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**4G is finally
coming to Turkey... or not?**

Highlights of this issue

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A New Bank is Opening

4G is finally coming to Turkey... or not?

What is 4G and what is it good for?

4G is a concept used in telecommunication sector. It is the abbreviation of the “fourth generation” of wireless telephone technology. It is the successor of 3G wireless network standards.

4G is expected to solve some of the problems, such as using a cellular network system and especially the network coverage problems of 3G networks. The speed of 4G for cell phones will be 100 mbit; and for wi-fi 1Gbit. So if supported with a suitable infrastructure, 4G will be able to provide us with the internet speed that we can reach by ADSL modems.



What is the date of the tender for authorising companies to provide 4G services?

Information Technologies and Communication Authority initially announced that it would hold 4G tender on 26 May 2015.

However, on 15 May 2015, the Ministry of Transport, Maritime Affairs and Communications issued a press release stating that after discussions with relevant parties including the Ministry, Information Technologies and Communication Authority decided to postpone the 4G tender for three months to be held on 26 August 2015.

Decision of Information Technologies and Communication Authority to postpone the 4G tender is published in the Official Gazette dated 25 May 2015.

The Ministry declared that the reason of this postponement was the request for time extension of the participants.

However, some argue that the Turkish President Erdogan’s comments on 4G services may have also some affect for this postponement.

What did Turkish President say about 4G?

Turkish President Erdogan stated in his speech at the 175th year ceremony of Turk Telekom on 21 April 2015 that Turkey should be patient for 2 years and switch to 5G technologies directly.

Some argue that 5G services are expected to be in use by 2020 worldwide.

What is the current status of the tender?

We expect 4G tender to be held on 26 August 2015.

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The Ministry is serious about the spam message ban! A brief summary of the Draft Regulation on commercial electronic messages

As published in Fine Print earlier, the Law regulating Electronic Commerce (No. 6563) entered into force on 1 May 2015. Among other issues, the Law regulates the principles of sending “commercial electronic messages”.

However, the Law only sets the basic principles on sending commercial electronic messages; hence currently the practice is not settled yet.

For this reason, recently the Ministry of Customs and Trade published a “Draft Regulation on Electronic Communication and Commercial Electronic Messages” which aims to clarify uncertainty on “commercial electronic messages”. Below is a summary of the Draft Regulation, please however note that the Draft Regulation may be subject to changes when it enters into force.

What is a commercial electronic message anyway?

A commercial electronic message is an electronic message sent for commercial purposes via electronic tools such as SMS, e-mails or phone calls.



According to the Draft Regulation, the following messages are deemed to be sent as commercial purposes: (i) messages sent for promotion of goods and services of a business establishment; (ii) messages sent to improve a business establishment’s image (e.g. the messages for celebration and good wishes on holidays); (iii) messages for obtaining approval to send further commercial electronic messages.

What are the requirements for sending a commercial electronic message?

A business establishment is required to obtain pre-approval of the recipients to send commercial electronic messages. According to the Draft Regulation, obtaining approval is subject to the following principles:

- the approval check box cannot be pre-checked for the approvals that are obtained through an electronic environment,
- if the recipient is silent to a request for approval, it is deemed to be a negative response against such request,
- the wording of the approval must clearly indicate that such approval is obtained for sending commercial electronic messages,
- the wording of the approval must clearly indicate that commercial electronic messages may be saved by the business establishment and may be shared with the Ministry of Customs and Trade upon the Ministry's request,
- the approval cannot be included in a provision of an agreement (i.e. must be obtained separately),
- if the e-mail address and telephone numbers are obtained through an electronic environment, such information must be verified by way of a verification code or verification link,
- a business establishment is not allowed to obtain a broad approval for all its group companies, each company must be mentioned specifically.



According to the Draft Regulation, a business establishment is required to include certain mandatory information/content such as business name, phone number, email address, the purpose of the electronic message (ie. promotion, offer, information) in its commercial electronic messages.

A recipient of a commercial electronic message has a right to reject further commercial electronic messages, through the same means of communication used for such commercial electronic messages.

Is there an exemption, at least?

There is no need to obtain approval for sending the above mentioned messages: (i) the messages that are sent for the purpose of fulfilling certain obligations stipulated in an agreement; (ii) commercial electronic messages that are sent to other business establishments.

Also, according to the Draft Regulation the following messages are exempted from the pre-approval requirement:

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- messages sent for the purpose of change, use, and maintenance of goods and services that a customer receives in the event that the customer has provided its communication information to the business establishment for this purpose,
- messages on information to a specific goods and/or services upon the request of the customer to receive such information,
- messages relating to an ongoing subscription or membership such as collection or reminding of debts, updating information, delivery of goods and/or services.

What about the databases created before the effective date of the Law?

The business establishments are not required to obtain an approval as per the Law for the databases which are created with the approvals of the recipients, before the effective date of the Law.

According to the Draft Regulation, the following databases, which are created before the effective date of the Law, are deemed to be created with the approvals of the recipients:

- databases created by obtaining the communication information of the recipients for the purpose of sending commercial electronic messages provided that recipient and the business establishment has a customer/seller-provider relationship;
- databases created by obtaining in accordance with the principles in the Draft Regulation.

In case of breach of the abovementioned obligations, administrative fines may be imposed to business establishments.

The Turkish text of the Draft Regulation can be found in the following link:

<http://www.gtb.gov.tr/data/553e3ae6f293705e64d07b38/T%20CAR%20%20%20LET%20%20%20M%20VE%20T%20CAR%20%20ELEKTRON%20K%20%20LET%20LER%20HAKKINDA%20%20Y%C3%96NETMEL%20K%20TASLA%20I.pdf>

Gorkem Gokce answered the questions of Ms. Hanife Bas related to commercial electronic messages for Milliyet and the interview was published on 12 May 2015.

The Turkish language text of the interview can be found at the following link:

<http://www.milliyet.com.tr/izinsiz-sms-fiyaskosu-/ekonomi/detay/2057552/default.htm>

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A New Bank is Opening

Official authorization of Ziraat Katilim Bankasi A.S. is published in the Official Gazette dated 14 May 2015. Banking Regulation and Supervision Agency has allowed the entry into operation of Ziraat Katilim Bankasi A.S. by its resolution dated 12 May 2015 and numbered 6302.

Minor Changes to the Law on Private Security Services

Regulation Amending the Regulation on Implementation of Law on Private Security Services is published in Official Gazette dated 11 May 2015 and came into effect as of such date.

An additional article titled "Fee" is introduced by this Regulation. According to this Article, fees on private security training, exams and certification will be specified by the Ministry of Interior and the actions and processes regarding these fees will be conducted by the Directorate of Police Academy Circulating Capital Enterprise.



Income earned from these trainings, exams and certification will be used for the purchase of movable and immovable, vehicles and services, maintenance and repair of the service buildings and their rent expenses on the central and field organization of the Security General Directorate so as to develop the private security services. The aforementioned actions and processes will be regulated under the protocol between the Directorate of Police Academy and the Head of the Private Security Department of the Security General Directorate.

The Turkish language text of the Regulation can be found at the following link:
<http://www.resmigazete.gov.tr/eskiler/2015/05/20150511-1.htm>

Answers. Not theories.

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About our firm

Gokce Attorney Partnership is an Istanbul-based law firm offering legal services across a broad range of practice areas including mergers and acquisitions, joint ventures, private equity and venture capital transactions, banking and finance, capital markets, insurance, technology, media, telecoms and internet, e-commerce, data protection, intellectual property, regulatory, real property, and commercial litigation. Please visit our web site at www.gokce.av.tr for further information on our legal staff and expertise.

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