

## Standard Summary Project Fiche

### 1. Basic information

- 1.1 CRIS Number: TR2010/0310.01
- 1.2 Title: **Prevention of anti-competitive behaviors in the electronic communications sector<sup>1</sup>**.
- 1.3 ELARG Statistical code: 10 (Information Society and Media)
- 1.4 Location: Turkey, Information and Communication Technologies Authority<sup>2</sup> (ICTA)  
(Bilgi Teknolojileri ve İletişim Kurumu) with its offices located in Ankara  
Bilgi Teknolojileri ve İletişim Kurumu, Yeşilirmak Sok. No. 16 06430,  
Maltepe, Ankara

#### **Implementing arrangements:**

- 1.5 Implementing Agency:

The CFCU will be the Implementing Agency and will be responsible for all procedural aspects of the tendering process, contracting matters and financial management including payment of project activities.

The Director of the CFCU will act as Programme Authorizing Officer (PAO) of the project:

Mr. Muhsin ALTUN (PAO-CFCU Director Central Finance and Contracts Unit)

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No: 63 C-Blok 06580 Söğütözü/Ankara Türkiye

- 1.6 Beneficiary (including details of SPO):

Information and Communication Technologies Authority (ICTA)

Yeşilirmak Sokak No:16 Demirtepe 06430 ANKARA

SPO: ÇÖL, Muhterem, Head of Sectoral Competition and Consumer Rights Department

Tel: +90 312 2947010, Fax: +90 312 2947165

E-mail: [mcol@btk.gov.tr](mailto:mcol@btk.gov.tr)

#### **Financing:**

- 1.7 Overall cost: 1,000,000 €

- 1.8 EU contribution: 900,000 €

- 1.9 Final date for contracting: 2 years after the signature of the Financing Agreement

- 1.10 Final date for execution of contracts: 2 years following the end date for contracting

- 1.11 Final date for disbursements: 1 year after the end date for the execution of contracts

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<sup>1</sup> “Electronic communications” term is used in lieu of “telecommunications” term.

<sup>2</sup> According to Law no. 5809, name “Telecommunications Authority” changed into “Information and Communication Technologies Authority”.

## 2. Overall Objective and Project Purpose

### 2.1 Overall Objective:

To contribute to the further liberalization of the Turkish electronic communications markets along with the encouragement of the new entries and enhancing competition among operators by improving the implementation capacity of the ICTA in compliance with the EU acquis. Increasing competition would lead to lower prices and better quality of service in electronic communication sector.

### 2.2 Project purpose:

Strengthening the implementation capacity of ICTA with regards to the assessment of anti-competitive behaviours and development of required measures and remedies in order to achieve workable competition in the sector as outlined by the EU acquis.

### 2.3 Link with AP and NPAA:

The Accession Partnership 2008 sets out the principles, priorities intermediate objectives and conditions decided by the European Council and Turkey.

#### Short-term priority

- Complete the adoption and implementation of the key "starting conditions" for the 2002 EU regulatory framework.

#### Medium-term priorities

- Continue the transposition and implementation of the acquis in the electronic communications area and prepare for full liberalisation of the markets.

Turkey adopted a revised NPAA on the basis of the Accession Partnership. The revised NPAA was published in the Official Gazette on 31 December 2008. According to the Chapter 10 of revised NPAA, concerning information society and media;

- Priority 10.1 completing the adoption and implementation of the key “starting conditions” for the 2002 EU regulative framework
- Priority 10.3 Continuing the transposition and implantation of the acquis in the electronic communications area and prepare for full liberalisation of the market

were defined as the two relevant and important priorities to be realized by transposition and implementation of the legislation listed under these.

2.4 Link with MIPD: In MIPD 2008-2010 for Turkey, under Component 1 “Transition Assistance and Institution Building” information society and media (electronic communications, Audiovisual Media Services Directive) has been listed as an additional priority to be supported as Institution Building.

2.5 Link with National Development Plan: N/A

2.6 Link with national/ sectoral investment plans: N/A

### 3. Description of project

#### 3.1 Background and justification:

##### *Background:*

Article 167 of the Turkish Constitution (1982) clearly charges the State with preventing monopolization and cartelization in the markets, which may arise de facto or as a result of agreements. The State carried out this task by adopting the Act no. 4054 on the Protection of Competition in 1994 and the establishment of the Competition Authority (CA), which is charged with enforcing this Act, in 1997.

The CA is authorized 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 Act, and to fulfill the duties assigned to it by the Act. Within that framework, the main duty of the CA is to prevent any threats to the competitive process in the markets for goods and services through the use of the powers granted by law on an ex-post basis. On the other hand, the competence of CA is limited regarding telecommunications sector. CA is required to take the ICTA's view into consideration primarily pursuant to Article 7 of the Act no. 5809 on the Electronic Communications Law which states that *"The Competition Board while performing examinations and supervisions and while making any decisions on electronic communications sector, including decisions about mergers and takeovers, takes into consideration primarily the Authority's view and the regulatory procedures of the Authority"*.

The main responsibilities of the ICTA can be seen from the Article 6 of the aforementioned Law as *"The Authority shall be competent to make regulations to create and protect competition and to eliminate the practices which are obstructive, disruptive or limitative for competition, to this end to impose obligations on operators with significant market power in the relevant markets and on other operators when required, and to take measures stipulated by the legislation in the electronic communications sector"*, and Article 7 which mentions that *"Without prejudice to the provisions of Law no. 4054 dated 7/12/1994 on Maintenance and Promotion of Competition, the Authority is entitled to perform examination and investigation of any action conducted against competition in electronic communications sector, on its own initiative or upon complaint; to take measures it deems necessary for the establishment of competition and to request information and documents within the scope of its tasks"*.

One other competence which is also asserted in the Article 6 of the Law No: 5809 is that *"The Authority shall be competent to inspect the breaches of competition in electronic communications sector which are against this Law and against regulations based on of this Law, to impose sanctions and to take the opinion of Competition Authority on the issues regarding the breach of competition in electronic communications sector, if specified by the legislation"*.

To sum up, ICTA is supposed to be the primarily responsible Authority in order to ensure sustainable competition in the electronic communications market. For this aim; ICTA, in practice, is making both ex-ante and ex-post regulations while CA is just making ex-post interventions related to the electronic communications sector provided that ICTA's views are taken into consideration.

##### *Justification:*

Turkish telecommunications market has been fully liberalised by January 2004 in legal terms and the market has made some progress with regards to competition since then. The ICTA has made progress on regulating the retail and wholesale services. As the wholesale market

develops, the new entrants gain ability to offer new products to end users mainly based on the wholesale products of the incumbent operators. On the other hand, the incumbents providing the same products both at wholesale and retail levels introduce new remedies like bundling of various services (like voice and broadband) and offer lower levels of prices. This eventually creates pressure on the alternative operators if they can not respond to such price decreases due to high level of wholesale prices. By the way, the price based anti-competitive behaviours are not the only way which impede the competition in the market but also non-price based ways may be used to push the competitors out of the market.

It is the responsibility of the national regulators to prevent such anti-competitive behaviours both on ex-ante and ex-post basis whereas competition authorities have the responsibility to detect and prevent anti-competitive behaviours on an ex-post basis. They are also expected to develop permanent remedies in addition to case-by-case assessments. The evaluation on this matter requires a high level of expertise and the capability to achieve in-depth analyses with regards to establishing relations between costs and prices. The issue has been recently on the agenda of almost all NRAs across the Union and also the Commission has intervened in several cases and imposed significant monetary fines upon the incumbent operators.

The ICTA will have carry out extensive analyses in a multi-play environment which will be the outcome of the increasing competition in the forthcoming years. In this respect, the ICTA aims to benefit from the expertise of international experts and the experience of the Member States. Furthermore, it is expected to gain ex-post assessment of the anti-competitive behaviors in the telecommunications sector both for ICTA and CA in the sphere of their legal duties.

### 3.2 Assessment of project impact, catalytic effect, sustainability and cross border impact

#### *Project Impact:*

The project is expected to produce four outcomes:

- (i) Elaboration of Turkish telecommunications legislation and regulations with regard to EU acquis,
- (ii) Taking both ex-ante and ex-post preventive measures to secure workable competition in the sector,
- (iii) Achieving coherency and consistency in implementing the regulatory decisions
- (iv) Improving regulatory enforcement procedures for the new entrants

#### *Catalytic Effect:*

The catalytic effect of the project would be the contribution to the further liberalisation of the market which would lead positive improvement of the implementation capacity of ICTA. A more effective, transparent regulation would encourage new entrants to the market which would improve regulatory enforcement for the sake of sustainable competition and would reduce the amount of the complaints due to anti-competitive behaviors. This would lead to reduction in the number of irrelevant objections against ICTA decisions and a reduction in the number of unnecessary appeals made to the courts which will help increase the overall ICTA enforcement efficiency.

#### *Sustainability:*

The project outputs are independent to continuous external financing. The implemented examination guidelines will help issuing the decisions consistently in accordance with the written standards. The results of the workshops and trainings will be available for further reference. The average age of examiners to be trained will ensure long-term commitment to

their career and availability of their services to ICTA as a trainer who transfers the accumulated knowledge to the future recruits

*Cross-border Impact:*

N/A

### 3.3 Results and measurable indicators:

3.1. Result 1: Improved expertise, knowledge and efficiency on preventing price related anti-competitive behaviours.

Indicators:

- Positive improvement of the implementation capacity of ICTA.
- Reduction of the amount of complaints due to anticompetitive behaviours.

Result 2: Improved expertise and knowledge for ICTA and CA in the sphere of their legal duties on detecting and taking measures related with anticompetitive behaviours reactively.

Indicators:

- Reduction of the amount of complaints due to anticompetitive behaviours.
- Improvement of the exchange of information process between ICTA and CA.
- Implementation of guidelines between ICTA and CA.

Result 3: Improved efficiency on dealing with non price-related anti-competitive behaviours and evaluating the level of competition in general.

Indicators:

- Reduction of complaints against ICTA decisions on non-price related anti-competitive behaviours.
- Enhancing the efficiency of the ICTA's regulations related to competition issues measured via a scorecard.

### 3.4 Activities:

The activities will be achieved under a Service Contract.

The project shall cover the following activities:

- 3.4.1. Activities related with the Result 1 are as follows:
- Activity 1: Development of a report about the regulations of EU countries to prevent competition abuses on an ex-ante basis, including the tariffs control and approval mechanisms related to retail and wholesale services by taking into account the specific abuses.
- Activity 2: Development of a report on related remedies and implementation process to deal with ex-ante examination of single and bundle tariff offers.
- Activity 3: Review of the Turkish legislation (including draft legislation), revising and/or making a secondary legislation related to ex-ante assessment of the price-related anti-competitive behaviours.

- Activity 4: Development of applicable and user friendly software models to realize anti-competitive practices during control and approval of retail and wholesale tariffs.
- Activity 5: Organization of workshops with ICTA staff.
- Activity 6: The development of a report covering detailed suggestions on principles and procedures to tackle with price based anti-competitive abuses and the development of guidelines to take necessary steps including price and non-price actions.
- Activity 7: The development of the roadmap for ICTA to gather related information (costs and revenues) to reach a conclusion about the abuses (ex: different roadmaps for predatory pricing, price squeeze, cross subsidization and etc.)
- Activity 8: The development of a report encompassing the review of the details of the main EU decisions and implementing measures (EU countries, EU Commission, CFI and ECJ decisions) on the specific abuses.

3.4.2. Activities related with the Result 2 are as follows:

- Activity 1: The development of a report that covers brief information about the relations between CA and NRA in the EU member countries.
- Activity 2: The development of a report that guides exchanging of information between CA and ICTA in line with Laws No. 5809 and 4054.
- Activity 3: Organization of workshops with ICTA and CA staff.

3.4.3. Activities related with the Result 3 are as follows:

- Activity 1: The development of a report which provides applicable guidelines to deal with the non-price related anti-competitive behaviours.
- Activity 2: The development of the periodical key performance indicators for SMP operators in order to prevent non-price discrimination in wholesale markets.
- Activity 3: The development of a report about the effects of convergence issues to the competition on ex-ante and ex-post basis including specific solution proposals.
- Activity 4: The development of a methodology to evaluate the level of competition in the sector (such as drafting a scorecard).
- Activity 5: Organization of workshops with ICTA staff.

3.5 Conditionality and sequencing: N/A

### 3.6 Linked activities

The proposed project is expected to complement the project “Technical Assistance for the improvement of access regime in the Turkish telecommunications market” (EuropeAid/123810/D/SER/TR) under 2005 Programme. The project has been commenced in January 2008 and has been completed by November 2008.

The outputs of the current project, especially the results of the cost models developed for fixed and mobile networks and the accounting separation report will be used mainly in the regulation of the wholesale services.

### 3.7 Lessons learned

Identification of trainees based on their qualifications is essential. During identification of trainees for the internship and other training activities, the examiners actively working on formal and substantive examination of applications will be prioritized.

All project-based activities must be timely supervised and approved by the SPO. There must be no delays in the transfer of information from the project team to the SPO to facilitate the procedures for approvals.

#### 4. Indicative Budget (amounts in EUR)

|                      |        |         | SOURCES OF FUNDING |                     |                  |       |                              |       |                 |                         |              |                      |       |
|----------------------|--------|---------|--------------------|---------------------|------------------|-------|------------------------------|-------|-----------------|-------------------------|--------------|----------------------|-------|
|                      |        |         | TOTAL EXP.RE       | TOTAL PUBLIC EXP.RE | IPA CONTRIBUTION |       | NATIONAL PUBLIC CONTRIBUTION |       |                 |                         |              | PRIVATE CONTRIBUTION |       |
| ACTIVITIES           | IB (1) | INV (1) | EUR (a)=(b)+(e)    | EUR (b)=(c)+(d)     | EUR (c)          | % (2) | Total EUR (d)=(x)+(y)+(z)    | % (2) | Central EUR (x) | Regional/ Local EUR (y) | IFIs EUR (z) | EUR (e)              | % (3) |
| Activity 1           |        |         |                    |                     |                  |       |                              |       |                 |                         |              |                      |       |
| Service contract     | X      | -       | 1,000,000          | 1,000,000           | 900,000          | 90    | 100,000                      | 10    | 100,000         |                         |              |                      |       |
| TOTAL IB             |        |         | 1,000,000          |                     |                  |       |                              |       |                 |                         |              |                      |       |
| TOTAL INV            |        |         | -                  |                     |                  |       |                              |       |                 |                         |              |                      |       |
| <b>TOTAL PROJECT</b> |        |         | 1,000,000          | 1,000,000           | 900,000          | 90    | 100,000                      | 10    | 100,000         |                         |              |                      |       |

NOTE: DO NOT MIX IB AND INV IN THE SAME ACTIVITY ROW USE SEPARATE ROW

Amounts net of VAT

- (1) In the Activity row use "X" to identify whether IB or INV
- (2) Expressed in % of the Public Expenditure (column (b))
- (3) Expressed in % of the Total Expenditure (column (a))

#### 5. Indicative Implementation Schedule (periods broken down per quarter)

| Contracts                 | Start of Tendering | Signature of contract    | Project Completion       |
|---------------------------|--------------------|--------------------------|--------------------------|
| (Contract 1.1)<br>SERVICE | June 2011          | Beginning of August 2011 | Beginning of August 2012 |

All projects should in principle be ready for tendering in the 1<sup>ST</sup> Quarter following the signature of the FA

**Duration of the Project:** 12 Months



## **6. Cross cutting issues (where applicable)**

### 6.1 Equal Opportunity

Equal participation of women and men will be secured through appropriate information and publicity material, in the design of projects and access to the opportunities they offer. An appropriate men/women balance will be sought on all the managing bodies and activities of the programme and its projects.

### 6.2 Environment

No negative effect on the environment.

### 6.3 Minorities and Vulnerable Groups

According to the Turkish Constitutional System, the word minority encompasses only group of persons defined and recognized as such on the basis of multilateral or bilateral instruments to which Turkey is a party.

The project will in no way harm the rights of any individuals (including disabled people) or entities to apply for the registration of their industrial property rights, or hinder the use of their rights for oppositions, complaints, appeals, or any other rights thereof before the public institutions of Republic of Turkey.

## **ANNEXES**

ANNEX 1: Log frame in Standard Format

ANNEX 2: Amounts contracted and Disbursed per Quarter over the full duration of Programme

## ANNEX 1: Logical framework matrix in standard format

|  |   |   |  |
|--|---|---|--|
| LOGFRAME PLANNING MATRIX FOR Project Fiche   |   | Programme name and number   | “Prevention of anti-competitive behaviors in the electronic communications sector”<br>No: 90   |
|  |   | <b>Contracting period expires:</b> 2 years after the signature of the Financing Agreement                       | <b>Disbursement period expires:</b> 1 year after the end date for the execution of contracts   |
|  |   | <b>Total budget :</b><br>1,000,000 €  | <b>IPA budget:</b><br>900,000 €  |
| <b>Overall objective</b>   | <b>Objectively verifiable indicators</b>  | <b>Sources of Verification</b>  |  |
| 1. To contribute to the further liberalization of the Turkish electronic communications markets along with the encouragement of the new entries and enhancing competition among operators by improving the implementation capacity of the ICTA in compliance with the EU acquis. Increasing competition would lead to lower prices and better quality of service in electronic communication sector. | 1.1. Achievement of compatibility with the EU acquis in the field of electronic communications.<br>1.2. Encouraging new entrants to the market<br>1.3. Improvement of the implementation capacity of the ICTA.<br>1.4. Reduction of the amount of complaints arising out of anticompetitive behaviors   | 1.1. EU Commission Country Progress Reports<br>1.2. ICTA Annual Reports   |  |
| <b>Project purpose</b>   | <b>Objectively verifiable indicators</b>  | <b>Sources of Verification</b>  | <b>Assumptions</b>   |
| 2. Strengthening the implementation capacity of ICTA with regards to the assessment of anti-competitive behaviours and development of required measures and remedies in order to achieve workable competition in the sector as outlined by the EU acquis.  | 2.1. Improving regulatory enforcement procedures for the new entrants by the last quarter of 2012.<br>2.2. Taking preventive measures to secure effectively competitive market whereby networks and services are provided in competitive manner by the end of 2012.<br>2.3. Reduction of complaints being brought before ICTA %25 by December 2012.<br>2.4. Reduction of appeals made by operators and consumers against ICTA decisions %25 by December 2012. | 2.1. EU Commission Country Progress Reports<br>2.2. ICTA Annual Reports<br>2.3. Ministry of Justice statistics. | - There will be no delays in legislation process.<br>-There will be no major changes in the national policies affecting ICTA regulations |
| <b>Results</b>   | <b>Objectively verifiable indicators</b>  | <b>Sources of Verification</b>  | <b>Assumptions</b>   |
| 3.1. Improved expertise, knowledge and efficiency on preventing price related anti-competitive behaviours.   | 3.1.1. Evaluation of current retail and wholesale regulatory measures and remedies in   | 3.1. EU Commission Country Progress Reports   | - There will be no major changes in the structure  |

|  |  |   |   |
|--|--|---|---|
| <p>3.2. Improved expertise and knowledge for ICTA and CA in the sphere of their legal duties on detecting and taking measures related to anticompetitive behaviours.</p> <p>3.3. Improved efficiency on dealing with non price-related anti-competitive behaviours and evaluating the level of competition in general.</p>   | <p>relevant markets with regard to establishing effective competition in the market.</p> <p>3.1.2. Improving regulatory enforcement and implementation with the aim of sustainable competition.</p> <p>3.2.1. Improvement in the structure of decision making process for both authorities.</p> <p>3.3.1. Reduction of complaints against ICTA decisions %25 by December 2012.</p> <p>3.3.2. Improvement and revising necessary remedies and implementation process related to competition related regulations by the end of 2012.</p> <p>3.3.3. Introduction of the schedule for new regulatory obligations and secondary legislations.</p> | <p>3.2. ICTA Annual Reports</p> <p>3.3. Conferences/Workshops conclusion reports</p> <p>3.4. ICTA Market Analysis Reports and Documents</p> <p>3.5. Official Gazette publications</p> | <p>of decision making process of ICTA.</p> <ul style="list-style-type: none"> <li>- There will be no delays in the secondary legislation process.</li> <li>- There will be no court decisions against the implementation of regulatory obligations and secondary legislations.</li> <li>-The CA staff will be available for co-operation and willing to participate.</li> </ul>   |
| <p><b>Activities</b></p>   | <p><b>Means</b></p>  |   | <p><b>Assumptions</b></p>   |
| <p>Linked to Result 1</p> <p>3.4.1.1. Development of a report about the regulations of EU countries to prevent competition abuses on an ex-ante basis, including the tariffs control and approval mechanisms related to retail and wholesale services by taking into account the specific abuses.</p> <p>3.4.1.2. Development of a report on related remedies and implementation process to deal with ex-ante examination of single and bundle tariff offers.</p> <p>3.4.1.3. Review of the Turkish legislation (including draft legislation), revising and/or making a secondary legislation related to ex-ante assessment of the price-related anti-competitive behaviours.</p> <p>3.4.1.4. Development of applicable and user friendly software models to realize anti-competitive practices during control and approval of retail and wholesale tariffs.</p> <p>3.4.1.5. Organization of workshops with ICTA staff.</p> <p>3.4.1.6. The development of a report covering detailed suggestions on principles and procedures to tackle with price based anti-competitive abuses and the development of guidelines to take necessary steps including price and non-price actions.</p> | <p>Service Contract</p>  | <p>1 M €</p>  | <ul style="list-style-type: none"> <li>- There will be no major changes in the structure of decision making process of ICTA.</li> <li>- There will be no delays in the secondary legislation process.</li> <li>- There will be no court decisions against the implementation of regulatory obligations and secondary legislations.</li> <li>-The CA staff will be available for co-operation and willing to participate.</li> </ul> |

3.4.1.7. The development of the roadmap for ICTA to gather related information (costs and revenues) to reach a conclusion about the abuses (ex: different roadmaps for predatory pricing, price squeeze, cross subsidization and etc.)

3.4.1.8. The development of a report encompassing the review of the details of the main EU decisions and implementing measures (EU countries, EU Commission, CFI and ECJ decisions) on the specific abuses.

Linked to Result 2

3.4.2.1. The development of a report that covers brief information about the relations between CA and NRA in the EU member countries.

3.4.2.2. The development of a report that guides exchanging of information between CA and ICTA in line with Laws No. 5809 and 4054.

3.4.2.3. Organization of workshops with ICTA and CA staff.

Linked to Result 3

3.4.3.1. The development of a report which provides applicable guidelines to deal with the non-price related anti-competitive behaviours.

3.4.3.2. The development of the periodical key performance indicators for SMP operators in order to prevent non-price discrimination in wholesale markets.

3.4.3.3. The development of a report about the effects of convergence issues to the competition on ex-ante and ex-post basis including specific solution proposals.

3.4.3.4. The development of a methodology to evaluate the level of competition in the sector (such as drafting a scorecard).

3.4.3.5. Organization of workshops with ICTA staff.

**Pre conditions**

**ANNEX II: amounts (in €) Contracted and disbursed by quarter for the project (IPA contribution only)**

| <b>Contracted</b>      |          |         |         |         |
|------------------------|----------|---------|---------|---------|
|                        | 2011 III | 2011 IV | 2012 I  | 2012 II |
| (Contract 1.1) SERVICE | 900.000  | 0       | 0       | 0       |
| <b>Cumulated</b>       | 900.000  | 900.000 | 900.000 | 900.000 |
| <b>Disbursed</b>       |          |         |         |         |
|                        | 2011 III | 2011 IV | 2012 I  | 2012 II |
| (Contract 1.1) SERVICE | 180.000  | 210.000 | 210.000 | 300.000 |
| <b>Cumulated</b>       | 180.000  | 390.000 | 600.000 | 900,000 |