

MODEL OF ADR MECHANISM FOR TURKEY IN REGARDS TO CONSUMER DISPUTES IN TELECOMMUNICATIONS

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TELEKOMÜNİKASYON SEKTÖRÜNDE TÜKETİCİ ŞİKAYETLERİNİN ÇÖZÜMÜNE İLİŞKİN TÜRKİYE İÇİN ALTERNATİF ŞİKAYET ÇÖZÜM MEKANİZMASI MODELİ

Özet

Alternatif uzlaşmazlık çözüm yöntemleri ya da kısaca ADR uzlaşmazlıkların çözümünde kullanılan yeni bir yöntem değildir, bu yöntemlerin eski çağlarda da kullanılmış olduğu bilinmektedir. Bununla birlikte, yargı sistemlerinin beklenen şekilde işlememesi nedeniyle ADR tekrardan önemli olmaya başlamıştır. Hızlılığı, gizliliği ve düşük maliyetleri nedeniyle birçok ülke tarafından uygulanması teşvik edilmektedir. Bu çalışmada, telekomünikasyon (elektronik haberleşme) sektöründe ortaya çıkan tüketici şikayetlerinin çözülmesinde AB üyeliğine aday bir ülke olan Türkiye’de AB’nin Evrensel Hizmet Direktifi ve diğer bazı ülkelerin uygulamalarının ışığı altında ADR yöntemlerinin kullanılması ve Türkiye için bir model önerisi üzerinde durulmaktadır.

Anahtar Kelimeler: ADR, AB Direktifleri, Uzlaşmazlık, Tüketici, Elektronik Haberleşme

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Abstract

Alternative Dispute Resolution or shortly ADR is not a new invention; it is known that societies used these various kinds of mechanism to resolve disputes in earlier times. However, it became important again after dissatisfaction results of judicial systems in most countries. It is encouraged by most countries because of its expediency, confidentiality, and lower costs. In this study, the use of ADR in consumer disputes in regards to telecommunications (or electronic communications) is examined in order to find an appropriate model for a developing country’s telecommunications sector. In this paper, with reference to Universal Service Directive of EU, a model of

* Bilişim Uzmanı, Bilgi Teknolojileri ve İletişimi Kurumu. Bu yazıda ifade edilen görüşler yazarla ait olup, hiçbir suretle Bilgi Teknolojileri ve İletişimi Kurumunun görüşleri şeklinde yansıtılamaz.

ADR mechanism for Turkey which is an EU candidate country is discussed in the light of Universal Service Directive of EU and several countries' implementations.

Key Words: *ADR, EU Directives, Dispute, Consumer, Electronic Communications.*

“A dispute is a problem to be solved, not a combat to be won.”

Anonymous

I. INTRODUCTION

When there are two people, there is always possibility of conflict between each other, so it is not possible to avoid from disputes every time, unfortunately they are part of our lives. However, solving the disputes with traditional litigation method is mostly overburdened and ineffective, which often exacerbates the disputes, making negative feelings fester and grow¹. As a result of these negative affects societies promoted alternative methods in order to resolve their disputes.

The term “Alternative Dispute Resolution”, “Appropriate Dispute Resolution”, “Amicable Dispute Resolution” or shortly “ADR” is generally used to describe a wide variety of dispute resolution mechanisms that are alternative to adjudication. By other words ADR is an out of court remedy for disputes. The goal of ADR, is to ensure that communication comes first and litigation comes last, if at all².

Although, it is assumed that ADR has its roots in antiquity, the use of ADR in the US promoted in the 1970s as a result of dissatisfaction in the US judicial system. It is accepted that the modern era of the ADR motion started at the Pound Conference in 1976. At that conference Chief Justice Warren Burger denounced the delay, expense, and unnecessary technicality in the judicial system and called for the development of informal dispute resolution processes³.

¹ **Attorney General's Report to the President on the Alternative Dispute Resolution (ADR) Working Group**, <http://www.usdoj.gov/adr/presi-report.htm>, (retrieved on 03.06.2009)

² *Ibid.*

³ **David B. Lipsky, Ronald L. Seeber, & Richard D. Fincher**, *Emerging Systems for Managing Workplace Conflict*, 2003, p. 75; **A. Leo Levin, Russell R. Wheeler**, *The Pound Conference: Perspectives On Justice In the Future*, West Publishing Co. St. Paul Minnesota, 1979

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On the other hand, in the other countries the ADR movement has also taken off in both developed and developing countries. ADR models used in other countries may be hybrid experiments mixed with elements of traditional dispute resolution or straight-forward imports of processes found in the US⁴. ADR mechanisms widely implemented to ensure social, legal, political, and commercial welfare.

ADR is preferred instead of litigation by most of the practitioners because of the advantages like; lower costs, satisfactory and expeditious process, confidentiality, maintenance of relationships, and well developed communication between the parties, more creative solutions, improvement of internal moral, and productivity.

As our aim is to find out the suitable out of court dispute resolution mechanism for Turkey's electronic communications (telecommunications) sector relating to consumer disputes, after this brief information in the introduction of this study, in the following part we are going to focus on ADR mechanisms. In the third part of the paper we are going to give some information about possible consumer disputes in electronic communications sector, as Turkey is a candidate country for the EU and tries to harmonize her legislation with the EU directives in the fourth part we are going to focus on the EU directive relating to out of court dispute resolution process in telecommunications sector and we are going to explore the practices of some EU member countries and other countries. Finally, in the conclusion in order to make a guideline for Turkey we are going to suggest which mechanism or mechanisms are suitable for Turkish electronic communications sector for the resolution of consumer disputes.

II. TYPES OF ADR

As we have indicated in the first part of this study dispute resolution outside of courts is not new; societies world-over have long used non-judicial, indigenous methods to resolve conflicts. What is new is the extensive promotion and proliferation of ADR models, and the increasing use of ADR^{5 6}. There are different kinds of ADR mechanisms which are used in the US. Some of

⁴ **Center for Democracy and Governance**, Alternative Dispute Resolution Practitioners' Guide, 1998, p. 5

⁵ *Ibid*

⁶ **OECD Working Party on Telecommunication and Information Services Policies Report** <http://www.oecd.org/dataoecd/56/11/35954786.pdf>, (retrieved 03.02.2009)

the developing and developed countries also import these mechanisms. In this part of the study we are going to give brief information about the types of ADR according to their usage. We are not going to focus on the ADR mechanisms which are not so common: But we want to focus on some common ADR mechanisms like negotiation, mediation, and arbitration in order to figure out which one better suits the consumer disputes in telecommunications.

II. 1. Preventive ADR Mechanisms:

In this type of ADR mechanism it is recognized that conflict is inevitable, so it is necessary to channel disagreements into a problem-solving arena early enough to avoid escalation into full-blown disputes. Besides solving the conflict earlier, it is also important to involve the parties in establishing at the outset how any disagreement or conflict will be handled before the dispute arises. Preventive ADR is mostly used in construction and employment sector⁷ ⁸. There are three kind of preventive ADR mechanism; these are ADR Clauses, Partnering and Negotiation.

Negotiation: Negotiation is the core of all ADR processes as it occurs in an informal conversation between a parent and a child regarding going out at night or in a formal process between two construction firms and their solicitors on the steps of the courthouse.

The purpose of negotiation is to reach a mutually acceptable agreement among the parties. It is a form of voluntary back and forth communication designed to reach an agreement when different sides have different interests.

II. 2. Facilitative ADR Mechanisms:

Facilitate simply means; make easy, assist forward, promote, expedite⁹. Facilitation is a process where a neutral whose selection is acceptable to all parties of a conflict and who has no substantive decision-making authority, diagnoses and intervenes to help the parties improve how it identifies and solves problems and makes decisions to increase the effectiveness¹⁰. The role of the neutral is to assist the parties to reach a mutually acceptable agreement

⁷ **Law Reform Commission**, Consultation paper Alternative Dispute Resolution, July 2008, p. 41.

⁸ **Folberg, H. Jay and Rosenberg, Joshua D.**, Alternative Dispute Resolution: An Empirical Analysis (1994). Stanford Law Review, Vol. 46, p. 1487, 1994.

⁹ Babylon-Pro 5, English Dictionary.

¹⁰ **Nancy D. Erbe**, Facilitative ADR's Global Popularity and Promise, Bepress Legal Series, year 2004, paper 205, pp. 7-8

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between the parties, but he/she doesn't have advisory or determinative role. This category of ADR includes the process of mediation.

Mediation: Mediation which includes the advantages such as speed, privacy, cost, flexibility, informality, party-control, and preservation of relationships is a win-win approach ADR mechanism. There are three steps in mediation. First step is the "Joint Session" in which the mediator explains the process to the parties. In this step mediator also assess the appropriateness of mediation to the situation and ensures the parties that they are willing and able to participate. Second step is the "private caucuses" in which the mediator meets with each party privately to discuss their respective positions and their own underlying needs and interests¹¹. This step is strictly confidential if the party doesn't let the mediator share the information with the other party. And the last step is "Closing Joint Session" in which an agreement reached by the parties. After reaching a mutually acceptable agreement parties sign the agreement and it becomes binding contract at this point.

II. 3. Advisory ADR Mechanisms:

Advisory ADR mechanism involves a neutral and independent third party who assists the parties in reaching a mutually acceptable agreement by evaluating the positions of the parties. In this method third party advises the parties and also recommends options for the resolution of the dispute. Advisory ADR mechanism includes collaborative lawyering and conciliation. Conciliation resembles mediation but in conciliation, conciliator takes more interventionist role and tries to settle the dispute whereas mediator just tries to guide the discussion and reframes representations.

II. 4. Determinative ADR Mechanisms:

Determinative ADR mechanisms are in the more adversarial part of the ADR spectrum. These mechanisms involve a neutral and independent third party who hears the both parties and renders a potentially enforceable decision. This type of ADR includes the processes of arbitration, adjudication, and expert determination and compared to other ADR mechanisms party control decreases in this side of the spectrum.

Arbitration: A dispute is submitted to one or more neutral third party with the mutual agreement of the parties of the dispute. Arbitrators are generally selected for their specialized knowledge in a substantive area of the dis-

¹¹ See footnote 6. p. 46

pute¹². Arbitration may be voluntary (by private agreement) or mandatory, and the decisions of the arbitrator(s) binding and enforceable.

II. 5. Collective ADR Mechanisms:

Collective ADR mechanism is the successful method of dealing with multi-party scenarios without resorting to litigation. Ombudsman schemes are mostly shown as an example of collective ADR mechanism.

II. 6. Court Based ADR Mechanisms:

Court based ADR mechanisms usually take place after litigation has been initiated and during the lead up to the commencement of a trial and are aimed at reaching a settlement on some or all issues. These mechanism includes Early Neutral Evaluation, Court Settlement Masters, Court Referred ADR, Small Claims Court. These processes may be supervised by a judge of the Court or a Court official.

II. 7. Comparison of Common ADR Mechanisms with Adjudication

The below chart shows how likely or different are the ADR mechanisms and adjudication:

Characteristics	Litigation	Arbitration*	Mediation**	Negotiation
Voluntary/ Involuntary	Involuntary	Voluntary	Voluntary	Voluntary
Binding/ Nonbinding	Binding; subject to appeal	Binding Subject to review on limited grounds	If agreement, Enforceable as Contract; sometimes agreement embodied in court decree	If agreement, enforceable as contract

¹² Alva Orlando, The Range of Dispute Resolution Mechanisms, http://www.blaney.com/files/adr_range.pdf, (retrieved on 03.25.2009)

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Third Party	Imposed, third party neutral decision – maker Generally with no specialized expertise in dispute subject	Party-selected Third-party decision maker, often with specialized subject expertise	Party-selected outside facilitator	No third-party facilitator
Degree of formality	Formalized and highly structured by predetermined, rigid rules	Procedurally less formal; procedural rules and substantive law may be set by parties	Usually informal, unstructured	Usually informal unstructured
Nature of Proceeding	Opportunity to present proofs and arguments	Opportunity for each party to present proofs and arguments	Unbounded presentation of evidence, arguments and interests	Unbounded presentation of evidence, arguments and interests
Outcome	Principled decision, supported by reasoned opinion	Sometimes principled decision supported by reasoned opinion; sometimes compromise without opinion	Mutually acceptable agreement sought	Mutually acceptable agreement sought
Private/Public	Public	Private, unless judicial review sought	Private	Private

* Court-annexed arbitration is involuntary, nonbinding, and public

** In some jurisdictions, mediation is mandatory for certain kinds of cases or if a court so orders.

III. CONSUMER DISPUTES IN ELECTRONIC COMMUNICATIONS

In the modern world almost all the people benefit from electronic communications (or telecommunications) services of the telecommunications companies. These services can be standard landline services, mobile services, cable TV or satellite services, internet services, directory information services, and pay-phone services.

While getting service from these companies we can have some problems about the price that charged by the company or the quality of the service and etc. Before finding the best alternative dispute resolution method for consumer disputes in telecommunications it will be better to take a look at the disputes in this sector. This will help us to find which conflicts can be included in ADR. As our aim is to find the suitable method for Turkey, first of all we must remind that in Turkey equipment faults relating to goods are not included, but conflicts arising from the services of the companies are included into ADR.

In telecommunications sector mostly recognized complaints are *billing* complaints. Other frequently faced complaint is failure to keep consumers informed, in this category telecommunications operators don't inform the consumers about the changes that they made relating to services they provide. These complaints can be categorized as *customer service* issues. In addition to aforementioned complaints, the other category of complaints is related with terms and conditions of the *contracts*. In this category people usually complains about the advice provided at point of sale, accessibility, or variation of contract terms. *Number portability* is another type of complaint which is mostly confronted after the implementation of number portability in most of the countries. This category of consumer complaints consists of delay of number portability, or problems caused by the providers. Issues relating to *quality of service* such as service interruptions, fault repair, coverage, and internet speed are also other kinds of complaint. Nowadays, dissemination and use of personal data, shortly privacy issues are also the concerns of consumer complaints.

These complaints are basic complaints which are handled by a division in telecommunications authorities or neutral third party such as telecommunications ombudsman or independent ADR organizations. In some countries more categories of complaints such as telemarketing, unlawful advertising are added to consumer complaints handled by the telecommunications authorities of the countries or independent ADR organizations.

In the following part of this study, basic requirements of out-of-court dispute resolution and implementations of ADR by some of the EU countries is examined with reference to Universal Service Directive of EU. In addition to implementations of some EU countries, use of ADR by FCC and FTC is searched with regards to consumer disputes.

IV. EU DIRECTIVE ON USERS' RIGHTS RELATING TO ELECTRONIC COMMUNICATIONS and PRACTISE OF ADR IN SOME EU COUNTRIES and IN THE US

In June 1993 The EU Council meeting of Telecommunications ministers decided to liberalize the European Telecoms sector by 1998 and on January 1, 1998 The European telecoms sector officially liberalized. After the liberalization of the sector in 1998, The Commission proposed the first review of the telecoms rules and the new common regulatory framework is adopted on April 24, 2002. Directive 2002/22/EC of The European Parliament and of The Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services shortly named Universal Service Directive is one of the directives in this new regulatory package and was published on the Official Journal of the European Communities on April 24, 2002.

According to 47th recital of the Universal Service Directive, National Regulatory Authorities (NRA) of EU Member States (MS) should ensure effective procedures to deal with the disputes between consumers and operators providing publicly available communications services. MS should take full account of Commission Recommendation¹³ 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes.

According to Article 34 of Universal Service Directive, MS shall ensure *transparent, simple and inexpensive* out-of-court procedures are available for dealing with unresolved disputes, involving consumers, relating to issues covered by the Directive. In order to fulfill these requirements MS shall adopt measures to ensure that such procedures enable to be settled *fairly and promptly*, also it is promoted to adopt a system of reimbursement and/or compensation. In addition to mentioned requirements MS shall ensure that their legislation does not hamper the establishment of complaints offices and the provision of on-line services at the appropriate territorial level to facilitate access to dispute resolution by consumers and other end-users¹⁴. In the following we are going to have a brief look at the implementation of out-of-court dispute resolution in some countries.

¹³ **Official Journal of the European Communities**, L 115, 17.4.1998, p. 31; Europe's Information Society, Consumer Protection, http://ec.europa.eu/information_society/policy/ecommm/todays_framework/consumer_protection/index_en.htm, (retrieved 03.10.2009)

¹⁴ Article 34, para. 2

IV. 1. United Kingdom (UK)

In the UK, Office of Communications (OFCOM) is the regulator for the UK communications industries, with responsibilities across television, radio, telecommunications and wireless communications services. Under the Communications Act 2003, principal duties of OFCOM is to further the interests of citizens and consumers in relation to communications matters¹⁵.

OFCOM is not responsible for regulating disputes between consumer and telecoms provider. If consumer is not satisfied with how his/her telecoms provider has handled his/her complaint, he/she is entitled to a free service to solve the dispute. This is normally through the Telecommunications Ombudsman -OTELO, or through CISAS - the Communications & Internet Services Adjudication Scheme.

In UK all companies must belong to an Alternative Dispute Resolution (ADR) scheme, if they don't, they are breaking important consumer protection rules. The ADR scheme acts as an independent middleman between the company and the customer. If the company's in the wrong, the ADR scheme can order the company to fix the problem and, if needed, pay compensation. Details of the company's ADR scheme are available from either on the back of phone bill, or company's customer services staff¹⁶.

ADR schemes are meant to supplement, not replace, a formal complaints process, so a consumer can apply to OTELO¹⁷, or CISAS¹⁸ free and independent ADR schemes- if their service provider is a member of these dispute resolution offices. However, before applying to OTELO and CISAS:

-consumer should make every effort to complete service provider's complaints procedure,

-consumer should receive a 'deadlock letter'¹⁹ or

¹⁵ **Ofcom, Statutory Duties and Regulatory Principles**, <http://www.ofcom.org.uk/about/sdrp/>, (retrieved on 04.06.2009)

¹⁶ **Ofcom, Problems with your mobile phone**, http://www.ofcom.org.uk/complain/mobile/company/billing/no_adr/, (retrieved on 04.06.2009)

¹⁷ Otelos is funded by its industry members, and approved as a dispute resolution service by the regulator (Ofcom), but its governance structure has been carefully designed to protect the independence of the Ombudsman. This was recognized early in 2003 when the Service was admitted to membership of the British and Irish Ombudsman Association.

¹⁸ CISAS was established in 2003 as an independent dispute resolution service for communications providers and their customers.

¹⁹ **Ofcom's advice on your next step**, http://www.ofcom.org.uk/complain/mobile/company/billing/adr_cmlnt/, (retrieved on 04.06.2009)

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-12 weeks will have passed since the first complaint made to the service provider.

When these ADR offices receive signed complaint form and have checked everything is okay, they will begin to investigate consumer's complaint. This process can take up to six weeks from the date they receive the form²⁰.

If a consumer has a complaint about the way the ADR scheme dealt with his/her complaint then he/she should make a formal complaint to the ADR using its own internal complaints procedure. OFCOM recommends consumers to follow this process before complaining to OFCOM.

IV. 2. Poland

In Poland government regulatory body the Office of Telecommunications and Post Regulation (OTPR) has become a mediator within the area of communications (services, namely telephoning and cable TV and postal services). The OTPR operates as a mediator at the national level. During the course of mediation proceedings, the OTPR acquaints the service provider with the consumer claim, presents the provisions of law applicable to this case and possible proposals for a conciliatory settlement to the dispute by the parties²¹.

To enter a mediatory procedure a consumer is obliged to pay the fee of 5 PLN (approx. 1 Euro) for the claim and 0,50 PLN for each attached document. A claim should contain two important statements of complaint, namely²²:

-consent for the future amicable settlement of dispute and indication of most satisfactory solution,

-confirmation internal complaint procedure of the service provider has been completed.

The President of the OTPR revokes a mediation proceeding if the case has not been settled in a conciliatory manner. The consumer is not bound by the mediator's settlement offer and they still retain the right to seek redress in court. Within the same area of communications services is the process of establishing the Court of Conciliation affiliated with the OTPR is nearing comp-

²⁰ **Contacting Otelo**, <http://www.otelo.org.uk/pages/39contactingotelo.php>, (retrieved on 04.06.2009)

²¹ **Stanczak, Plotr**, Presentation of the ADR System in Poland, Promoting Alternative Dispute Resolution, Baltic Sea Seminar, Stockholm, 27th of May 2005, p. 18

²² *Ibid.*

letion. The formation of the permanent consumer arbitration court is based on agreement on the foundation agreement concluded between the President of the OTPR and non-governmental organizations which represent consumers and entrepreneurs. The administrative costs for the functioning of arbitration courts are covered by the President of the OTPR²³.

Also an e-commerce consumer complaint board project connected with European certification system Euro-Label based on the Code of practice is developing fast. This project is being developed with an assistance of the Office for Competition and Consumer Protection. In order to present the whole picture of Polish ADR system it is important to indicate the essential roles of NGOs, especially the Consumer Federation, as well as district and municipal consumer advocates. These institutions provide crucial assistance and guidance to individual consumers, also in cross-border cases²⁴.

IV. 3. Australia

In Australia the Telecommunications Industry Ombudsman (TIO) is a free²⁵ and independent alternative dispute resolution scheme for small business and residential consumers who have a complaint about their telephone or internet service²⁶. Established in 1993 under a Federal Act of Parliament, the TIO is independent of industry, the government and consumer organizations²⁷.

²³ *Ibid.*

²⁴ **Consumer Policy Strategy**, Office of Competition and Consumer Protection, 2004-2006, Warsaw, July 2004.

²⁵ **Australian Communications and Media Authority**, Telecommunications Ombudsman Fact Sheet, http://www.acma.gov.au/WEB/STANDARD..PC/pc=PC_1735, (retrieved on 04.25.2009)

²⁶ TIO has jurisdiction to investigate complaints about: The standard telephone service, mobile services, internet access, pay-phones, delays in telephone connections, printed and electronic white pages, fault repair, privacy, land access and breaches of the customer service guarantee and industry codes of practice. The TIO cannot handle complaints concerning: The setting of tariffs and charges, privately-owned telecommunications equipment, other than the rented handset supplied with a basic phone service and mobile handsets sold as a part of a bundled contract, cabling, except cabling up to the rented handset, business directories (however, the TIO does have an agreement with Yellow Pages that allows us to help resolve some complaints), matters of telecommunications policy, the 000 emergency service, anti-competitive behavior or restrictive business practices, the content of 'information services', eg. 900 numbers and internet content.

²⁷ **Telecommunications Industry Ombudsman**, http://www.tio.com.au/about_tio.htm, (retrieved on 04.24.2009)

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The TIO is governed by a Council and a Board of Directors, and is managed by an independent *Ombudsman* appointed by the Board on the recommendation of Council. The Council is comprised of five TIO member representatives and five consumer representatives, with an independent Chairman. While the Ombudsman has responsibility for the day to day operations of the scheme, the Council provides advice to the Ombudsman on policy and procedural matters.

The TIO is an industry-funded scheme, deriving its income solely from members who are charged fees for complaint resolution services provided by the TIO. Members consist of telecommunications carriers, telephone carriage providers and Internet Service Providers. A member is only charged complaint handling fees if the TIO receives a complaint from one of its customers. Therefore, the funding system acts as an incentive for members to keep TIO investigations to a minimum by developing and maintaining effective complaint handling and customer service procedures. In order to apply TIO scheme, complainant has to raise his/her complaint with the service provider first. Thus, the service provider should have reasonable opportunity to settle a complaint with a customer before the TIO will become involved. The TIO investigates complaints by considering the facts provided by both parties in a dispute. Complaints to the TIO can be made online or by phone, fax, email, in writing. The TIO's decisions are legally binding upon the telecommunications company up to the value of \$10,000, and Recommendations up to the value of \$50,000.

The TIO can only investigate a complaint if²⁸:

- The consumer has given the service provider a reasonable opportunity to address the complaint;
- The complaint is made within 12 months of the consumer becoming aware of the circumstances surrounding the complaint. The time limit may be extended by a further 12 months in certain cases;
- Legal proceedings have not commenced;
- The complainant was resident in Australia at the time that the circumstances surrounding the event occurred;
- The complaint is made in good faith; and

²⁸ Ibid.

- The complaint type is within the TIO's jurisdiction (set out below)

The TIO may refer systemic problems, identified through complaint statistics, to the Australian Communications & Media Authority, Australian Competition and Consumer Commission, the Privacy Commissioner or other appropriate bodies²⁹.

IV. 4. United States (US)

Jurisdiction over telecommunications in the United States is divided between the federal level and the states. Accordingly, regulation and the handling of customer complaints also take place at both the federal and state levels. When the carrier is a local telephone company or when the dispute consists of issues that do not extend outside of the state, state commission handles the dispute through mediation or formal or informal complaint proceedings. When the carrier is a long-distance telephone company or when the dispute consists of issues crossing state lines the Federal Communications Commission (FCC)'s Consumer and Governmental Affairs Bureau (CGB) handles the dispute through formal or informal complaint proceedings³⁰. Thus, at the federal level, the CGB's Consumer Inquiries and Complaints Division within the FCC handles complaints.

The Consumer Inquiries and Complaints Division provides informal mediation and resolution of individual informal consumer inquiries and complaints consistent with controlling laws and FCC regulations, and in accordance with the Bureau's delegated authority. The Division receives, reviews and analyzes complaints and responses to informal consumer complaints; maintains manual and computerized files that provide for the tracking and maintenance of informal consumer inquiries and complaints; mediates and attempts to settle unresolved disputes in informal complaints as appropriate; and coordinates with other Bureaus and Offices to ensure that consumers are provided with accurate, up-to-date information³¹.

Consumers are invited to file complaints by e-mail, postal mail, fax, or telephone relating to³²;

²⁹ Ibid.

³⁰ **International Trends in Telecom Business Dispute Settlements**, http://www.soumu.go.jp/main_sosiki/hunso/english/pdf/report_2_01.pdf, (retrieved on 04.02.2009)

³¹ **Federal Communications Commission**, Consumer and Governmental Affairs Bureau, http://www.fcc.gov/cgb/cgb_offices.html#CGB, (retrieved on 04.24.2009)

³² Ibid.

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- Dissability access to communications services an equipments,
- Junk fax
- Telemarketing, prerecorded messages and do-not-call,
- Wired telephone,
- Wireless telephone,
- Internet service and voip,
- Broadcast (TV and radio), cable, satellate issues,
- Tower light outages and signal interference

The CGB tries to resolve complaints on a consensual basis. If a solution is not reached, however, the FCC has full powers to issue orders and rule-making authority, over matters that fall within federal jurisdiction, provided tariffed services are involved. For other complaints, consumers must look elsewhere³³.

V. SUGGESTED MODEL FOR TURKEY and CONCLUSION

Information Technologies and Communication Authority (ICTA) is the competent body that is in charge of regulating the telecommunications industry in Turkey. One of the main competencies of the ICTA is to make necessary arrangements and supervisions pertaining to the rights of subscribers, users, consumers and end users. At the same time Electronic Communications Code³⁴ is a basic statute, which sets forth principles and procedures relating to the sector of telecommunications (electronic communications).

According to the article 50 of Electronic Communications Code (ECC) consumers are entitled to sign a contract with the operator who provides such services when subscribing to an electronic communications service. Among other issues subscription contracts have to cover the dispute settlement procedures in case of any conflict between the subscriber and the operator. Although there is a condition in the subscription contracts, operators still don't have internal dispute settlement and a dedicated division in ICTA that handles most of the complaints. But in the first hand, handling all the complaints creates a big burden on ICTA. On the other hand recourse to the courts is always possible but it is expensive and often unsatisfactory from a user perspective.

³³ Lawford, John, Telecommunications Ombudsman for Canada, November 2005, p. 37-38

³⁴ Electronic Communications Code was published on 5th November 2009.

In order to recommend a better option for Turkey, different models of ADR mechanisms used in telecommunications industry of some countries' were reviewed in this paper. The best solution for Turkey would be establishing a non-profit ombudsman office funded by participating service providers, and subject to general government guidelines that resemble in UK and Australia. All telecommunications service providers would be required to participate in this mechanism. In all other respects, it should be independent of both industry and government. The ombudsman should have jurisdiction over the services (e.g wire-line and wireless telecommunications, internet access, voice service, cable, satellite) provided by electronic communications operators where internal conflict resolution has been tried and failed, and where other administrative bodies do not have jurisdiction. The ombudsman should have discretion to refer a complaint to a regulator or the courts if in its judgment that is a more appropriate or convenient avenue to pursue.

Although above mentioned mechanism is better, given the current situation in Turkey, it is not easy to establish non-profit ADR scheme funded by participating service providers at the first place. As there are so many burdens on telecommunications operators, they are usually reluctant to individual consumer problems and they don't like the idea of funding an independent ADR scheme. Thus, if the funding is obtained not only from telecommunications operators but also from ICTA it would be easier to found an ombudsman office.

As a result to set an effective alternative dispute resolution mechanism in Turkey, cooperation between the regulator and the telecommunications operators should be encouraged initially. This cooperation for funding the ombudsman office will also ensure the independence of the ombudsman.

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