

# Agriculture and Competition Law ALERT

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### Competition Commission intensifies its monitoring of essential foods and fresh produce: What you need to know

The latest edition of the Competition Commission's (Commission) Essential Food Price Monitoring Report (EFPMR) analyses price movements of sunflower oil, bread, maize meal and certain fruits and vegetables and contains a deep dive probe into the poultry value chain. The Commission remains concerned about food inflation and whether prices are justified by increasing costs.



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## Competition Commission intensifies its monitoring of essential foods and fresh produce: What you need to know

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However, as mentioned in one of our previous alerts ([link](#)), food price increases can result from a multitude of factors disassociated from anti-competitive behaviour, for example, rolling blackouts, the after-effects of the COVID-19 pandemic, weather conditions, oil price fluctuations, geopolitical challenges, etc. The Fresh Produce Market Inquiry (FPMI) commencing this year will hopefully be used as a responsible tool to more robustly assess the true causes of price increases (at least in respect of certain fruits and vegetables) and assist an industry battered by cost pressures and potential food shortages.

Below is a summary of some of the Commission's key findings in the EFPMR.

### **Sunflower oil**

The EFPMR notes that retailers appear to be taking more margin than before, which, according to the Commission, is unlikely to be justified. The Commission remains concerned about pricing in the cooking oil value chain and is currently conducting a formal investigation.

### **Bread**

From January to December 2022, in respect of white bread, the Commission found that (i) the retail price increased by 20% and (ii) the wholesale price increased by 15%. According to the Commission, a similar trend presents for brown bread. Ultimately, the Commission appears to allege that there is a trend that retailers have sought to take increased margin on this staple.

### **Maize meal**

From January to December 2022, the Commission found that maize meal prices increased by 32% and a large domestic surplus suggests that the pricing is being driven more by global export parity pricing than domestic cost pressures.

### **Top five vegetables and fruit**

According to the Commission, the prices of carrots, potatoes, and cabbage were generally stable throughout 2022. Onion prices were, however, said to have sharply increased from August to November



## Competition Commission intensifies its monitoring of essential foods and fresh produce: What you need to know

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before slightly decreasing in December. The EFPMR notes that it is unclear what is driving the price of onions as the increases appear to be more than simply seasonal variations.

Fruit prices are primarily driven by domestic market outcomes, although the export of certain fruits exposes pricing to global markets to some extent. The price of the fruits tracked by the Commission declined from January to July 2022, after which prices started to rise again. Avocados and oranges were said to have increased the most, with avocados showing a significant spike from August to December, a likely outcome of their seasonality.

### **The poultry value chain and industry background**

Chicken is the most popular meat choice, followed by beef. The importance of affordable chicken is further highlighted by consumer

behaviour in the current economic climate. Faced with increased red meat prices, consumers have substituted beef and lamb for chicken to ease budgetary constraints.

The EFPMR notes that the largest vertically integrated poultry producer in South Africa, released a trading update in January 2023, cautioning the market about deteriorating trading conditions affecting its feed and poultry divisions.

The Commission views the South African poultry sector as highly concentrated and dominated by vertically integrated firms. Such a market structure raises notional concerns for the Commission that these firms could use alleged market power to achieve anti-competitive prices.

From a competition policy perspective, the unintegrated players are in a supply relationship with the vertically integrated firms, as well as in a competitor relationship. This is a potential cause for concern for the Commission as it grants the vertically integrated firms a degree of influence over their unintegrated rivals, which according to the Commission, may be abused to the benefit of their downstream broiler and chicken product businesses.

Overall, according to the Commission, there appears to be evidence of margins in the chicken industry being under pressure, which may affect the long-term sustainability of small and emerging chicken producers.

### **The Fresh Produce Market Inquiry**

In addition to ongoing investigations, during this year, the Commission will conduct an FPMI. The FPMI's final terms of reference (TOR) were published on 14 February 2023.

## Agriculture, aquaculture & fishing sector and competition combined alert

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The purpose of the FPMI is broadly to examine whether there are any features in the fresh produce value chain that impede, restrict, or distort competition in the South African fresh produce market.

The Commission has identified the following three broad themes in the FPMI TOR:

1. Efficiency of the value chain, with an emphasis on the dynamics around fresh produce market facilities.
2. Market dynamics of key inputs and the impact on producers.
3. Barriers to entry, expansion, and participation (focused on the participation of small and medium-sized enterprises and historically disadvantaged farmers).

The scope of the FPMI will cover various aspects of the sale of fresh produce by the farmer to the customer (i.e. fresh produce markets, retailers, wholesalers, processors, etc.). For the purposes of the FPMI, fresh produce includes fruit and vegetables (whether processed or not). The main fruits produced and consumed in South Africa include apples, bananas, oranges (and other citrus), stone fruit, pears, avocados, grapes, and nuts. The main vegetables include potatoes, onions, tomatoes, sweetcorn, carrots, and cabbage.

**Susan Meyer and Duran Naidoo**



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