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English - Or. English

27 May 2026

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Information Sharing in Competition Policy – Note by Croatia

24 June 2026

This document reproduces a written contribution from Croatia submitted for Item 5 of the 149th OECD Competition Committee meeting on 22-24 June 2026.

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JT03587931

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1. General Framework for Assessing Information Exchange

1. The exchange of competitively sensitive information between undertakings, including information on pricing policies, strategic choices, or market expectations, may enable competitors to coordinate their conduct even in the absence of a formal or explicit agreement. In particular, the dissemination of information concerning future commercial intentions may constitute an infringement of competition rules.
2. Such exchanges, even when they occur casually or informally, may distort competitive conditions by reducing uncertainty and weakening the intensity of competition, thereby facilitating collusion or other forms of coordination.
3. Although the exchange of aggregated or anonymised data is, in principle, less likely to raise concerns where individual undertakings cannot be identified, an infringement may still arise where the structure or context of the exchange supports anti-competitive outcomes. Undertakings should therefore exercise particular caution when sharing forward-looking or pricing-related information, as any reduction in strategic uncertainty capable of influencing market behaviour may be problematic under competition law.
4. The applicable guidelines on horizontal co-operation agreements clarify that Article 101(1) of the Treaty on the Functioning of the European Union (TFEU) applies where the exchange of commercially sensitive information is liable to influence the commercial conduct or strategic decision-making of competing undertakings. This is particularly the case where such exchanges reduce or remove uncertainty as to the conditions of competition in the relevant market.
5. In assessing whether an information exchange falls within Article 101(1) TFEU or Article 8(1) of the Croatian Competition Act, regard should be had in particular to the commercially sensitive nature of the information, the level of aggregation and degree of detail involved, the temporal relevance of the data, especially whether it is forward-looking, and the structural and competitive characteristics of the relevant market.
6. Whether a particular exchange constitutes an infringement requires a fact-specific, context-driven assessment that takes account of all relevant legal and economic circumstances.

2. The Role of Trade Associations in Information Sharing

7. Under the current Croatian Competition Act, trade associations are expressly recognised as undertakings and may therefore be subject to proceedings under competition law. By contrast, the 2003 Competition Act did not expressly designate associations as subjects of competition law, which limited the direct application of those rules to such entities.
8. Fines may be imposed directly on an association of undertakings where it coordinates or facilitates unlawful conduct. In addition, individual members may be sanctioned separately if they are found to have actively participated in, implemented, or otherwise adhered to unlawful recommendations or practices.

2.1. The *Marinas* Decision (2015)

9. In 2015, in the so-called *Marinas* case, the Croatian Competition Agency (CCA) imposed fines on nine undertakings and on the Croatian Chamber of Economy (CCE) for participating in a cartel. The case arose from a meeting organised under the auspices of the CCE Council of the Croatian Association of Nautical Tourism, during which representatives exchanged strategic information concerning future berthing prices.

10. In its decision, the CCA underlined that the CCE bore particular responsibility for ensuring compliance with competition law by its members, given its status as a statutory institution with mandatory membership for legal persons engaged in economic activity in Croatia.

2.2. The *Hrvatske šume* Commitment Case (2023)

11. On 20 July 2023 the CCA closed the infringement case with respect to the conclusion of a prohibited agreement against the Croatian forestry and woodland management company – Hrvatske šume and the Croatian Chamber of the Economy – Wood Processing Association by accepting the commitments offered by Hrvatske šume.

12. Following a complaint of the undertaking Massive Panels d.o.o., on 14 April 2022 the CCA opened ex-officio proceeding against Hrvatske šume and the CCE Wood processing Association with the view to identifying any anticompetitive behaviour in the form of a prohibited vertical agreement in the distribution of timber assortments within the meaning of Article 8 (1) of the Competition Act, based on the circumstantial evidence indicating that these undertakings concluded a prohibited agreement implementing the Letter of Understanding signed on 15 December 2017 that may have resulted in distortion of competition in the relevant market concerned.

13. So, Article 11.2 of the Letter of Understanding stipulated the establishment of a Commission for the Implementation of the Letter of Understanding consisting of two representatives of the signing parties in charge of its operation.

14. What raised competition concerns in this concrete case was that the representatives of the CCE Wood Processing Association, regardless of the fact whether they were appointed members of the Commission or not, and regardless of the fact whether they participated in decision making, participated in the meetings of the Commission where complaints of the customers of Hrvatske šume – who are their direct competitors, were discussed and decided upon.

15. Hrvatske šume committed itself not to apply Article 11.2 of the Letter of Understanding for the conclusion of framework and annual agreements for the purchase of trunks signed on 15 December 2017 and Article 9.2 of the Letter of Understanding for the conclusion of framework and annual agreements for the purchase of cubic timber of 20 April 2018. In addition, the Wood Processing Association must be exempt from the meetings and decision making about the complaints of the customers of Hrvatske šume in the sale of timber assortments. The decision can exclusively be made by the managing body of Hrvatske šume. Furthermore, the Commission for the monitoring of the sale of timber assortments in public tenders has been established that will decide about the complaints of the bidders.

2.3. Telecommunications Sector Proceedings on Alleged Information Sharing

16. Following indications of a possible exchange of commercially sensitive information, the Croatian Competition Agency initiated infringement proceedings on 28

December 2023 against Hrvatski Telekom d.d. (HT), A1 Hrvatska d.o.o. (A1), Telemach Hrvatska d.o.o. (Telemach), and the Croatian Employers Association – Association for Information and Communications Technology (CEA ICT).

17. In those proceedings, the CCA is examining whether the undertakings concerned distorted competition by coordinating prices through the inclusion of an index clause (an inflation-adjustment mechanism) in their general and special terms and conditions, thereby potentially concluding a prohibited agreement within the meaning of Article 8 of the Competition Act.

18. More specifically, the CCA is assessing whether HT, A1, and Telemach, allegedly encouraged or facilitated by CEA ICT representatives, participated in a cartel by exchanging commercially sensitive information about plans to adjust prices in line with annual inflation rates. Such conduct could amount to collusion on future commercial strategy by reducing or eliminating uncertainty as to future market behaviour and enabling the undertakings concerned to align their conduct.

19. The CCA will also determine whether CEA ICT facilitated the alleged collusive conduct by tacitly endorsing exchanges of commercially sensitive information during meetings of the Telecom Working Group, including discussions on the planned introduction of inflation-linked price adjustment clauses, and by failing publicly to distance itself from such conduct. In addition, the Agency will assess whether CEA ICT's initiative to propose amendments to the regulatory framework, specifically to allow indexation clauses in the general terms and conditions of electronic communications services, contributed to or reinforced the alleged coordination.

20. If those allegations are established, CEA ICT may be found to have participated in a prohibited horizontal agreement under the applicable competition rules.

3. Recommendation to Beekeeping Associations on Compliance with Competition Law

21. To raise awareness and strengthen understanding of competition law and policy, the Croatian Competition Agency emphasised in its recommendation that, pursuant to Article 8(1) of the Competition Act, all agreements between two or more independent undertakings, decisions of associations of undertakings, and concerted practices that have as their object or effect the prevention, restriction, or distortion of competition in the relevant market are prohibited.

22. The CCA considered it necessary to issue this recommendation to local beekeeping associations because their members generally have limited market power and may be less familiar with the competition law framework.

23. In this regard, the CCA stressed that the presidents of these associations bear particular responsibility for ensuring that members are informed of the applicable competition rules and that the recommendation is appropriately disseminated within the association.

24. The concept of a “decision of an association of undertakings” covers any measure adopted by such an association that gives sufficiently concrete expression to an intention to coordinate the conduct of its members. This applies regardless of the legal form of the measure, whether it applies to all members or only certain categories of members, and whether its effects are limited to members or also extend to non-members.

25. This may include, for example, statutes, internal rules, conditions of membership, and public communications, including those relating to price increases by members.

26. Price agreements between competitors, including the dissemination of price lists, pricing recommendations, arrangements concerning price increases or reductions, and the exchange of confidential strategic information or market share data, constitute serious restrictions of competition in the context of horizontal agreements.

27. Moreover, an undertaking that participates, even passively, in a meeting of an anticompetitive nature without publicly distancing itself from the discussion may be regarded as participating in the resulting prohibited agreement if its conduct gives other participants the impression that it endorses the collusive arrangements.

28. The CCA therefore recommended that associations clearly inform their members, including those with minor market shares, that each economic operator must determine its market conduct independently in the relevant market.

29. Accordingly, any direct or indirect contact between undertakings, including contact facilitated through associations, is prohibited where it has the object or effect of influencing the conduct of actual or potential competitors, or where it discloses to a competitor the conduct that an undertaking has adopted or intends to adopt in the market.

4. Conclusion

30. The Croatian Competition Agency's experience shows that information exchange may raise serious competition concerns even where no express agreement is documented, particularly when commercially sensitive or forward-looking information reduces strategic uncertainty between competitors.

31. Trade associations require especially careful scrutiny in this context, as they may facilitate coordination through meetings, recommendations, or informal exchanges among members. Croatian practice therefore combines enforcement action with preventive guidance, underscoring that undertakings and associations alike must ensure the independent determination of market conduct and avoid any exchange liable to distort competition.