
The Turkish Competition Authority Finds No Competition Law Violation in Media Barometer

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Introduction

The Turkish Competition Authority (“TCA”) has concluded its investigation against Diye Danışmanlık Eğitim ve Medya Hizmetleri Tic A.Ş.’s (“**yurddaş + partners**”) *Media Barometer* services. It is decided that *Media Barometer*, which is a media performance measurement service that includes a price comparison system for advertisers, does not violate the Law No. 4054 on the Protection of Competition (“**Competition Law**”)[1].

With one preliminary investigation and one full-fledged investigation by the TCA and several judicial reviews by the administrative courts, *Media Barometer* has been under either the TCA’s or judicial review since October 2014. During the process, the TCA has notified that it will initiate a full-fledged investigation against the companies purchasing *Media Barometer* (i.e. advertisers) unless they stop purchasing the said service from yurddaş + partners. Scope of these notifications is an example of a rare, if not a unique practice of the TCA. At the end, *Media Barometer* has turned out to be in compliance with the Competition Law from the very beginning.

Background Information

Pursuant to the complaint lodged by the Association of Television Broadcasters (“**Association**”) in 2014, the TCA initiated a preliminary investigation to determine whether yurddaş + partners and advertisers are violating the Competition Law through *Media Barometer*[2].

In this preliminary investigation decision, the TCA defined the market in which the *Media Barometer* service is provided as “*purchasing conditions comparison services market for advertisers*”. It was noted that advertisers include companies from various industries such as banking, automotive, food and FMCG. Further, the TCA defined another market where the TV channels sell advertisement space to advertisers as “*TV channels’ advertisement space buying market*”. In this ecosystem, *Media Barometer* appears as a service quite similar to those of global media auditing companies that measure the performances of media investments. It aims to improve the competitive strength of the brands and to clarify whether the activities conducted by advertisers’ agencies are efficient. In short, *Media Barometer* serves to the purpose of improvement of the accountability of the agencies’ activities and purchasing conditions.

Within this scope, the preliminary investigation was to find out (i) whether companies purchasing *Media Barometer* established a buying cartel to coordinate their buying prices in their commercial relationships with TV channels and (ii) whether yurddaş + partners was complicit in this so-called buying cartel.

Following its preliminary investigation, the TCA found no evidence demonstrating the existence of a written or oral agreement between the advertisers that might fall in the scope of Article 4 of the Competition Law prohibiting the agreements restricting competition. Nevertheless, the TCA further decided that *Media Barometer*

might cause competition law concerns in the medium to long run. As a result, the TCA notified that it will initiate a full-fledged investigation (i) against companies purchasing *Media Barometer* (i.e. advertisers) unless they stop purchasing the said service from yurddaş + partners and (ii) against yurddaş + partners unless it stops providing *Media Barometer* services (“**Notifications**”). However, the decision failed to state how *Media Barometer* might cause the said concerns. Considering the portion of the advertisement expenses of the advertisers that use *Media Barometer* within the total advertisement expenses, the TCA decided that it was not necessary to initiate a full-fledged investigation. Rather, it decided to send the said Notifications.

The TCA’s controversial decision led to complex judicial reviews. yurddaş + partners and the Association challenged the decision separately before the Administrative Courts of Ankara. In the lawsuit brought by yurddaş + partners, the Court found that the TCA has failed to demonstrate how *Media Barometer* was to affect the competition in the market. Therefore, the Court decided that Notifications were based on speculative evolutions and annulled the TCA’s decision[3]. In the lawsuit brought by the Association, the Court decided that the TCA’s decision is a result of contradictory grounds. The Court here stated that it is contradictory to find violation suspicion and at the same time decide not to initiate a full-fledged investigation. Therefore, the Court has annulled the TCA decision[4]. As a result, the TCA’s decision was annulled by two different Courts on different grounds. Later on, both decisions were separately appealed and brought before the Council of State.

The Council of State overruled the first decision and approved the second decision, both leading to the same conclusion: Because the TCA established the violation suspicion, it should have initiated a full-fledged investigation to determine whether and how *Media Barometer* violates the Competition Law[5].

The TCA’s Recent Investigation and Conclusion

Upon the Council of State’s said decisions, the TCA initiated a full-fledged investigation against yurddaş + partners in June 2017. The TCA examined (i) whether yurddaş + partners is in dominant position in media auditing services market, and (ii) whether yurddaş + partners’ *Media Barometer* is creating a coordination of buying prices between the advertisers.

As a result of the investigation, the TCA found no evidence that *Media Barometer* will not create a coordination effect between the advertisers and decided that yurddaş + partners does not violate the Competition Law. It further decided that yurddaş + partners is not in dominant position in media auditing services. The TCA only published a short decision that includes very limited information on, and outcome of the case. The reasoned decision is expected to be published in the upcoming months and to reveal more details as to this interesting process.

It is likely that the companies purchasing *Media Barometer* as well as yurddaş + partners have gone through financial and reputational struggle as the procedure took a period of almost four years. The legal effect of the Notifications cleared away with the TCA’s latest decision of no violation.

Disclaimer: yurddaş + partners was represented by ACTECON during the proceedings before the Turkish Competition Authority.

[1] TCA’s Decision dated 24.04.2018 and numbered 18-12/228-103.

[2] TCA’s Decision dated 12.12.2014 and numbered 14-51/900-410.

[3] Ankara 3rd Administrative Court’s Decision dated 07.10.2015 and numbered 2015/101 E., 2015/1371 K.

[4] Ankara 16th Administrative Court’s Decision dated 12.05.2016 and numbered 2015/2048 E., 2016/1534 K.

[5] 13th Chamber of Council of State’s Decision dated 28.02.2017 and numbered 2016/4373 E., 2017/472 K. and 13th Chamber of Council of State’s Decision dated 07.03.2017 and numbered 2016/641 E., 2017/566 K.