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**Competition in the Food Supply Chain – Contribution from Poland**

**- Session IV -**

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More documentation related to this discussion can be found at: [oe.cd/gfc24](https://oe.cd/gfc24).

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## *Competition in the Food Supply Chain*

### *- Contribution from Poland -*

#### **The impact of agricultural commodity traders on the economic situation of suppliers – remarks based on Unfair Trade Practices**

1. The functioning of supply chains in agri-food markets can be significantly disrupted by natural disasters, epidemic threats or political and military conflicts. The period between 2020 and 2024 was marked by each of them – droughts and floods, but most importantly by two unprecedented events: the emergence of the SARS-CoV-2 pandemic and the outbreak of war in Ukraine. The United Nations has warned that they might have led to the most prominent food crisis after World War II. Their impact on the situation of consumers was twofold: firstly, they reduced the physical availability of food due to a decline in agricultural production, supply chain disruptions, or trade restrictions and, secondly, they reduced economic access to food, by increasing prices and food expenditures.

2. The FAO stresses that the increased vulnerability of markets to shocks is linked to the relatively high concentration of both production and trade in key agricultural commodities. In terms of production in 2022 five countries (with the European Union counted as a single country) accounted for 65 percent of the global output of wheat, 72 percent of maize and soybean crops and 90 percent of rice production. For exports at the country level, the concentration was even more significant - in 2022 five countries accounted for 75 percent of wheat exports, 83 percent of maize, and more than 90 percent of soybean exports (FAO Stat)<sup>1</sup>. Nevertheless, an excessive concentration of global trade in agricultural commodities is also observed at the company level. In 2011, the market share of the top four trading companies was estimated to be at least 70 percent, exerting significant influence on both suppliers and consumers.

3. A number of studies indicate that the largest global companies involved in agricultural commodity trading realise significant profits in times of higher food prices during crisis episodes (e.g. Murphy, Burch, and Clapp 2012<sup>2</sup>). In the 21st century, this applied to the years: 2008 (global financial crisis), 2011 and 2021-2022. The latest report on the issue, written by Maarten Hietland, was published in the beginning of 2024 by the SOMO - Centre for Research on Multinational Corporations, based in Netherlands, under the very meaningful title: „Hungry for profits”<sup>3</sup>. We should take a while to discuss some of the remarks.

4. The profits of the largest five agricultural commodity traders (ADM, Bunge, Cargill, COFCO and Loius Dreyfus Company – also known as „The Big Five” or ABCCD)

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<sup>1</sup> FAO, The State of Agricultural and Commodity Markets, 2022 <https://openknowledge.fao.org/server/api/core/bitstreams/0c7cb6df-c416-4397-b999-bf7bca819b17/content/state-of-agricultural-commodity-markets/2022/food-agricultural-trade-resilience.html>

<sup>2</sup> Murphy Sophia, David Burch, and Jennifer Clapp. 2012. Cereal Secrets: The World’s Largest Grain Traders and Global Agriculture. Oxfam. <https://www.oxfam.org/en/research/cereal-secrets-worlds-largest-grain-traders-and-global-agriculture>

<sup>3</sup> Maarten Hietland, Vincent Kiezebrink, 2024. „Hungry for profits” <https://www.somo.nl/hungry-for-profits/>

have increased to unprecedented levels in the middle of pandemic in 2021 and 2022. In 2022 the profits of the Big Five tripled, compared to the 2016-2020 period. These profits remained excessively high in the year 2023, and have been realized during a period of increased food prices and ongoing war crisis in Ukraine, regardless any of perturbances.

5. Abovementioned report gives a detailed analysis of the realised profits and shows four key reasons that enabled these companies to thrive. They have been able to benefit from higher food prices without suffering from equivalent rise in production prices on the cost side and without incurring any losses of customers switching to alternative traders. Their increasing profits went hand in hand with rising food prices.

6. The first reason is the possibly monopolistic position they collectively hold on the global market. They have control over the export and import markets, dominate the global trade in key agricultural commodities and are an inherent factor in our global food supply chain. Since 1990 the EU competition regulators have assessed a total of 60 ABCCD cases of mergers and acquisitions.

7. They are not only competitors, but they actually cooperate with each other on many occasions, and at different levels. As it is known in general and documented in numerous publications, market power is closely tied to price-setting power in a context where markets are highly concentrated and the interconnectedness can result in price setting, anti-competitive behaviour and cartel formation.

8. The third characteristic is that they control the supply side. Through their large storage capacity, and their ability to take a well-informed position on the unregulated financial markets, these companies are able to influence and profit from unstable food systems.

9. The fourth reason is their vertical integration. They hold a key positions throughout the entire food supply chain – from farm to fork. This integration is manifested through a vast network of contracted agricultural suppliers, storage, processing and transportation in core strategic food-producing countries or whole regions.

10. Another remarkable Preliminary report „A new merger wave in the agri-food value chain? Some reflections on the Bunge/Viterra merger”<sup>4</sup> was published in July 2024, written by Ioannis Lianos, Stavros Makris and Jean-Benoit Maisin with contributions from Alina Velias. It was issued short before the approval of the EU Commission for this merger.

11. Viterra is an agribusiness company owned by a global mining giant – Glencore. The Company now operates in 38 countries with revenues in 2023 at the level of 53 billion US dollars. The second one - Bunge is the world’s fifth largest grain company, operating in 40 countries with over 57 billion US dollars of annual revenues, and the world’s largest oilseed processor, globally dominant in soybeans, canola and corn. As stated before both companies operate in a highly concentrated global grain market and are part of the abovementioned Big Five. In the report the authors point out that proposed transaction will create a global grain giant to rival such companies like Cargill and ADM, with further contribution to the consolidation of the crucial commodity trading and logistics segment of the global food value chain. It was noted that the agribusiness industry has been experiencing massive consolidation waves.

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<sup>4</sup> Ioannis Lianos, Stavros Makris, Jean-Benoit Maisin, with contributions from Alina Velias, 2024, “A new merger wave in the agri-food value chain? Some reflections on the Bunge/Viterra merger Preliminary Report (July 2024)” <https://www.somo.nl/hungry-for-profits/>

12. The authors of the report underline that over the last two decades the global agricultural value chain has been progressively transformed into an ecosystem of closely tied players. The emergence of integrated technology, traits, seeds, chemicals and/or platforms around Agri-Tech business ecosystems following the last merger wave in 2015-2017 has contributed to the erection of new barriers to entry as companies wishing to enter the relevant markets may have to offer an integrated solution for farmers. Such platformization has resulted in „locking-in” more farmers to specific agrochem providers, limiting their incentive and ability to switch to rivals. It may reinforce the power of large agricultural companies, which are seeking to develop an „integrated offering of equipment and services for farmers”, thereby enabling them to „gradually build a compelling one-stop solution that will allow them to compete for the lion’s share of the market.

13. By developing large global agricultural networks linking thousands or even millions of farmers with the other segments of food value chain, the merged entity Bunge/Viterra will be able to benefit from indirect network effects and the feedback loops, as the more farmers and a variety of products they cover, the more data they will be able to harvest and the more valuable they will be to processors and other intermediaries that need access to agricultural production.

14. As the authors of the report emphasize - another concern flows from the position of the farmers - their bargaining power is very limited due to the atomistic nature of agricultural markets. Their position will be weakened even more by the merger as the concentration of economic power will put them in a more vulnerable position. The effects are wider than just price and output effects. The approved but not yet succeeded merger can have far-reaching implications for the global agribusiness sector. While it will create the world’s largest grain trade company and offers potential benefits in terms of operational efficiency, it also poses significant risks to competition, innovation and sustainability. One of the social sustainability issues is whether the farming industry receives a sufficient share of the total surplus so as to make it robust when confronted by economic shocks. If the farmer’s profit margins are squeezed too much, this may prevent them from building a savings buffering them from economic shocks such as bad weather conditions, floods, wars etc.

15. High economic concentration allows dominant firms to control large segments of the market, potentially leading to higher prices, reduced competition, less resilient and sustainable food systems. Centralized networks, where only a few firms dominate entire segments of value chain are particularly vulnerable to disruptions. Therefore, proactive merger control is necessary to secure consumer’s well-being, ensure fair distribution of value chain to incentivize and diffuse innovation.

16. The authors have pointed out that rising concerns over resilience, structural inequality have led to a call for more watchful competition law enforcement – which should focus on the way in which the total surplus value is allocated both between the various segments of the global food value chains and the various jurisdictions in which the merging companies are active. The quest for food sovereignty and the fulfillment of the human right to food also form part of the broader global justice agenda that has been gaining momentum in recent years. The growing consolidation of trading companies may result in the exercise of bargaining power against market partners, particularly farmers, leading to the imposition of unfavourable terms of cooperation.

17. Unfair Trade Practices regulations had been introduced to counteract single-sided violations on the food supply chain. Polish Office of Competition and Consumer Protection

(UOKIK) plays an important role in execution of those regulations.<sup>5</sup> The Office actively searches for breach of regulations in contracts between suppliers or producers and agricultural commodity traders and their malpractices.<sup>6</sup> UOKIK has issued couple of decisions regarding malpractices with reference to such commodity traders like Cefetra Polska sp. z o.o. or Polish Agri sp. z o.o., which buy different kinds of grains ( such as wheat, rye, triticale, barley, rapeseed) mainly from farmers. Although these entities are not controlled by the global Big Five, they have a strong position in domestic and local markets, especially compared to their suppliers.

18. The President of UOKIK had objections to some clauses in contracts templates used by one of the biggest commodity traders in Poland - Cefetra Polska sp.z o.o., which is the part of the Cefetra Group, owned by the BayWa AG. The agreements in contract templates were unnegotiable and detrimental to farmers supplying the company with grains, rapeseed and legumes. Company has unfairly exploited its contractual advantage over farmers, burdening them with excessive risks related to contract performance. Cefetra has demanded from suppliers realization of contracted deliveries, despite the occurrence of circumstances beyond their control, in particular of a force majeure, preventing the delivery of the agreed amount of grains. In some cases the damage was higher than 50 percent of annual revenues from a farm. To prove the occurrence of force majeure, the farmers had to submit a document confirming the introduction of a state of natural disaster in the region, where their farms were located. To aggravate the situation even more – according to Article 232 of the Polish Constitution from 1997<sup>7</sup>, only the Council of Ministers is entitled to introduce such an extraordinary legal tool. The Council of Ministers has for the first time in history introduced a state of natural disaster on 16 September 2024 in response to ongoing major floods in the southwest of Poland.

19. Moreover, Cefetra was demanding from farmers the proof of damage higher than 50 percent of the average amount of product which have been sold by the farmer during last two years. In practice those terms and conditions precluded farmers from any exception from their contractual obligation. As a consequence Cefetra has been seeking financial penalties and expenses caused by substitute execution of contract. In the Decision RBG-2/2022<sup>8</sup> the President of UOKIK imposed 2 mln PLN on Cefetra. Company has challenged the Decision and it has been revoked by Court of Competition and Consumer Protection on October 26 th 2023<sup>9</sup> and the UOKiK has filed an appeal. Our Office is still waiting for a set date of the hearing of the appeal.

20. Similar practice towards farmers has been used by PolishAgri sp. z o.o. – the leader in the export of grains from the western part of Poland. PolishAgri buys wholesale different kinds of grains such as wheat, rye, triticale, malting barley, mostly from small farms. Terms and conditions in contract templates could have not been changed by individual supplier. The proceedings of UOKIK demonstrated, that PolishAgri has unfairly exploited its contractual advantage over farmers, demanding from them the whole amount of contracted

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<sup>5</sup> Systemic issues are regulated in the Competition and Consumer Protection Act of 16 February 2007 (Journal of Laws of 2024, item 1616 as amended)

<sup>6</sup> The Act of 17 November 2021 on Counteracting the Unfair Use of Contractual Advantage in Trade in Agricultural and Food Products (Journal of Laws of 2023, item 1773)

<sup>7</sup> Constitution of the Republic of Poland from 2 April 1997, (Journal of Laws of 1997, No 78, item 483)

<sup>8</sup> Decision RBG 2/2022, 17 May 2022, [https://decyzje.uokik.gov.pl/bp/dec\\_prez.nsf/](https://decyzje.uokik.gov.pl/bp/dec_prez.nsf/)

<sup>9</sup> Sentence of The Court of Competition and Consumer Protection, 26 October 2023, XVII AmA 67/22.

grains, even if realisation was impossible, due to circumstances beyond their control - a force majeure nature, such as weather conditions. If farmers could not meet the conditions of contract, to fulfill the obligations they were obliged to pay financial penalty or to buy contracted amount of the grains individually on free market either to bear the costs of replacement purchase made by PolishAgri. In the Decision RBG 9/2022<sup>10</sup> the President of UOKIK imposed 300.000 PLN on PolishAgri. The Decision has been challenged by the company. In the recently announced sentence XVII AmA 58/22 from September 11 th 2024 The Court of Competition and Consumer Protection<sup>11</sup> dismissed the complaint. PolishAgri contract templates were called „Sales contracts” not „Cultivation contracts”. The Court of Competition and Consumer Protection ruled that it was necessary to establish if the regulations regarding the force majeure should be included in sales contracts, so the farmers could be released from their contractual obligations. While such an obligation does not arise from regulations of the Polish Civil Code, the provision, which set standards for contracts with farmers is an Article 168 section 4 of the Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008. It indicates specific requirements relating to contracts for agricultural products, regardless of the type of contract - regulations applicable in the event of force majeure are required.

21. Consequently, there is a possible disharmony between Unfair Trade Practices regulations and the EU Commission policy approving another merger which will have far-reaching implications not only for regional (European) but also global agribusiness situation. There is a need for robust competition law enforcement and regulatory measures to react to challenges associated with the deepening concentration of the market. Moreover, there is a lack of monitoring of agricultural commodity traders on a global level, something which was also noticed by Abdolreza Abbassian<sup>12</sup>, former senior economist at the UN’s Food and Agriculture Organization.

22. The imperative of international collaboration and knowledge exchange in addressing competition issues within agriculture and food markets should be underscored. UTP organizations should make every effort to even up this disharmony - ensuring fair competition and supporting sustainable practices are essential for the long-term stability of the food supply chain.

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<sup>10</sup> Decision RBG 9/2022, 01 August 2022, [https://decyzje.uokik.gov.pl/bp/dec\\_prez.nsf/](https://decyzje.uokik.gov.pl/bp/dec_prez.nsf/)

<sup>11</sup> Sentence of The Court of Competition and Consumer Protection, 11 September 2024, XVII AmA 85/22 and the justification of the sentence.

<sup>12</sup> Maarten Hietland, Vincent Kiezebrink, 2024. „Hungry for profits” <https://www.somo.nl/hungry-for-profits/> basing on: Helen Thomas, Financial Times, 21.06.2023, Murky world of global food trading is too important to ignore. <https://www.ft.com/content/481f3646-6b0f-4512-a0f8-f4746fc4c7ab>