partially,

Long-Run Incremental Cost: Change in total cost depending on quantity in the long-run in case a new service or element is included to current program of production or service,

Bit-stream Access: Access to all sorts of equipment and physical circuit connecting the network termination point at the end user's premises to the main distribution frame to which the user is connected or to the equipment placed to the equivalent facility, in a way permitting data transmission,

Local Loop: The physical circuit connecting the network termination point at the end user's premises to the main distribution frame or an equivalent facility in the fixed telecommunications network,

Unbundled Access to the Local Loop: Full unbundled access and shared access to the local loop without a change in the ownership of the local loop,

Full Unbundled Access to the Local Loop: Access to the local loop or sub-local loop, in a way permitting the use of full frequency spectrum of the copper pair,

Shared Access to the Local Loop: Access to the local loop or sub-local loop, in a way permitting the use of non-voice band frequency spectrum of the copper pair.

Unless otherwise specified, the terms in this Ordinance have the meanings in the Telegram and Telephone Law No. 406.

## **Principles**

**Article 5** - The following principles shall be taken into consideration in execution of this Ordinance:

- a) Attaining a sustainable competitive environment,

- b) Paying regard to qualitative and quantitative continuity, orderliness, reliability, productivity, clarity, transparency and efficient use of resources,
- c) Promoting supply of telecommunications services, new investments and technological innovation,
- d) National telecommunications market to be at international standards and levels in line with changing conditions,
- e) Non-discriminatory treatment of users under similar conditions and accessibility of services under equal conditions by similarly situated users,
- f) Avoiding the possibility that the users are forced to buy services they do not demand,
- g) Promoting the practices that will enable users to make use of telecommunications services and infrastructure at reasonable prices,
- h) Charges paid for telecommunications services to be based on the cost of efficient service provision including a reasonable profit return,
- i) Avoiding the possibility of financing the cost of a service by the tariff of an other service unless otherwise justified by objective reasons,
- j) Taking into account the special conditions of users,

#### **Scope of Access**

**Article 6** - For the purposes of this Ordinance, access shall include:

- a) Access with all sorts of method to elements of a fixed or mobile telecommunications network and its associated facilities, including unbundled access to the local loop and bit-stream access,
- b) Access to physical infrastructure including buildings, ducts and masts,
- c) Access to relevant software systems including operational support systems,
- d) Access to number translation or systems having equivalent functionality,
- e) Access to virtual network services,
- f) Interconnection between two telecommunications networks.

#### **Determination of Operators with Significant Market Power**

**Article 7** - The Board determines the operators having significant market power in the related telecommunications services market. The principles and procedures regarding the determination of operators having significant market power in the related telecommunications market is arranged by a communiqué.

## **PART TWO**

### **Obligations of Access and Interconnection**

#### **Determination of Access Obligations**

**Article 8** - The Authority imposes on an operator the obligation of meeting the other operators' requests for access, in situations where the Authority considers that denial of access request by the operator or adduction of unreasonable terms and conditions having a

similar effect would hinder the emergence of a competitive market, or would not be in the end-user's interest.

While providing access, operators obliged by the Authority to provide access, have obligation to apply equivalent conditions to other operators providing equivalent services, and provide services and information under the same conditions and of the same quality as it provides for its own shareholders, partnerships and affiliates.

### **Conditions that Access may be Restricted**

**Article 9** - An operator may only restrict access as long as it justifies by objective criteria that the security of network operations or network integrity or data protection cannot be assured or interoperability of networks is not possible and it takes the Authority's approval.

Existence of the conditions defined in this Article, does not constitute a valid reason for refusal to negotiate terms for access as it does not prevent the determination of operators as obliged to provide access.

### **Interconnection**

**Article 10** - In accordance with this Ordinance, all operators may request to participate in interconnection negotiation from other operators and they are obliged to negotiate interconnection when requested by other operators.

Türk Telekom and the operators with significant market power are obliged to provide interconnection. Besides, the Authority imposes on an operator the obligation of meeting the other operators' requests for interconnection, in situations where the Authority considers that denial of interconnection request by the operator or adduction of unreasonable terms and conditions having a similar effect would hinder the emergence of a competitive market, or would not be in the end-user's interest.

Interconnection is to be supplied at any interconnection point that technical and economical feasibility of which can be proved and considered as appropriate by the Authority. In case the operator requires interconnection from any other point, it undertakes the cost of point that will be provided.

The Authority may decide, without prejudice to the provisions of Article 9 of this Ordinance, the interconnection obligation to be restricted upon the request of operators, on the grounds that there are technically and commercially viable alternatives to the interconnection or needed resources for providing interconnection are not available.

### **Facility Sharing**

**Article 11** - Where an operator may install facilities on or under public or third parties' land or use of property or take advantage of a procedure for the expropriation, the Authority may impose on this operator the obligation to share of such facilities and/or property with other operators at reasonable prices, by also taking into consideration the requirements of protection of environment, public health and safety, town and district planning and efficient use of resources and the conditions defined in Article 9 of this Ordinance.

The Authority may issue regulations implying provisions and conditions to be applied in the division of costs of facility and/or property sharing among the parties.

### **Number Portability and Carrier Selection**

**Article 12** - The Authority may impose on operators the obligation to assure that users may keep the numbers assigned to them when they change their operators.

The Authority may impose on operators the obligation to assure that users may select their carriers freely.

The Authority determines the implementation principles of this Article by regulations.

### **Non-Discrimination**

**Article 13** - Türk Telekom and operators with significant market power in the related telecommunications services market are obliged to ensure the services which they use internally to provide telecommunications services or the third parties need to provide telecommunications services, to the others requesting these services on a non-discriminatory basis and upon the same conditions applied for their own services.

The Authority may decide the obligation defined in this Article to be restricted, in case that occurrence of any of the conditions defined in Article 9 is justified.

### **Unbundling**

**Article 14** - Türk Telekom and operators with significant market power in the related telecommunications services market are obliged to make unbundling in a way to provide access including transmission, switching and interfaces, requested from them.

The Authority determines the extent to which the operators with significant market power in the related telecommunications services market shall provide unbundled access to all network elements, including unbundled access to the local loop. In case an operator justifies that the conditions are impeding the fulfilment of unbundling obligation, The Authority exempts the operator from this obligation. An operator obliged to provide unbundled access to the local loop shall provide such access at a cost-oriented price. The Authority determines the implementation principles of this Article by regulations.

The Authority takes the views of operators and interested natural persons and legal entities before initiating an implementation according to this Article.

### **Co-location**

**Article 15** - The Authority may impose on operators with significant market power and/or Türk Telekom the obligation to provide physical co-location on its premises for the equipment of other operators at cost-oriented prices. The Authority may exempt the mentioned operators from the obligation of physical co-location in case they can prove that physical co-location is not necessary. Other operators sharing the premises of the operator with significant market power or their representatives may enter into the premises of Türk Telekom and/or operators with significant market power to access their materials and equipment.

The Authority may impose on operators, exempted from the obligation of physical co-location, the obligation to provide co-location by using a different method on equal economic, technical and operational conditions with physical co-location at cost-oriented prices.

## **PART THREE**

### **Financial Provisions on Access and Interconnection**

#### **Access and Interconnection Tariffs**

**Article 16** - Operators may set their tariffs freely by taking into consideration the principles of this Ordinance.

Operators with significant market power and Türk Telekom are obliged to set their access and interconnection tariffs by cost orientation. Other operators designated by the Authority as obliged to provide interconnection also shall set their interconnection tariffs by cost orientation. The Authority may request from the mentioned operators to prove their access and/or interconnection tariffs are set according to cost-orientation.

When the Authority considers that the tariffs are not set by cost-orientation, he determines the tariffs according to cost-orientation. The Authority may set an upper limit for the tariffs by taking into account the other countries' implementations in the extent of appropriateness, until he determines the tariffs by cost orientation. Tariffs determined by the Authority are binding.

#### **Determination of Tariffs by Cost-orientation**

**Article 17** - The following points are taken into consideration when the tariffs are determined by cost-orientation:

a) Cost-oriented price for access and interconnection services consists of long-run incremental cost of efficient service provision including an appropriate return on capital employed for the provision of service plus the total parts of common costs that can be attributed to the service.

b) When the amount of costs exceeds cost of efficient service provision, exceeding part is assumed superfluous expense and cost in respect of cost of efficient service provision. Such expenses and costs are taken into account as far as they emanate from a statutory obligation or they are justified as being indispensable for other reasons.

c) Under the examination of costs according to paragraph (b) of this Article, the prices and costs of operators offering corresponding services in comparable markets may be referred for purposes of comparison. In this situation, exclusive features of the reference markets are taken into account.

#### **Accounting Separation**

**Article 18** - Operators with significant market power and Türk Telekom are obliged to make accounting separation. Other operators designated by the Authority as obliged to provide interconnection also may be deemed as obliged to make accounting separation.

Operators of fixed telecommunications network, unless otherwise specified by the Authority, keep separate accounts concerning the following business units for activities subject to and not subject to regulations of the Authority:

- a) Core Network,
- b) Access Network,
- c) Retail Business Unit (Separate accounts shall be kept for each activity subject to regulations of the Authority like leased lines and telephony services),

d) Other Activities.

Operators of mobile telecommunications network, unless otherwise specified by the Authority, keep separate accounts concerning the following business units for activities subject to and not subject to regulations of the Authority:

- a) Mobile Network,
- b) Retail Business Unit,
- c) Other Activities.

Other operators are obliged to make accounting separation in the scope to be determined by the Authority.

The long-run incremental costs of the business units and the common costs which cannot be attributed to one specific business unit and/or attributed to more than one business unit are kept separately in the accounts. Service exchanges among business units and transfer prices are indicated clearly.

Principles and procedures regarding the implementation of this Article are determined by the Board.

Operators shall fulfill the obligations defined in this Article within the period to be determined by the Board decision.

#### **Financial Reporting and Auditing**

**Article 19** - Türk Telekom and operators with significant market power prepare separate income statements for business units defined in Article 18 of this Ordinance. Revenues, expenses and costs are attributed to the services provided by the business units and the network components according to the cost causation and documented in respect of transparency principle. Operators submit the income statements and other relevant financial statements prepared at the end of the fiscal year to the Authority within four months as from the ending of fiscal year.

The Authority, where necessary, may inspect the operators' accounts or make independent auditors inspect them. Expenditures of independent auditors are undertaken by the operators.

### **PART FOUR**

#### **Access and Interconnection Negotiations and Agreements**

##### **Liberty of Contract**

**Article 20** - Operators determine the terms and conditions of access including interconnection themselves, as long as not being contrary to regulations, authorization and concession agreements, telecommunication license and general authorization.

##### **Settlement of Disputes**

**Article 21** - In case that the related operators cannot reach an agreement within utmost three months, any one of the parties may apply to the Authority for dispute settlement procedure to be actuated.

Applications of dispute settlement to the Authority shall include at least the following points:

- a) Name and titles of the parties,
- b) Date which the request of access or interconnection was made,
- c) Scope and duration of access or interconnection request,
- d) Offered price for the requested access or interconnection and its grounds,
- e) Issues that the parties cannot agree on,
- f) All sorts of information and document regarding the points listed above.

The Authority rejects the application in case the necessary documents are not submitted by the applicant operator.

The Authority notifies the other operator that dispute settlement is requested from the Authority. The operator submits his opinions and information and documents regarding the issue to the Authority within utmost fifteen days upon the receipt of notification. The Board decides whether the dispute settlement request is to be accepted or not within utmost fifteen days upon the receipt of mentioned information and documents. However, the dispute settlement requests relating to interconnection are accepted in any case. Dating from the initiation of dispute settlement procedure, parties have six weeks for reaching an agreement themselves. The Board may extend this period for four weeks where necessary.

In case that an agreement cannot be reached between parties within the periods stated in the forth paragraph of this Article as from the initiation of dispute settlement procedure, the Board is empowered to determine the binding terms, conditions and prices appropriate for the agreement.

The Authority, in accordance with fifth paragraph of this Article, by evaluating the information and documents submitted by the parties in terms of the quantity and quality, in line with the principles defined in Article 5 of this Ordinance, determines the terms, conditions and prices appropriate for the access agreements including interconnection within four months and notifies the parties. The Authority extends this period for two months where necessary.

The Authority may request from the parties all sorts of information and document considered necessary in the scope of this Article. The parties are obliged to send the mentioned information and documents to the Authority within the period to be determined by the Authority.

Terms, conditions and prices determined by the Authority come into force as from the date of notification to the parties, unless otherwise specified by the Authority.

The Authority takes all sorts of measures, including the determination of interim tariff, during the execution of dispute settlement procedure. Operators are obliged to comply with the measures taken by the Authority including interim tariff. The Authority takes into consideration the prior prices implemented and Articles 16 and 17 of this Ordinance while the interim price is being determined. After the final price is determined by the Board, operators settle outstanding accounts with each other at this price retrospectively. Terms, conditions and prices determined by the Authority cease to have effect in case the parties decide otherwise themselves in conformity with this Ordinance and other relevant regulations.

## **Submission of Contracts on Access and Interconnection to the Authority and Their Publicity**

**Article 22** - Certified copies of all access and interconnection agreements, their annexes and amendments are submitted to the Authority within utmost fifteen days upon the signing of them. Operators are obliged to fulfill the amendment requests concerning the matters stated as contrary to the legislation in the contracts by the Authority within thirty days. Provisions concerning the submission of contracts to the Authority in the authorization and concession agreements, telecommunication licenses and general authorizations are reserved.

Parties of the agreement notice the articles they think trade secrets are involved in, with the agreement to the Authority. Information that may be assumed as trade secrets are limited to demand and/or forecasts on demand for access or interconnection services, commercial and operational information of which could provide an undue competitive advantage to third parties and thus distort competition. Any provision in contracts on access and interconnection that would have to be applied also on other entities requesting access, including tariff information, following non-discriminatory principle will not be regarded as trade secret.

Agreements on access and interconnection are open to the public on condition that trade secrets are hidden.

Principles and procedures regarding the examination of agreements of access and interconnection by third parties are determined by the Board.

## **Privacy of Information**

**Article 23** - Operators of which acquire information from other operators before, during or after the process of negotiating agreements on access and interconnection are obliged to use that information for the purpose for which it was supplied and respect at all times the confidentiality of information. The received information shall not be passed on to third parties, shareholders, partnerships and affiliates of operators for whom such information could provide a competitive advantage, in no wise, except the Authority.

## **Reference Offer on Access and/or Interconnection**

**Article 24** - Türk Telekom and operators with significant market power are obliged to prepare and send the reference offers on access and/or interconnection to the Authority. The Authority publishes the reference offers upon the approval. It is essential that the operators requesting access and/or interconnection are not required to buy and pay for services which are not necessary for the service requested. Therefore services shall be sufficiently unbundled and the terms and conditions of reference offer of access and/or interconnection including prices of each services shall be stated precisely according to market needs. Unless otherwise specified by the Board decision, reference offers are renewed every year and sent to the Authority up to the end of February. Existing reference offers on access and/or interconnection continue to prevail up to the new ones' approval.

Operators with significant market power are obliged to prepare and send the reference offers on interconnection to the Authority within utmost three months after they are designated by the Authority as having significant market power and Türk Telekom is obliged to prepare and send the reference offer on interconnection to the Authority within utmost three months after this Ordinance become effective. Reference offers on interconnection are prepared in accordance with the format in Annex. Issues regarding the publication of reference offers on access are determined by the Board.

The Board may decide amendments to be made in the reference offers on access and/or interconnection considering the principles defined in the Article 5 of this Ordinance.

## **PART FIVE**

### **Other Provisions**

#### **Administrative Fines**

**Article 25** - In accordance with this Ordinance, the following administrative fines are imposed depending on the nature of breach in the proportions to be determined by the Board decision;

a) In the event that the operators obliged by the Authority to provide access or interconnection do not fulfill the non-discrimination obligation, in the proportion provided that it is no more than %1 (one percent) of the previous calendar year's turnover of the operators concerned,

b) In the event that an operator does not fulfill the facility sharing obligation or delay without a valid reason, in the proportion provided that it is no more than %1 (one percent) of the previous calendar year's turnover of the operator concerned,

c) In the event that an obliged operator does not fulfill the co-location obligation or delay without a valid reason or interrupt the service, in the proportion provided that it is no more than %1 (one percent) of the previous calendar year's turnover of the operator concerned,

d) In the event that an obliged operator compels the operators requesting access or interconnection service from him to buy a service not requested, in the proportion provided that it is no more than %1 (one percent) of the previous calendar year's turnover of the operators concerned, in the event that they do not fulfill the unbundling obligation or delay without a valid reason, no more than %2 (two percent),

e) In the event that an obliged operator does not fulfill the unbundling obligation or delay without a valid reason, in the proportion provided that it is no more than %2 (two percent) of the previous calendar year's turnover of the operator concerned,

f) In the event that the obliged operator does not comply with the agreement on access or interconnection of which the terms, conditions and prices are determined by the Authority as a result of the dispute settlement procedure or interrupt the services provided under the obligation of access or interconnection, in the proportion provided that it is no more than %1 (one percent) of the previous calendar year's turnover of the operator concerned,

g) To the operator who does not fulfill the obligation to obey the measures, including interim tariff, to be taken by the Authority in the scope of Article 21 of this Ordinance, in the proportion provided that it is no more than %1 (one percent) of the previous calendar year's turnover of the operator concerned,

h) To the operator who does not fulfill the obligations stated in Article 22 of this Ordinance to submit the agreements on access and interconnection to the Authority or amend the provisions contrary to the legislation within its duration, in the proportion provided that it is no more than %0,5 (five per thousand) of the previous calendar year's turnover of the operator concerned,

i) To the operator who does not comply with the obligation of privacy of information defined in Article 23 of this Ordinance, in the proportion provided that it is no more than %1 (one percent) of the previous calendar year's turnover of the operator concerned,

i) To the operator who does not fulfill the obligations relating to the reference offer on access and/or interconnection defined in Article 24 of this Ordinance, in the proportion provided that it is no more than %1 (one percent) of the previous calendar year's turnover of the operator concerned,

j) In the event that the operators implement their tariffs for access and/or interconnection contrary to the provisions of this Ordinance, in the proportion provided that it is no more than %1 (one percent) of the previous calendar year's turnover of the operators concerned,

k) To the operator who does not fulfill the obligation of accounting separation defined in Article 18 of this Ordinance within the duration to be determined by the Board decision, in the proportion provided that it is no more than %2 (two percent) of the previous calendar year's turnover of the operator concerned,

l) To the operator who does not fulfill the obligations relating to financial reporting and auditing defined in Article 19 of this Ordinance, in the proportion provided that it is no more than %1 (one percent) of the previous calendar year's turnover of the operator concerned.

The Authority warns the concerned operator to fulfill his obligation within a period that will be determined by the Board decision before imposing the administrative fines specified in this Ordinance. An administrative fine in proportion determined by the Board decision is imposed to the operator who would not fulfill his obligation within this period.

Imposition of the administrative fines in accordance with this Article does not abolish the obligations put into force by this Ordinance. In case of repetition or continuation of the action subject to breach, administrative fine is imposed in the proportion provided that it is no more than %3 (three percent) of the previous calendar year's turnover of the operator concerned.

Provisions of "Ordinance on Administrative Fines to be imposed by the Telecommunications Authority to the Operators" become effective by being published in the Official Journal with the date of 01.08.2002 and no: 24833 are reserved.

### **Public Consultancy**

**Article 26** - The Authority may take the views of operators and interested natural persons and legal entities before making decisions regarding the implementation of this Ordinance.

### **Temporary Article 1**

Necessary amendments in the existing Interconnection Agreements are made in respect of this Ordinance by the parties within two months as from the date of validity of this Ordinance. In case the parties cannot reach an agreement the Authority determines the binding terms, conditions and prices appropriate for the agreement within two months.

**Effective Date**

**Article 27** - This Ordinance shall enter into force on the date of its publication.

**Execution**

**Article 28** - The provisions of this Ordinance shall be executed by the Chairman of the Board.

## **ANNEX**

### **The Minimum List of Items to be Included in the Reference Offer on Interconnection**

- I. General Provisions:
  - 1.1 Rights and Obligations of the Parts,
  - 1.2 Property Rights,
  - 1.3 Protection of Secrecy,
  - 1.4 Duration and the conditions of renegotiation of the agreement,
  - 1.5 Procedures in the event of changes being proposed to the network or service offerings of one of the parties
- II. Provisions on Services Provided:
  - 2.1 Interconnection;
    - a) Definition and Extension of Services,
    - b) Required network and transmission elements,
    - c) Access points at which interconnection is offered,
    - d) Testing procedures,
    - e) Issues on Configuration
  - 2.2 Co-location;
    - a) Information on co-location points,
    - b) Co-location options as physical, distant and virtual co-location,
    - c) Characteristics and restrictions of equipment subject to co-location,
    - d) Measures put in place to ensure the security of co-location points,
    - e) Access conditions for staff of operators making use of co-location service to their equipment in co-location points,
    - f) Rules for the allocation of space where co-location space is limited,
    - g) Conditions to inspect whether there is location available for physical co-location
- III. Prices, payments and billing procedure
- IV. Issues on demand forecasts
- V. Sanctions to be applied for cancellation of confirmed orders
- VI. Issues on Network Integrity and Security
- VII. Procedure for provision of service quality and handling of repair requests
- VIII. Procedure for fault handling
- IX. Technical Characteristics of equipment to be used and the standards which it is subject to
- X. Operational issues like signaling, traffic or network management