INFORMATION EXCHANGE BETWEEN COMPETITORS:
SUMMARY OF GUIDELINES

1. The purpose of the guidelines is to raise the business community’s awareness of the core aspects of an assessment from a Competition law point of view of information exchange between competitors in order to facilitate business activities and lawful operation of associations, to promote efficient competitive environment in the country and to create conditions to enhance consumers’ welfare.

2. The Comission highlights in its Guidelines the legal figure of information exchange between competitors as a prohibited conduct that constitutes an infringement of competition rules, as it removes or reduces the uncertainty of enterprises with regard to the current or future competitive conduct of the other market participants.

2.1. A strict distinction is made between two main functions of information exchange between competitors resulting in restriction, prevention or distortion of competition on the market.

2.1.1. Exchange of information between competitors as part of another form of prohibited business conduct;
When the exchange of information between competitors takes place in the context of another form of prohibited horizontal cooperation between enterprises (cartel), then it is not an infringement in its own right of competition rules, but rather has an auxiliary function in terms of the offense.

2.1.2. The exchange of information as a self-contained form of prohibited conduct of enterprises;
The exchange of information may represent a self-contained form of horizontal cooperation between competing enterprises, expressed in one of three forms of prohibited conduct - an agreement between enterprises, a decision by an association of enterprises or concerted practices of enterprises. In this respect, different legal forms of information exchange are distinguished:

• Exchange of information between competitors as an agreement between enterprises; By agreeing to exchange market information with each other, businesses actually express a common intent to pursue a certain coordinated conduct on the market.

• Exchange of information between competitors as a decision by an association of enterprises;
To have an exchange of information in such a form, it is not necessary that all members of the association have actually provided data that the association has collected from them, nor is it necessary for the exchange of information to take place in the form of execution of a legal obligation of association members.

• Exchange of information as a concerted practice between enterprises;
The exchange of information between competitors exists in that form when the parties knowingly use market information in order to adopt or adhere to such a marketing strategy which in practice leads to coordination of their market responses on a particular market.
Concerted practice can be in place when an enterprise unilaterally reveals strategic information to its competitors (e.g. through communication by mail, e-mails, phone calls, meetings, etc.).

3. Characteristic features of information which is banned for exchange between competitors.

3.1. Strategic or sensitive commercial information;

3.1.1. This is information on the enterprises’ business conduct, which is usually kept as their trade secrets, and which, if disclosed or shared between competitors, may lead to reduction of the strategic uncertainty on the market and to the elimination or diminishing of public benefits from the presence of a process of competition between economic operators.

3.1.2. Strategic information can be linked to: prices (actual prices, discounts, increases, decreases, formulas and pricing models), clients or customers, production costs, capacity, production quantities, turnover, sales revenues, production quality, marketing plans; assumed risks, investments, technologies, innovations, etc.

3.1.3. In most cases, information relating to product prices and quantities is of highest strategic value, followed by the available information on production costs, capacity and demand. In all cases, the strategic value of information depends on the level of generalization and its relevance, as well as on the market context in which it is disclosed or shared, and on the frequency of exchanges between its competitors.

3.2. Personalized and generalized information relates to an identified or identifiable particular enterprise, while generalized information combines data from several companies so that identification of an individual enterprise’s data is impossible. The exchange of aggregated data between enterprises in which there is no possibility to identify personalized information on individual enterprises, is less likely to have a restricting impact on competition than the exchange of personalized data on individual companies.

3.3. Historical, current (updated) and future information

• Historical information is one that relates to the period dating back at least one year prior to the exchange of information;

• Current (updated) is information related to a period shorter than one year;

• Future information is neither historical, nor current. It applies mostly to business plans and forecasts of an enterprise for its development on a particular market or to the strategy it intends to pursue on this market;

As a rule, the exchange of historical information presented in statistical (aggregate) format is compatible with competition rules because it cannot have any real impact on current or future conduct of the enterprises participating on a particular market.

3.4. Public and confidential information

Even if there is public access to certain data, it does not exclude the existence of forbidden exchange of information between competitors if these data are not sufficient to determine the strategic market conduct of enterprises, to which they relate, so that competitors wishing to reduce strategic uncertainty with regard to the
process of market competition, set up an additional mechanism for exchange of data which do not have any independent significance, but just further elaborate or explain publicly available information.

3.5. Statistical indices and absolute data
The presentation of information in the form of statistical indices, reflecting the numerical ratios between the performance indicators of the operation of various enterprises, is less likely to constitute a breach of competition law, rather than information presented in the form of absolute data, provided that these indices do not allow individualization of the concerned enterprises to the extent allowing other market agents directly or indirectly to determine the marketing strategies of their competitors.

In analyzing the likely anticompetitive effects of the exchange of information in the form of indices (prices, production volume, etc.), the degree of aggregation of information and whether it is historical or current, as well as the frequency of exchanges, are taken into account.

4. Characteristics of prohibited exchange of information between competitors;

4.1. Market coverage of information exchange;
Information exchange is more likely to have a restrictive effect on competition if the companies involved have more coverage (market share) on a particular market. The assessment depends on the circumstances of the case.

4.2. Frequency of information exchange
The more often an exchange of information between competitors takes place, the more favorable conditions are created for coordinated and concerted market responses by the enterprises.

4.3. Public and secret exchange of information
Public exchange occurs if it is done in a way that allows exchanged information to be equally available to all enterprises involved in a particular market, to their customers or users.

Secret sharing of information occurs if competitors exchange information on their future conduct in terms of prices, trade discounts, pricing methods, capacity utilization, information on customers and geographic sales regions, without disclosing this information to all companies involved in the relevant market, to their customers or users. Then it is assumed that this is likely to lead to the worst anticompetitive effects in the relevant market. Usually cartels are implemented through a secret exchange of information between competitors.

4.4. Direct and mediated exchange of information
A very important component of the evaluation of information exchange between competitors is the analysis of its mechanism - whether it is a direct exchange between the companies or a mediated exchange by means of the involvement of associations of enterprises or through another agent acting on their behalf or to protect their economic interests.

4.5. Unilateral and bilateral exchange of information
Exchange of information may be unilateral or bilateral, depending on whether companies unilaterally disclose their business information to their competitors or participate in a reciprocal mechanism for mutual sharing of such
information, as unilateral disclosure of commercially sensitive information may also constitute a breach of competition law.

5. **Market features facilitating information exchange between competitors**
   In evaluating information exchange, the features of the market concerned are taken into account, since they could further the exchange of information between competitors, viz.: the market structure, market concentration, market transparency, features product forming that market; supply and demand;

6. **Pro-competitive effects of information sharing;**
   In some cases where the exchange of information is not part of a cartel between enterprises, the prohibition of such exchange can be waived if it simultaneously:
   - Contributes to improving production or distribution of goods or provision of services or promoting technical and / or economic progress, giving users a fair share of the benefits received
   - Does not impose on the involved enterprises restrictions which are necessary to achieve the relevant economic benefits, and
   - Does not lead to prevention of competition in a substantial part of that particular market;

7. **Sanctions**
   If the exchange of information between competitors is not exempt from prohibition and is not part of a cartel or other anti-competitive conduct, then it is a self-contained violation of Art 101 of TFEU and / or Art. 15 of the LPC, under which CPC is empowered to impose individual fines of up to 10% of the total turnover for the previous financial year of the enterprises.