



AGRICULTURE, AQUACULTURE & FISHING SECTOR AND COMPETITION LAW ALERT

25 MAY 2022



CLIFFE DEKKER HOFMEYR

INCORPORATING
KIETI LAW LLP, KENYA

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Competition in the agricultural sector

Spurred by a combination of recent developments, including the competition authorities' continuous monitoring of essential food items pursuant to the COVID-19 pandemic, the recent concentration study, and the initiation of a market inquiry in respect of the fresh produce market, a clear paradigm shift has emerged in which the competition authorities' focus on the agricultural sector has been reignited, making it a sector of significant interest going forward.



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Competition in the agricultural sector

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The Competition Commission (Commission) has stated that it will continue to monitor the increasing price volatility of essential food items in South Africa. This comes after legal interventions intended to guard against price gouging during the pandemic were repealed when the National State of Disaster was lifted in April 2022. The Commission noted that while businesses that operate in the consumer goods and retail sector are dealing with genuine and ongoing supply chain disruptions, they should ensure that any price increase is carefully considered and justified *vis-à-vis* competition laws. For example, albeit unclear in terms of which provisions it would be acting, the Commission recently warned that, following the implications of the Ukrainian war on edible oil prices, it was "*studying the causes*" of recent significant price increases to assess whether they are justified or if companies are merely profiteering from consumers.

The Commission's latest Essential Food Pricing Monitoring Report highlights that the increasing price volatility of various essential food items, including fresh produce, has had a detrimental impact on the poor as food price inflation and volatility affects them to a greater degree.

Arguably, these price increases have resulted from a combination of factors, including the ongoing pandemic, weather conditions, oil price fluctuations and geopolitical challenges. The Commission observed generally that "*it is key that increases in prices ... are not exploited unduly by intermediaries or processors – especially those sourcing scarcer products ... who may attempt to use cost increases to justify greater price increases than warranted*". The specific legal basis in terms of which such exploitative increases will be addressed remains unclear.

CONCENTRATION TRENDS AND MARKET INQUIRY

In addition, in November 2021 the Commission published a study measuring the levels and trends of concentration and participation in the South African economy generally. According to the Commission, the study revealed that there are concerning trends of high levels of concentration in particular parts of the economy, including numerous sub-sectors within the agriculture value chain (e.g. farming, grain, fishing, forestry and livestock); that many agricultural inputs are dominated by a few firms and agricultural processing remains concentrated despite a broader base of participation; and the agricultural sector was identified as a good market inquiry candidate.

Competition in the agricultural sector

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In line with the trends identified in the Commission's work outlined above, the Commission recently announced its intention to initiate a market inquiry into the South African fresh produce market. The aim is to understand the state of competition at all levels of the industry, the market features affecting price outcomes, and the challenges currently faced by farmers, to examine whether there are any features in the fresh produce value chain which lessen, prevent or distort the competitiveness of the South African fresh produce market. The Commission has preliminarily identified four broad themes to be assessed: the efficiency of the value chain; the market dynamics and impact of key inputs for growers; the participation of small and

historically-disadvantaged growers; and the barriers to entry in relation to the regulatory environment. Notably, it is not clear how the question of access to agricultural land as an input will be addressed (if at all). This market inquiry is set to commence shortly, once the final terms of reference are published, and the intention is for it to be completed within 18 months (during which the public and business will be invited to provide inputs).

**ALBERT AUKEMA,
PREANKA GOUNDEN AND
THANDO HADEBE**



OUR TEAM

For more information about our Agriculture, Aquaculture & Fishing sector and services in South Africa and Kenya, please contact:



André de Lange

Sector Head:
Agriculture, Aquaculture & Fishing
Director: Corporate & Commercial
T +27 (0)21 405 6165
E andre.delange@cdhlegal.com



Sammy Ndolo

Partner | Kenya
T +254 731 086 649
T +254 204 409 918
T +254 710 560 114
E sammy.ndolo@cdhlegal.com



Preeta Bhagattjee

Practice Head & Director:
Technology, Media & Telecommunications
Sector Head:
Technology & Communications
T +27 (0)11 562 1038
E preeta.bhagattjee@cdhlegal.com



Emil Brincker

Practice Head & Director:
Tax & Exchange Control
T +27 (0)11 562 1063
E emil.brincker@cdhlegal.com



Chris Charter

Practice Head & Director:
Competition Law
T +27 (0)11 562 1053
E chris.charter@cdhlegal.com



Jackwell Feris

Sector Head:
Industrials, Manufacturing & Trade
Director: Dispute Resolution
T +27 (0)11 562 1825
E jackwell.feris@cdhlegal.com



Tobie Jordaan

Sector Head: Business Rescue,
Restructuring & Insolvency
Director: Dispute Resolution
T +27 (0)11 562 1356
E tobie.jordaan@cdhlegal.com



Mashudu Mphafudi

Practice Head & Director:
Finance & Banking
T +27 (0)11 562 1093
E mashudu.mphafudi@cdhlegal.com



David Thompson

Deputy Practice Head & Director:
Corporate & Commercial
T +27 (0)21 481 6335
E david.thompson@cdhlegal.com



Albert Aukema

Director:
Competition Law
T +27 (0)11 562 1205
E albert.aukema@cdhlegal.com



Roy Barendse

Executive Consultant:
Dispute Resolution
T +27 (0)21 405 6177
E roy.barendse@cdhlegal.com



Tessa Brewis

Director:
Corporate & Commercial
T +27 (0)21 481 6324
E tessa.brewis@cdhlegal.com



Simone Franks

Director:
Real Estate
T +27 (0)21 481 6464
E simone.franks@cdhlegal.com



Johan Latsky

Executive Consultant:
Corporate & Commercial
T +27 (0)11 562 1149
E johan.latsky@cdhlegal.com



Andries Le Grange

Director:
Competition
T +27 (0)11 562 1092
E andries.legrange@cdhlegal.com

OUR TEAM

For more information about our Agriculture, Aquaculture & Fishing sector and services in South Africa and Kenya, please contact:



Gillian Lumb

Director:
Employment Law
T +27 (0)21 481 6315
E gillian.lumb@cdhlegal.com



Richard Marcus

Director:
Dispute Resolution
T +27 (0)21 481 6396
E richard.marcus@cdhlegal.com



Burton Meyer

Director:
Dispute Resolution
T +27 (0)11 562 1056
E burton.meyer@cdhlegal.com



Susan Meyer

Sector Head:
Healthcare & Pharmaceuticals
Director: Competition Law
T +27 (0)21 481 6469
E susan.meyer@cdhlegal.com



Hugo Pienaar

Sector Head:
Infrastructure, Transport & Logistics
Director: Employment Law
T +27 (0)11 562 1350
E hugo.pienaar@cdhlegal.com



Verushca Pillay

Director:
Corporate & Commercial
T +27 (0)11 562 1800
E verushca.pillay@cdhlegal.com



Lucinde Rhoodie

Director:
Dispute Resolution
T +27 (0)21 405 6080
E lucinde.rhodie@cdhlegal.com



Belinda Scriba

Director:
Dispute Resolution
T +27 (0)21 405 6139
E belinda.scriba@cdhlegal.com



Roux van der Merwe

Director:
Corporate & Commercial
T +27 (0)11 562 1199
E roux.vandermerwe@cdhlegal.com



Clarice Wambua

Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E clarice.wambua@cdhlegal.com



John Webber

Director:
Real Estate
T +27 (0)11 562 1444
E john.webber@cdhlegal.com



Charl Williams

Director:
Corporate & Commercial
T +27 (0)21 405 6037
E charl.williams@cdhlegal.com

OUR TEAM

For more information about our Competition Law practice and services in South Africa and Kenya, please contact:



Chris Charter

Practice Head & Director:
Competition Law
T +27 (0)11 562 1053
E chris.charter@cdhlegal.com



Njeri Wagacha

Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E njeri.wagacha@cdhlegal.com



Sammy Ndolo

Managing Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E sammy.ndolo@cdhlegal.com



Preanka Gounden

Senior Associate:
Competition Law
T +27 (0)21 481 6389
E preanka.gounden@cdhlegal.com



Albert Aukema

Director:
Competition Law
T +27 (0)11 562 1205
E albert.aukema@cdhlegal.com



Reece May

Senior Associate:
Competition Law
T +27 (0)11 562 1071
E reece.may@cdhlegal.com



Lara Granville

Director:
Competition Law
T +27 (0)11 562 1720
E lara.granville@cdhlegal.com



Nelisiwe Khumalo

Associate:
Competition Law
T +27 (0)11 562 1116
E nelisiwe.khumalo@cdhlegal.com



Andries le Grange

Director:
Competition Law
T +27 (0)11 562 1092
E andries.legrange@cdhlegal.com



Mmakgabo Makgabo

Associate Designate:
Competition Law
T +27 (0)11 562 1723
E mmakgabo.makgabo@cdhlegal.com



Susan Meyer

Sector Head: Healthcare & Pharmaceuticals
Director: Competition Law
T +27 (0)21 481 6469
E susan.meyer@cdhlegal.com

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.

Dx 154 Randburg and Dx 42 Johannesburg.

T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.

T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.

T +254 731 086 649 | +254 204 409 918 | +254 710 560 114

E cdhkenya@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.

T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

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