

# Agriculture, Aquaculture & Fishing and Competition Law



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KENYA

The Competition Authority of Kenya releases the Animal Feed Market Inquiry Report



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## The Competition Authority of Kenya releases the Animal Feed Market Inquiry Report

On 6 February 2025, the Competition Authority of Kenya (CAK) published its report on the Animal Feed Market Inquiry (Report). The Report highlighted several anti-competitive practices within the animal feed sector and the need for entities in the sector to align their internal and external arrangements and contracts to omit anti-competitive practices.

### Background

As of 2021, Kenya's meat and fish consumption was less than half the average amount of other African countries, despite government interventions to lower animal feed costs. In 2018 and 2021 respectively, 16% value-added tax on animal feeds and import duty on key imported raw materials used in the manufacture of animal feeds were removed. In 2023 the Government zero rated all imported raw materials for manufacturing of animal feeds. However, animal feed prices have continued to rise, driving up the cost of animal products. The CAK inquiry aimed to assess the market interactions, structures and outcomes affecting competition in the animal feed value chain and whether such factors were leading to the high costs.

### Key findings

The inquiry found that the high cost of animal feeds in Kenya is primarily due to expensive input materials, with Kenya relying heavily on large volumes of imported raw materials such as processed soybeans and sunflower to produce the feeds. Despite the abundance of these materials in proximate countries such as Tanzania, Uganda and Zambia, prices in Kenya remain high. The Report noted that the inputs market is highly concentrated, as a few producers control most of the animal feed inputs, leading to the anti-competitive practices identified in the inquiry.

Kenya's animal feed market was reported to function as an oligopoly, dominated by a few large producers who have control over supply and pricing. Four feed suppliers were found to account for over 50% of commercial feed sales within the country. The Report highlighted anti-competitive practices among feed suppliers, such as price control of inputs and supplies, market division and allocation, and minimum resale price maintenance, which resulted in high input prices that did not reflect market forces. Limited access to market information and differential pricing of inputs to unintegrated feed producers resulting in reduced profit margins were also highlighted as practices that led to reduced competition in the sector.

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### Competition offences

Section 21 of the Competition Act (Act) prohibits restrictive trade practices whose effect would be to prevent or lessen competition in the trade of goods or services. These prohibited practices include price fixing, market division or allocation, limits on production or market access, application of dissimilar conditions for similar transactions, or entering into contracts with parties that have supplementary conditions not connected to the subject of the contracts. This prohibition applies to entities that are competitors in a particular field i.e. a horizontal relationship or an entity and its suppliers or customers i.e. a vertical relationship.

The CAK published the Consolidated Guidelines on Restrictive Trade Practices under the Competition Act (Guidelines), which elaborate on the standard the CAK uses in analysing restrictive trade practices. Under the Guidelines, price fixing, limits on production and market allocation are considered hardcore restrictions. These are considered to be injurious to competition and have no redeemable value whatsoever.

The Act allows entities to seek an exemption from the CAK before entering into agreements that would otherwise be considered anti-competitive. The Competition (General) Rules (Rules) prescribe the form and relevant accompanying information that are needed to be granted an exemption. An exemption will generally be granted where the benefits arising from the anti-competitive practice outweigh the lessening of competition in the sector. Block exemptions may also be granted under the Act and the Rules for a category of practices or agreements between entities.

The Report highlighted several instances where producers and input suppliers in the animal feed sector had participated in anti-competitive practices including price fixing of feed inputs, restriction on supply of inputs and dissimilar conditions on transactions between input suppliers and integrated feed suppliers, as opposed to small unintegrated feed suppliers.

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## Compliance and enforcement measures

Sections 31 and 32 of the Act empower the CAK to undertake investigations into any conduct that is alleged to constitute a restrictive trade practice or abuse of dominance. This power includes the right to enter any premises where such conduct is believed to occur, and to search the premises, including computer systems and, if need be, seize the relevant materials used in the alleged conduct.

Where an entity is found to have performed any prohibited conduct, the CAK is further empowered under section 36 of the Act to impose penalties on the offending entity, including imposing a financial penalty of up to 10% of the entity's gross annual turnover in Kenya for the immediately preceding year.

## Conclusion

There is a growing call for animal feed producers in Kenya to ensure they have complied with competition laws and regulations. Following the inquiry and the publication of the Report, we expect that the CAK will increase its monitoring of the animal feeds sector, including more investigations into animal feed producers, enhanced collaboration with regional and governmental regulators and intervening where anti-competitive practices occur. This is to protect consumers, enhance competition and promote the growth of the sector. Animal feed producers should review the Report in detail and seek advice on the implications for their businesses.

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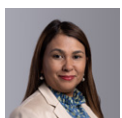
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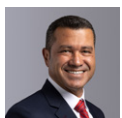
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**BBBEE STATUS:** LEVEL ONE CONTRIBUTOR

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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