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Information Sharing in Competition Policy – Note by Romania

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Romania

1. Introduction: Romania's enforcement landscape in context

1. Since the OECD Competition Committee's 2010 roundtable on information exchanges, both the legal framework and enforcement practice have evolved significantly. At EU level, the period has been marked by the continued development of case law on information exchanges and concerted practices, and by the adoption of the revised Horizontal Cooperation Guidelines in 2023. In Romania, the past decade has produced a growing body of enforcement practice addressing the competitive risks associated with information exchanges across several sectors.

2. Romania applies Article 5(1) of Competition Law No. 21/1996, which is substantively aligned with Article 101(1) TFEU. Article 101 TFEU is applied directly in cases capable of affecting trade between Member States. The RCC is an independent administrative authority and participates actively in the European Competition Network. The transposition of Directive (EU) 2019/1 further strengthened the RCC's institutional independence and investigative powers.

3. Romanian enforcement practice shows that information exchange concerns arise in three main configurations. The first involves professional or trade associations acting as institutional platforms for the collection, discussion or dissemination of commercially sensitive information. The second involves indirect exchanges through customers or other intermediaries. The third concerns structured reporting, benchmarking or market-monitoring systems capable of increasing transparency between competitors. Across these configurations, the RCC's analysis focuses less on the formal channel of communication and more on the function of the information flow: whether it reduces strategic uncertainty and enables undertakings to anticipate or align future commercial conduct.

4. Against this background, the RCC published in 2021 *its Guidelines on Compliance with Competition Rules by Associations of Undertakings*. The guidance was adopted in response to the recurrent role of associations in Romanian enforcement practice and is intended to clarify both prohibited conduct and permissible safeguards for association activities, including exchanges of information.

2. Legal framework: concerted practices, stand-alone information exchange and by-object analysis

5. Romanian competition law addresses information exchanges primarily through the concept of concerted practice. Article 5(1) of Competition Law No. 21/1996 prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices that have as their object or effect the prevention, restriction or distortion of competition. The provision's broad formulation allows the RCC to address direct exchanges, indirect exchanges through intermediaries and exchanges carried out through association structures.

6. The RCC's approach is aligned with EU competition law principles and CJEU case law, including ICI/Dyestuffs, Suiker Unie, T-Mobile Netherlands, Dole Food and Banco BPN/BIC Portugues. Consistent with that case law, undertakings must determine independently the commercial policy they intend to pursue on the market. Exchanges of strategic information may infringe Article 101(1) TFEU and Article 5(1) of the Romanian

Competition Law where they reduce uncertainty regarding competitors' future conduct, particularly where they concern future prices, pricing intentions, discounts, volumes or other forward-looking commercial parameters.

7. Romania does not apply a *per se* standard. Information exchanges may, however, be qualified as restrictions by object where, by their nature and legal and economic context, they are capable of reducing strategic uncertainty between competitors. This is particularly the case for exchanges of non-public forward-looking pricing information or other strategic information in concentrated and transparent markets. The recent Banco BPN/BIC Portugues judgment confirms the relevance of this approach by treating exchanges of confidential and strategic information concerning future pricing parameters as capable of constituting a restriction by object.

8. Romanian practice since 2010 reflects two related developments. In some cases, information exchange has been treated as the core infringement analysis. The cement decision is the clearest example: the infringement concerned an indirect exchange of commercially sensitive information through actual or potential customers, without a parallel finding of price fixing, market sharing or output limitation. In other cases, information exchange operated as the organisational or monitoring mechanism of a broader cartel arrangement. ACODAREN is the clearest example: the decision concerned a single, complex and continuous infringement involving the fixing or uniformisation of labour rates, spare parts prices and other commercial conditions, with information exchange functioning as one of the mechanisms through which the arrangement was organised, implemented and monitored.

9. This distinction is important for comparative purposes. It avoids overstating every information-exchange case as a pure stand-alone infringement, while recognising that exchanges of strategic information may themselves constitute the competitive harm where they replace independent decision-making with practical cooperation.

3. Economic and analytical approach

10. The economic logic underlying Romanian enforcement is that information exchange may facilitate coordination by reducing strategic uncertainty. In competitive markets, firms should remain uncertain about rivals' future prices, output, discounts, capacity or commercial strategy. Information flows that make such parameters more predictable may soften competition, especially where the market structure already facilitates coordination.

11. This concern is particularly acute in markets with high concentration, stable commercial relationships, relatively homogeneous products, barriers to entry and recurring interactions among competitors. In such settings, additional transparency may make it easier for firms to anticipate rivals' conduct and to adjust their own behaviour accordingly. Romanian cases in cement, MTPL insurance, leasing and association-based repair services show that the RCC considers the specific market context when assessing whether information is sufficiently strategic and whether the exchange is capable of reducing uncertainty.

12. The RCC also distinguishes between legitimate market intelligence and anticompetitive exchange. The mere fact that an undertaking seeks to understand market conditions does not establish an infringement. The risk increases where the information is non-public, current or forward-looking, individualised or granular, exchanged systematically or recurrently, transmitted to decision-makers and used in setting commercial strategy. The cement case illustrates this distinction: the decision did not rely

merely on the fact that customers referred to competitors' prices during negotiations, but on the systematic collection, centralisation, monitoring and managerial use of competitors' future pricing information.

4. Enforcement experience

13. Romanian enforcement practice provides several examples of information sharing mechanisms. The following case summaries focus on the aspects most relevant to the OECD roundtable: the mechanism of exchange, the legal characterisation, the role of associations or intermediaries and the evidentiary approach.

4.1. Cement: indirect information exchange through common customers

14. The cement case concerned an indirect exchange of commercially sensitive information between the three main cement producers in Romania, conducted through actual or potential customers. The infringement found by the RCC was based on customer-mediated information flows rather than on proven direct contacts between the competing producers. According to the decision, the producers supplied customers with detailed information on future prices, product categories, packaging types, discounts, payment terms and implementation dates. That information subsequently circulated to competing producers through customers and was collected, centralised and monitored internally. The RCC found that the information was then used in the development and adjustment of the producers' pricing strategies.

15. The legal analysis focused on the systematic and reciprocal nature of the information flow. By repeatedly collecting competitors' future pricing information from customers, while themselves communicating comparable information to customers, each producer could reasonably anticipate that its own commercially sensitive information might circulate in the same way to its competitors. The RCC therefore treated the producers as both recipients and indirect sources of the information exchange. Particular weight was placed on the fact that the producers did not distance themselves from the practice, did not effectively prevent the internal dissemination of the information and, in some cases, encouraged the collection and updating of competitor pricing information through their sales networks.

16. The RCC assessed this conduct in light of the specific structure of the Romanian cement market. The market was characterised as a highly concentrated, symmetric oligopoly, with three vertically integrated producers holding more than 90% of the market over a prolonged period. The decision also noted high barriers to entry, a homogeneous and standardised product, stable market shares and a significant degree of existing transparency, including through observable retail prices, volumes and information linked to greenhouse gas emissions regulation. Against this background, the exchange of non-public, forward-looking information on prices, discounts and payment terms was considered capable of further reducing the residual uncertainty that should exist between competitors.

17. The decision is relevant for comparative enforcement because it concerns customer-mediated information flows. Unlike cases involving an association, platform or service provider acting as an organised intermediary, the information circulated through customers pursuing their own commercial interests. The case therefore raises the question of when repeated receipt, internal processing and use of customer-transmitted competitor information becomes a concerted practice rather than legitimate market intelligence.

18. The decision also highlights the evidentiary importance of internal information-management systems. The infringement was not based merely on the fact that sales representatives heard competitor information from customers. The RCC focused on organised collection, internal reporting, centralisation and managerial use of that information in pricing decisions. Economic analysis of price correlations was treated as corroborative material, not as a substitute for documentary evidence of the information exchange.

4.2. MTPL/RCA insurance: information exchange through an industry association

19. The MTPL/RCA insurance case concerned exchanges of commercially sensitive information within the framework of UNSAR, the Romanian insurers' association, and in particular within its motor insurance committee. The RCC sanctioned nine insurance companies and UNSAR for conduct relating to the coordination of market behaviour in the compulsory motor third-party liability insurance sector. According to the RCC, participating insurers exchanged information concerning intentions to increase MTPL/RCA premiums, including through discussions held in the association framework. The investigation relied on meeting records, internal correspondence and leniency evidence.

20. The RCC also examined the dissemination of insurer-specific technical and financial indicators through association-related channels, including information capable of reflecting individual market positions. In the RCC's view, the combination of discussions on future pricing intentions and the circulation of insurer-specific information contributed to reducing strategic uncertainty between competitors. The decision therefore treated these elements as part of a single concerted practice aimed at coordinating behaviour on the MTPL/RCA market.

21. The case is significant because the infringement finding was built around the exchange of forward-looking pricing information through a structured association framework, rather than around a formal agreement fixing specific premium levels. The RCC considered that, in a concentrated and transparent market, exchanges concerning future pricing intentions were capable of reducing strategic uncertainty and therefore qualified as a restriction by object.

22. Subsequent judicial developments are relevant for the roundtable. The fine imposed on UNSAR was annulled by the Bucharest Court of Appeal, and that outcome was upheld by the High Court of Cassation and Justice. In essence, the courts required sufficient proof of the association's own contribution to the alleged coordination, rather than treating the mere fact that discussions occurred within the association framework as sufficient for association liability. Separately, in proceedings brought by Groupama Asigurari, the High Court of Cassation and Justice referred questions to the CJEU in Case C-357/25 concerning the evidentiary standard applicable to concerted practices involving exchanges of pricing intentions. The reference asks whether Article 101(1) TFEU requires detailed or individualised information on future pricing intentions, such as the date, scope and manner of future price adjustments, or whether more general discussions concerning other insurers' tariffs or legislative changes affecting tariffs may also be sufficient. It also raises the issue whether the competition authority must examine alternative explanations advanced by an undertaking for subsequent tariff increases.

4.3. ACODAREN: information exchange as an organising mechanism of a broader cartel

23. In the **ACODAREN** case, the Romanian Competition Council sanctioned 56 authorised repairers from the Dacia, Renault and Nissan network, their professional association ACODAREN, a vehicle manufacturer's commercial subsidiary, an insurance broker and several insurance companies for a single, complex and continuous infringement lasting from April 2008 to March 2017. The conduct was qualified as a restriction by object under Article 5(1)(a) of the Romanian Competition Law and Article 101(1) TFEU. According to the decision, the infringement concerned the fixing and/or uniformisation of labour rates, spare parts prices and other commercial conditions applicable to complex vehicle repairs covered by motor insurance, including MTPL/RCA and CASCO policies.

24. The case is relevant for information-exchange analysis because commercially sensitive information was not merely evidence of coordination, but one of the mechanisms through which the arrangement was organised and monitored. ACODAREN acted as the institutional platform through which competing repairers coordinated their commercial approach towards insurers. Before negotiations, the association collected information from members on existing commercial conditions, including labour rates and terms applied in relations with insurers. After negotiations, it circulated information on the discussions and commercial terms agreed with each insurer, allowing members to follow and implement the collective negotiation outcomes.

25. The arrangement was not limited to horizontal coordination between repairers. The decision found that undertakings active on adjacent or related markets supported and reinforced the mechanism. The vehicle manufacturer's commercial subsidiary contributed to the organisation and implementation of the arrangement within the authorised repair network, while the broker supported interactions between repairers, insurers and the network. The participating insurers were not treated merely as passive counterparts: their acceptance and implementation of the negotiated terms were considered important for the stability and effectiveness of the arrangement.

26. A particular feature of the case was the role of insurers' ability to direct insured vehicles towards particular repair workshops. In principle, this leverage could have been used to counteract coordination among repairers. In practice, however, the Council found that insurers participated in the coordinated framework and used their position to obtain commercial advantages, including more favourable repair conditions and increased insurance-related volumes. The case therefore concerned a broader alignment of incentives across interconnected activities, including vehicle repair services, insurance and spare parts distribution.

27. For comparative purposes, **ACODAREN** is a particularly instructive example of the infrastructural role of information exchange in sustaining complex cartel arrangements. The coordination involved 56 competing repairers and several undertakings active on adjacent or related markets. Such an arrangement could hardly have been organised, monitored and sustained for more than nine years without a structured, recurrent and well-documented system for collecting and disseminating commercially sensitive information. The case therefore illustrates that, in complex multi-party infringements, information exchange is not simply a supporting element of the infringement: it may be the mechanism that enables the infringement to exist and persist over time. From an evidentiary perspective, the scale and formalisation of the information exchange generated a substantial documentary record, including e-mails, negotiation summaries, reports and internal communications, requiring extensive forensic review of materials collected during dawn raids.

4.4. Financial leasing: association-mediated exchange of commercially sensitive information

28. The financial leasing case concerned the financial leasing sector in Romania and involved ALB, the Association of Financial Companies in Romania, together with several member companies active on the market. The RCC found that commercially sensitive information was exchanged through the association framework, including information on financing volumes, asset values, financing periods, residual values and leasing portfolios. The exchange took place through regular association-based reporting mechanisms and was considered capable of increasing transparency between competitors and reducing strategic uncertainty regarding their commercial conduct.

29. The case illustrates the competition risks associated with association-based reporting systems in financial services. Sectoral statistics and regulatory engagement may require the collection of market data. However, the exchange of recent, future-oriented or sufficiently granular company-level information can reduce strategic uncertainty among competitors, particularly where the association covers a significant share of the market and where the number of relevant market participants is limited.

4.5. Operational leasing: commitments on association-based information exchange

30. The operational leasing case concerned the operational vehicle leasing sector in Romania and involved ASLO, the Association of Operational Leasing Companies, together with its member companies. Unlike the financial leasing case, the operational leasing case was resolved through commitments. The RCC's concerns related to the collection, processing and dissemination of individualised company-level information, including quarterly data on operational leasing volumes. Such information could have allowed competitors to monitor market positions and adapt their commercial strategies.

31. The commitments were designed to ensure that future information exchanges would take place only under safeguards preserving confidentiality. In particular, the parties undertook that data would be collected and disseminated in aggregated form, without allowing individual companies to be identified, and under conditions limiting the risk of coordination. The case illustrates that information exchange risks are not limited to price lists or interest rates: in service-based markets, volume data, client allocation indicators and operational performance metrics may also reduce competitive uncertainty if exchanged in a sufficiently granular and recurrent manner.

5. Trade associations: legitimate functions and systemic risk

32. A recurring feature of Romanian enforcement is the role of trade or professional associations. Associations serve legitimate and useful functions: they may represent members before public authorities, provide training, develop technical standards, disseminate best practices and produce aggregated industry statistics. The 2021 RCC guidance expressly recognises these functions. At the same time, associations create repeated opportunities for contacts between competitors and may provide the institutional infrastructure through which commercially sensitive information is collected, discussed or circulated.

33. The RCC guidance therefore emphasises that associations should not be used as fora for the exchange of commercially sensitive information between members. The competition risk depends on factors such as the nature of the information, its level of detail,

whether it is current or forward-looking, the frequency of dissemination, the number of participants and the market structure. Information on prices, volumes, sales, market shares, capacity, discounts, margins, costs, customers and commercial strategies is particularly sensitive.

34. Romanian practice also shows that association liability must be analysed separately from member liability. The fact that competitors exchange information in an association setting does not automatically establish the association's own liability. The authority must establish the association's contribution to the infringement, depending on the applicable legal standard and evidence. The UNSAR judicial proceedings and the pending CJEU reference in Groupama Asigurari illustrate the continuing relevance of this issue.

6. Permissible exchanges and safeguards

35. Romanian law does not establish bright-line safe harbours for information exchange. The assessment remains contextual and depends on market structure, the nature of the information, the frequency and granularity of the exchange, the age of the data, the degree of aggregation and the safeguards surrounding collection and dissemination. Nevertheless, Romanian practice and the 2021 guidance provide operational criteria for lower-risk information sharing.

36. Genuinely public information generally raises lower concerns, provided that it is accessible to all market participants on equal terms and does not disclose non-public forward-looking intentions. Historical information generally presents lower risks than current or future information, although the point at which data becomes sufficiently historical depends on the market. On markets with annual contracts, predictable negotiation cycles or stable customer relationships, even data from a prior period may retain strategic value.

37. Aggregated and anonymised data may be permissible where the aggregation prevents identification of individual undertakings and does not allow reverse engineering. The 2021 guidance recommends that collection of individual data and preparation of market or benchmarking reports be carried out by an independent third party subject to confidentiality obligations. Participation should be voluntary, and non-participation should not be sanctioned by exclusion from the association or denial of access to legitimate association services.

38. The guidance also warns that aggregated information should not be accompanied by comments, analysis, recommendations or interpretations concerning prices or other sensitive commercial parameters. Such commentary may transform otherwise lower-risk statistical reporting into a coordination mechanism.

7. Evidence and proof in information-exchange cases

39. Romanian information-exchange cases have relied on a combination of direct documentary evidence, internal communications, association records, leniency or acknowledgment declarations and, in some cases, economic analysis. The relative importance of each category varies with the mechanism of exchange.

40. In association-facilitated cases, the most probative evidence has often been the association's own records: meeting minutes, e-mails, circulars, post-meeting summaries and data compilations prepared for negotiation or benchmarking purposes. These materials

can provide a contemporaneous and chronological account of the exchange and may be more complete than records found at individual undertakings.

41. In indirect-exchange cases, the evidentiary challenge is different. The cement decision did not rely on direct contacts between competitors. The RCC reconstructed the mechanism through internal communications, CRM and reporting-system records, management requests for competitor pricing intelligence and evidence that information was used in pricing strategy. Price correlation analysis was used as corroborative evidence, not as an independent basis for the infringement finding.

42. Participation in a meeting or working group does not automatically establish liability in every case. However, where commercially sensitive information is exchanged in a meeting, participants who remain present and do not distance themselves may be presumed to have taken account of the information, subject to rebuttal. Effective distancing may require clear opposition, refusal to receive the information, internal quarantine of the information, or reporting to the authority, depending on the circumstances.

8. Public disclosures, digital information flows and remedies

43. Romania has not yet adopted a dedicated enforcement decision concerning public disclosures such as earnings calls or investor-relations communications. The relevant principle, however, would be the same: public disclosure is less likely to raise concerns where it concerns genuinely aggregated, historical or non-strategic information. By contrast, individualised, forward-looking disclosures capable of signalling future prices, discounts, capacity, output or other strategic parameters may raise competition concerns, even if the disclosure is formally public.

44. The RCC has not yet concluded a public enforcement case specifically targeting algorithmic or AI-based information sharing. Nevertheless, digitalisation increases the speed, scale and observability of information flows. Algorithmic pricing tools, shared data pools, digital platforms and automated benchmarking systems may create new mechanisms for reducing uncertainty between competitors. Romanian experience with traditional association reporting and customer-mediated exchanges suggests that the relevant question will remain functional: whether the mechanism allows competitors to anticipate or align future conduct.

45. The RCC has not identified, in the cases discussed in this contribution, a merger remedy or market-study disclosure remedy whose design was altered specifically because of collusion risks created by information disclosure. However, the Romanian experience supports the broader point that transparency remedies should be calibrated carefully in concentrated markets. Remedies intended to improve market information for customers or regulators should avoid creating granular, frequent or forward-looking data flows between competitors.

46. Romania does not have a general sector-specific exemption that would permit anticompetitive information exchanges of the kind discussed in this contribution. Sectoral regulation may explain why certain data is collected or reported, particularly in financial services, insurance or regulated utilities, but it does not remove the need to assess whether information sharing reduces strategic uncertainty between competitors.

9. Sanctions and association liability

47. Information-exchange infringements are sanctioned under the general fining framework applicable to infringements of Article 5 of the Romanian Competition Law and Article 101 TFEU. Under Article 55(1) of Competition Law No. 21/1996, undertakings and associations of undertakings may be fined between 0.5% and 10% of the total turnover achieved in the financial year preceding the sanctioning decision for infringements of Article 5 of the Competition Law or Articles 101 and 102 TFEU. The RCC does not apply a separate or automatic fining methodology for information exchanges; the amount of the fine is determined by reference to the general criteria of gravity, duration, relevant turnover and any aggravating or mitigating circumstances, including settlement, acknowledgement of liability or leniency, where applicable.

48. Romanian law contains specific rules for associations of undertakings. Where the infringement committed by an association concerns the activities of its members, Article 55(2) provides that the fine may not exceed 10% of the sum of the total turnovers of each member active on the market affected by the infringement. This allows the sanction to reflect the economic significance of the members' activities where the association's own turnover would not adequately capture the gravity or market impact of the infringement.

49. The law also provides mechanisms ensuring that fines imposed on associations can be effectively recovered. Where a fine imposed on an association is calculated by reference to the turnover of its members and the association is not solvent, the association must request contributions from its members. If the fine is not fully paid within the period set by the RCC, the authority may require payment of the outstanding amount directly from undertakings whose representatives were members of the association's decision-making bodies, and, where necessary, from other members active on the market affected by the infringement. Members may avoid such payment only if they demonstrate that they did not implement the infringing decision because they were unaware of it or actively distanced themselves before the investigation was opened.

50. In practice, association-related information-exchange cases also require a separate assessment of whether the association made its own contribution to the infringement, as distinct from the conduct of its members. The RCA/UNSAR litigation illustrates the importance of this issue: the annulment of the fine imposed on the association shows that the fact that competitors exchange information within an association framework does not automatically establish the association's own liability. The authority must establish the association's participation or facilitating role on the basis of the applicable legal standard and evidence.

10. Conclusions for the Roundtable

Romania's experience since 2010 suggests four conclusions of comparative relevance.

51. First, information exchange should be assessed by reference to its function, not merely its form. Direct exchanges, association-facilitated exchanges, customer-mediated exchanges and reporting systems may all reduce strategic uncertainty where the information is sufficiently strategic and the market context makes the information useful for coordination.

52. Second, information exchange may be the core infringement in some cases, but in other cases it is more accurately understood as the organisational infrastructure of a broader

cartel. Maintaining this distinction improves legal precision and avoids overstating the stand-alone character of every information-exchange case.

53. Third, trade associations remain a central compliance priority. They perform legitimate functions, but their governance systems, committees and data-collection activities require active safeguards. Guidance and advocacy can therefore have significant preventive value when they translate legal standards into concrete operational rules.

54. Fourth, future enforcement will need to address digital and automated information flows without abandoning the core analytical question. Whether the channel is a meeting, an association report, a customer, a CRM platform, a benchmark, an algorithmic tool or an online platform, the key issue is whether the exchange enables undertakings to replace independent commercial judgment with practical cooperation.

Selected references

Romanian Competition Council, Decision No. 63/2018, MTPL/RCA insurance.

Romanian Competition Council, Decision No. 68/2020, financial leasing.

Romanian Competition Council, Decision No. 17/2021, operational leasing commitments.

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