LIDC Congress 9-12 October 2025, Vienna

Questionnaire for question A

Is the concept of the abuse of relative market power beyond market dominance necessary to ensure a functioning competition and what criteria should be used to assess it?

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## *Background and context*

The term ‘relative market power’, also known in other jurisdictions as ‘economic dependence’, superior or unbalanced bargaining power’ or ‘significant imbalance in commercial relations’, is used to describe circumstances in which a company exploits its superior bargaining position vis-à-vis business partners. These rules exist all over the world, from Europe to South Korea or Brazil. In contrast to the traditional concept of dominance, the concept of relative market power is concerned with the analysis of asymmetric dependencies or bargaining positions in business to business (B2B) relationships, irrespective of a dominant market position or monopoly power in the traditional sense. This is relevant to business-to-business relationships, including distribution, franchising, subcontracting, supply chains and others, in both traditional and digital markets.

This additional tool for regulating unilateral conduct has recently received renewed attention, reflecting a broader trend in the regulation of business-to-business (B2B) relationships. In recent years, several jurisdictions in Europe, including France, Belgium, Switzerland and Austria, have introduced or updated legislation targeting the abuse of economic dependence or relative market power. The proliferation of these legislative measures highlights the need for transparent, predictable and enforceable criteria for assessing relative market power, situations of dependence and imbalances in bargaining power in the B2B context. It also raises the question of the extent to which such provisions serve to maintain effective competition and thus form part of competition, anti-monopoly or antitrust law as it is commonly understood. This study aims to examine how these criteria are applied in practice, the challenges of enforcement and the wider implications of this regulatory trend for competition policy and the economy.

The following list of questions should be understood as a reminder of issues that may rise in the relevant jurisdiction. National rapporteurs are free to structure the report as they wish, covering only issues relevant to their jurisdiction or discussing other issues arising in their jurisdiction that are not mentioned in this questionnaire.

### *1. Introduction: Origin and Development of the Rules in your Jurisdiction*

The Romanian laws address issues related to relative market power and economic dependence, primarily through the concept of “*abuse of superior bargaining position*.” This concept was formally introduced in 2022 into the Law No. 11/1991 on combating unfair competition (the “Unfair Competition Law”)[[1]](#footnote-1), reflecting a broader effort to address commercial imbalances in B2B relationships, especially in times of crisis. In addition, sector-specific rules, particularly in the agri-food industry, reinforce protections for economically dependent suppliers. These developments are complemented by pre-existing civil law remedies and principles that, while more limited, also aim at mitigating unfair contractual imbalances.

### *1.2. General concept of “abuse of superior bargaining position”*

In 2022, Romania introduced the concept of “*abuse of superior bargaining position*” into the Unfair Competition Law[[2]](#footnote-2), through Government Emergency Ordinance No. 84/2022, which entered into force on 20 June 2022[[3]](#footnote-3). This change came in the aftermath of the COVID-19 pandemic, in a broader social and economic context that prompted stronger state involvement to protect the proper functioning of markets and the interests of consumers and businesses.

As outlined in the preamble to the ordinance, essential sectors such as food and pharmaceuticals were subject to significant changes and instability at the national level. These developments revealed vulnerabilities and recurring situations where companies, although not holding a dominant position under competition law, were still able to use their stronger market position to impose unfair conditions on other market participants.

The legislative response was shaped by the need to address these power imbalances, particularly in crisis situations, such as states of emergency, war, or other exceptional events clearly defined by law, where speculative practices, excessive price increases, and market disruption could harm both consumers and economic operators. The aim was to create a legal mechanism that would allow authorities to intervene in such scenarios, ensuring fair competition and market stability.

This concern was also raised by certain findings of the Romanian Competition Council (“RCC”), the authority responsible for enforcing the unfair competition framework. In the course of its activity, RCC identified several issues that highlighted gaps in the existing law, particularly in cases where unfair practices could not be addressed under the current definition of dominance. These observations reinforced the need for a more flexible and targeted legal instrument.

Although the pandemic context is fortunately now gone, the legal amendments remain in place as part of an effort to strengthen economic ensure fair competition in asymmetric business relationships.

Returning to the definition, the legislator’s concern lies not with the mere existence of a superior bargaining position, but with its abuse, which constitutes unfair competition and runs counter to honest commercial practices and the general principle of good faith. Such abuse occurs when an undertaking exploits its stronger position in a commercial relationship to inflict significant harm on the other party and distort competition in the market. This may involve actions or omissions such as unjustified refusal to supply or purchase goods or services; failure to comply with contractual obligations related to payment, supply, or procurement; imposition of unjustifiably onerous or discriminatory conditions relative to the contract’s subject matter; or unjustified modification or termination of the commercial relationship (Art. 2(3) of the Unfair Competition Law).

* 1. *Sector specific rules against abuse of superior bargaining position*

Besides the general concept of “*abuse of superior bargaining position*” as defined by the Unfair Competition Law, Romania also enacted rules for the protection of suppliers in the agricultural and food industries having a weaker position in B2B contracts concluded with buyers with a much larger turnover than theirs. In this sense, Romania has transposed the Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain (the “UTP Directive”)[[4]](#footnote-4) by Law No. 81/2022 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain (“UTP Law”)[[5]](#footnote-5), which entered into force on 15 April 2022.

While the UTP Law[[6]](#footnote-6) does not explicitly define the concept of “*superior bargaining position*” or “*economic dependence*,” its scope is limited to situations where suppliers with a turnover within a specified range enter into agreements with buyers whose turnover falls within a significantly higher range. These thresholds effectively establish a presumption of unequal bargaining power between the parties. As noted in the preamble to the UTP Directive[[7]](#footnote-7), “*Differences in bargaining power, which correspond to the economic dependence of the supplier on the buyer, are likely to lead to larger operators imposing unfair trading practices on smaller operators*”.

* 1. *Other legal instruments against superior bargaining position*

Before the introduction of specific provisions addressing the abuse of superior bargaining position under the Unfair Competition Law and the UTP Law, contracting parties could rely on other legal mechanisms to challenge unfair imbalances in B2B relationships. One such mechanism was the concept of lesion, as governed by the Romanian Civil Code. Lesion exists where one party, exploiting the other’s state of need, lack of experience, or lack of knowledge, secures a benefit for itself or a third party that is substantially disproportionate to the value of its own obligation, as assessed at the time of contract formation. Although lack of experience or knowledge cannot be invoked by professionals, a company may rely on state of need (for example if it has perishable goods which vanish or can no longer be exploited after a certain period). However, the use of lesion as a remedy is limited, as it may only be invoked only if the lesion exceeded half of the value that the performance promised or performed by the injured party had at the time the contract was concluded.

In addition to lesion, general principles of contract law, such as the principle of good faith during negotiations, could offer limited reinforcement in cases of abuse or unfair conduct during the formation of B2B contracts.

Separately, we note that the notion of “*abuse of economic dependence*” existed separately in the Competition Law no. 21/1996 (“Competition Law”)[[8]](#footnote-8), in the context of the classical abuse of dominant position. This amendment was introduced in 2010 by Government Emergency Ordinance no. 75/2010, which amended Art. 6 of the Competition Law and stated that one of the abusive dominant position practices consists in “*exploiting the dependence of another undertaking on such an undertaking or undertakings and which does not have an alternative solution under equivalent conditions, as well as breaking contractual relations for the sole reason that the partner refuses to comply with unjustified commercial conditions*.”[[9]](#footnote-9)

This explicit case was excluded from the law in 2015, by Government Emergency Ordinance no. 31/2015.[[10]](#footnote-10)

It is noteworthy that the driving force behind these rules was the Romanian Competition Council, drawing inspiration from broader European legislative developments in this area. As mentioned above, these provisions were introduced into the national legal framework as part of a broader package of urgent measures targeting speculative behavior, in response to the crisis generated by the COVID-19 pandemic.

In conclusion, although these provisions were originally introduced as part of emergency legislation to regulate market conduct during times of crisis, the RCC views them as an essential legal instrument to safeguard weaker parties in cases where competition law offers no remedy.

As regards the UTP Law[[11]](#footnote-11), this is a transposition of the EU UTP Directive[[12]](#footnote-12). Therefore, European Union policy alignment was the pivotal factor in adopting the rules. As such, alignment with European Union policy was the primary driver behind the adoption of these rules. Following the adoption of the directive at EU level, associations representing farmers and agricultural producers were actively involved in the national implementation process and had their views taken into account regarding how the directive should be applied in Romania.

The rules on the exploitation of a superior bargaining position are general in nature and form part of the broader legal framework on unfair competition. As such, they apply across all sectors or industries that are not governed by specific derogatory provisions. For instance, the UTP Law[[13]](#footnote-13) contains sector-specific rules applicable to the agri-food industry, provided the thresholds established by the law are met. The UTP Law is considered a special law in relation to the general Unfair Competition Law.[[14]](#footnote-14) In our view, where the thresholds under the UTP Law are not met, but the criteria for a superior bargaining position under the Unfair Competition Law are satisfied, a weaker supplier in the agri-food sector could still rely on the general provisions of the Unfair Competition Law for protection.

The rules against exploitation of superior bargaining position in the Unfair Competition Law are rather *ex post*, but the preventive intent must be nevertheless proved. By contrast, the UTP Law contains *ex ante* regulations, establishing a list of prohibited trading practices in advance, which apply regardless of harm actually occurring.

As regards the enforcement, RCC is responsible for enforcing the rules on the exploitation of a superior bargaining position under the Unfair Competition Law, where public interest is involved - specifically, when the proper functioning of the market is adversely affected. RCC may initiate an investigation either ex officio or based on a formal complaint.

To determine whether public interest is affected, RCC assesses the case based on the following criteria:

* the degree of social harm.
* the economic significance of the sector involved, including the number of undertakings participating in or affected by the conduct; and
* the duration of the alleged unfair competition practice.

If RCC finds that public interest is not at stake, it will reject the complaint on that basis. However, if public interest is established, RCC will launch a full investigation and may issue a decision. Should it find that an unfair competition practice has occurred, RCC can order its cessation and impose a fine within the limits prescribed by the law.

Alternatively, any person with a legitimate private interest, such as a party disadvantaged by the stronger negotiating position, may bring a civil action directly before the Romanian courts. This can be done without prior involvement of RCC. In such cases, the claimant may request the cessation and prohibition of the abusive conduct and compensation for both financial and non-financial damages suffered.

While courts do not have the authority to impose administrative fines, they can award damages. Importantly, this legal remedy is available regardless of whether the case involves a public interest.

As regards the UTP Law, RCC is also the designated enforcement authority. In these cases as well, affected parties retain the right to pursue civil action before national courts independently of the RCC’s prior intervention.

* 1. *The applications of the rules*

1.5.1 Specifically on superior bargaining position

As the developments in the field are very recent, the RCC has few investigations started on exploitation of superior bargaining position on the Romanian market.

Currently, there are two major investigations led by the RCC with this subject matter:

* One investigation relating to the one of the leading producers of medical oxygen in the country, supplying liquid medical oxygen to the Bucharest Emergency Hospital[[15]](#footnote-15). According to the president of the RCC, Bogdan Chiritoiu, “*This is the first time we will be investigating a case of abuse of a superior bargaining position, a practice recently incriminated by unfair competition law. The aim is to sanction the behavior of companies which, although they do not have a dominant position or market shares exceeding 40%, are large enough to be able to create problems for their trading partners.*”[[16]](#footnote-16)
* One investigation relating to the exploitation of superior bargaining position of car repair shops in their commercial relationship with an insurance company, in the case of settlement of repairs carried out on the basis of motor third-party liability insurance policies.[[17]](#footnote-17)

There is also another investigation, which is already completed[[18]](#footnote-18), against Sun Wave Pharma SRL ("Sun Wave"), which would have had exerted pressure on the manufacturer Geltec Private Ltd. ("Geltec") to stop supplying food supplements to Bleu Pharma SRL ("Bleu Pharma"), its competitor on the Romanian market. The investigation started in 2024, after Bleu Pharma filed a complaint against Sun Wave Pharma. According to Bleu Pharma, Sun Wave would have requested Geltec to stop producing food supplements for Bleu Pharma, otherwise it would lose the contract with Sun Wave. For this reason, Geltec notified Bleu Pharma to cease its commercial relationship. RCC issued the decision No. 59/2025[[19]](#footnote-19) stating that Sun Wave infringed art. 2(1)(d) of Unfair Competition Law, i.e., "*any other commercial practices that contravene fair practices and the general principle of good faith and that cause or may cause damage to competitors*."

While it does not assess the infringement of the Unfair Competition Law[[20]](#footnote-20) relating to the superior bargaining position, the RCC’decision in *Sun Wave* case is relevant since it assesses the presence of an economic dependency relationship. However, the interesting aspect is that the decision examines with priority the business relationship dynamics between Sun Wave and the producer Geltec, assessing the dependency of Geltec on Sun Wave, and not by reference to the plaintiff, Bleu Pharma, which was the disadvantaged competitor. On the other hand, Bleu Pharma filed the complaint against Sun Wave, not against Geltec, with whom it had economic relationships.The qualification by RCC of Sun Wave's actions, under Art. 2(1)(d) and not under Art. 2(3) the provision on superior bargaining position may be tied to the criteria under the Art. 2(3) that the enterprises must have in the present or have had in the past a commercial relationship.

* 1. *On the unfair trading practices in the agricultural sector*

RCC’s activity in the field of unfair trading practices in the agricultural sector is also just beginning. In 2024, RCC received two complaints of alleged infringements of the UTP Law[[21]](#footnote-21) in 2024 and carried out a first investigation on the matter.

Under the said investigation RCC focused on delays in payment for products, unilateral changes to the contract (such as changes to order and delivery dates, changes to the range of products ordered, the application of different procedures at the buyer's warehouses, and failure to comply with the contract termination clauses), as well as delays in the receipt of goods and in the preparation of documents. Before the in-depth investigation findings were issued, the parties involved participated in a mediation session assisted by an authorized mediator. This procedure, which suspended the in-depth investigation conducted by the competition authority, led to the conclusion of an amicable agreement between the parties involved, setting an important precedent in the application of the new legislation on unfair commercial practices. Following this favorable agreement between the parties, the RCC closed the proceedings without imposing any sanctions, in accordance with the relevant legislation.

### 2. Criteria for the Definition of Relative Market Power or of Similar Concepts

#### 2.1. Definition of Relative Market Power or of Similar Concepts

The Unfair Competition Law[[22]](#footnote-22) defines *superior bargaining position* as the situation in which an undertaking does not hold a dominant position within the meaning of the Competition Law[[23]](#footnote-23), but is nevertheless in a position, due to market characteristics, that may give rise to significant imbalances caused by factors such as the specific structure of the production or distribution chain, vulnerability to external factors, perishability or seasonality, and by the specific relationship between that undertaking and other undertakings operating on different markets. This relationship is assessed based on the following cumulative criteria:

1. The existence of an imbalanced power relationship, resulting from factors such as market share or brand recognition;
2. The importance of the commercial relationship for the other undertaking’s business, based on factors such as the significant share of its sales or purchases in the activity of the other undertaking, the critical role of its products or services for the operation of the other undertaking’s business, or the existence of significant investments made by the latter to fulfill the established commercial relationship;
3. The absence of an equivalent alternative solution for the other undertaking.

Separately, the UTP Law[[24]](#footnote-24) does not explicitly define a superior bargaining position but implicitly assumes an imbalance in commercial relations between suppliers and buyers in the supply chain when there is a significant disparity in their respective turnovers—placing the buyer in a superior bargaining position. As can be inferred from the above, the Unfair Competition Law does not distinguish between suppliers or customers. On the contrary, when giving examples of abuse of superior bargaining position, the law refers to “*unjustified refusal to supply or purchase goods or services, failure to comply with contractual terms relating to payment, supply or purchase*”.

In the agrifood sector, however, the UTP Law[[25]](#footnote-25) expressly differentiates depending on whether the party is a buyer or a supplier, the supplier being considered in a weaker position.

As regards the notion of “*intermediation power*”, it is noteworthy that this is not a term explicitly found in Unfair Competition Law, UTP Law or Competition Law. However, the current rules may be used to address certain cases of intermediation, even if not specifically referred to as such.

The UTP Law[[26]](#footnote-26) imposes direct restrictions on actions which qualify as intermediation power, e.g. the buyer is prohibited from: (i) delisting, threatening to delist, or withdrawing from display one or more agricultural and/or food products in order to put pressure on or take commercial retaliation against the supplier for accepting contractual terms that are unfavorable to it; (ii) listing and displaying on the shelf only the buyer's own brand, so that the offer includes at least one private brand of a competing producer in the relevant product category; (iii) applying different commercial conditions to private label products of producers than to the trader's own brand products for listing/display on the shelf; (iv) refusing to list an agricultural and/or food product registered under national and/or European quality schemes, offered by a supplier, on the grounds of lack of volume and seasonality.

Under the above framework, the law makes certain explicit legal presumptions, as detailed below.

First, the Competition Law[[27]](#footnote-27) presumes that there is a dominant position on the market where the company owns 40% market share or higher, unless disproved by the respective company. This presumption is relevant in the context of abuse of superior bargaining position since this applies where the company does not have a dominant position on the market as provided under the Competition Law. Therefore, to qualify under one law or another, it will matter whether the company has dominant position under Competition Law[[28]](#footnote-28) or superior bargaining position under Unfair Competition Law[[29]](#footnote-29).

Second, the UTP Law establishes certain implicit presumptions, as follows: (i) buyers with a certain turnover have a stronger bargaining position than suppliers with a certain turnover, case in which the law automatically applies; (ii) certain practices – the so-called “*black-list practices*” are presumed unlawful, even if the supplier agreed to them by contract.

*2.2. Criteria Related to the Market*

Though there are no specific guidelines on market definition in cases of abuse of economic dependence, Unfair Competition Law expressly states that the superior bargaining position can be held by an undertaking that does not hold a dominant position on the relevant market. The unbalance caused by the difference in market shares or of brand notoriety between the parties are taken into account.

The characteristics of the affected market are assessed from the perspective of the specificity of the products/services provided, the duration of the contracts, the size of the costs incurred by consumers when changing the suppliers of products/services, etc. It will also be possible to consider the size of enterprises, assessed at least from the perspective of the volume of economic activity, reflected by turnover, sales volume, etc. The number of undertakings operating on that market will also be taken into account, in the sense that the existence of a large number of market players, indicating high competition, usually attributes a minor effect to the unfair competition practice. The existence of a small number of undertakings, indicating low competition, could give the practice of unfair competition a significant effect, reflected in the performance of the public interest.

Law 81/2022 on agri-food practices bypasses market analysis entirely in favour of formal behavioural criteria and market shares are irrelevant.

*2.2.1. The definition of relevant market*

The Unfair Competition Law[[30]](#footnote-30) when discussing the prerequisites of the exercise of superior bargaining power does not refer directly to the definition of the relevant market, but it is implied that any scrutinized behaviour takes place in the context of a specific market. However, the focus of the legal assessment should be on market failures that are capable of favouring significant imbalances generated by factors, such as the specific structure of the production or distribution chain, vulnerability to external factors, perishability or seasonality. The relationship between the undertakings involved in the unfair practice is analysed on the basis of the following cumulative criteria: (i) existence of unbalanced market forces, possibly because of the market share or brand awareness; (ii) the importance of the commercial relationship for the activity of the other undertaking, as a result of elements such as the significant share of its sales or acquisitions in the activity of the other undertaking, the critical role of its products or services for the performance of the activity of the other undertaking or the existence of significant investments on the part of the latter, made in order to comply with the established commercial relations and (iii) the absence of an equivalent alternative solution for the other undertaking.

So according to Unfair Competition Law[[31]](#footnote-31) for the assessment of the degree of dependence of one undertaking on another, an exhaustive definition of the relevant product and geographic markets is not essential, the focus being placed rather on the imbalance between the contracting parties and the dynamics of their relationship.

In the *Sun Wave* case, the assessment of the relevant market was twofold – first the RCC looked at the overall object of activity of the concerned companies and ascertained that both players were active in the field of wholesale of the pharmaceutical products, but also it took into consideration the fact that both were subject to the same regulatory framework, namely food supplements regulations, referring to its findings stemming from its previous sector inquiry on the OTC and food supplements.

Under UTP Law[[32]](#footnote-32) market definition is irrelevant as its application is based on the designated turnover thresholds of the buyer or supplier.

*2.2.2. The existence of the alternatives*

In cases involving superior bargaining power, the alternatives could be assessed more from an economic and contextual perspective rather than from a strict relevant market substitutability perspective.

For instance, if the dependent undertaking has tailored its operations to a particular partner, realistic alternatives may be effectively unavailable. This could be exemplified in the recent case[[33]](#footnote-33) where the Competition Council conducted an unannounced inspection at the headquarters of Messer Romania Gaz SRL, one of the main producers of medical oxygen in the country. The inspection took place as part of the in-depth investigation on the exploitation of the superior bargaining position by Messer Romania Gaz SRL in relation to the Bucharest Emergency Clinical Hospital, with a view to providing liquid medical oxygen. More precisely, it was revealed that due to the real estate and construction set-up where the hospital premises is located, it was impossible for the Hospital to source the liquid medical oxygen from any third-party suppliers (via competitive public procurement) as Messer Romania was the only one operating the tank facility in the hospital yard and it was technically impossible to be removed due to a neighbouring suspended bridge. The decision is still pending.

The Decision in *Sun Wave* case[[34]](#footnote-34) underlines that for the plaintiff Bleu Pharma, 7 out of the 19 products within its portfolio were affected by the abrupt cease of the supply following the pressure exerted by the competitor holding the superior bargaining power towards the third-party supplier, so the assessment of the dependency was linked to access to the upstream market.

*2.2.3. Relationship between relative market power and dominance*

The concept of relative market power (or economic dependence) is a separate legal notion as compared to traditional dominance. Article 1(^1) letter d of the Unfair Competition Law[[35]](#footnote-35) explicitly separates the two, namely the owner of the superior bargaining power must be an undertaking that does not have a dominant position, in the traditional sense given by Article 6 of Romanian Competition Law. This implies that RCC would rather pursue the path of the dominance assessment for the suspected abuses of dominant position when the concerned party would be likely to be dominant, than look at the economic dependence.

*2.3. Criteria Related to the Company having a Relative Market Power*

Unfair Competition Law discusses criteria related to several factors or elements that contribute to the identification of the relative market power. These are structural factors such as the specific structure of the production or distribution chain of the products in question, vulnerability to external factors, perishability or seasonality, and the specific relationship between undertaking in question and other enterprises operating on different markets. The relationship is analysed on the basis of the cumulative criteria such as (i) the existence of an imbalance in forces, as a result of elements such as market share or brand awareness, (ii) the importance of the commercial relationship for the activity of the other undertaking, as a result of elements such as the significant share of its sales or acquisitions in the activity of the other undertaking, (iii) the critical role of its products or services for the performance of the activity of the other undertaking or (iv) the existence of significant investments on the part of the latter, made in order to respect the established commercial relations, as well as the absence of an equivalent alternative solution for the other undertaking.

Turnover as a proxy of market power is especially preeminent in UTP Law[[36]](#footnote-36) which introduces clear legal thresholds establishing a presumption of relative market power via financial asymmetries, creating a presumption of relative market power when the buyer’s turnover exceeds EUR 2,000,000 and the supplier’s turnover is less than EUR 350,000,000.

The company’s product portfolio and the exclusivity of its offerings also weigh significantly in the evaluation. Brand power and reputation are also critical factors that can effectively substitute for formal structural dominance. Vertical integration constitutes another way through which companies may acquire relative market power. Finally, the company’s commercial practices and unilateral contractual behaviour may provide evidence of relative market power.

In Romanian law and civil enforcement, the assessment of the superior bargaining position is based on a contextual approach depending on the legal basis. Provisions of the Unfair Competition Law[[37]](#footnote-37) or the sector-specific regulation (notably UTP Law[[38]](#footnote-38)) may be complemented also with the civil code provisions on carrying out negotiations and performance of the contracts in good faith.

Comparation between turnovers of the parties is particularly evident under UTP Law, where there is a legal presumption of relative market power when buyer’s turnover exceeds EUR 2,000,000 and the supplier’s turnover is less than EUR 350,000,000.

The assessment may be performed by RCC using data as resulted from financial statements, tax records or sales data and its concentration, but also other data may be informative such as the number of employees, operational structure, and overall asymmetry in size i.e. whether a small or medium-sized enterprise (SME) is contracting with a subsidiary of a multinational company.

As it concerns the behavioural elements, the plaintiff has to provide also sources and proofs indicative of the relative market power and the exploitation thereof, but this evidence may be completed by various reports, surveys or internal documents retrieved during dawn-raids.

A company offering a non-substitutable product and denying access to an essential product to competitors by leveraging the superior bargaining power over a buyer has been framed as abusive under the Competition Law and Article 102 TFUE. However, a *de facto* dominance held by the supplier in relation to its buyer, is currently assessed by RCC in the *Messer* case mentioned above under the Unfair Competition Law, highlighting the significant asymmetry between the supplier and the public hospital, the indispensable nature of the product and the lack of alternative suppliers, as the lock-in effects were merely conveyed by the lack of equipment, compatibility and site logistics.

*2.4. Criteria related to the Company in a Dependency Situation*

The concept of relative market power or the superior bargaining position is assessed through several factors, largely contextual also for the dependent company assessment. Such factors relate to structural indicators, such as size and turnover, market position, but also dynamic elements such as contractual behaviour, intermediation roles, alternatives, or sector-specific characteristics.

In the specific context of UTP Law[[39]](#footnote-39) applicable to the agri-food supply chain, the legal presumption of relative market power exists where the buyer’s turnover exceeds EUR 2,000,000 and the supplier’s turnover is less than EUR 350,000,000.

The Unfair Competition Law[[40]](#footnote-40) does not directly address the turnover, but rather the antithetic and unbalanced relationship between the parties involved. Assessment can include the fluctuations of the turnover and sales that may indicate among other factors, the size of the undertaking investigated. The share of the dependent company's turnover originated from the relationship with the investigated party may suggests a financial dependence.

Significant investments made for the implementation of the contractual relationship by the dependent company could also be a cause for the dependence. This is illustrated in the *Messer* case mentioned above, where RCC examined the conduct of a supplier of medical oxygen in relation to its contracts with a particular public hospital, found in a such situation due the technical limitations of the premises and sunk investments performed by the hospital that could not be used with any other third-party suppliers.

The nature of the activities at different levels of the supply chain could also lead to an economic dependency, for example if the suppliers is relying solely on the infrastructure of a platform to dispatch its products or services and it does not have any alternative intermediation flow in place.

There are also sector-specific characteristics, related to perishable goods in agriculture, or pharmaceuticals, as short product cycles or regulatory entry barriers, or a high degree of the buyer concentration. For example, in *Sun Wave* case[[41]](#footnote-41), the plaintiff was in the position where access to an essential food supplement was impeded by its supplier, due to pressure exerted on the supplier by another competitor enjoying the relative market power in the upstream market. The relative market power consisted of the economical constraint that could be exerted on the third party, as Sun Wave was a significant buyer with a consistent turnover. On the other hand, the competitor Bleu Pharma could encounter significant difficulties to source a considerable part of its portfolio from another producer on short notice.

When it comes to alternatives for the dependent party, the law and practice is centred on identification of realistic alternatives at the moment when the superior economic power is exerted. The alternatives must be economically viable solutions, to occur in a reasonable timeframe and without substantial or disproportionate switching costs. It focuses on the practical substitutability; thus it is not limited to the mere existence of other players in the market. The law uses the term of “equivalent alternative”, but the practice has developed several criteria to assess the equivalence (or rather the lack of it).

Firstly, we should see if other potential suppliers, customers, or platforms exist and are accessible in the market. This involves assessing geographical reach, technical or logistical interchangeability, IT infrastructure or other barriers, or whether the dependent firm possesses the financial resources to effectively engage with these alternatives. The dependent company should be able to switch without incurring excessive costs, risks, or losses, otherwise the prohibitive switching costs or risks are indicative of dependence.

Another factor to be considered is volume replacement. If a new partner cannot absorb the same volume of supply or demand, then it is unlikely to be considered a genuine alternative. Geographic feasibility is also relevant. Even if competitors exist, they may not operate in the same region or may not have compatible distribution networks or regulatory clearance, which undermines substitutability in practice.

It is noteworthy that the cessation of activity of the dependent company is not considered an acceptable alternative, and the shut down operations is a sign of economic dependence, and such outcome would qualify as a substantial damage caused by the exploitative practice itself and strong indication of abuse of relative market power. The economic consequences that would follow from termination of the relationship expressed in loss of revenue, lost investments, layoffs of employees etc. are important for the assessment. Sunk infrastructure investments that cannot be repurposed and would be lost upon exit, it strongly supports a finding of dependency.

To sum up, under the Romanian law the primary point of attention remains the current market situation, namely the dependent undertaking’s actual capacity to switch between realistic and viable alternatives at the moment when the economic dependency is exploited. Still, a commitment by a dependent undertaking to diversify its activities or counterparties could be indicative for the degree of economic dependency, but not a prerequisite for the finding of the exploitative behaviour.

It is also important to mention that the Romanian law does not clarify how important it is for RCC’s analysis whether the dependent company is at fault or not. However, the practice of RCC shows that a proper compliance with the contractual provisions by the dependent company is important for determining whether the behaviour of the company holding the relative market power can be objectively justified or not.

*2.5. Criteria related to the Imbalance of the Party’s Position*

The aspects related to the imbalance of one party’s position are at the core of the legal concepts of superior bargaining position under Unfair Competition Law, as well as under UTP Law[[42]](#footnote-42). As these frameworks operate with the relational asymmetry between the parties, these elements are at the centre of the assessment.

Firstly, the Unfair Competition Law[[43]](#footnote-43) seems to indicate that the superior bargaining position between the parties is caused by the significant imbalances generated by the specific structure of the production or distribution chain, vulnerability to external factors, perishability or seasonality, and by the specific relationship between it and other enterprises operating on different markets.

Then, the three pillars of the dependent relationship are confined to the imbalance situation, namely (i) the existence of an unbalanced forces, as a result of elements such as market share or brand awareness, and (ii) the importance of the commercial relationship for the activity of the one undertaking, as a result of the significant share in terms of sales to or acquisitions from the ‘superior’ undertaking, the critical role of its products or services for the performance of the activity of the first undertaking or the existence of significant investments on the part of the latter, made in order to honour the established commercial relations, and (iii) absence of alternatives.

The relative size or turnover of the parties expressed as a significant disparity in turnover or market power between them is an automatic presumption of power asymmetry under UTP Law[[44]](#footnote-44) when the buyer’s turnover exceeds EUR 2,000,000 and the supplier’s turnover is less than EUR 350,000,000.

We consider that lack of alternatives is also a clear indication of economic dependency, particularly when associated with other factors, such as a large portion of revenues resulting from that contractual relationship, as well as negotiation asymmetry (when one party unilaterally dictates contract terms through adhesion contracts).

The criteria related to the imbalance are assessed via multiple tools. Financial statements and market studies may inform upon the market shares, turnover, sales revenues, staffing. For the dependency itself, as this is a consequence of several complex factors RCC could be informed through various sources, such as data provided by the parties or other players in the market being asked to provide information.

The degree of dependence of the income of one party on the stronger party is helpful to establish the interpersonal power. Contractual dynamics give further insight, as well as any signs of monitoring the other party or enforcing retaliation measures (expressed via letters, notifications or merely absence of any reactions to the coercive behaviour). Efforts to diversify and the dynamics of the market entry barriers are very important to signal the imbalanced situation.

*2.6. Other Criteria and Considerations*

Any assessment of the relative market power cannot be performed in a void or purely theoretical. This is why it must take into consideration the specific characterises of both the industry under which the concerned parties operate and the typical go-to-market setup.

The Unfair Competition Law[[45]](#footnote-45) mentions that any intervention grounded on unfair competition is to be pursued provided that it serves the public interest to preserve the well-functioning of the relevant market. Among the criteria employed to assess the public interest of the intervention is the importance or the size of the concerned sector.

The UTP Law[[46]](#footnote-46) regulates and prohibits many of the potential unfair trading practices and therefore any expression thereof may be construed as indicative of the economic dependency. These rules include breaches of the payment terms for perishable goods, restrictions on unilateral contract changes, and bans on certain listing fees.

Highly regulated sectors such as pharmaceuticals, telecommunications or energy demand application of the specific legislation when assessing the essential obligations of the parties or barriers to entry the market. For utilities for example access to infrastructure is critical, so this element is essential in a relative market power assessment.

The criteria may be applied not only to current commercial relationships but, under certain conditions, to future or potential ones. Still the focus remains on existing commercial ties, where factual elements such as dependency or imbalance can be established based on past or current data.

The UTP Law covers pre- and post-contractual stages. For instance, refusal to provide a written contract or threatening with the non-renewal of the contract unless the supplier agrees to unfavourable terms may constitute unfair trading practices under the UTP law.

However, any such assessment should delineate from purely speculative predictions without robust proofs of being practically implemented.

As RCC will increasingly have to deal with more cases as the ones described above, we expect a more detailed and predictable economic assessment, but there is a certain degree of enforcement discretion in addressing relative market power in Romania, as the framework integrates legal and economic analysis alike.

Both enactments, namely Unfair Competition Law and UTP Law, rely heavily on economic tools and allow for sophisticated analysis based on economic data and use of market research data and studies.

Surveys carried out during the investigation with various stakeholders, completed by the findings of past or concurrent sectorial inquiries play a significant role in informing the authority upon the market dynamics. Information received from the other players in the market, or even by external parties such as public funds audit agencies, may play a significant role in managing the aspects of a case in a comprehensive view. In case of complaints, a valid initial source of data could be the plaintiff itself, being required to indicate, describe and prove the unfair commercial practices, detailing the manner and means of unfair competition acts, the purpose pursued, the circumstances in which the act was committed, the consequence produced or which could have occurred materialized in the existence of a possible damage, elements that define the degree of social danger; number of companies involved; number of consumers potentially affected.

### 3. Abuse of Relative Market Power

*3.1. Abusive behaviour (or a similar concept) vs. the imbalance of power and dependency*

In Romania, an imbalance of power or the economic dependency on its own is not sufficient to trigger liability — abusive conduct must also be proven.

Under the Competition Law[[47]](#footnote-47) for an abuse of dominance, RCC must show both dominance and abuse, such as unfair pricing, refusal to supply, discriminatory conditions, or exclusionary behaviour; mere dominance is not unlawful. Under the Unfair Competition Law [[48]](#footnote-48) for finding an unfair competition behaviour based on an economic dependence, the existence of a superior bargaining position must be coupled with unfair impositions, such as unilateral contractual changes, unjustified refusals to supply, or disproportionate penalties; dependency without exploitation is not enough. The UTP Law[[49]](#footnote-49), which transposes the EU UTP[[50]](#footnote-50) Directive for the agri-food sector, namely Directive 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, OJ 2019 L 111 goes further by designating certain practices (late payments, unilateral changes, forced returns) as *per se* abusive once the turnover thresholds are met[[51]](#footnote-51) — even if the weaker party has consented to them.

Under Romanian law (GEO No. 84/2022[[52]](#footnote-52) amending the Unfair Competition Law), the concept of a “superior bargaining position” was introduced. It refers to situations where a company, even if not dominant in the market, can still exert influence over its partners due to:[[53]](#footnote-53)

1. A significant imbalance of power from its size or market influence;
2. The strategic importance of the relationship for the partner (e.g., major share of sales/purchases, critical products/services, or large investments);
3. The partner’s limited ability to find alternatives or substitutes.

The *Sun Wave* case[[54]](#footnote-54) shows how the RCC[[55]](#footnote-55) is refining its application of the superior bargaining position, finding that dependency alone was not decisive, but that additional factors – such as pressure leading to supply termination to a rival – were relevant in its assessment.

Overall, Romanian law consistently requires a combination of imbalance and abusive behaviour; dependency alone does not constitute an infringement.

However, a distinction must be made between the legal requirement under the Competition Law[[56]](#footnote-56) and the criteria set forth under the Unfair Competition Law[[57]](#footnote-57). Thus, in Romania, the abuse of dominance under the Competition Law requires proving market dominance and harm to competition or consumers, with heavy sanctions. By contrast, the 2022 amendments to Unfair Competition Law introduced superior bargaining position, which doesn’t require dominance but targets unfair exploitation of dependent partners (e.g. unilateral contract changes, unfair penalties). This regime has a lower evidentiary threshold, lighter sanctions, and focuses on protecting weaker trading partners, while broader market harm is only a secondary concern.

The *Sun Wave* case[[58]](#footnote-58) is notable in that the RCC did not base its findings on dominance, but on Unfair Competition Law, thereby expanding the use of unfair competition rules to address situations of alleged commercial pressure.

In conclusion, the abuse is required in both regimes, but dominance rules protect competition, while relative power rules protect weaker partners. They are complementary, with different thresholds and purposes.

In Romania, whether a restriction of competition must be shown depends on the legal basis. Under the Competition Law[[59]](#footnote-59), authorities must prove both dominance on a defined market and a restriction of competition further to an abuse by dominant company, usually through evidence of foreclosure, exclusion, or harm to consumers, as in predatory pricing cases. By contrast, under Unfair Competition Law[[60]](#footnote-60) and UTP Law[[61]](#footnote-61), for finding a superior bargaining position it is not necessary to show market-wide competitive harm. What matters is the exploitation of a weaker trading partner through unfair or coercive practices, such as retroactive fees or unjustified contract changes, even if competition as a whole is unaffected.

The decision in *Sun Wave* case shows that, unlike dominance cases which often turn on foreclosure, the RCC relied on evidence of commercial pressure within a dependent relationship to apply Unfair Competition Law. In short, competition restriction is required only for dominance cases, while relative power and UTP regimes focus on bilateral unfairness and dependency.

It should also be mentioned that the definition of abusive behaviour depends on the legal framework. Under Competition Law, both exploitative and exclusionary practices are covered, in line with EU law, including unfair pricing, discriminatory conditions, predation, refusals to supply, tying, or margin squeeze. By contrast, the Unfair Competition Law[[62]](#footnote-62) focuses mainly on exploitative conduct such as unilateral contract changes, unfair fees, penalties, or delisting threats, with exclusionary effects considered only when linked to coercion or gatekeeping. The UTP Law[[63]](#footnote-63) is even narrower, addressing only exploitative conduct through a list of *per se* prohibited practices like late payments or unilateral modifications. The *Sun Wave* case[[64]](#footnote-64) illustrates this distinction: although the conduct excluded a rival, the RCC treated it as exploitative coercion under Unfair Competition Law.

The Romanian concept of “superior bargaining position” covers both exploitative and exclusionary abuses, but its main focus is on exploitative conduct — e.g., unfair contract terms or unjustified refusals that harm a dependent partner. While such practices can also distort competition in the market, this effect is usually a secondary consequence of the exploitation, not the primary target of the law.[[65]](#footnote-65)

In *Sun Wave* case, RCC chose to frame the situation as exploitative coercion under Unfair Competition Law, even though a competitor’s supply was interrupted. The case illustrates the emerging approach in Romania, where relative bargaining power and UTP rules are used mainly to address exploitative practices, while the Competition law remains the tool for tackling both exploitative and exclusionary abuses.

Romanian enforcement most often targets exploitative, non-price abuses in vertical relationships, particularly in retail, distribution, franchising, online platforms, and the agri-food sector. The focus is on practices such as unilateral imposition of contractual terms, retroactive changes, unjustified shelf or marketing fees, late or conditional payments, delisting threats or retaliation, and shifting commercial risks onto weaker partners. Tying, bundling, or outright refusals to contract are addressed mainly in dominance cases under the Competition Law and are less frequently sanctioned. The *Sun Wave* case from 2025 reflects this orientation, with the RCC intervening on the basis of coercive supplier pressure, as opposed to traditional price-related concerns. Overall, Romanian practice concentrates on observable exploitative behaviour rather than complex price-based abuses.

It is also noteworthy that the Romanian enforcement records show far more findings of exploitative than exclusionary abuses, particularly in situations of economic dependence or superior bargaining position. Exploitative practices are most common in retail, distribution, franchising, agri-food, and online platforms, typically involving unilateral or retroactive contractual changes, unfair fees, delayed payments, delisting threats, or risk shifting. These cases are easier to prove and are usually sanctioned under Unfair Competition Law or UTP Law, while Competition Law is rarely applied unless dominance is established. Exclusionary abuses such as refusal to supply, predatory pricing, or foreclosure through exclusivity are much less frequent, as they require complex market definition and proof of broader competitive harm. The *Sun Wave* case shows this orientation: while the conduct had an exclusionary dimension, the RCC framed it as exploitative coercion under Unfair Competition Law, underscoring the practical emphasis on exploitative abuses when applying relative power rules.

Additionally, in Romania, competition enforcement focuses mainly on non-price infringements (e.g., unilateral contract changes, access fees, delisting threats, late payments, shifting risks), especially in retail, food supply chains, e-commerce, franchising, and distribution. These cases are usually handled under Unfair Competition Law, UTP Law, and sometimes Competition Law 21/1996 when dominance exists. The prevalence of non-price cases is due to their easier proof through contracts and business records, compared to complex price-related abuses.

By contrast, price-related abuses such as excessive pricing, predatory pricing, or margin squeeze are very rarely found. They require detailed economic evidence, cost benchmarks, and demonstration of consumer harm, which makes them far more complex and resource-intensive to pursue. The RCC has seldom sanctioned excessive pricing and has almost never confirmed predatory pricing cases, reflecting a cautious approach to avoid over-enforcement. An illustration of this approach is provided by the decision in *Sun Wave* case[[66]](#footnote-66), where RCC focused on non-price aspects—putting pressure on a supplier to terminate the supply agreement entered into with a competitor - rather than on pricing conduct. The case underscores the authority’s preference for addressing concrete contractual practices over price-centered theories of abuse. Overall, the Romanian practice shows significantly more findings of non-price abuses than of price-related infringements.

Another aspect that should be noted is that in Romania, abusive conduct can be found both in existing and in potential or future business relationships, but the legal basis differs. Under Competition Law[[67]](#footnote-67), enforcement covers both current and future dealings, with refusal to deal considered a classic abuse if a dominant undertaking denies access to an essential input or imposes unjustified conditions, provided competitive harm is proven. The Unfair Competition Law[[68]](#footnote-68) dealing with the superior bargaining position is usually applied to existing contractual relations where unfair terms are imposed, but it can also extend to pre-contractual or potential dealings if there is a credible expectation of continued business based on past relations or ongoing negotiations. The UTP Law[[69]](#footnote-69) explicitly regulates both existing and future contractual relationships, prohibiting practices such as refusing to sign a written contract, conditioning future access on unfair terms, or threatening delisting.

The *Sun Wave* case shows how the RCC applied Unfair Competition Law to a situation where a supply contract had not been formally renewed but where the supplier’s dependence and expectation of continuity rendered the exertion of pressure by the stronger party abusive. Overall, Romanian practice shows that both ongoing and potential relationships can fall under the scope of these rules, with UTP Law providing the clearest framework for pre-contractual abuses.

Voluntary negotiation does not exclude a finding of abuse or economic dependence under Romanian law. What matters is not the mere fact that a contract was signed, but whether the negotiation was genuine and balanced or instead purely formal. If the weaker party had no real alternative, faced a “take-it-or-leave-it” situation, or accepted terms under the threat of delisting or loss of business, authorities may still find abuse.

Under Unfair Competition Law, negotiation is relevant but not decisive: even agreed terms can be abusive if imposed unilaterally or under pressure, especially where past dealings or the market structure create dependency. UTP Law goes further, as it bans certain clauses and behaviours outright (such as retroactive fees, late payments, or refusal to sign contracts), making any “consent” by the weaker party legally irrelevant. Under the Competition Law, the fact that both parties signed a contract may weigh in the assessment, but if the dominant company used its market power to extract conditions that distort competition, the formal agreement does not shield it from liability.

*Sun Wave* case shows this approach: even though the supplier accepted the termination of deliveries citing financial reasons, the RCC analyzed whether the acceptance stemmed from genuine autonomy or was shaped by the stronger party’s leverage. This reflects a broader trend whereby Romanian authorities scrutinize the substance of commercial relationships, recognizing that negotiation alone cannot legitimize conduct in the presence of significant dependency.

*3.2 Remedies*

In Romania, remedies for abusive conduct combine administrative sanctions with private enforcement. Authorities can impose fines and corrective measures, while affected parties may seek contractual and compensatory relief through the courts.

Under Unfair Competition Law,[[70]](#footnote-70) RCC may order the cessation of unfair practices and impose fines of up to LEI 500,000. Parties harmed by the conduct can also go to court to request annulment or revision of abusive clauses, claim damages for losses, obtain interim measures such as suspension of delisting, or even reinstatement of contracts in cases of unjustified refusal to deal.

Under UTP Law[[71]](#footnote-71), RCC can impose fines on buyers of up to 1% of annual turnover, order them to stop unfair practices, or require contract changes. The law explicitly nullifies abusive clauses regardless of supplier consent, while repeat or uncooperative behaviour leads to higher sanctions. The remedies are strongly geared toward protecting suppliers and restoring fair trading conditions.

Under Competition Law[[72]](#footnote-72), RCC may impose fines of up to 10% of global turnover and, in rare cases, order structural remedies such as divestments. Behavioural obligations, such as ceasing abusive practices, revising prices or terms, or reinstating access to essential inputs, are more common. Victims can also bring private damages actions, seek interim injunctions, or request the nullification of abusive contractual clauses.

The decision of RCC in *Sun Wave* case[[73]](#footnote-73) shows how remedies are structured in practice: RCC ordered cessation of supplier pressure affecting a rival without requiring resumption of deliveries. The affected party was left with the possibility of pursuing damages or contractual claims in court, demonstrating the coexistence of administrative intervention and civil law mechanisms in the Romanian system.

In Romania, enforcers and judges have some discretion to reshape commercial relationships when abuse or unfair practices are established, but their powers differ. Courts have the broadest authority, especially under Unfair Competition Law and the Civil Code, as they can annul or amend abusive clauses, restore pre-abuse conditions such as prices or delivery terms, suspend delisting, and even add implied terms based on principles of good faith and fairness. This allows judges to rebalance an asymmetric relationship by removing retroactive fees or imposing fairer contractual conditions. By contrast, the RCC has more limited powers. Under Competition Law, it can order the cessation of abusive conduct and, in rare cases, impose structural or behavioural remedies, but it cannot directly rewrite contracts. Under UTP Law, RCC can prohibit specific unfair clauses, require written contracts, and enforce statutory rules on payment deadlines or returns, yet it generally cannot insert new terms beyond what the law mandates. Its role is to stop unlawful practices and trigger renegotiation, leaving detailed contractual adjustments to the courts. The *Sun Wave* case shows the limits of administrative remedies: the RCC directed the cessation of supplier pressure but did not order reinstatement of supply, leaving the dependent partner to rely on contractual or damages actions in court.

Overall, Romanian law allows intervention to correct abusive or unfair situations, but within strict limits. Courts may modify or strike down terms to restore fairness, while administrative enforcers focus on prohibiting unlawful practices. Neither is empowered to redesign the parties’ business model; interventions must be lawful, proportionate, and aimed at rebalancing the relationship rather than substituting the parties’ commercial choices.

*3.3. Are there instances where mandatory contract law provisions have been introduced under ex ante regulation to deal with relative market power and economic dependence?*

In Romania, mandatory contract law provisions have indeed been introduced through ex ante regulation to address situations of relative market power and economic dependence, especially in sectors where suppliers or smaller businesses are vulnerable to stronger trading partners. The most developed example is UTP Law[[74]](#footnote-74), which transposes UTP Directive[[75]](#footnote-75). This law imposes binding contractual rules that apply even before a contract is signed and regardless of party consent. It requires all supply agreements to be in writing, sets statutory maximum payment deadlines (30 days for perishables, 60 days for non-perishables), prohibits unilateral changes or retroactive clauses, and declares any contrary provisions automatically void. RCC enforces these rules, with fines of up to 1% of turnover and powers to order removal of abusive clauses or require compliant contracts.

Outside the agri-food sector, courts applying Unfair Competition Law[[76]](#footnote-76) and the Civil Code have intervened in franchising and distribution contracts, striking down unfair exclusivity or penalty clauses when linked to economic dependence. At EU level, the EU Platform-to-Business (P2B) Regulation, i.e. Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services OJ 2019 L 186 is directly applicable in Romania and imposes ex ante obligations on online platforms, such as transparent terms and notice periods for delisting.

Overall, Romanian law combines general ex post tools (Unfair Competition Law[[77]](#footnote-77) and Competition Law[[78]](#footnote-78)) with sector-specific ex ante rules (notably UTP Law[[79]](#footnote-79)) and EU-level instruments. These provisions limit party autonomy by invalidating abusive terms and imposing mandatory contract standards, signalling a clear policy trend toward proactive intervention in relationships marked by unequal bargaining power.

*3.4. Fines applicable for abuses of relative market power*

Abuses of relative market power are sanctionable in Romania, though the type and level of fines depend on the legal framework applied. The concept does not fall under the classical dominance provisions of Competition Law unless actual dominance can be proven, but both Unfair Competition Law and UTP Law provide a direct legal basis for sanctioning such conduct.

Under Unfair Competition Law, RCC may impose fines of up to LEI 500,000 for abuses of superior bargaining position, such as unjustified contractual terms, delisting threats, or abusive refusals to supply. The level of the fine depends on the gravity, duration, and recurrence of the conduct, as well as the impact on the weaker party.

Under UTP Law, which targets imbalances in the agri-food supply chain, RCC can impose fines of up to 1% of the infringer’s annual turnover. The law prohibits certain clauses and practices outright — such as excessive payment terms, unilateral changes, or retroactive fees — and fines apply even if the supplier formally “agreed” to them.

By contrast, Competition Law provides for much higher fines (up to 10% of global turnover), but only when dominance in the relevant market is established. Relative market power alone is not sufficient to trigger this regime.

The *Sun Wave* case[[80]](#footnote-80) shows how the Romanian framework operates: the RCC acted under Unfair Competition Law, requiring the company to cease coercive practices and confirming that relative power can give rise to liability even absent dominance. Although no turnover-based fine was imposed, the decision underscored that both public enforcement tools and private damages actions are available to address abuses of this kind.

As regards remedies other than fines, in Romania, they differ significantly depending on whether they are imposed by courts or by administrative bodies such as RCC. Courts cannot impose administrative fines — those are the exclusive competence of RCC under Unfair Competition Law, UTP Law, and Competition Law. By contrast, courts can award damages to compensate victims for losses, which RCC cannot do. Courts also have the power, under the Civil Code and Unfair Competition Law[[81]](#footnote-81), to modify or annul abusive contractual clauses, restore pre-abuse conditions, or impose interim relief such as suspension of a delisting. RCC does not rewrite contracts, but it can order undertakings to cease applying abusive terms, require written contracts in the agri-food sector under UTP Law[[82]](#footnote-82), and impose behavioural or, in rare cases, structural remedies under Competition Law[[83]](#footnote-83).

In practice, courts tend to focus on protecting private rights, rebalancing contractual relations, and compensating individual harm, while RCC focuses on systemic enforcement — stopping ongoing abuses, prohibiting unlawful practices, and imposing fines to ensure deterrence. Businesses often combine both avenues: regulatory enforcement to halt abusive conduct and court actions to secure damages or contract adjustments.

The *Sun Wave* case[[84]](#footnote-84) shows these boundaries in practice: RCC required cessation of coercive conduct but left reinstatement of supply to civil proceedings, where the dependent party could seek damages or contractual remedies. This underlines the complementary functions of administrative enforcement and judicial redress in the Romanian system.

4. General Assessment and Conclusions

### The (still recent) formalization into Romanian legislation of abuse of superior bargaining position is a positive step towards a more robust and predictable legal basis. This serves both companies which, due to various circumstances, find themselves within the scope of these new rules, as well as for their counterparts who might at times struggle with understanding if they are being over-negotiated or a victim of illegal and abusive conduct.

### Relative market provisions are necessary to ensure that competition functions fairly and effectively, especially because they protect a broader range of market participants. Rather than the recent formalization of abuse of superior bargaining power being an example of duplication or over-regulation, it is a very useful mechanism which is meant to raise red flags regarding conduct which exceeds the so-called “tough” commercial strategies. It is also justified that these rules exist, because their potential punitive consequences are more likely to lead to a more balanced and level playing field for all market players.

### Market criteria should remain core to establishing, first, the existence of a superior bargaining power, and then any potential abuse of it. Just as there is no abuse of dominance in the absence of a dominant position, for which Romanian legislation at least regulates a rebuttable presumption, there should be no abuse of relative market power in the absence of establishing that one of the parties holds it. As to how relative market power (or superior bargaining power) is to be identified, this assessment would always be done by reference to the particular characteristics of the economic relationship between the parties involved.

### At the same time, as amply explained above, market criteria cannot be the sole element on the basis of which an assessment is made, this being only an element among a complex and comprehensive systems of factors that are analyzed factually, and on a case-by-case basis.

### There are strong arguments to support the conclusion that this type of conduct should be regulated as part of the broader competition law regime. First, these provisions address the power imbalances that distort competition. Even if there is no dominant position, the abuse of dependence of the other contracting party can lead over time to the elimination of smaller competitors from the market, discourage market entry and reduce innovation and diversity. Secondly, we cannot talk about competition if companies are prevented from accessing markets, set free terms, and terminate unfair relationships without economic coercion or disproportionate adverse consequences. Lastly, the Romanian Competition Council has already a wealth of tools, resources and knowledge to be a proficient enforcer of these rules. It is a natural outcome of the breadth of expertise RCC has that this particular form of conduct falls within their scope of activity, and that they have been given tools to investigate similar to the ones available for antitrust cases.

### Without taking away from the welcomed progress that is being made, the concept of abuse of relative market power, as a standalone unlawful conduct, is relatively new and only modestly regulated, with current laws offering limited definitions and enforcement guidelines, particularly outside of specific sectors like food retail, where clearer rules exist. Overall, due to vague terminology and inconsistent application, companies face only moderate predictability regarding these regulations, though ongoing court decisions and active enforcement by authorities are expected to gradually improve clarity and guidance in the future.

### While the revised legislation provides enforcement authorities (in particular, the Romanian Competition Council) with additional options to identify and sanction certain types of conduct, the practical implementation of these new tools is still to be crystallized.

### To strengthen Romania’s recent regulation of relative market power, especially in food retail, clearer legal definitions, sector-specific guidelines for vulnerable industries like e-commerce and franchising, and greater advocacy and education for small companies are recommended. Improving coherence and predictability—through consistent interpretation, more accessible remedies for victims, and enhanced institutional cooperation—will help ensure the rules are fair, modern, and effectively enforced.

1. Law No. 11/1991 on unfair competition, published in Official Gazette 24 of 30 January 1991, as further amended and completed. [↑](#footnote-ref-1)
2. Law No. 11/1991 on unfair competition, published in Official Gazette 24 of 30 January 1991, as further amended and completed. [↑](#footnote-ref-2)
3. Government Emergency Ordinance 84/2022 on combating speculative actions and amending and supplementing certain legislative acts, published in Official Gazette 601 of 20 June 2022. [↑](#footnote-ref-3)
4. EU Directive for the agri-food sector, namely Directive 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, OJ 2019 L 111. [↑](#footnote-ref-4)
5. Law 81/2022 on unfair commercial practices between undertakings in the agricultural and food supply chain, published in Official Gazette 363 of 12 April 2022. [↑](#footnote-ref-5)
6. Ibid. [↑](#footnote-ref-6)
7. EU Directive for the agri-food sector, namely Directive 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, OJ 2019 L 111. [↑](#footnote-ref-7)
8. Competition Law no. 21/1996, republished in Official Gazette 153 of 29 February 2016, as further amended and completed. [↑](#footnote-ref-8)
9. Government Emergency Ordinance no. 75/2010 on amending and supplementing Competition Law No. 21/1996, published in Official Gazette 459 of 6 July 2010. [↑](#footnote-ref-9)
10. Government Emergency Ordinance no. 31/2015 on amending and supplementing Competition Law No. 21/1996 and supplementing Government Emergency Ordinance No. 83/2014 on the remuneration of personnel paid from public funds in 2015, as well as other measures in the field of public expenditure, published in Official Gazette 474 of 30 June 2015. [↑](#footnote-ref-10)
11. Law 81/2022 on unfair commercial practices between undertakings in the agricultural and food supply chain, published in Official Gazette 363 of 12 April 2022. [↑](#footnote-ref-11)
12. EU Directive for the agri-food sector, namely Directive 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, OJ 2019 L 111. [↑](#footnote-ref-12)
13. Law 81/2022 on unfair commercial practices between undertakings in the agricultural and food supply chain, published in Official Gazette 363 of 12 April 2022. [↑](#footnote-ref-13)
14. Law No. 11/1991 on unfair competition, published in Official Gazette 24 of 30 January 1991, as further amended and completed. [↑](#footnote-ref-14)
15. Competition Council, case of abuse of dominant position in medical oxygen market available at <https://www.consiliulconcurentei.ro/wp-content/uploads/2024/06/Inspectii-oxigen-iun-2024.pdf> Accessed 09 September 2025. [↑](#footnote-ref-15)
16. Juridice, case of abuse of dominant position in medical oxygen market available at <https://www.juridice.ro/741331/consiliul-concurentei-analizeaza-un-caz-de-exploatare-a-pozitiei-superioare-de-negociere-pe-piata-oxigenului-medicinal.html> Accessed 09 September 2025. [↑](#footnote-ref-16)
17. Juridice, the Competition Council conducted inspections at several car repair shops available at <https://www.juridice.ro/746557/consiliul-concurentei-a-efectuat-inspectii-la-mai-multe-service-uri-auto.html> Accessed 09 September 2025. [↑](#footnote-ref-17)
18. Decision No. 59 of 11 March 2025 of the Romanian Competition Council regarding the finding and prohibition of the infringement of the provisions of Article 2(1)(d) of Law No. 11/1991 on unfair competition, as subsequently amended and supplemented, by Sun Wave Pharma SRL. [↑](#footnote-ref-18)
19. Ibid. [↑](#footnote-ref-19)
20. Law No. 11/1991 on unfair competition, published in Official Gazette 24 of 30 January 1991, as further amended and completed. [↑](#footnote-ref-20)
21. Law 81/2022 on unfair commercial practices between undertakings in the agricultural and food supply chain, published in Official Gazette 363 of 12 April 2022. [↑](#footnote-ref-21)
22. Law No. 11/1991 on unfair competition, published in Official Gazette 24 of 30 January 1991, as further amended and completed. [↑](#footnote-ref-22)
23. Competition Law no. 21/1996, republished in Official Gazette 153 of 29 February 2016, as further amended and completed. [↑](#footnote-ref-23)
24. Law 81/2022 on unfair commercial practices between undertakings in the agricultural and food supply chain, published in Official Gazette 363 of 12 April 2022. [↑](#footnote-ref-24)
25. Ibid. [↑](#footnote-ref-25)
26. Ibid. [↑](#footnote-ref-26)
27. Competition Law no. 21/1996, republished in Official Gazette 153 of 29 February 2016, as further amended and completed. [↑](#footnote-ref-27)
28. Ibid. [↑](#footnote-ref-28)
29. Law No. 11/1991 on unfair competition, published in Official Gazette 24 of 30 January 1991, as further amended and completed. [↑](#footnote-ref-29)
30. Ibid. [↑](#footnote-ref-30)
31. Ibid. [↑](#footnote-ref-31)
32. Law 81/2022 on unfair commercial practices between undertakings in the agricultural and food supply chain, published in Official Gazette 363 of 12 April 2022. [↑](#footnote-ref-32)
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35. Law No. 11/1991 on unfair competition, published in Official Gazette 24 of 30 January 1991, as further amended and completed. [↑](#footnote-ref-35)
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37. Law No. 11/1991 on unfair competition, published in Official Gazette 24 of 30 January 1991, as further amended and completed. [↑](#footnote-ref-37)
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39. Ibid. [↑](#footnote-ref-39)
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42. Law 81/2022 on unfair commercial practices between undertakings in the agricultural and food supply chain, published in Official Gazette 363 of 12 April 2022. [↑](#footnote-ref-42)
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48. Law No. 11/1991 on unfair competition, published in Official Gazette 24 of 30 January 1991, as further amended and completed. [↑](#footnote-ref-48)
49. Law 81/2022 on unfair commercial practices between undertakings in the agricultural and food supply chain, published in Official Gazette 363 of 12 April 2022. [↑](#footnote-ref-49)
50. Unfair Trading Practices. [↑](#footnote-ref-50)
51. Abuse is presumed if the turnover of the buyer exceeds EUR 2,000,000 and the one of the supplier is below EUR 350,000,000 and practice is on the blacklist or grey list (e.g., late payments, unilateral changes, coercion). [↑](#footnote-ref-51)
52. Government Emergency Ordinance 84/2022 on combating speculative actions and amending and supplementing certain legislative acts, published in Official Gazette 601 of 20 June 2022. [↑](#footnote-ref-52)
53. Schoenherr, Newsletter on RCC investigations (2024) – discussion of superior bargaining position concept and criteria available at <https://www.schoenherr.eu/content/romanian-competition-council-conducts-investigations-of-alleged-abuse-of-superior-bargaining-position-and-alleged-unfair-trading-practices-what-does-this-mean-for-companies#:~:text=On%2026%C2%A0June%C2%A02024%2C%20the%20Romanian%20Competition,infringement%20under%20Romanian%20competition%20rules> Accessed 09 September 2025. [↑](#footnote-ref-53)
54. Decision No. 59 of 11 March 2025 of the Romanian Competition Council regarding the finding and prohibition of the infringement of the provisions of Article 2(1)(d) of Law No. 11/1991 on unfair competition, as subsequently amended and supplemented, by Sun Wave Pharma SRL. [↑](#footnote-ref-54)
55. Romanian Competition Council. [↑](#footnote-ref-55)
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63. Law 81/2022 on unfair commercial practices between undertakings in the agricultural and food supply chain, published in Official Gazette 363 of 12 April 2022. [↑](#footnote-ref-63)
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65. Romanian government adopts law sanctioning speculative actions during times of crisis and regulating the abuse of superior bargaining position - Iustinian Captariu, Catalin Graure (2022) available at <https://www.kinstellar.com/news-and-insights/detail/1795/romanian-government-adopts-law-sanctioning-speculative-actions-during-times-of-crisis-and-regulating-the-abuse-of-superior-bargaining-position#:~:text=,conditions%20considering%20the%20scope%20of> Accessed 09 September 2025. [↑](#footnote-ref-65)
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74. Law 81/2022 on unfair commercial practices between undertakings in the agricultural and food supply chain, published in Official Gazette 363 of 12 April 2022. [↑](#footnote-ref-74)
75. EU Directive for the agri-food sector, namely Directive 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, OJ 2019 L 111. [↑](#footnote-ref-75)
76. Law No. 11/1991 on unfair competition, published in Official Gazette 24 of 30 January 1991, as further amended and completed. [↑](#footnote-ref-76)
77. Ibid. [↑](#footnote-ref-77)
78. Competition Law no. 21/1996, republished in Official Gazette 153 of 29 February 2016, as further amended and completed. [↑](#footnote-ref-78)
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