



International
Competition
Network

ICN Special Project: Competition concerns in agriculture and food markets

**Report on the Survey on Competition
concerns in agriculture and food markets**

November 2024

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Executive Summary

The increasing market concentration and market power are being observed agri-food markets, many of which are highly globalized. The recent bout of global inflation and the cost-of-living pressures that stemmed from it, increased demands for competition authorities to lend their skills and expertise to understanding the causes of food prices increases in particular and to assess whether anti-competitive behaviour and sub-optimal competition could have been a driving factor behind higher food prices.

In response to rising food inflation, the 2023 International Competition Network (ICN) Conference confirmed the importance of tackling competition issues in agriculture and food markets and agreed to initiate a special project to assess how competition authorities have responded to high food inflation. This report deals with the first phase of the Special Project which was a survey to collect information from ICN members on the food and agriculture-related cases and research that they have conducted. The survey, which received 49 agency responses, highlighted the following:

Competition issues and market failures: Competition authorities are concerned about a range of issues in competition and food markets, however high food prices are the predominant concern raised by survey respondents. This is unsurprising given the recent inflationary episode and levels at which prices have settled as inflation subsides. Other important concerns include high input prices, concentration, and abuse of dominance. The proactive monitoring and research efforts undertaken by authorities have highlighted global concentration and vertical integration in food markets as a risk factor for anti-competitive conduct highlighting unfair trading practices, exclusive contracting and prevalent tacit collusion as conduct enabled by the structure of many food and agricultural markets.

Market power and abuse of dominance: Excessive pricing and potentially unfair or anti-competitive price discrimination are the main areas of concern for competition authorities in this area. In terms of sectors, most are concerned about abuses of dominance in the retail and wholesale sectors, which are often highly concentrated. Few competition authorities submitted abuse of dominance cases for the survey period 2019 to 2023. However, the submitted cases reflecting these concerns in excessive pricing, buyer power, and price discrimination.

Cartels: Price-fixing cartels are the main concern raised of competition authorities in this area followed by information exchange. The sectors where authorities are most concerned are meat and fish, transport and logistics, and fertilizer. Regarding actual cases, authorities have found cartel conduct in big rigging for public sector contracts, information exchange, and market division.

Mergers: The global nature of the food and agricultural commodities market presents unique data and analytical challenges to competition authorities when assessing mergers in this sector. One of the main challenges experienced by competition authorities is accessing data during the assessment process. Several authorities have overcome this by collaborating with other relevant agencies.

Regulation and Policy: The prevalent issues identified in the survey on experiences by competition authorities on regulation and policies that have affected agricultural and food markets include price controls and the promotion of local productions. The diverse objectives and equally varied effects of these regulations on various jurisdictions call for regular assessments of the impacts of price control in national and cross-border markets and advocate for alternative regulations that enhance competition.

In addition to the survey, the special project hosted a breakout and plenary session at the ICN annual conference hosted in Brazil to provide delegates with high-level feedback on the survey findings and identify potential priority areas for the special project or other ICN working groups.

The following have been identified as potential work products for the next phase of the special project.

- Development of a toolkit or template for price monitoring.
- Frameworks for collaborative research into the activities of global commodity traders.
- Establishing a comprehensive knowledge base on competition interventions in food and agriculture markets.
- Developing a template(s) or tips for requesting and collecting data on cross border activity, particularly in merger control and for cartel investigation.

There are a number of opportunities that available for participation and contribution by ICN members.

1. Introduction

1. Throughout the world, the nature and cause of the recent inflationary incidents have featured prominently in debates in the academy, governments, and competition authorities. Food inflation has been a particular pain point for consumers since it has generally exceeded overall inflation and income growth leading to a cost-of-living crisis. This crisis, while a global phenomenon, has been felt most acutely in developing countries where incomes are often low and welfare systems are underdeveloped. The COVID-19 pandemic and the Russian/Ukraine crisis exacerbated the vulnerability of global food systems to supply shocks throughout the value chain including in key inputs such as fertilizers and pesticides.

B.1. Background of the ICN Special Food Project

2. In response to concerns from competition authorities about rising food inflation, the 2023 International Competition Network (ICN) Conference confirmed the importance of tackling competition issues in agriculture and food markets. Delegates at the ICN Conference agreed to initiate a special project to assess how competition authorities have responded to high food inflation. This report deals with the first phase of the Special Project which was a survey to collect information from ICN members on the food and agriculture-related cases that they have pursued in their jurisdictions, the main markets of concern, and the conduct and competition law areas of concern that they have investigated.
3. The primary goal of the project is to understand the importance of these markets to competition authorities and the competition-related challenges faced by various ICN members in the agriculture and food markets and how they address them. Further, based on the survey and discussions at the annual conference and advocacy working group workshop, practices and priority actions are recommended for consideration by the ICN. The Special Project was structured in the following phases:
 - 3.1. In phase 1, the survey gathered information on how competition authorities have responded to the immediate high food inflation along with information on enforcement against transactions creating high levels of concentration and competition issues within the food value chains. This was done through the ICN survey that forms the basis of this Report. See Questionnaire sent to ICN members in Annexure 1 of this Report.

- 3.2. In phase 2, the data collected through the survey was collated into preliminary findings of the survey which were shared at the ICN Annual Conference convened in Brazil in May 2024. In the breakout session, all panellists affirmed the importance of food and agriculture markets for competition authorities and policymakers. Price monitoring and market studies were highlighted as potentially useful tools for competition authorities to understand and intervene in food markets.¹
- 3.3. In phase 3, The Special Project team compiled this Report that synthesizes the responses to the survey along with the cases referenced by authorities. The Project also convened a webinar to (i) discuss the findings of the survey; and (ii) seek contributions to recommendations made, i.e. how agricultural issues can be integrated into the work programs of the ICN working groups and Special Projects such that authorities are better equipped to deal with competition concerns and issues in food and agricultural markets; and (iii) the role of this Special Project in monitoring the implementation of the recommendations.

B.2. Questionnaire Survey

4. As part of the Special Project, information based on the cases and inquiries in different jurisdictions, the main markets of concern, and the types of conduct and arrangements being assessed was gathered through the ICN Special Project survey ('the survey'). The survey collected information on proactive monitoring and research, merger control, abuse of dominance, cartels, and government policy.
5. The survey was sent to all ICN members, with forty-nine (49) members responding to the survey.² See Annexure A2 for the list of respondents and Annexure A3 for the references to submitted research, cases and regulations.
6. The survey period was between December 2023 to March 2024, requesting for enforcement activity between 1 January 2019 to 31 December 2023.

¹ For example, Moldova found the biggest cartel, in fertilizer, through a market study.

² Responding agencies represented the following: 19 respondents were European; 12 respondents were African; 9 were from the Americas & Caribbean; 4 respondents were Asian and Australasian; 2 from the Middle East.

B.3. Structure of Report

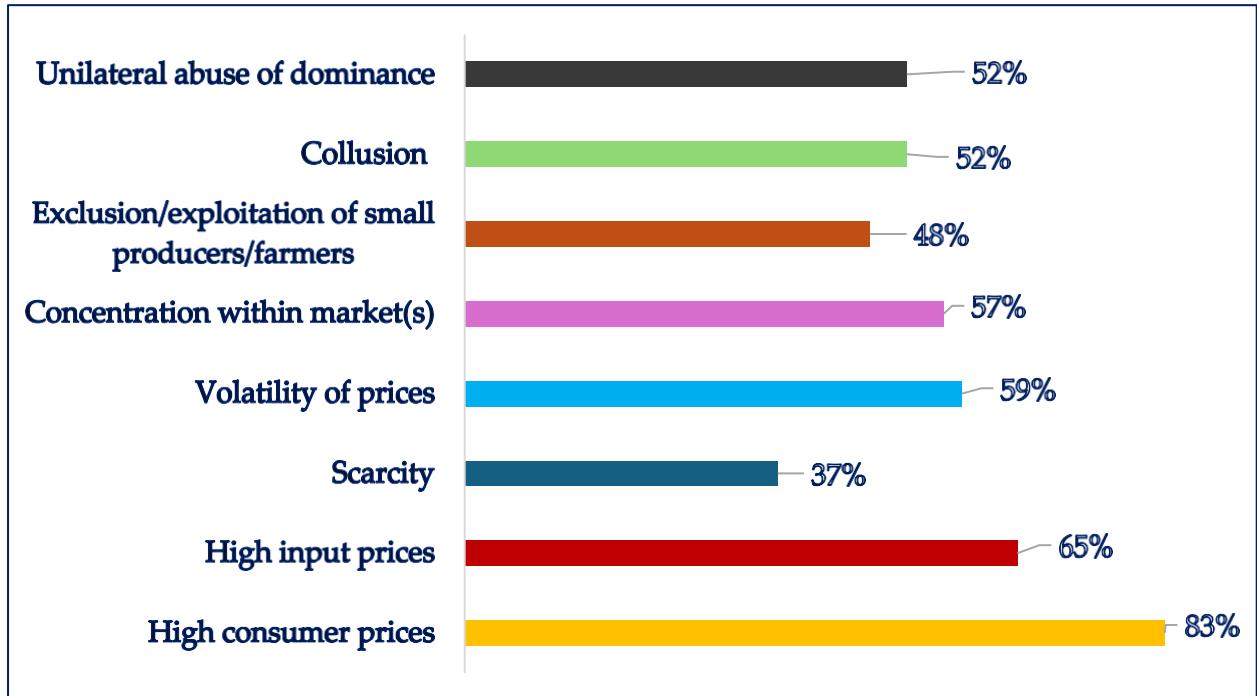
7. This Report is based on the contributions from responding authorities and is structured as follows:
 - 7.1. Section 3 gives the overview of the authorities' prioritization including the competition concerns raised regarding agriculture and food markets.
 - 7.2. Section 4 discusses the different ways in which authorities have engaged in proactive monitoring and research. A deep dive into different data collection methods and products is also discussed.
 - 7.3. Section 5 discusses the prevalent forms of abuse faced by authorities in different levels of the value chains for different agricultural and food markets.
 - 7.4. Section 6 highlights different challenges faced by authorities when detecting and enforcing against cartels. It further discusses cartel-related concerns faced by authorities at different levels of the value chains for different agricultural and food markets. This section further discusses how much anti-competitive arrangements involve multinational companies and products which are traded.
 - 7.5. Section 7 analyses the markets that have witnessed increased consolidation and prevalent theories of harm that authorities grapple with when investigating mergers in agriculture and food markets.
 - 7.6. Section 8 illustrates the regulatory and policy landscape of different jurisdictions and the impact they have had on agricultural and food markets.
 - 7.7. Section 9 presents authority views on tasks to be undertaken by the ICN in supporting Competition Authorities in addressing competition issues within the agricultural and food markets.
 - 7.8. Section 10 presents conclusions and preliminary recommendations to address competition issues identified from the survey.

2. Overview

8. There were 49 responses to the survey. Of these, the majority were from European authorities followed by Africa, Asia and Australia, the Americas and Caribbean and the Middle East. Food prices were identified as major concern by most authorities (83%) followed by high input prices (65%). Over half, (57%)

reported that food and agricultural markets were a priority area for the authorities' work. Most of the concerns identified by the responding authorities were raised by the public (63%) followed by the government (41%).

Figure 1: Concerns raised by authorities in food and agricultural markets



9. While in some instances these markets are longstanding priority areas, it is clear that the events of the last 3 – 4 years have resulted in a renewed focus in this respect. Perhaps as a reflection of their appreciation of their experience with understanding markets and price formation, competition authorities were called upon by governments and the public to investigate drivers of food prices. In many instances, the vulnerabilities exposed by the on-set of the Russia/Ukraine crisis were a decisive moment for initiating this work:

9.1. Eastern Europe is an important region for the production of grains and oilseeds. As such, the disruptions brought on by the war led to constrained global supplies and higher prices.

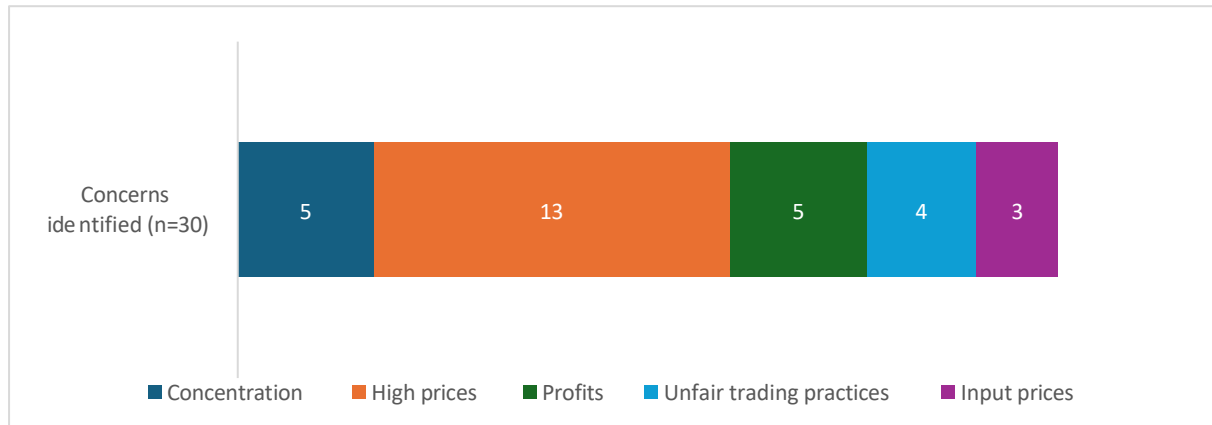
9.2. At the same time, the region is also an important producer of the petrochemicals that are used to produce fertilizer. The conflict therefore affects the input costs faced by primary producers.

3. Proactive Monitoring and Research

10. One of the actions taken by authorities is self-initiated proactive monitoring and research into the state of competition in food markets and whether low

levels of competition could have provided the impetus for rising food prices. The majority of survey respondents, 88%, reported engaging in this activity in the last 4 years. The activity has taken different forms and methods such as market inquiries, rapid market studies, and periodic market scanning activities or studies.

Figure 2: Concerns identified by competition authorities through monitoring and research



11. Most of the agencies that responded to the survey indicated that they had undertaken some form of price monitoring, market scanning, or research between 2019 and 2023. This was a highly disruptive period in food value chains, and it is therefore expected that competition authorities exercised increased vigilance over food and agricultural markets. There was also demand from the public and the government for competition authorities to lend their skills, expertise, and credibility to explaining food prices. As the sections that follow will demonstrate, authorities used a range of approaches in their proactive monitoring and research work. This includes the choice of data sources, which spanned surveys, government databases, and data from market participants to the choice of products, which reflects different national priorities or consumption patterns. In many cases, the analysis conducted by the competition authorities included profitability and margins, a reflection that these variables are better indicators of market power than price levels.

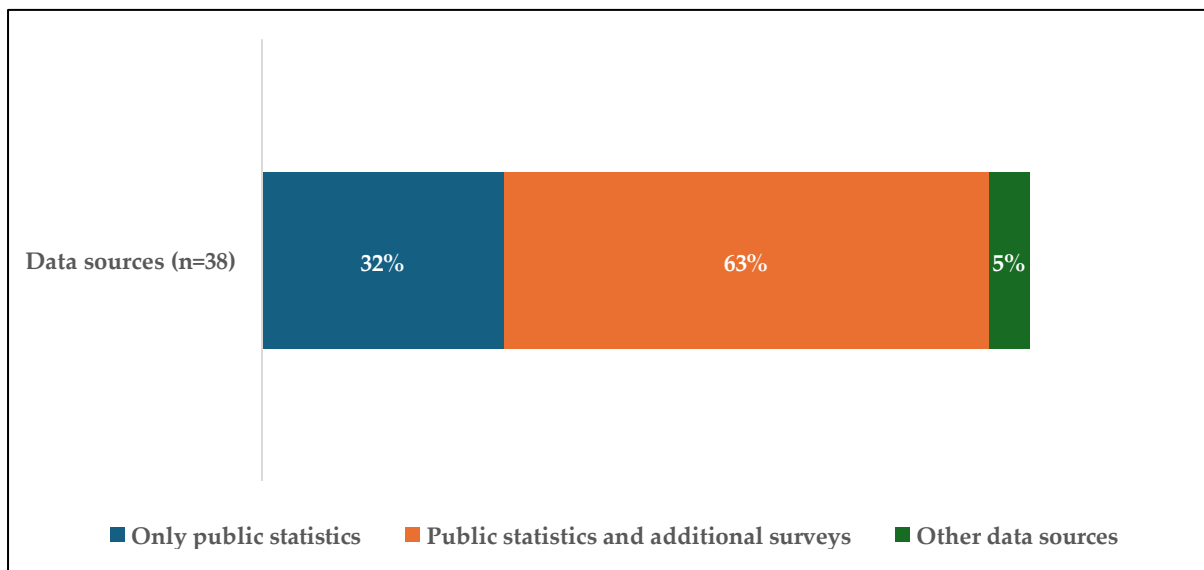
D.1. Data Methods

12. The survey revealed that competition authorities have used a range of different tools and methods to undertake their research and monitoring activities. This is expected because the different data available, information-gathering resources, and legal powers to request information differ across countries.

- 12.1. **National statistical authorities:** Statistical agencies appeared to be the most popular source of data for monitoring and research by competition authorities. Indeed, this is unsurprising considering the breadth and depth of data that statistical authorities compile in their work including retail prices, producer prices, and firm-level financial performance. All of these data sources fall squarely within the requirements of a competition authority seeking to understand the nature of price increases throughout the economy.
- 12.2. An important methodological benefit of this data source is that it allows for comparisons to be made over time. Therefore, the analysis can show divergences from long-term trends whether it is due to temporary shocks or the exploitation of market power. However, as this data is aggregated and anonymized, it does not allow a competition authority to identify specific infringements and actors. Consequently, it is best placed as a screening tool that can guide further and more focused inquiries into narrower product markets and groups of companies.
- 12.3. **Primary data gathering:** A small group of competition authorities conducted primary surveys targeting firms in the value chain. A notable example of this work is Austria, which sent requests for information (RFIs) to 700 retailers and 1500 producers. In Malawi, field visits were conducted to retailers throughout the country as part of the price monitoring efforts. Other authorities that collected data from market participants include Croatia, Chile, Colombia, COMESA, Ecuador, Czech Republic, Iceland, Italy, Latvia, and Rwanda.
- 12.4. **Consumer surveys:** Austria and the United Kingdom are examples of authorities that made use of consumer surveys in their respective research and monitoring activities:
 - 12.4.1. The CMA reported that it used the “Food and You 2” survey conducted by the Food Standards Authority (FSA)³ which includes questions about food prices food affordability and measures of household food insecurity. The CMA also draws on the FSA’s monthly tracking survey that collects data on the same matters.
 - 12.4.2. Austria’s FCA sector inquiry included a consumer survey of 1000 people between the ages of 18 and 65.

³ A government department mandated with overseeing the UK’s food regulatory system.

Figure 3: Data sources used by competition authorities who conducted monitoring.



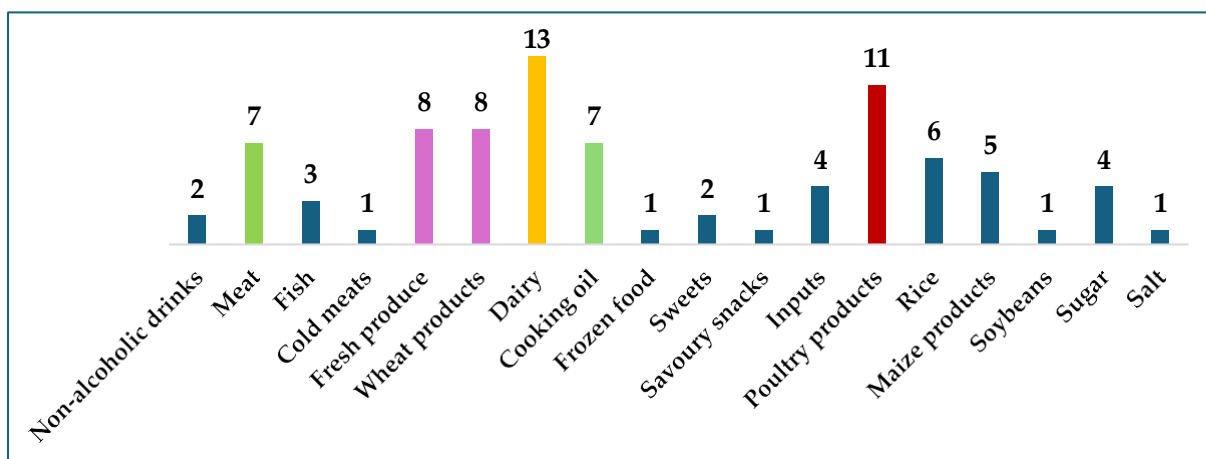
D.2. Products

13. The consumer products considered by competition authorities in their monitoring and research efforts are strikingly similar with little variation by developing or developed countries. Many of the respondents reported that their efforts were, in part, a response to the surge in food prices that immediately followed the onset of the Russia/Ukraine crisis. It is therefore to be expected that grain and oilseed products, for example, bread and cooking oil feature prominently among the list of focal products for monitoring and research. Dairy and poultry products also feature prominently; another indication of the importance of Eastern European grains and oilseeds to the international food system because animal feed is manufactured through blending grains and oilseed to meet the nutritional needs of livestock. Various types of fresh produce have also been the focus of monitoring and research.
14. Evidently, competition authorities are concerned about the price of nutritionally valuable foods, which are closely tied to the health and well-being of populations. Among the respondents, there are various ways through which competition authorities identified these products. For example, Rwanda selected products based on the priority crops that form part of the crop intensification programme – maize, wheat, rice, white potato, beans, and cassava. These were supplemented with other essential foods, namely soybeans, meat, milk, and eggs. Colombia was similarly guided by government

policy and studies the price of foods that are part of the Family Basket such as cocoa, maize, beef, rice, banana, vegetables, milk, and panela.

15. A small group of authorities focused on agricultural input markets where market failures and exploiting market power may have large downstream price effects while also placing strain on farm budgets:
 - 15.1. Brazil studied seeds, pesticides, fertilizer, machinery, and agricultural implements.
 - 15.2. COMESA’s monitoring considered the price of fertilizer throughout Eastern and Southern Africa.
 - 15.3. Zambia studied fertilizer, day-old chicks, and chicken feed.

Figure 4: Focal products for competition authorities monitoring and research



D.3. Market structure and conduct

16. The monitoring and research conducted by competition authorities shows that throughout the world, concentration and vertical integration in food and agricultural markets remain a risk factor for anti-competitive conduct. The survey also points to the regional and global aspects of rising concentration, which is enabled by the presence of large multi-national companies throughout the food value chain especially as suppliers of essential inputs such as genetic material. Concentration, both domestic and regional, has been enabled by mergers and acquisitions and enforced in many cases by high barriers to entry. Furthermore, competition authorities are concerned about global concentration in markets for key inputs such as genetic material and fertilizers.

Austria

17. The Austrian food retail market was found to be highly concentrated with four largest retailers having a combined market share of 91%. The food inquiry identified economies of scale in purchasing, the effects of bundling products, and intensity of competition resulting in low-profit margins as the leading factors that led to the food retail market becoming an oligopoly. This structure and market share distribution have not changed for several years. However, online food retail trade in Austria has grown but remains limited to cities.
- 17.1. In terms of products, the inquiry found that in most (15) of the product groups assessed, concentration is either low or medium. In 10 product groups, concentration was found to be high. International food companies dominated 9 food groups and were found to account for 50% of household spending.
- 17.2. Furthermore, the number of farms in Austria has fallen, leading to higher concentration at the farming level of the value chain too. However, Austria's farming sector remains more small-scale compared to other countries in Europe where large commercial enterprises shape primary production.
- 17.3. Suppliers that were consulted as part of the market inquiry reported that they had been victims of the unfair trading practices prohibited by the Austrian Fair Competitive Conditions Act. These practices include unilateral changes to contracts, demands for payments that aren't related to the supply of agricultural and food products, and demands for payment for a deterioration in goods when it was not the supplier's fault or that had taken place on the premises of the food retailer.

Brazil

18. The regional aspect of concentration was noted in a series of studies on agricultural input markets undertaken in 2020. The studies found that in recent years, international groups have entered the Brazilian market through the acquisition of local firms. Further, the study explored the link between the seed and pesticide markets which have become dominated by the same companies. These companies did not have a presence in the seed market until the mid-1980s but have built a presence through biotechnology and related intellectual property rights relating to genetic events and cultivars. The Bayer-Monsanto merger is an example of a corporate action that further concentrated these markets.

COMESA

19. Taking a regional approach, COMESA's research found highly concentrated markets with a few regional players that dominate the market. Their research further found that vertical integration throughout the value chain has allowed traders to control the market and prices.

Iceland

20. The role of concentration in wholesale markets was explored in Iceland's research on the food market. The research found Iceland's economy was highly dependent on imports from Europe, which means that importers and wholesalers can have a meaningful impact on outcomes in food markets. The largest retailers in Iceland reported that the wholesale level of the value chain is strong. Furthermore, the research notes that there is limited scope for parallel imports since there are contracts between producers and wholesalers that grant wholesalers exclusive territorial rights for the products.

Malawi

21. The CFTC conducted several market inquiries that identified high levels of concentration with detrimental effects on consumers and other value chain participants:
 - 21.1. The raw and processed milk market inquiry found that the Malawi Milk Law limits the range of processors to whom smallholder farmers can sell their milk creating a monopsony in the milk value chain. These firms, the inquiry found, use their market power to unilaterally suppress buying prices despite changing economic conditions. This indicates the potential existence of tacit collusion among dominant milk processors.
 - 21.2. The poultry sector study also found significant concentration and anticompetitive market practices among Malawi's large integrated poultry producers. The major concerns picked up by the study were tacit collusion, exclusive dealer agreements, refusal to supply, excessive pricing, and margin squeeze. Furthermore, there was evidence of tying feed to the sale of day-old chicks and refusal to supply day-old chicks during periods of high demand. These practices are alleged to impede the operations of small producers and undermine competition and consumer choice.

Sweden

22. The preliminary findings of the Swedish research project point to high barriers to entry at the grocery and wholesale levels of the value chain:
 - 22.1. Barriers to competition at the grocery level include challenges with establishing new stores and changing affiliations for existing ones.
 - 22.2. At the wholesale level, the research finds that there are obstacles for grocery stores that want to compete with the wholesale operations of grocery chains. Specific challenges concern using specialized wholesalers or directly sourcing goods from suppliers.

Switzerland

23. In Switzerland examples of highly concentrated markets include fertilizer, artificial insemination of cattle, butter production, processing of sugar beets, and the food retail sector. Further, many of the firms that deal with farmers are vertically integrated and supply farmers with fertilizers and seeds but also purchase products from farmers. In some instances, their activities extend to food processing and retailing.

D.4. Prices and margins

24. The period for this study, 2019 – 2023, was a tumultuous time for the global economy. The instability brought about by the COVID-19 pandemic, supply chain shortages, and the war in Ukraine led to price increases throughout the world as reported by nearly all of the authorities that responded to the survey. Food markets are highly integrated globally with international trade taking place throughout the value chain from inputs, and raw materials down to finished products. Therefore, global events such as those listed are, while unpleasant for consumers, a legitimate driver of prices and typically subside after some time as the recent experience has shown.
25. During the global inflationary episode, there was a shift from price levels and changes being the primary focus of analysis to a focus on profit margins and mark-ups. The relationship between prices and costs or the reasonableness thereof is a long-standing area of interest for competition authorities, therefore it is unsurprising that authorities adopted this lens in their monitoring and research endeavours. Furthermore, in common market blocs such as the EU and COMESA, cross-border price differentials have also been analyzed to evaluate whether competition in these markets is functioning optimally at a

regional level. Lastly, where possible, competition authorities also considered the distributional impact of inflation, which reflects an understanding that food inflation often has a more pernicious effect on the poorest households.

Austria

26. The food inquiry found that despite rising concentration, the weighted markup for a basket of goods did not change between 2021 and the first half of 2023. While the markups on individual products increased, they were offset by lower markups on other products. Therefore, the net position is stable overall markups and profit margins among retailers. However, the food inquiry found that there were price differences between Austria and Germany, which reflected the country-specific pricing strategies of multinational food corporations. Other explanations for these differentials include higher overheads and the larger proportion of discounted goods in Austria.
27. The Austrian agricultural sector is integrated into the global economy and is therefore subject to global changes in prices. The inquiry found that national and market indices are often consulted in price negotiations between farmers and their buyers. During the inquiry period, there were increases in the costs of agricultural products that were attributable to factors such as supply chain disruptions; geopolitical conflicts; adverse weather events, and concomitant global supply shortages. Inputs such as fertilizers, fuel, and energy prices also affected farmers. However, the inquiry found that the agricultural sector recuperated these costs and increased earnings led to a rise in profitability in 2022.

COMESA

28. With respect to price, COMESA's research has found that Kenyan maize prices are consistently higher than those in neighbouring markets – up to 3 times the price of maize in Tanzania and Uganda – and above import parity levels. For COMESA these price levels and differentials raise concerns about the margins earned by traders. COMESA's research has also highlighted that farmers in Zambia could earn more for their maize while consumers in Kenya could pay less if there was better regional integration of markets. Furthermore, COMESA has highlighted the implications of government trade policy on farmer earnings and consumer prices. For example, when the Malawian government banned imports from Tanzania over concerns about a maize disease, maize prices in Malawi spiked in response to the supply shortage. At the same, the price of

maize in Tanzania collapsed as farmers were foreclosed from Malawi, resulting in excess supply.

Denmark

29. Danish food price increases have been lower than the EU and comparator countries – the Netherlands, Germany, and Sweden. The price surveillance reports note that consumer prices are often slow to respond to changes in input costs. In Denmark, the lag period is up to 18 months. In addition, the reports noted that wages, transportation, and processing costs also affect food prices. In general, the reports find that gross profits in the food value chain have fallen in the processing wholesale, and retail sectors of the value chain. However, gross profits have increased in the primary food industries.

Iceland

30. Food prices in Iceland were found to be among the highest in Europe and 40% above the European average. The research placed a special emphasis on comparing the prices of imported and domestic foods to investigate whether price increases occurred due to higher costs or if retail chains increased prices in the absence of higher costs. The results of the analysis showed that gross margins had remained stable from 2017 to 2021 but increased by 0.8% between 2021 and 2022. Interestingly, the research found differing gross margins depending on the source of the goods – 17% for domestic goods, 25% for imported goods bought from wholesalers, and 34% for goods imported by the retail chains.

Latvia

31. In Latvia, market surveillance initiated in 2023 focused on the markets for eggs, fish, dairy, meat, grain, and bread products. The Competition Council assessed price transmission to determine if consumers experienced price decreases when commodity input prices fell. In the drinking milk value chain, it was found that retailers and producers changed prices in line with the farming level regardless of whether these were price increases or price reductions. However, price transmission for cheese and sour cream was found to be flawed and did not transmit with the same speed as milk by a predictable magnitude.

32. Regarding imports, the study found that locally produced milk had become cheaper than internationally produced milk in the last quarter of 2022. Until then, imported milk was the more expensive option. By contrast, cheese and sour cream produced in Latvia remained more expensive than locally

produced alternatives. The study also interrogated price differences between private labels and producer-owned brands finding that branded milk, cheese, and sour cream are consistently more expensive than private labels. Lastly, the dairy study found that competitors in the retail sector engage in “intelligent matching” by monitoring one another’s prices and adjusting them accordingly to offer competitive prices. This practice, the Competition Council noted, is not prohibited by law provided it takes place independently and not under collusive conditions.

33. A more nuanced picture emerges regarding the price differences between bread and grain products produced in Latvia compared to those that are imported. Latvian-produced wheat flour had higher markups than imported wheat flour. The same applies to buckwheat, white bread, and pasta. However, imported rye bread was found to be more expensive than locally produced rye bread. As with dairy, private-label products were sold at a lower price than branded products, despite being functionally identical.

South Africa

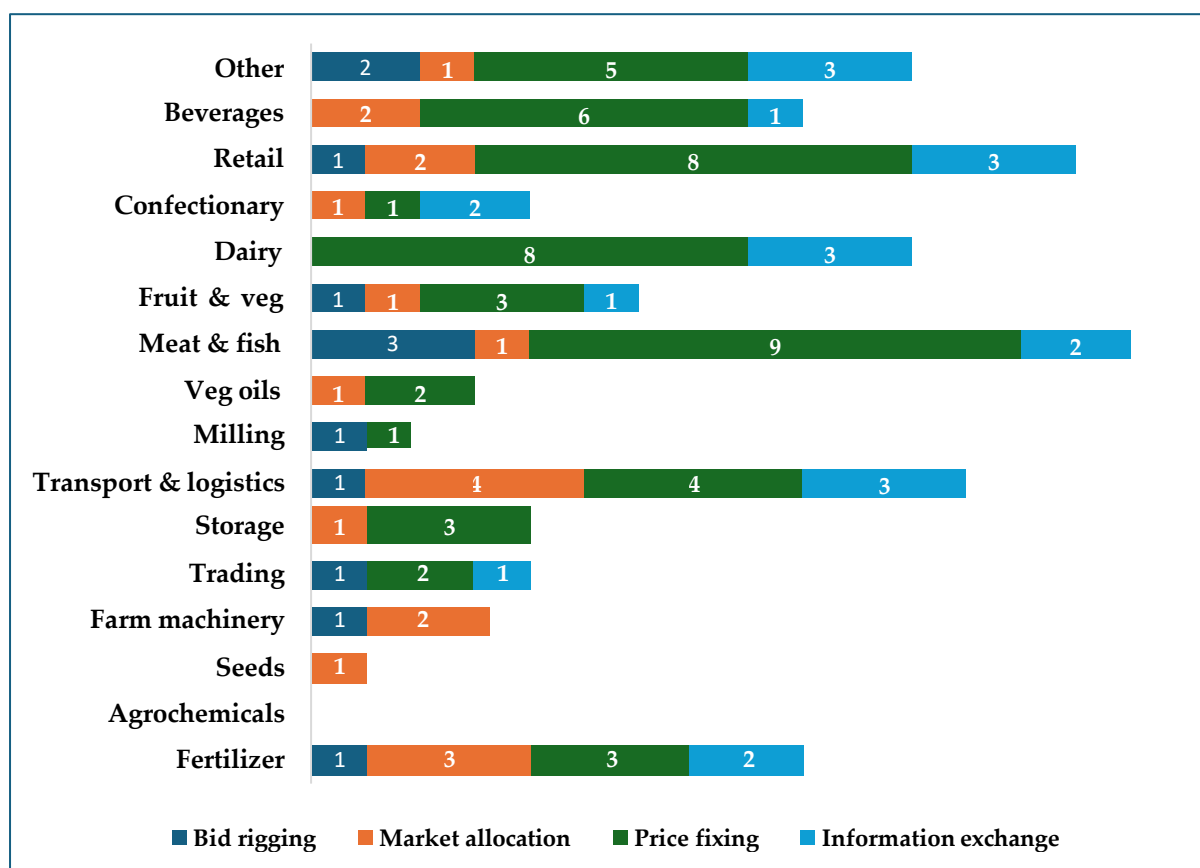
34. South Africa tracks spreads at the producer and retail levels of the value chains for bread, maize meal, sunflower oil, frozen chicken, and eggs. The analysis of spread uses commodity prices to proxy for farmgate prices. Additional sources include average producer prices and retail prices collected by the national statistical authority. The methodology allows consumers to understand price formation throughout the essential food value chains and provides an indicator of where in the value chain margins may be expanding or shrinking. As of July 2024, 11 essential food price monitoring (EFPM) reports have been published by the Competition Commission of South Africa. Each of these reports includes a deep dive into a specific value chain. These deep dives explore the structure of the value chain and how it has evolved, the barriers to entry that entrants face, and, where possible, an assessment of the profitability trends of major value chain participants.
35. The EFPM reports have pointed to several concerning features and patterns across many food value chains. These include a rising concentration in the dairy market, widening farm-to-retail spreads across several essential food items, opportunistic pricing of garlic and ginger during the COVID-19 pandemic, potential opportunistic behaviour following the onset of the war in Ukraine, wide geographical disparities in fresh produce pricing, and domestic price increases following in the imposition of trade measures.

36. A common finding throughout the EFPM reports is the rocket-and-feather effects, where prices are quick to rise in response to a shock and slow to fall once it has dissipated. This behaviour may not be objectionable from a competition law perspective, but it may verge on the opportunistic when consumers do not benefit from lower production costs - leaving margins permanently higher. An example of this behaviour was seen in the cooking oil market following the on-set of the war in Ukraine. Recently, the price of maize meal has increased considerably in response to a mid-summer drought that affected summer crops.
37. Based on some of these findings, the Commission entered into a consent agreement with several retailers to reduce their margins for the duration of the national state of disaster. The Commission also initiated a market inquiry into the fresh produce market, which is currently in the public consultation phase. Lastly, the Commission has released a draft term of reference for market inquiry into the poultry sector.

4. Cartels / Coordinated Conduct

38. The concentrated structure of food and agricultural markets also raised the risk of cartels or coordinated conduct among participants. Authorities reported the most cartel-related price-fixing concerns in the meat and fish, retail, transportation, and logistics sectors. The existence of price fixing is notable across different food and agricultural sectors. In a period characterized by rapidly increasing prices and production costs, firms may have a strengthened incentive to engage in this behaviour.
39. Information exchange and market allocation rank second and third, respectively, among the cartel behaviours that have worried competition authorities. It is well known that these actions can reduce competition and maintain higher prices and profits. Information exchange has been used to allow competitors to pass on uniform price increases, despite differences in cost structure and some instances decreases in costs. Market allocation insulates rivals from competition allowing them to exercise market power that they otherwise may not have had.
40. The survey shows that many cartels combine these practices to subvert competition. That is to say, price fixing often goes hand-in-glove with market allocation as the prices in the allocated markets are jointly determined by the cartelists. Often, these schemes are supported by exchanging information on prices as opposed to other competitively sensitive information such as costs or sales. Certain kinds of bid-rigging, such as cover bidding, are, by nature, conspiracies that require co-conspirators to exchange information about price so that the designated bidder can prevail and be awarded the contract.
41. The authorities that responded to the survey reported that investigations were still ongoing, consequently they were not in a position to provide comprehensive case descriptions. The figure below shows that authorities were most concerned about cartels in the meat and fish and retail industries and specifically price fixing. What follows are brief insights from the few who were able to provide detailed descriptions of prosecuted or settled cases.

Figure 5: Cartel-related concerns



E.1. Price fixing

Malaysia

42. A cartel was fined a total of RM 415 million for fixing the price of poultry feed. The parties were initially found to have implemented identical price increases, which further investigations found were the result of communications between representatives of the companies as well as meetings coordinated by the Malaysian Feed Millers Association. The cartel ran from January 2020 to June 2022.

Mexico

43. COFECE investigated possible anti-competitive agreements between competitors who conspired to manipulate the price per kilogram of tortilla and further establish an obligation to sell the product at tortilla shops. The guilty parties were fined \$ 15,822 for their part in the conspiracy.

Zambia

44. A group of companies were found to be engaged in collusive practices by implementing uniform price increases in the price of fish fingerlings. The

investigation found that there was no basis for these companies to apply a common pricing policy since they all have different production and distribution costs. The companies that were party to the collusion were fined 9-10% of the annual turnover.

Mauritius

45. Six suppliers of venison were found guilty of fixing the selling price of deer meat to a single buyer, Panagora Marketing, which is a meat processing and distribution company. Initially, five of the cartel members were part of the Mauritius Deer Farming Cooperative Society (MDFCS) which is a trade association that they used to discuss a common price and later to negotiate prices with Panagora for the supply of venison. Despite the trade association becoming dormant, the cartel members continue to agree on a common price that they would offer to Panagora. The Competition Commission of Mauritius fined the parties a total of 1.4 million rupees, a reduced fine that reflects the willingness of the parties to cooperate with the investigation.

E.2. Market allocation

Mexico

46. A second tortilla case involved price fixing and market allocation in the municipalities of Palenque and Chiapas. The parties to the conspiracy agreed on prices and established minimum distances between stores to prevent competitors and to allocate the market. COFECE issued fines totalling \$ 109,346 to the guilty parties. In a third tortilla case, the guilty parties were charged 2 million pesos for manipulating the price of tortillas and limiting its sales in the Chiapas municipality. This cartel involved a member of the government.

South Africa

47. Unilever and Sime Darby oils were involved in a cartel to divide the wholesale and retail markets for edible fats and oils by allocated customers and specific types of goods. Specifically, Sime Darby agreed not to produce specialty spreads and bakery margarine in pack sizes less than 15kg or 15 litres for the wholesale market while Unilever agreed to focus on the retail market through supplying 500g and 1kg pack sizes. Another price-fixing cartel involved the commission that agents charged farmers for selling their produce. The Agents agreed to charge 5% for potatoes and onions, 7.5% for all other vegetables and

fruits, and 9.5% for all other vegetables and fruits delivered to them without pallets.

E.3. Information Exchange

Chile

48. An egg producer association was fined 1 million US Dollars for sharing sensitive information through the media. Part of the settlement agreement with the association was for it to take other measures to protect free competition.

Iceland

49. During the 2008 recession, Icelandic shippers, Samskip and Eimskip, were faced with the choice between increased rivalry or increased collusion to meet the prevailing headwinds. The second option was “increased collusion” since the data subsequently collected during the investigation showed that they had been engaged in collusion since 2001. In 2008, the parties met to formalize their choice and consecration a project called “New Beginnings”. The purpose of New Beginnings was to evaluate the benefits of extending and intensifying their already collusive relationship. The information exchange at the project’s inception meeting concerned liner sailing schedules, maritime transport to and from Iceland, market shares, ship handling in Iceland, subsidiaries in Norway that handled the export of frozen fish, maritime transport between European continental ports, and cold storage in the Netherlands. The collusion was supported by several meetings, telephone conversations, and emails. Contact between employees was also made at golf tournaments, dinner parties, and during travel. This information was then used to conduct the full range of collusive activities – price fixing, market allocation, and bid rigging – which kept their prices high in a period that would otherwise have seen intense price wars.

E.4. Bid rigging

Croatia

50. The Croatia Competition Agency found that 4 companies concluded a bid-rigging agreement covering 14 groups of food procured by a social care institution that provides soup kitchens in Zagreb. Over the cartel period, the companies engaged in submitting identical bids of different bidders within the same product group, sub-contracting, and contract allocation in public

procurement and bid suppression schemes. The total fine imposed on the cartelists was 2.155 million Croatian kuna.

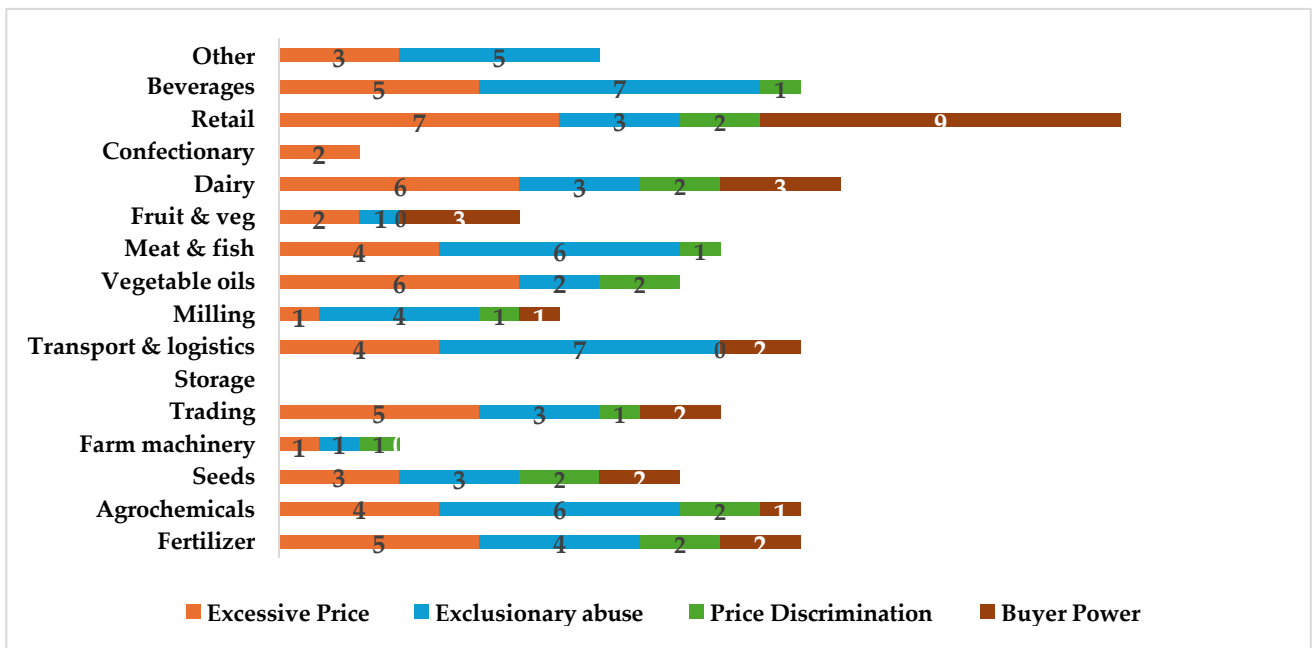
Brazil

51. In Brazil, 7 firms and 7 individuals were convicted for big rigging in municipal procurement for supplying outsourced school meals. The investigation found that the enterprises and executives involved exchanged information to fix prices and divide the market for school meals in the metropolitan regions of Sao Paulo and Campinas and in the region of Sorocaba. During the cartel, the offending parties would regularly meet to monitor the status of their market division scheme. The firms were fined approximately 330 million Brazilian reals, and the individuals are a total of nearly 7 million Brazilian reals. In addition to the fines, the firms were prohibited from winning government work at the Federal, State, or Local levels and in the Federal District for 5 years. Furthermore, the Tribunal determined that the offending individuals should be registered on the Brazilian Consumer Protection System and recommended that government bodies do not grant payments in instalments of federal taxes to these individuals.

5. Abuse of Dominance / Unilateral Conduct

52. Many food and agricultural markets are characterized by structural features, such as vertical integration and dominance by one or a few large firms, that could lend themselves to abuses of dominance such as excessive pricing, margin squeeze, anti-competitive tying and bundling, and refusals to supply among others. The exploitation of buyer power by retailers or large processors is also a potential cause for concern in food and agricultural markets.
53. Across products and markets, excessive pricing is the leading concern raised by respondents. This position likely reflects the public concerns during an inflationary period where prices are increasing more rapidly than the pace at which customers are accustomed. Following excessive pricing are exclusionary abuses as a cause for concern. As noted, many of the respondents submitted that their food and agricultural markets are not only concentrated but also characterized by vertical integration. These features may give some actors the ability and incentive to use their market power to block rivals from accessing important inputs or important marketing channels. The incentive is likely strengthened when in the presence of the sort of supply constraints experienced during the COVID-19 lockdowns were lifted and economic activity started to ramp up.
54. As the figure below shows, the retail sector recorded the most abuse of dominance-related concerns among survey respondents. Several respondents noted that their grocery industries were highly concentrated with three to four retailers or wholesalers that have considerable joint market share among them. It follows that these retailers and wholesalers are significant marketing channels for producers who depend on them to reach consumers. This dependency may confer retailers and wholesalers with buyer power over producers, which retailers and wholesalers can exploit to enhance their profitability. In light of this relationship, it is not surprising that buyer power is the leading cause for concern in the retail sector.
55. Excessive pricing is the second leading cause of concern in the retail sector. In times of inflationary pressure, competition authorities, consumers, and governments may be worried about exploitation by retailers that they perceive to have market power. Respondents were most concerned about excessive pricing in dairy, fertilizer, and trading. Beverages, transport and logistics, meat and fish, and agrochemicals are areas where competition authorities are mostly concerned about exclusionary abuses.

Figure 6: Abuse of dominance-related concerns



56. Many of the authorities that responded to the survey reported that investigations were still ongoing, consequently, they were not in a position to provide comprehensive case descriptions or conclusions (prosecution or otherwise). What follows are brief descriptions of the information submitted by survey respondents.

F.1. Excessive pricing (including exploitative abuses)

Kazakhstan

57. The authority investigated Kazphosphate for excessive pricing on ammonium phosphate. Kazphosphate was fined 697 million tenge for their conduct and agreed to lower the price of ammonium phosphate and refund affected customers the price difference.

Brazil

58. Ambev is accused of controlling the activities of distributors and resellers by imposing information technology tools that capture data on the distributors' and resellers' cost structure and sales. The case for interim relief was brought by the National Confederation of Ambev Resellers and Logistics and Distribution Companies (Confenar). It was alleged that this was a form of abusive control by Ambev. Further, Ambev is accused of “flattening the distributors’ margin” and preventing distributors from charging lower prices than those set by Ambev. Ambev is also accused of fixing the distributors' resale prices and preventing distributors from freely pricing its products and

adjusting in response to changes in demand. CADE found that this was not the case and dismissed the request for interim relief.

F.2. Price discrimination

Brazil

59. There is an ongoing investigation into the potentially discriminatory effects of Monsanto's loyalty discount program in the Brazilian market for soya seeds. The Council for Economic Defence (CADE) is investigating how the discount is calculated. Specific concerns for investigation are the non-linearity of the discount structure, how the minimum volume of sales is calculated for each licensee to be placed in one of the bonus categories, and whether the discounts are objectively and equally applied to all licensees. The discount structure may be deemed to be anti-competitive if it induces loyalty and exclusivity and/or generates discriminatory effects.
60. The Ambev investigation described also includes an allegation of price discrimination since Ambev sells directly to retail establishments and through distributors. The complaint, Confenar, alleges that by selling directly to retail establishments at a lower price than the price established over a given region, Ambev would be discriminating against its agents. CADE found that this was not the case and dismissed the request for interim relief.

F.3. Exclusionary abuse

Zambia

61. Farm Deport, which supplies day-old chicks and feed to the broiler industry, was fined 3% of its annual turnover for selling day-old chicks conditional on purchasing feed. In a similar case, it could not be proven that the companies that were alleged to have tied day-old chicks to feed were dominant but warned companies against the practice.

F.4. Buyer Power

62. In Chile, a buyer power case was investigated in the wine value chain. As with many agricultural industries, there are atomized producers – in this instance of grapes – who sell to a smaller number of buyers – wine producers. However, some intermediaries match production (supply) with demand. The investigation found that the buying market was moderately concentrated overall, but that the commercialization of particular strains was more concentrated and likely to give rise to unilateral abuses. The investigation

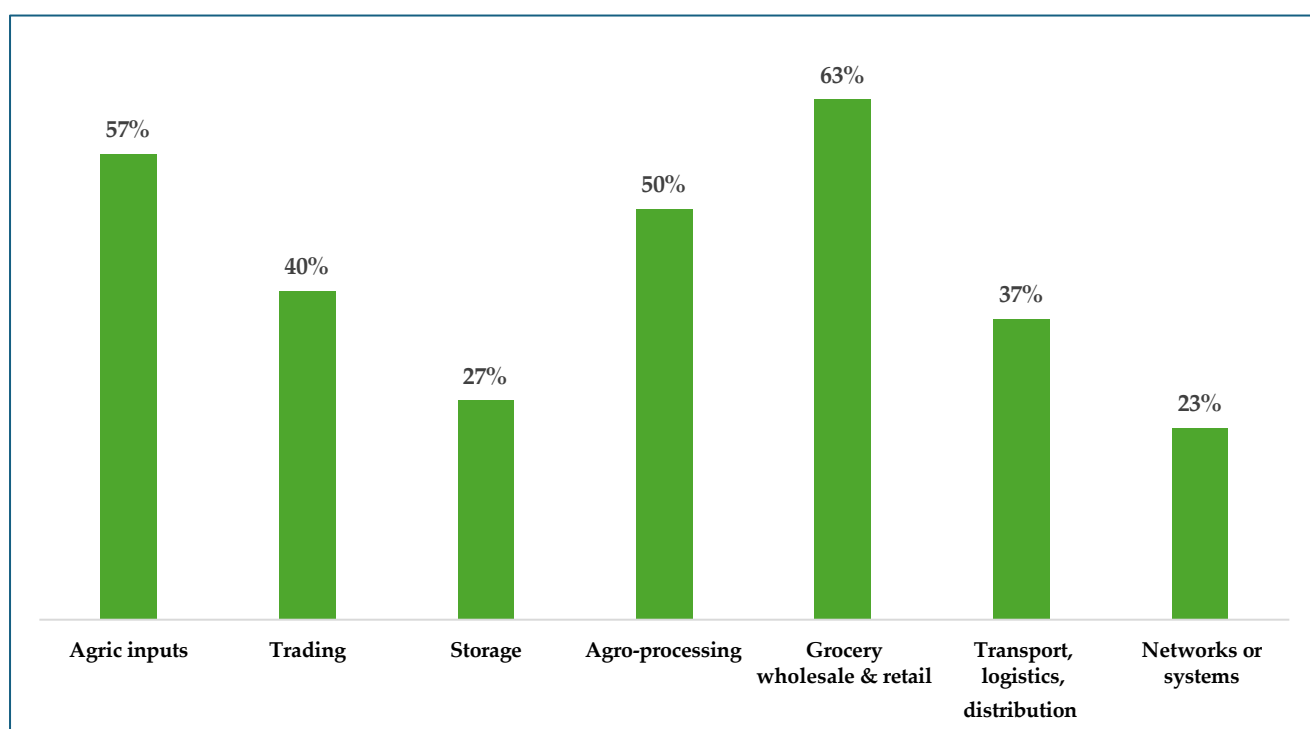
raised several concerns about the contracts for the sale of grapes which show a significant power disparity:

- 62.1. The use of standard contracts which limit the room for negotiation.
 - 62.2. A low guaranteed minimum price.
 - 62.3. Key dates are established close to harvest reducing the sales alternatives available to producers.
 - 62.4. Contracts don't consider bonus criteria or references to ex-post assessment of the quality of delivered grapes.
 - 62.5. Limit the right to appeal the decisions of an arbitrator in the case of a dispute.
 - 62.6. The reference price instrument established in sectorial regulation was not being applied in practice, leading to information asymmetries and a lack of transparency for producers.
63. The case was not pursued by the competition agency but referred to the Minister of Agriculture to modify the legal and regulatory framework to make it more competitive and remove the asymmetries between the producers and the purchases.

6. Merger Control

64. In the assessment of mergers worldwide, understanding the nature of competition concerns, specifically, theories of harm are important to competition authorities. Twenty-eight (28) Authorities gave feedback (see Figure 7) on the prominent theories of harm identified in the merger control process with three key sectors having the most prevalent cases. These sectors are uni. The main theories of harm included at least one of the following: Input foreclosure, Customer foreclosure, Unilateral effects, Coordinated effects, Buyer power, and Access to sensitive information. The most prevalent theory of harm identified was unilateral effects. Coordinated effects and foreclosure also feature quite widely.

Figure 7: Merger-related concerns by sub-sector



65. Several authorities did not respond to the query on the challenges encountered in providing more comprehensive insights. This points to the complexities of analyzing merger effects, which vary from one jurisdiction to another, and emanate from their diverse economic and regulatory environments.

G.1 Complexities of global supply chains and market power distribution

65.1. Determination of market power: The European Commission's Directorate General for Competition (DG-COMP) however, pointed out

that in merger review, there are complexities in comprehending market power within extensive agricultural commodity value chains.

65.2. Access to data: Market analysis is as good as the data available in any merger assessment. Access to adequate information seemed to be a prevalent issue to several Authorities concerning merger review. In contrast, DG-COMP has not suffered the same fate of inadequate information in merger review and thus, may be a good starting point in sharing learnings and strategies that can be employed by other agencies as a means to enhancing effective merger review globally.

66. Authorities have used collaboration with other jurisdictions as well as their prosecutorial powers to resolve the aforementioned challenge. Cross-border enforcement cooperation in merger control may be used as a means to overcome challenges in enforcing structural remedies and accessing information

Singapore

67. A country with only 1% of agricultural land and 90% of food is imported, has a voluntary merger notification regime. During the period under review, only one merger was reviewed, impacting the distribution services of packaged food and beverage products.

68. The merger assessment entailed unilateral and coordinated effects, as well as buyer power. The parties overlap in the provision of distribution services for packaged food and beverage products.

69. Their merger regime is faced with difficulties relating to their reliance on cross-border market participants and the size of their domestic agricultural industry. Obtaining domestic information from foreign-based agricultural and food markets is a major challenge in their merger assessment process.

New Zealand

70. One merger was reviewed affecting agricultural markets related to seed breeding and development, with multinational DLF Seeds acquiring locally based PGG Wrightson Seeds Holdings Limited. The parties overlapped in the development and breeding of a variety of forage and turf seed types. Both parties undertook these activities in New Zealand for both domestic consumption and export. Due to the prominence of New Zealand in seed breeding, and the target's registration in New Zealand, they did not experience

the usual challenges associated with assessing the local effects of an international merger.

71. Notably, in the fodder beet seed there was noted an increase in concentration where imports accounted for the majority of the supply. However, both merger parties as well as multiple independent overseas producers imported the product into New Zealand, and it did not significantly increase concentration.
72. Generally, they did not face significant challenges due to the local presence and prominence of seed breeding activities. This made access to information from merger parties and local competitors less challenging thus easing analysis of the effects of a merger on their local market.

Saudi Arabia

73. Saudi Arabia received about fourteen (14) merger notifications relevant to food and agricultural markets for the period under review, involving foreign-to-foreign concentrations, which were captured at the time as per the threshold then. However, they did not identify notified economic concentration that resulted in material effects on the domestic market. They opine that limited resources and a smaller economy make it harder to impose conditions and gather detailed information from foreign-to-foreign economic concentrations.

Austria

74. Austria has had a few mergers in food and agricultural markets, a noteworthy one was the Metro and AGM grocery wholesale merger was cleared with structural remedies.
75. Merto was acquiring sole control over the AGM in agreement with the REWE Group. Merto operated twelve (12) wholesale food markets in Austria and served the customer groups hospitality (hotels, restaurants, bars, cafes, and caterers), traders (independent resellers such as small groceries, kiosks, and filling stations), as well as professional service providers and organizations such as offices and institutions. AGM was in the wholesale food business and specialized in supplying hotels and providing general and communal catering in the form of an integrated collection and delivery service at twelve (12) locations in Austria. The planned merger covers nine (9) AGM wholesale markets
76. To define the market, an extensive market inquiry was conducted and the results were submitted to the Cartel Court. In the course of its examination of

the merger, the Cartel Court also looked into market definition and potential market dominance as part of the expert opinion. Three data sources were used for the empirical analysis: the customer questionnaire data collected by the AFCA; transaction data at the product/monthly level; and individual transaction data.

77. In this specific case, the Cartel Court assumed a relevant common product market for delivery and collection in the full-assortment wholesale industry. The relevant geographic market is local and limited to a uniform catchment area of 75 kilometres by road from the locations. While the Cartel Court found “collection” and “delivery” to be substitutable, it ruled out substitutability between the full-assortment wholesale industry and other sources of supply such as food retailers, specialized wholesalers, or food manufacturers.
78. The assessment found that two locations would be most affected by the merger in terms of a marked increase in local market concentration, with the 30% market threshold being significantly exceeded thus the existence of a market dominant position was presumed. The structural remedies proposed by the notifying parties, about the two locations would in effect neither cause nor strengthen a local market dominance.
79. Austria noted that the main challenge in the competitive assessment of international mergers is the access to data that cannot be provided by the parties (e.g. turnover of competitors, assessments by foreign customers and suppliers, etc.).

Ecuador

80. In Ecuador’s experience, the international cases notified to them didn’t cause disruptions to the structure of the relevant markets in the country. This is because they involved dynamic markets with a large number of participants capable of exerting competitive pressure and no difficulty in diversifying to Ecuador, or they only entail a change of control in the market shares of the products offered.
81. The Ecuadorian Competition Authority has however faced significant challenges when collecting information from foreign companies because those that don’t operate directly in Ecuador are not obligated to provide information to various government bodies, as domestic companies are. However, in Ecuador’s agriculture and food markets, especially in the import of foreign products, we regard information from a governmental agency that collects data

on international trade (SENAE). This tool has been utilized by the Competition Authority to obtain data, and up to the present date, it has been useful for structural analysis, but it'll never be enough in the cases of a deep economic assessment.

Iceland

82. A merger of SalMar and NTS, which operate in the markets for fish farming was notified to the European Commission, the Norwegian Competition Authority, and the ICA. The merging parties and their subsidiaries operate mostly in Norway but also in Iceland and sell their products to a large extent in Europe.
83. The merger between Arnarlax and Arctic Fish, would have resulted in the merged entity controlling almost half of the production capacity and granting of licenses for salmon farming in Iceland. The Norwegian Competition Authority found no grounds for intervention, but the merger was further investigated by the European Commission and the ICA.
84. It was the conclusion of both the ICA's investigation and the Commission's investigation that Icelandic-farmed salmon belonged to a specific product market. Had the merger been accepted, it would have led to a significant distortion of competition, with the combined company becoming by far the largest producer of Icelandic salmon in the EEA area. Such a merger could have led to higher prices and fewer options for trade with Icelandic salmon.
85. To respond to that competition distortion, SalMar offered, as a condition, to sell NTS's operations in Iceland, specifically Arctic Fish. After a market test of such a proposal, it was concluded that they would prevent distortion of competition due to the merger. ICA concluded that the divestment and conditions would fully prevent the competitive distortion that the merger would otherwise have caused in Iceland.
86. It is worth noting that the assessment and remedies under the merger addressed increased market concentration concerns through coordination with other jurisdictions and collaboration with other jurisdictions to implement asset sale remedies for the farmed salmon merger.

Chile

87. Chile has not experienced cases of increased concentration impacting its food markets as they are an importer of food and agricultural products. Importation

in food and agricultural industries is usually taken into consideration in the assessment of mergers, as a source of competitive pressure for the merged entities, often mitigating the potential competition concerns. Chile specializes in the production of agriculture and food products and therefore is not subject to importation concerns since it mostly exports said products.

88. In the case of Chile, when a merger is notified in the FNE's jurisdiction, it triggers legally binding obligations of providing complete and truthful information, both alongside the notification and as requested during the length of the investigation. The failure to comply with said obligations is sanctionable by law and the FNE prosecutes such infractions. They however note challenges in obtaining information from international industry players without local presence, despite legal obligations for information provision. Chile has relied on collaboration with other regulators and market players in such instances. Additionally, it uses prosecution powers to ensure compliance with information provision and applies suitable remedies to address competition concerns.

EU-DG Comp

89. Countries that import considerable volumes of agricultural commodities often rely on the supply of global international traders (unless those countries can be supplied by neighbouring areas close to their borders). Those global traders are generally very few, and the supply chain at that level is quite concentrated. Further consolidation may negatively impact competition in those countries.
90. In this sector products are generally homogeneous and markets are monitored by several independent sources or institutional bodies, so access to information is not a particularly difficult challenge.
91. In agricultural commodity trading, value chains can be very long and it is sometimes difficult to understand how much market power exists at each level of that chain. For instance, crops are bought and sold in the same form and similar volumes by several players, which however may have entirely different cost structures and business models (e.g. aggregators, elevators, local traders, global traders, processors, etc.). The same product may be sold several times between the farmer and the final consumer, and it is sometimes difficult to understand how to allocate market shares among the many players that happen to hold a given product one after the other along the value chain.

7. Regulation and Policies

92. The regulatory and policy landscape in food and agricultural markets tends to be complex and quite dynamic. This stems from the diverse economic environments within which countries operate and regulatory frameworks that have different objectives depending on the development needs of each jurisdiction. Considering competition policy and law does not operate in a vacuum and aims to support the competition-related economic, development, and growth considerations of the jurisdiction in question, it is important to deal with regulatory and policy issues in a stratified manner, keeping in mind that developed and developing countries have varied priorities despite having a global market for food and agricultural products.
93. In the survey, several authorities identified regulations and policies that impact competition in food and agricultural markets. In some instances, regulations are aimed at improving market conditions through monitoring, protecting consumers from exploitation, promoting market entry and competition enhancement, and promotion of local production and import diversification. However, others may be outcome of incumbents lobbying to protect their market power. Depending on their details and objectives, these regulations and policies may have positive and negative effects on national and cross-border competition in agricultural and food markets. This is because they may have an effect of discrimination in the market and preferencing local producers to the detriment of consumers, who were the targeted beneficiaries of the regulations. Each country's initiatives reflect the need to enforce competition in these markets in order to have pro-competitive outcomes such as competitive market prices to consumers.
94. Proposed areas of focus for the ICN advocacy working group are:
- i. Develop frameworks or share other ideas for competition agencies to monitor prices in areas of concern to identify suspicious patterns that seem to suggest a cartel or other antitrust violation.
 - ii. Facilitate collaboration among agencies that may be able to share price monitoring data and collaborate in its interpretation (subject to legal frameworks) in a bid to assess anticompetitive practices operating across borders.
 - iii. Highlighting examples of competition agency regulatory reforms strategies aimed at eliminating price controls in agriculture and food markets as a means of ameliorating market inefficiencies.

H.1 Price Regulation and Monitoring

A number of countries have enacted price control regulations as a means of addressing the high prices in food and agriculture markets, by either putting in place maximum and / or minimum prices for food and agricultural products. In addition, a number of countries have price monitoring programmes, not as an antitrust detection tool, but as a price control tool. This signals the need for antitrust enforcement and policy in food and agricultural markets in a bid to inform regulators about the consequences of price controls as a regulatory tool.

Greece

95. Greece has implemented several initiatives including the "household basket" initiative to offer essential goods at lower prices and the ongoing monitoring of profit margins to avoid distortions in competition. The measure is essentially an agreement between the Government and Greece's major supermarket chains, according to which the latter shall offer at least 51 essential goods at low prices to meet the citizens' daily needs. This list generates a "household basket," which is updated weekly, and includes everything from bread; flour; eggs; meat; fish; spaghetti; beverages; certain dairy products; toilet paper; baby formulas; and also pet food.
96. The prices of the products included in the basket are lower than those which are "off the list", but there is no established cap to their price; it is merely that the prices of these products remain at low levels – most products in the basket are private label products. Hence, consumers can browse and compare these products and prices at each supermarket on the ministry's website (a platform offering price comparison service called e-katanalotis). A special label on the supermarkets' shelves assists consumers in identifying which product is part of the "basket". The measure entered into force on November 2, 2022, was initially planned to operate for a short period (end of March) but has been extended. Certain seasonal products (for instance foods consumed during the Easter period) were also added to the basket, leading other producers/retailers to join the basket.
97. The Hellenic Competition Commission opined that in essence, the regulation does not raise concerns from a competition law perspective, as long as the selection of product categories to be included in the household basket does not stem from an agreement between the State and the undertakings active in the market or any communication or contact between competing undertakings and

the initiative neither allows nor encourages undertakings to exchange information or jointly agree on such products/product categories or other competition parameters.

Zimbabwe

98. Controls on the sale and transportation of maize affecting market dynamics. SI 145 of 2019 imposed strict controls on the sale and transportation of maize, it became illegal for individuals and companies to buy maize directly from farmers as they were going through the Grain Marketing Board. Considering the payment system (local currency and inflation), the SI 145 of 2019 had a detrimental effect on the output as farmers had strict monopsony (GMB) which determines price and payment date. That affected the output negatively and created excess demand which resulted in importation to meet the demand.

Ecuador

99. Ecuador has several regulations for production including Inter-ministerial Agreement No. 177, dated September 20, 2019, which aims to promote local consumption of milk and dairy products. Ministerial Agreement No. 165, dated December 06, 2018, sets the minimum support price for the 2018-2019 sugarcane harvest. Ministerial Agreement No. 032, dated April 5, 2022, establishes the minimum support price for the paddy rice harvest. Ministerial Agreement No. 191, dated October 7, 2019, determines the minimum support price for the quintal of wheat. Lastly, Ministerial Agreement No. 199, dated June 23, 2023, aims to establish the Advisory Council of the Beef Chain, which will serve as an advisory and coordination mechanism between the public and private sectors related to production, technology, industrialization, marketing, access to financing, associative strengthening, and other aspects of beef

Honduras

100. Ministerial agreements are being established to set prices for agri-food products, aiming to control speculative price increases and establish maximum prices for essential products. Additionally, regulations for the health control of food and beverages will establish provisions for the regulation, control, and promotion of health in food and beverages, to protect public health. The price agreements have as a goal to establish throughout the national territory, to control the speculative wing of prices, the maximum prices for sale to the consumer of essential products of popular consumption, taking as a reference the established and monitored prices.

101. Moreover, the purpose of the control food and beverages regulation is to establish the provisions for the regulation, control, and health promotion that must be complied with by natural or legal persons under which health authorizations will be granted to food and beverages, their raw materials and establishments dedicated to the manufacturing, processing, handling, sale, packaging, conservation, import, export, storage, transportation, distribution, marketing and others of health interest related to them, which include hospitality services; as well as their advertising, to protect the health of the population.

Hungary

102. The Hungarian government introduced a price cap on granulated sugar, wheat flour, sunflower oil, semi-skimmed cow's milk, pork legs, chicken breast, and chicken back from Feb 1, 2022. Retailers were not allowed to sell these products at a higher price than the one they applied on October 15, 2021. The price cap was initially set to last for three months but has been continuously extended. Eggs and potatoes were also included starting from Nov 10, 2022 (in this case, the price cap was equal to the price applied by the given retailer on Sep 30, 2022). The price cap was terminated on July 31, 2023, i.e., it was in effect for more than a year. The regulation aimed to help consumers mitigate the effects of food price inflation and control their expenditures. The regulation affected only retail prices (but not manufacturer prices), i.e., retailers had to absorb the losses.

103. After the end of the price cap regulation (i.e., Aug 1, 2023), larger retailers (i.e., those with an annual turnover of more than HUF 1 billion) had to sell the previously price-capped products at procurement price (i.e., they cannot make a profit on these products). In addition, they had to select one product from each category and offer a weekly promotion with at least a 15% discount (i.e., sell these specific products below the procurement price). This regulation is currently in force until June 30, 2024, but may be extended.

104. This regulation, like the price cap, distorted consumer choice and often resulted in lower quality products and harmed the local suppliers. It also distorted competition at the retail level, as smaller retailers (not subject to the regulation) had to charge higher prices, making them less competitive. This price measure was eventually declared contrary to EU Law by the European Court of Justice on the basis that it undermines fair competition and free access to the market.

105. Similarly, GVH is implementing a price-spotting system for the government. The IT system and the related legal background were set up in a record time, and the system has been available to the public since July 1, 2023. The system allows consumers to compare prices of around 80 product categories. This is expected to reduce consumers' search costs, and thus improve price competition at the retail level (which can increase competition throughout the supply chain).

Mauritius

106. Mauritius has implemented three types of price regulations on essential products since 2021 to protect consumer purchasing power. These regulations include:

106.1. Maximum Prices: In 2021, maximum prices were set for nine essential food products such as canned fish (sardines and pilchards), canned tomatoes, cheese, edible oil, margarine, milk powder, and pulses (black lentils, gros pois, dholl gram, dholl petit pois, and red lentils).

106.2. Subsidized Prices: from July 2021 to December 2021, essential products from 243 specific brands were subsidized to mitigate the impact of global price increases due to supply disruptions.

106.3. Maximum Mark-Ups: In July 2022, amidst the Russia-Ukrainian war's impact on imported goods' prices, a maximum mark-up regime replaced the subsidy scheme.

107. These measures aimed to maintain the affordability of essential food products, which are predominantly imported. Additionally, the Competition Commission launched a market study in 2022 to evaluate the effectiveness of these regulations and their potential adverse effects on market competition.

Bulgaria

108. Bulgaria proposed a draft law to set a maximum mark-up of 10% on at least one product from certain essential food product groups, applicable only to large retail chains. However, the Bulgarian Commission on Protection of Competition (CPC) opposed the draft law, highlighting several potential negative effects:

108.1. Restricted Price Competition: Retailers might align their mark-ups close to the maximum, similar to a prohibited agreement.

- 108.2. Risk of Shortages: Fixed mark-ups could lead to shortages or sales of lower-quality products.
- 108.3. Market Distortion: Different mark-up requirements for various retail sizes could distort competition and harm smaller shops.
- 108.4. National Bias: Requirements to prioritize Bulgarian goods might create geographic barriers, disadvantaging foreign suppliers and potentially harming Bulgarian producers if retailers turn to imports.
109. The CPC suggested alternative measures to support low-income consumers without restricting competition. Consequently, the draft law was not adopted.

Latvia

110. Latvia faced regulatory proposals in the milk sector, with the Competition Council offering expert opinions against measures that could limit competition. Proposed regulations, Food Law Amendments (September 2023), to control raw milk prices and mandate the publication of premiums were seen as potentially facilitating anti-competitive behaviour. Other proposed regulations, such as banning large food retailers from discarding expired food without offering it to charities, (Food Law Amendments, September 2023), and restricting large retail stores' operating hours on weekends and holidays (Law on Unfair Practices of Retailers, April 2023), were also highlighted for their possible negative impact on competition. Public Procurement Law Amendment, April 2023, intends to promote short food supply chains by limiting participation to small and medium enterprises, potentially restricting competition. These regulations have not been adopted.

Malaysia

111. Malaysia has seen significant regulatory actions in the food sector, including the removal of poultry subsidies and the implementation of the Festive Seasons Price Control Scheme. The subsidy removal aimed to reallocate savings towards socio-economic welfare initiatives, while the price control scheme regulated the maximum selling prices of certain essential festive goods. However, this scheme faced criticism for hindering competition by imposing strict price controls that did not account for production costs, potentially leading to market distortions and reduced competitiveness.

Lithuania

112. Proposed regulations in the milk sector aimed at regulating purchase prices, potentially impacting competition negatively, according to the Competition Council.

Italy

113. Implements initiative to offer a basket of goods at contained prices to protect consumers' purchasing power.

H.2 Market Entry and Competition Enhancement

Germany

114. Germany's regulations have focused on ensuring fair competition and addressing unfair trading practices. Notable efforts include the enforcement of the EU's directive on unfair trading practices in the agricultural and food supply chain, aimed at protecting suppliers from unfair practices by buyers. The German Competition Authority has been active in monitoring and enforcing these regulations to maintain a competitive market environment.

Sweden

115. Sweden's Act on Prohibition of Improper Trade Methods between companies in the agricultural and food production chain aims to counteract unfair trading practices and reduce imbalances in bargaining power between suppliers and buyers. The Swedish Competition Authority enforces this act, which includes rules on delivery and payment terms to create more competitive markets across the value chain.

Australia

116. The Dairy Industry Code to balance bargaining power between dairy farmers and processors.

New Zealand

117. The wholesale access regime facilitates new market entrants and enhances competition. The Grocery Industry Competition Act and the Grocery Supply Code ensure fair conduct and transparency in agreements between suppliers and retailers.

South Africa

118. **Draft General Policy on Allocation of Commercial Fishing Rights (2020):** This introduced a framework that prioritizes new entrants and SMEs in fisheries, thus promoting economic participation.
119. **Buyer Power Enforcement Regulations (2020):** These regulations prohibit buyer power abuses in agro-processing and other sectors to protect SMEs and historically disadvantaged persons.

Greece

120. The transposition of Directive 633/2019 to address unfair trading practices in food and agriculture markets.

H.3 Promotion of Local Production and Import Diversification

Switzerland

121. Switzerland's food and agriculture markets are heavily influenced by high trade protection measures, including both tariff and non-tariff barriers. These protections limit competition from abroad and can be particularly stringent on primary food products, such as butter, which faces high import tariffs. Additionally, non-tariff barriers, like specific import conditions, further restrict competition. The regulatory environment also indirectly favors certain farm sizes through various support mechanisms, affecting the overall market competition.

Singapore

122. Policies to meet 30% of nutritional needs through local production by 2030. Strategies to diversify import sources, increase local production, and support the local food industry's internationalization.

The Philippines

123. Currently implementing temporary modification of import duty rates and laws to boost agriculture and fisheries sectors. Extension of temporary tariff reductions on various agricultural products.

H.4 Consumer Protection and Temporary Measures

Iceland

124. Iceland imposes significant import tariffs on locally produced food items, especially meat and dairy products, impacting their price, import levels,

and market availability. The Icelandic Competition Authority (ICA) has advocated for shifting from import tariffs to direct financial support for local agriculture to enhance market competition. This shift has been successfully implemented in the vegetable and fruit sectors, leading to increased competition, lower prices, improved supply and quality, and higher consumption.

Colombia

125. Based on the case involving Lactosueros, the Superintendence of Industry and Commerce issued a circular citing regulatory bases such as Article 78 of the Constitution, which regulates the quality control of goods and services and information provided to the public in marketing. This circular aims to uphold competition and consumer protection standards.

H.5 Guidance on horizontal cooperation in agriculture and food

European Union

126. In Europe that was a request for an opinion on whether a market stabilization mechanism for the Spanish olive oil sector was consistent with Article 39 of the Treaty on the Functioning of the European Union (TFEU). Article 39 deals covers the common agricultural policy of the EU. The Commission considered that the proposed market stabilisation mechanism was compatible with Article 39 and has continued to monitor the mechanism and the development of olive oil prices in particular.

Iceland

127. The Icelandic Competition Authority has published guidelines that support rules aimed at preventing business associations from conducting their activities in ways that could harm competition. This was motivated by several instances where business associations mentioned that prices would need to increase in the media with one conducting a survey that included the question ““my company anticipates price increases due to higher input prices””.

Latvia

128. There are regular consultation with market participants, including agricultural and food market players, in Latvia. These engagements have covered permitted vertical agreements for retailers and wholesalers, guidance on partnerships and associations for public procurement and guidance on what competitors are and aren't allowed to agree on.

United Kingdom

129. The CMA has issued guidance on the application of UK competition law to environmental sustainability agreements – Green Agreement Guidance - between firms at the same level of the supply chain. This guidance sets out the principles that apply together with examples that businesses can use to inform and shape their decisions. Further, they explain that the CMA does not anticipate taking enforcement action against agreements that are consistent with the guidance and that the CMA operates an open-door policy for parties seeking guidance on their sustainability initiatives.

Zambia

130. Zambia issued a general amnesty covering horizontal and vertical collaborations in 2019. This was to encourage parties to such agreements to regularise the agreements. The Commission also developed the leniency program and revised its settlement guidelines to cover parties in horizontal agreements. In addition, the Commission provides regular updates and guidelines through various media with the aim of helping horizontal collaborates to comply.

8. Priorities for ICN Special Project as Designated by the Respondents

131. As highlighted, the survey presents potential tasks for consideration by the ICN in supporting competition authorities to address competition issues within the agricultural and food markets as indicated by survey responses. The tasks included dealing with cartels, advocacy, price monitoring, abuse of dominance, mergers, agency effectiveness, public interest, and any other areas proposed by the respondents. The scores given by the respondents were averaged to determine the overall rankings from 1 to 7(1 being the highest and 7 being the lowest priority), as indicated below:

131.1. **Cartels (Priority Ranking: 3.1):** Combatting cartels remains a significant challenge in agricultural and food markets. Establishing robust methodologies and case data for detecting and prosecuting cartel activities is crucial for deterring anticompetitive practices.

131.2. **Advocacy (Priority Ranking: 3.3):** Advocating for competition enhancement in agricultural and food markets is key to raising awareness and promoting compliance with competition laws.

Developing advocacy toolkits can empower stakeholders to advocate for fair competition principles effectively.

- 131.3. **Price Monitoring (Priority Ranking: 3.6):** Implementing effective price monitoring techniques to help detect price-fixing and other collusive behaviours early. Developing methodologies for price monitoring supports fair pricing practices and market transparency.
 - 131.4. **Abuse of Dominance (Priority Ranking: 4.0):** Curbing the abuse of dominance is essential for maintaining a level playing field in agricultural and food markets. Toolkits and guidelines can help to identify and address instances of dominant market players exploiting their position.
 - 131.5. **Mergers (Priority Ranking: 4.6):** Addressing mergers within the agricultural and food sectors is crucial to prevent market consolidation that could stifle competition. Developing robust methodologies for merger assessments (like the ICN Recommended Practices for Merger Analysis) ensures that mergers enhance market dynamics rather than restrict them.
 - 131.6. **Agency Effectiveness (Priority Ranking: 4.8):** Enhancing the effectiveness of competition agencies is critical for enforcing regulations and tackling anticompetitive behaviours effectively. This involves improving agency capabilities, resources, and collaboration on international platforms.
 - 131.7. **Public Interest (Priority Ranking: 5.3):** Ensuring that competition policies serve the public interest is paramount. This includes safeguarding consumer welfare, promoting fair market practices, and fostering economic efficiency within the agricultural and food sectors.
132. Furthermore, the survey indicates a willingness by Authorities (59%) to contribute resources to a knowledge base. This presents an opportunity for ICN to establish a comprehensive knowledge repository based on public information and develop toolkits that support competition agency data gathering, case submissions, and methodologies in agricultural and food markets. Such initiatives will play a key role in enhancing enforcement capabilities by fostering international collaboration.

9. Conclusions

133. There are three main conclusions that can be drawn from the survey findings discussed in this report which we summarise below:

134. **Firstly, food and agricultural markets are a priority for competition Authorities globally**

134.1. Almost all competition authorities surveyed confirmed that food and agriculture markets are priority areas for their work, particularly due to the recent global disruptions. The Russia/Ukraine war, in particular, has underscored the vulnerability of these markets, especially in Eastern Europe, a significant producer of grains, oilseeds, and petrochemicals. Authorities focused on products like grains, oilseeds, dairy, and poultry, which are essential to global food security. Some authorities also examined agricultural input markets, such as seeds and fertilizers, due to their significant impact on food prices.

134.2. The research highlights concern about concentration and vertical integration in food and agriculture markets, which remain significant risk factors for anti-competitive conduct. Large multinational companies often dominate these markets, leading to potential market failures. These insights collectively underscore the critical role of competition authorities in ensuring fair competition and protecting consumers in food and agriculture markets, particularly in times of global economic disruptions.

135. **Secondly, regulation of market conduct and market structure presents significant challenges for authorities due to the complexity of global value chains in food and agricultural markets**

135.1. The concentrated structure of food and agricultural markets has created an environment where cartels and coordinated conduct thrive, particularly in sectors like chemical inputs (fertilizers and pesticides), meat and fish, retail, and transportation and logistics. The cases discussed show that cartels engage in price fixing, market allocation, and information exchange, with price fixing being the most common and harmful. These practices undermine competition, inflate prices, and harm consumers, particularly in essential markets like food, where price stability is crucial. The meat and fish sectors, along with retail, have shown significant vulnerability to cartel behaviour. The involvement of trade associations and coordinated efforts by firms, as seen in Malaysia

and Mauritius, exemplify how sector-specific dynamics can facilitate collusion. The public sector, especially in public procurement, is highly susceptible to bid-rigging schemes, which can lead to inefficient allocation of resources and increased costs for essential services like school meals and social care.

- 135.2. The international cases from Mexico, South Africa, Chile, Iceland, Croatia, and Brazil highlight that cartel behaviour is an issue across the globe. The methods employed by cartels, such as market allocation and information exchange, are consistent across different jurisdictions, underscoring the need for a coordinated global response to combat these practices.
- 135.3. Abuse of dominance is a significant concern in food and agricultural markets, where structural features like vertical integration and market concentration allow dominant firms to engage in practices such as excessive pricing, margin squeeze, and anti-competitive tying and bundling. These practices distort competition, leading to higher prices and reduced choices for consumers.
- 135.4. Retailers and large processors, in particular, have the potential to exploit their buyer power over producers, further exacerbating these issues. The retail sector is particularly prone to abuse of dominance due to its concentrated nature, where a few large players hold significant market power. This power imbalance allows retailers to impose unfavourable terms on producers, such as through buyer power abuses, which can include unfair pricing, exploitative contract terms, and exclusionary practices. Cases like those involving Kazphosphate in Kazakhstan and Farm Deport in Zambia demonstrate that dominance abuse often occurs in markets for critical inputs like fertilizer and poultry feed. Such abuses can have a cascading effect on prices throughout the value chain, ultimately impacting consumer prices and market efficiency.
- 135.5. The complexity of global supply chains and the distribution of market power across different levels of agricultural commodity value chains present significant challenges in merger assessments. Authorities often face difficulties in understanding the extent of market power, particularly in extensive value chains where the same product may pass through various intermediaries. Additionally, cross-border and institutional collaboration can be crucial in addressing these challenges, as seen in cases like the EU-DG COMP, where the monitoring of global

traders and supply chains is critical.

- 135.6. Access to information is a recurrent challenge in merger assessments, particularly when dealing with foreign entities that do not operate directly within the jurisdiction of the reviewing authority. Countries like Ecuador and Saudi Arabia have faced difficulties in gathering detailed information from foreign entities, which hampers their ability to conduct thorough merger reviews. However, jurisdictions like New Zealand and the EU have managed to mitigate these challenges through robust data collection mechanisms and collaboration with other regulatory bodies.
- 135.7. Smaller economies, such as Singapore and Saudi Arabia, face unique challenges in merger reviews due to their reliance on imports and limited domestic agricultural sectors. These challenges include difficulties in obtaining information from foreign-based market participants and the limited resources available to impose conditions on foreign-to-foreign mergers. Structural remedies, such as divestitures, have been effectively used to prevent increased market concentration in merger cases, as seen in Austria and Iceland. These remedies are crucial in preventing the creation of dominant market positions that could harm competition.
136. **Thirdly, various jurisdictions have implemented price control and protectionist policies and regulations to address the distinct challenges in the food and agricultural markets, aiming to balance local and foreign competition**
 - 136.1. Different countries implement diverse pricing regulations tailored to their specific economic conditions and priorities, including price caps, maximum mark-ups, and subsidized pricing. While intended to protect consumers and control inflation, such regulations can lead to unintended consequences like reduced product quality, distorted competition, and negative impacts on smaller retailers or suppliers.
 - 136.2. The presence of multiple regulatory measures across countries, such as Greece's household basket initiative or Hungary's price cap regulations, reflects the complexity and dynamism of price regulation in food and agricultural markets. Policies like South Africa's draft general policy on the allocation of commercial fishing rights and the Australian Dairy Industry Code highlight efforts to promote the participation of new

entrants and SMEs.

136.3. Several jurisdictions focus on policies that promote local production and support the local food industry's internationalization, recognizing the importance of domestic food supply chains. Countries like Switzerland and Singapore implement high trade protection measures and strategic import diversification to safeguard local production and food security. High trade protection and import barriers, while beneficial for local producers, can limit competition and consumer choice. Countries like Iceland impose significant import tariffs on locally produced food items, which can affect prices, import levels, and market availability, potentially leading to reduced competition. Some jurisdictions, like Iceland, are moving towards direct financial support for local agriculture instead of relying solely on import tariffs, which has shown positive results in certain sectors.

10. Recommendations

137. **Investment in data and research is critical in ensuring access to relevant information required by competition authorities to address challenges in food and agricultural markets**

137.1. Data is crucial for understanding markets, identifying barriers to competition, and analysing behavioural patterns across different regions and tradable goods. Currently, a large number of authorities are involved in scanning the market and monitoring prices, which often leads to market inquiries and government interventions. There is a strong interest in knowledge sharing by authorities through the ICN. Authorities believe that the following areas should be prioritized for the development of toolkits, established databases, and knowledge sharing.

138. **Cross-border collaboration and cooperation are essential in tackling the anti-competitive issues affecting countries globally**

138.1. The imperative of international collaboration and knowledge exchange in addressing competition issues within agriculture and food markets has been underscored. Cultivating partnerships with relevant stakeholders within the agri-food sector facilitates the acquisition of data, advocacy for competitive markets, and the enforcement of market regulations. Such collaborative endeavours serve to reinforce the effectiveness of market inquiries and studies, which play a pivotal role

in identifying market challenges and formulating practical recommendations.

- 138.2. Authorities emphasized the need to undertake initiatives aimed at identifying and regulating cartels and mergers, particularly those with transnational implications that affect market competition and food prices. There is a need to develop frameworks for better understanding and analysing market power distribution across different levels of the value chain. It is imperative to invest in tools and methodologies for better tracking and evaluating market power in extensive agricultural value chains, considering the different business models and cost structures involved.
 - 138.3. There is a need to encourage Authorities to engage with ICN working groups to devise methodologies for more effective enforcement and coordinating concerted efforts across borders to confront cartel activities and mergers that may lessen market competition. Competition authorities may want to consider a templates, samples, or models for requesting and collecting data cross-border that may aid in cartel investigation.
 - 138.4. As a means to enhance cross-border cooperation among competition authorities to share best practices and information, especially in sectors with complex global supply chains. A source of lessons that could inform best practices is retrospectives on significant mergers (such as Bayer / Monsanto) to understand how they have changed market power and where the market power lies in the value chain.
 - 138.5. Authorities need to be encouraged to collaborate with international organizations and other jurisdictions to access relevant data, as seen in Ecuador's use of government agency data for international trade.
139. **Advocacy for pro-competitive policies and regulations which ameliorate the complex challenges in food and agricultural markets, while enhancing competition is critical**
- 139.1. Authorities need to take an active role in advising governments on whether public policies are undermining competition, entrenching market positions, and/ or harming consumers. Further, authorities must identify and adopt strategies to curtail the adoption of laws and regulations that protect incumbent market power at the expense of market efficiency and consumer welfare and call for their reform. Through active advocacy and market inquiries, CAs can identify and

influence the policy options available to ensure that they produce competitive outcomes alongside their other aims. Authorities need to advocate for public policies that promote fair and inclusive markets, especially when regional food production and pricing are affected. The Nairobi Action Plan prioritized the need to advocate for the reform of policies that negatively impact competition in agri-food markets. The use of findings from market studies to drive legal reforms and advocate for the implementation of remedies from these studies was identified as an action point. The ICN's Advocacy Working Group's Recommended Practices for Competition Assessment, Market Studies reports and Information Store, and many reports on effective advocacy are great examples to raise such awareness.

139.2. Competition authorities should work closely with industry associations to promote compliance with competition laws and to monitor any activities that may facilitate collusion, such as price discussions or market allocation agreements. In addition, there is a need to Strengthen domestic legal frameworks in some jurisdictions to compel foreign companies operating indirectly within a jurisdiction to provide necessary information for merger assessments.

139.3. Where governments have adopted price regulation, they should strive to balance it with market dynamics, ensuring consumer protection without stifling competition. Therefore, Authorities need to consider and advocate for periodic assessments of price regulations to ensure they do not distort competition or harm smaller market players, with adjustments made as necessary. Implementing robust monitoring and enforcement frameworks, such as Hungary's price spotting system, to track the effectiveness and impact of pricing regulations on market competition.

11. Proposed Priority Actions from the ICN Annual Conference in May 2024

140. **Investment in data, research, and analysis/price monitoring by competition agencies:** Data is crucial for understanding markets, identifying barriers to competition, and analyzing behavioural patterns across different regions and tradable goods. Currently, a large number of authorities are involved in scanning the market and monitoring prices, which often leads to market inquiries and government interventions.

141. **Advocating for pro-competitive measures in agricultural policy:**

Authorities need to take an active role in advising governments on whether public policies are undermining competition, entrenching market positions, and/ or harming consumers. Through active advocacy and market inquiries, CAs can identify and influence the policy options available to ensure that they produce competitive outcomes. It was agreed that it is essential for authorities to advocate for public policies that promote fair and inclusive markets, especially when regional food production and pricing is affected. The Nairobi Action Plan prioritized the need to advocate for the reform of policies that negatively impact competition in agri-food markets. The use of findings from market studies to drive legal reforms and advocate for the implementation of remedies from these studies was identified as an action point. The ICN can help identify tools and ideas that have worked well for some of its members in order to inspire and support other members who might consider similar action.

142. **International cooperation and knowledge sharing:** The imperative of international collaboration and knowledge exchange in addressing competition issues within agriculture and food markets has been underscored. Cultivating partnerships with relevant stakeholders within the agri-food sector facilitates the acquisition of data, advocacy for competitive markets, and the enforcement of market regulations. Such collaborative endeavours serve to reinforce the effectiveness of market inquiries and studies, which play a pivotal role in identifying market challenges and formulating practical recommendations.

143. **Cross-border cartel enforcement and merger control:** Authorities emphasized the need to undertake initiatives aimed at identifying and regulating cartels and mergers, particularly those with transnational implications that affect market competition and food prices. Further, engaging with ICN working groups to continue to devise and promote methodologies for more effective enforcement (e.g., ICN's sets of merger Recommended Practices) and enforcement cooperation efforts across borders to confront cartel activities and mergers that may lessen market competition.

12. Recommendations from the ICN Advocacy Workshop in February 2024

144. **Action 1: Invest in more data, research, and analysis:** Data are essential for understanding markets, revealing bottlenecks to competition, and analyzing patterns of (mis) behaviour across regions and tradeable commodities. Data need to be frequently gathered from multiple sources including relevant government ministries, research institutions, the informal sector, and industry

in a form that allows a common understanding of the market, particularly in the agriculture sector markets.

145. The African Market Observatory provides a unique insight into market characteristics, price differentials, and market dynamics of staple foods across select African countries. The scope of the market observatory should be expanded to include more agricultural commodities and more countries. We see a value chain approach is recommended to better understand the interconnected market segments and address any behaviour that can give rise to restrictive effects on competition at all levels, including production costs related to input prices, barriers to transport and marketing, and delivering final products to the consumer. A policy shift towards investment in more research and data to incentivize increased and inclusive agricultural production and processing is key for creating employment opportunities.

146. **Action 2: Reform of harmful agri-food policies:** Public policy has significant impacts on markets and competition. Interventions must work for fairer markets. Competition authorities need to have the ability to advise governments to understand if and how public policies undermine competition, entrench market positions, or harm consumers. Effective advocacy work by authorities includes the consideration of restrictions on regional competition and the potential anticompetitive conduct of competitors across countries within common markets. A proliferation of non-tariff barriers (NTBs) in recent years has undermined regional integration and exacerbated food security. This is especially important when one country has extreme weather impacts while neighbouring countries continue to have good growing conditions and can meet regional demand. NTBs are negatively affecting prices for consumers across borders who depend on food production from neighbouring countries. Poorly designed subsidy programs, such as for fertilizer, can also create market distortions and reinforce fertilizer monopolies that generate excessive margins.

147. **Action 3: Cultivate multi-stakeholder partnerships for agri-food market research and market inquiries:** Competition regulators benefit from partnerships with other stakeholders involved in the agri-food sector to collect data, advocate for competitive markets, and enforce market rules. Market inquiries and studies are tools through which competition authorities can gather and analyze data to diagnose market issues and make robust recommendations. The impact of such actions depends on partnerships where

each stakeholder plays their role, from industry associations, research institutions, and community leaders, to government regulators as well as regional authorities. In addition, partnerships should encompass those involved in adjacent issues, such as health and nutrition, directly impacted by agri-food markets. This will provide regulators with greater leverage to tackle issues that apply to prevailing market circumstances and fulfil consumer needs.

148. **Action 4: Mobilize a network of advocates and supporters:** Advocacy strategies are key to bringing attention to uncompetitive market practices and seeking compliance. Authorities can mobilize a broad base of supporters to promote fair competition practices. Many constituencies, such as small producers, farmer cooperatives, SMEs, and consumers are negatively impacted by uncompetitive behaviour in agri-food markets.
149. Competition regulators need to reach out to these groups to explain the harm of market concentration when markets are controlled by a small number of players. Competition authorities have to use a variety of channels, such as media, to inform the public and advise policymakers, consumers, associations, and other market players - to raise awareness about anti-competitive conduct and the consequences of non-compliance with the competition laws. Such advocacy initiatives, when used alongside enforcement measures, help through public pressure to prevent anticompetitive conduct, and enhance the welfare of consumers.
150. **Action 5: Make the case that competition issues are important for the agri-food systems:** The competition space remains a relatively small and specialist group of competition authorities, researchers, and consumer groups. There is insufficient attention by the sustainable development community, particularly those working in food and agriculture, to the harm caused by anti-competitive markets. More awareness and advocacy are needed in the agri-food systems space about the role of competition authorities and the need for better enforcement of competition laws and policies, and for advocacy towards governments to reform harmful trade and subsidy policies.

151. **Proposed Priority Actions for the Special Project**

Objective	Action	Notes	Proposed Work Product	Lead
<p>1. Enhancing access to data and information by competition Authorities</p>	<p>1.1. Investing in more data, research and analysis</p>	<p>Leverage the willingness of stakeholders to contribute resources by establishing a comprehensive knowledge base(s) of public information. This repository should include data, case studies, and methodological resources that support competition authorities in enforcing regulations and addressing global competition challenges. For example, the AWG’s Market Studies Information Store (with a section on food and agricultural studies)</p>		
	<p>1.2. Development of Methodologies and Toolkits</p>	<p>Develop and disseminate toolkits or tips that guide merger assessments, abuse of dominance, and cartel detection within agricultural and food markets. These toolkits should complement the existing ICN Recommended Practices and Manuals with focused companion pieces that identify ag/food-specific considerations.</p>		
	<p>1.3. Enhancement of Price Monitoring Mechanisms</p>	<p>Share information and experiences from members to help support competition agencies that wish to implement comprehensive price monitoring systems that can detect early signs of price-fixing and collusion. These systems should be supported by clear methodologies that ensure transparency and fairness in pricing practices.</p> <p>There is a need to undertake comparative lessons by countries doing price monitoring. Further,</p>		

Objective	Action	Notes	Proposed Work Product	Lead
		<p>couple the cross-border price monitoring with analysis by agriculture experts to</p> <p>There are proposals to have price comparison tools that consumers can use.</p>		
	<p>1.4. Cultivate multi-stakeholder partnerships for agri-food market research and market inquiries</p>	<p>The ICN members can undertake cross-border market inquiries. Comparison of market studies in food and agriculture is an important area for knowledge sharing. This type of information sharing occurs in the AWG's Market Information Store, and might be updated to reflect the latest food/agricultural studies.</p> <p>The OECD Competition Committee has been identified as a key partner in the areas regarding cross-border data collection on prices and international trade policies as relates to import/export restrictions and might be useful partner when dealing with matters relating to development of databases and toolkits in agricultural markets.</p> <p>Non-Government Agencies with some ongoing works in price monitoring, research in agricultural value chain analysis at regional and global level may be useful partners to consider, these NGAs include, Shamba Centre for Food and Climate, Centre for Competition, Regulation and Economic</p>		

		Development at the University of Johannesburg among others.		
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Objective	Action	Notes	Proposed Work Product	Lead
2. Advocating for competition principles in food and agricultural markets	2.1. Reforming harmful agri-food policies	<p>The ICN Advocacy Working Group should continue to share know-how and support competition agencies that may wish to conduct regular assessments of the impacts of price controls in national and cross-border markets. This will help identify whether these controls are achieving their intended goals or inadvertently stifling competition. Alternative regulatory measures that promote competition while protecting consumers should be explored.</p>		
	2.2. Mobilize a network of advocates and champions	<p>Through the AWG, continue to promote ICN’s work on advocacy outreach, including revisiting the prior AWG work on sector-specific advocacy tips for food and agriculture. Promote agency advocacy initiatives that raise awareness about the importance of fair competition in agricultural and food markets. These initiatives should target policymakers, industry stakeholders, and the public to foster a culture of compliance and support for competition laws.</p>		

Objective	Action	Notes	Proposed Work Product	Lead
3. Strengthening Agency Effectiveness	3.1. Investing in Agency capacity building initiatives	Through the AEWG (and other WGs), continue to explore capacity building for competition agencies to improve their effectiveness in enforcing regulations and tackling anti-competitive behaviours. This includes providing resources for training, international collaboration, and the development of advanced analytical tools, webinars, and workshops. This may provide a starting point for accessing more information and perspective from NCA and regional authority experiences.		

13. ANNEXURES

Annexure A1. Final survey

ICN Special Project: Competition concerns in agriculture and food markets

Questionnaire for Authorities

20 November 2023

All countries have been experiencing high food inflation, placing enormous pressure on real earnings and more vulnerable parts of society. Developing countries in particular are experiencing daunting problems in the delivery of food at affordable prices to poorer populations. Research indicates the existence of not only short-term 'rocket and feather' conduct in processing and retail but also the possibility of serious market failures and competition issues in national and cross-border markets. The Breakout Session at ICN 2023 confirmed the importance of the ICN tackling competition issues in agriculture and food markets given the transnational nature of businesses, the increasing use and current vulnerabilities of global value chains, and the importance of international markets such as agriculture inputs.

This Special Project will assess how competition authorities are responding to the immediate high food inflation along with enforcement against high levels of concentration and competition issues within the food value chains.

In the first phase, the Special Project will compile an information base on the cases and inquiries in different jurisdictions, the main markets of concern, and the types of conduct and arrangements being assessed. It will include information on what authorities are doing proactively in seeking/compiling data on food and agriculture including attempts to identify what is causing high prices and scarcity that may be competition-related, and the use of advocacy tools to promote compliance and prevent abuse. Results from the initial phase will be shared at the next annual ICN conference.

The first phase therefore involves a questionnaire to authorities to assess the competition issues and challenges faced in tackling them. This includes what are the main priorities, such as food prices, input prices to farmers, the concentration at different levels of agri-food value chains, the extent of market power, challenges in assessing international mergers, likely cross-border coordination including indicated by cases, and patterns of exclusionary conduct affecting smaller producers.

Questionnaire

Overview

1. Importance of food price concerns from 1 January 2019 to date:
 - a. On a scale of 1 (no importance) to 5 (most important), indicate the importance of food prices. Please also list other concerns as general focus area for your authority along with other concerns:

	1 (no importance)	2	3	4	5 (most important)
Food prices					
Digital platforms					
Energy prices					
Sustainability					
Other (specify)					

- b. If your authority has a prioritization process/agenda, please indicate whether 'food prices' were identified over the period between 1 January 2019 and 31 December 2023. If so, please provide a link to the relevant document.
 - c. Please indicate how your authority determined the importance/priority of food prices.

Select (✓) all that apply.

Complaints from the public	
Complaints from the government	
Price changes	
Other (Please fill in)	

2. Have specific competition concerns been raised with the authority regarding agriculture and food markets, by...?:

Select (✓) all that apply.

Government	
Stakeholders (consumer groups, farmer organisations, other)	
Media	
Market intelligence (internal and/or external)	
Research institutes, think tanks, academia	
Other (specify)	

Routing Rule: If you answered 'yes' to any of the entities in Question 2, go to Question 3; otherwise go to question 4.

3. Types of issues raised.

Select (✓) all that apply.

High consumer prices	
High Input prices	
Scarcity	
Volatility of prices (impacts of international/external shocks)	
Concentration within market(s)	
Exclusion or exploitation of small producers/farmers	
Collusion	
Unilateral conduct (Abuse of dominance)	
Other (specify)	

Proactive Monitoring and Research

4. Has the authority engaged in any market scanning and/or price monitoring?
 - a. If so, please provide details, including the status of this monitoring (i.e. whether ongoing or completed). Please provide a link to relevant documents where applicable.
 - b. How is/was data compiled – from what sources, in what format, and what analysis is done?
 - c. What insights has the market scanning and/or price monitoring provided on conduct across agricultural value chains that may be of concern?

5. On the basis of the proactive monitoring and research, have ex officio investigations/inquiries been opened since 1 January 2019?

- a. If so, please provide details, including links to relevant media releases, press statements and court decisions/ rulings. In your response please indicate (i) the sector of interest; (ii) main issue (objective and/concern); (iii) timeline of the investigation/inquiry; (iv) key findings; and (v) recommendations.
6. Has the authority used the findings of the research in Advocacy engagements directly with business and/or government, or indirectly through the media?
- a. If so, what actions or commitments have come out of these engagements

Target	Actions / Commitments
Business	
Government	
Media	

Abuse of Dominance

7. Identify the products and markets in which abuse of dominance issues have been raised between 1 January 2019 and 31 December 2023.

Select (✓) all that apply

	Excessive pricing/price gouging	Exclusionary abuse of dominance	Price discrimination	Abuse of buyer power
Fertilizer				
Agrochemicals				
Seeds				
Farm machinery				
Trading				
Storage				
Transport and logistics				
Milling				
Vegetable oils				
Meat & fish				
Fruit & vegetables				
Dairy				
Confectionary				

Retail (supermarkets)				
Beverages				
Other (specify)				

- a. Please indicate whether these complaints were i) self-initiated by the authority; ii) filed by the public; iii) initiated at the direction of government.
 - b. Please provide details, including links to documents such as press statements, media release, and court decisions/rulings where available.
8. Do any of the abuse matters mentioned above involve government – either openly or (suspected) secretly?
9. Identify and provide details (including participants if public) on abuse of dominance cases in agriculture and food markets with possible cross-border dimensions due to:
- a. International trade
 - b. Multinational companies
 - c. International arrangements (such as licencing)

Please supporting media release, press statements, court rulings/decisions in the public domain where available

Cartels

10. Identify the products and markets in which cartel issues have been raised between 1 January 2019 and 31 December 2023.

Select (✓) all that apply

	Bid rigging	Market allocation	Price fixing	Information exchange
Fertilizer				
Agrochemicals				
Seeds				
Farm machinery				
Trading				

Storage				
Transport and logistics				
Milling				
Vegetable oils				
Meat & fish				
Fruit & vegetables				
Dairy				
Confectionary				
Retail (supermarkets)				
Beverages				
Other (specify)				

- a. Please indicate whether these complaints were i) self-initiated by the authority; ii) filed by the public; iii) initiated at the direction of government.
- b. Please provide details, including links to documents such as press statements, media releases, and court decisions/rulings where available.

11. Do any of the cartels mentioned above involve government – either openly or (suspected) secretly?

12. Identify and provide details (including participants if public) on cartel cases in agriculture and food markets that feature the following:

- a. cross-border arrangements
- b. traded products
- c. multinational companies

Please supporting media release, press statements, court rulings/decisions in the public domain where available

13. Does the authority review cartel cases in other jurisdictions, where...

	Yes	No
one or more of the implicated companies are in your jurisdiction?		
one or more of the products involved are traded in your jurisdiction. (If, 'yes' please list these products)		

14. Does the authority screen for possible international coordination which may have an effect in the jurisdiction? If 'yes', please describe the screening method(s) used.
15. Has the authority/jurisdiction provided any exemptions/derogations from the prohibition on anticompetitive agreements affecting agriculture and food markets? If so, please describe the measure or provide links to the relevant public notices or media releases or press statements.
16. Has the authority provided specific guidance on horizontal collaborations involving parties active within agriculture and food markets to help them comply with competition law (in particular prohibitions on anticompetitive agreements)? If so, please identify and provide details or provide links to the relevant public notices or media releases or press statements.

Merger Control

17. On a scale from "1" ("least prevalent") to "5" ("most prevalent") please indicate the frequency with which the listed theories of harm (columns) have been identified in merger reviews in the different agricultural and food markets in the value chain (rows).

	Input foreclosure	Customer foreclosure	Unilateral effects	Coordinated effects	Buyer power	Access to sensitive information
Agricultural inputs						
Trading						
Storage						
Agro-processing						
Grocery wholesale & retail						
Transport, Logistics and distribution						
Networks or systems						

18. Describe the challenges (if any) that the authority experienced when it reviewed international (regional/global) mergers in agriculture and food markets regarding:
- a. Increased concentration impacting the country as an importer? (List the products, where applicable).?
 - b. Obtaining information and analysing effects on domestic market?
 - c. Challenges for small (developing) countries in blocking or placing conditions on such mergers?
 - d. Other challenges (please specify)

Regulations and policies

19. Please identify any government regulations and/or policies which have impacted on competition in food and agriculture markets since 1 January 2019.
- a. Please identify their specific objective and intended impact on the sector (output, price, imports).
 - b. Please provide details, including links to documents in the public domain such as press statements and media releases where available.

Priorities for ICN special project

20. Please rank the following areas according to how you believe ICN should prioritise for the development of toolkits, data and methodologies in agricultural and food markets ('1' is the highest importance):
- a. Advocacy
 - b. Agency effectiveness
 - c. Price monitoring
 - d. Cartels
 - e. Abuse of dominance
 - f. Mergers
 - g. Public interest perspectives
 - h. Others?
21. Should the ICN establish a knowledge base for cases and knowledge base on markets and conduct in agriculture and food markets?

ENDS

Annexure A2. List of Respondents

<i>Europe</i>	<i>Americas</i>	<i>Middle East</i>	<i>Asia & Australasia</i>	<i>Africa</i>	<i>Caribbean</i>
Austria	Brazil	Israel	Malaysia	COMESA	Barbados
Bulgaria	Chile	Saudi Arabia	Singapore	Eswatini	Curacao
Croatia	Colombia	Turkey	New Zealand	Kenya	
Cyprus	United States - DOJ		India	Malawi	
Czech Republic	Ecuador			Mauritius	
Denmark	El Salvador			Rwanda	
DG Comp	Greece			Seychelles	
Germany	Honduras			South Africa	
Greece	Mexico			Tanzania	
Iceland	Paraguay			Zambia	
Ireland				Zimbabwe	
Italy					
Kazakhstan					
Latvia					
Slovak Republic					
Sweden					
Switzerland					
Turkey					
United Kingdom					

Annexure A3. List of References

[Drafting Note: insert links of references]