
Be Warned! TCA Fines Türkiye’s Leading Electric Scooter Rental Company For False and Misleading Information (MARTI)

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On 5.12.2022, The Turkish Competition Authority (“TCA”) published its decision imposing a monetary fine on Martı İleri Teknoloji A.Ş. (“**Martı**”), a leading electric scooter rental company in Türkiye, for providing false and misleading information^[1]. The reasoned decision of the TCA indicated that the Authority had communicated with Martı via email after receiving the official answers to its initial request for information with the aim to clarify any confusions that Martı might have had regarding the requested items and decided to impose a fine only after the second round of answers, which were still false and misleading, according to the TCA.

What Led to the Fining Decision?

Within the scope of the preliminary investigation^[2] initiated to determine whether Martı abused its allegedly dominant position by exclusionary conduct, the opening and per-minute fees for e-scooter services were requested from Martı. In its response letter, Martı stated that the prices of its e-scooter services between 2019 and 2022 varied due to daily, weekly, monthly and seasonal campaigns and hence, it submitted the base prices. Subsequently, the TCA requested from Martı via e-mail to convey the starting and per-minute prices of its e-scooter services only for the cities İstanbul, Ankara and İzmir on a monthly basis, with the note that the respective campaign times and contents should be provided in case the monthly prices are not available. In its response letter, Martı shared its list prices on a monthly basis together with average discounts applied. It also informed the TCA that monthly prices were calculated by taking into account the prices which were applied for the longest period in the respective month and price transition dates were also given in the annex of its responses.

However, the TCA noted that the prices submitted by Martı were different from the user data and the data provided by the complainant. Subsequently, the TCA contacted with Martı and requested the correct data. Upon this, it was observed by the TCA that the prices disclosed by Martı differed from the prices provided in its previous responses. In this respect, the TCA noted that although the discounted campaign prices were specifically requested from Martı, such data was not submitted. Furthermore, although Martı claimed that it could not gather detailed data on the ground that it did not have aggregated data on how much discount was made in the relevant period/location, the

correct data was provided to the TCA in detail following the TCA's notice regarding the differing data.

Consequently, the TCA decided to impose an administrative fine at the rate of 1‰ of Martı's 2021 turnover pursuant to Paragraph 1 of Article 16 of the Law No. 4054 on the Protection of Competition as a result of providing the Authority with false and misleading information.

No Room for a Second Chance?

The fine imposed on Martı illustrates that the TCA actively communicates with the respondents to get the accurate data requested and to prevent any misunderstanding that may reasonably occur along with its information request processes. In a similar previous decision, Türk Telekom Decision[3], the TCA repeatedly requested the correct information from Türk Telekom, Türkiye's leading internet and fixed service provider, by providing detailed explanations to its representatives during the course of a meeting in its HQs and sending additional letters with detailed instructions to the company before establishing that the information was not submitted in the required format and inconsistencies were still detected on many occasions.

On another note, during the course of its investigation in poultry markets[4], information provided by one of the investigated parties in its first defences regarding its turnover, which was claimed to be predominantly belonging to export sales, was called into question. The company was contacted for providing the accurate information as the TCA had noticed that the sales data provided concerned only domestic sales. However, as the relevant data was again provided inaccurately in its second defences, the TCA decided to impose an administrative fine on the undertaking for providing false and misleading information.

In its OMV decision[5], the TCA requested explanations from the company regarding the contradictions between its statements in the individual exemption form (*i.e.* it was not active in heating oil market) and the statements on the company's own website. The undertaking in turn responded that its activities in the concerned market were indeed very limited and hence did not indicate it being active in the concerned market. However, the TCA did not accept such explanations as the company merely denied being active in the concerned market although it admitted that it had activities albeit to a limited extent.

Conversely, the TCA's approach for explainable misunderstandings/errors has been rather lenient, particularly when undertakings provide the correct information after receiving such notice from the TCA. For example, in another very recent decision concerning Türk Telekom[6], the TCA accepted the explanations of Türk Telekom that the misleading information was provided inadvertently as the error was made because of the lack of familiarity of an employee with the company's systems and the mistake was based on the inexperience of that employee. The TCA accepted this explanation and concluded that there is no need to impose an administrative fine on Türk Telekom.

Conclusion

Martı decision illustrates that the TCA actively communicates with respondents in case there is any room for misunderstandings or confusions. Therefore, in order to ensure that there are no misinterpretations, provision of the accurate data along with consistent and fair communication with the TCA throughout the entire process should be ensured by the undertakings. This constitutes great importance regarding the attention which needs to be paid to the preparation of the responses, and how this process needs to be handled.

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[1] The TCA's decision dated 21.07.2022 and numbered 22-33/527-213.

[2] The TCA's decision dated 14.04.2022 and numbered 22-17/285-M.

[3] The TCA's decision dated 03.05.2016 and numbered 16-15/255-110.

[4] The TCA's decision dated 13.03.2019 and numbered 19-12/155-70.

[5] The TCA's decision dated 26.12.2013 and numbered 13-72/997-428.

[6] The TCA's decision dated 30.09.2021 and numbered 21-46/667-332.