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The Turkish Competition Authority fines a leading electric scooter company for providing false and misleading information (*Martı*)

PROCEDURES, DOMINANCE (ABUSE), INVESTIGATIONS / INQUIRIES, ENVIRONMENT, MISINFORMATION, SERVICES, SANCTIONS / FINES / PENALTIES, REQUEST FOR INFORMATION, TURKEY, TRANSPORT (ROAD)

Turkish Competition Authority, *Martı*, No. 22-33/527-213, Decision, 21 July 2022 (Turkish)

Gönenç Gürkaynak | ELIG Gürkaynak Attorneys-at-Law (Istanbul)

Dilara Yesilyaprak | ELIG Gürkaynak Attorneys-at-Law (Istanbul)

Zeynep Ayata Aydoğın | ELIG Gürkaynak Attorneys-at-Law (Istanbul)

Beyza Nur Adıgüzel | ELIG Gürkaynak Attorneys-at-Law (Istanbul)

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Do you think the information requested from the Competition Authority is not available in your company records? Check It Twice! The Competition Board Fines Martı İleri Teknoloji AŞ for Providing False/Misleading Information*

The Turkish Competition Board (" *Board* ") imposed an administrative fine on Martı İleri Teknoloji AŞ (" *Martı* ") with its decision dated 21.07.2022 and numbered 22-33/527-213 based on the ground that the information submitted by Martı in response to the Turkish Competition Authority's (" *Authority* ") information requests constituted providing false/misleading information (" *Decision* ").

The Decision reminds the importance of providing complete and correct data to the Authority and highlights the facts that the Authority can check the information submitted from various sources and impose a fine in case of detection of false/incomplete information.

Some Background Information on the Process Before the Authority

To give some background information on the matter, a complaint was made to the Authority on 11.09.2020 and it was claimed that Martı held a dominant position in the market it operated and it abused its dominant position through exclusionary practices. The Board had initially decided that it is not necessary to take any

administrative action in relation to the complaint with the decision dated 22.10.2020 and numbered 20-47/646-M. Nevertheless, an complainant appealed the Board's decision before the Ankara 8th Administrative Court and the relevant Court annulled the Board's said decision stating that the Authority should have conducted a preliminary investigation in order to decide whether it is necessary to initiate a full-fledged investigation with its decision dated 28.02.2022 and numbered 2020/2396 E., 2022/471 K.. Upon the annulment, the Authority launched a preliminary investigation against Martı with the Board's decision dated 14.04.2022 and numbered 22-17/285-M to determine whether Martı held a dominant position in the relevant market and violated Article 4 of the Law No. 4054 on the Protection of Competition ("**Law No. 4054**") ("**Preliminary Investigation**"). Within the scope of the Preliminary Investigation, the Authority requested information from Martı about the opening and per-minute charges for its e-scooters, yet it was found that information provided by Martı in response to the mentioned request were false/misleading. Accordingly, during the Preliminary Investigation phase, and administrative fine was imposed on Martı for providing false/misleading information.

For completeness, post Preliminary Investigation, the Authority decided to launch a full-fledged investigation against Martı with its decision dated 21.07.2022 and numbered 22-33/527-M. Eventually to the Investigation ended with approval of the commitments submitted by Martı to eliminate the competitive concerns (i.e. foreclosing the market to competitors through pricing below cost) pursuant to Article 43 of the Law No. 4054 with the Board's decision dated 08.09.2022 and numbered 22-41/587-247. Yet Martı still faced an administrative fine for providing false/misleading information to the Authority.

Below we provide an explanation on sequence of events and the legislative framework in relation to the administrative fine imposed on Martı for providing false/misleading information.

Legislative Framework of the Request for Information

Article 14 of the Law No. 4054 stipulates the following "*In carrying out the duties assigned to it by this Act, the Board may request any information it deems necessary from all public institutions and organizations, undertakings and associations of undertakings. These authorities, officials of undertakings and associations of undertakings are obliged to provide the requested information within the period to be determined by the Board.*" As evident from the language, the Article gives the Board a broad authority to request information without any limitation on the content or the sources. Moreover, it is clear that the recipients of this information request "*are obliged*" to provide the requested information at the designated time by the Board.

The broad authority of the Board is further strengthened in Article 16 of the Law No. 4054. Accordingly, if an undertaking provides incomplete, false or misleading information or document, or does not provide information or document within the duration set out by the Authority, the Board shall impose the undertaking an administrative fine by 0.1% of its annual gross revenues which is generated by the end of the financial year preceding the decision, or which is generated by the end of the financial year closest to the date of the decision and which would be determined by the Board, if it is not possible to calculate this.

The Evaluation of the Information Provided by Martı

As per publicly available information, Martı provides e-mopeds, e-bikes, and e-scooters, serviced by proprietary software systems and IOT infrastructure services in certain cities of Turkey. The process that led to the administrative fine started with the first information request of the Authority from Martı which is dated 14.04.2022. Within scope of the relevant information request, the Authority requested information on the opening and per-minute charges for e-scooters. Martı submitted its responses after more than two months on

21.06.2022. In its responses, Martı provided the base prices (as opposed to the exact charges applied) and in relation to its failure to submit the exact prices, it stated that the prices in the relevant period changed due to daily, weekly, monthly, and seasonally applied campaigns. Subsequent to this response, the Authority sent a follow-up request to Martı on 28.06.2022 and it enquired about the price information based on the opening and per-minute monthly charges for e-scooters for 2019, 2020, 2021 and 2022 and specifically stated that, in case this information cannot be provided, the information regarding the timing and the content of the campaigns must be provided. Few days later, on 01.07.2022, Martı responded the request, and provided (i) the price list based on the opening and per-minute monthly charges for e-scooters for 2019, 2020, 2021 and 2022 and the average discounts applied in the relevant period and noted that (ii) the submitted information for the monthly list prices for opening and per-minute charges were based on the charges applied for the longest period in the relevant month. Martı also provided the price transition dates for completeness.

The above set of information provided by Martı included information regarding opening and per-minute price in Ankara for the period between 01.01.2020 and 18.11.2020. When this submitted information were compared with the user data in the relevant period as well as the images submitted in the annex of the complaint petition, it was understood that the prices applied in the relevant period were different than the price information submitted by Martı.

The Decision includes the relevant images and the explanation which portrays that Martı had provided price information for the opening in its responses yet this information contradicted with the information received from the field. Indeed, it was observed that there was in fact no charge for the opening, and moreover, the actual price information per-minute was different than the submitted information. After detecting this error, the Authority requested the submission of the correct information from Martı. In response to this request, Martı submitted the relevant information. Upon the comparison of the latest response and the previous response by Martı, the Board detected other discrepancies in the information provided for the opening and per-minute charges regarding different periods and different cities.

Having detected the discrepancies, the Board noted that (i) Martı did not provide the accurate information despite the specific guidance the Authority provided to Martı and (ii) although Martı claimed that it did not have aggregated data on how much discount was made in certain period/locations and therefore could not provide detailed data, it was observed that after Martı was informed that the user data differed from Martı's data, it provided the relevant data in detail. Following this evaluation, the Board decided to impose an administrative fine on Martı pursuant to Article 16(c) for providing false and misleading information. The administrative fine was calculated on the 2021 annual gross revenue of Martı on the rate of 0.1%. The amount of the administrative fine was not disclosed in the decision.

Conclusion

The Decision is important in terms of showing that undertakings should ensure providing all data available to them and that all data submitted to the Authority is correct. Indeed, the explanations that the requested data is not available may be disproved by the Authority as one must remember that the Board has many other resources of information where it can request information from (i.e. all public institutions and organizations, undertakings and associations of undertakings). This decision shows that recipients of the requests for information should pay attention to submit the right information at the right time, meaning, before the Authority sends additional information requests or clarification requests.