



COMPETITION AND CONSUMER PROTECTION COMMISSION

MARKET INQUIRY INTO THE COMMERCIAL POULTRY INDUSTRY

TERMS OF REFERENCE

RESEARCH AND EDUCATION UNIT

8th April 2024

INTRODUCTION

1. The Competition and Consumer Protection Commission (“the Commission”) intends to conduct a market inquiry into the commercial poultry industry in Zambia (“the Poultry Market Inquiry” or “the Inquiry”), focused on meat production (generally known as broiler production). The Inquiry will cover economic activities, firms and institutions, operating through the value chain including the breeding stock, feed and inputs, broiler production and processing, marketing and retail activities. The Inquiry will cover activities in Zambia, and which have an effect in Zambia, even while they may relate to cross-border and/or international arrangements and businesses.
2. The purpose of the market inquiry is to review and understand how the commercial poultry industry operates, in order to determine whether there exists any feature, or a combination of features that may have the effect of preventing, restricting or distorting competition; or have elements of unfair trading practices in connection with the supply or acquisition of any goods or services in the commercial poultry industry in Zambia.
3. These Terms of Reference (“ToR”) are published pursuant to Regulation 5(1) and 5(2) of the Competition and Consumer Protection (General) Regulations, 2011 (Regulations). Regulations 5(1) and 5(2), mandates the Commission to inform the public about the market inquiry through the placement of a Notice on the Commission website or in a daily newspaper of general circulation in Zambia. Regulation 5(2) requires that the Notice indicate the scope of, or the terms of reference for, the market inquiry and request all interested parties to make submissions to the Commission.

LEGAL BASIS FOR MARKET INQUIRY

4. The Poultry Market Inquiry is initiated in terms of Part V of the Competition and Consumer Protection Act No. 24 of 2010 (“the Act”) and Part III of the Regulations and in keeping with the purpose and functions of the Commission as set out in objectives of the Act and in Section 2 of the Act.
5. Pursuant to Regulation 4(1) (a-e), the Commission may initiate a market inquiry based on a complaint(s) made to it by enterprises, consumers or

representative bodies, studies conducted by any relevant bodies on a particular sector, its own research, its experience in regulating restrictive business and anti-competitive trade or representations made to it by the Government regarding a particular sector or type of agreement.

6. The Poultry Market Inquiry was necessitated by the complaints made to the Commission, concerns raised in studies conducted by the Commission and other relevant bodies in the poultry sector, as well as the Commission's experience in reviewing mergers, regulating restrictive business and anti-competitive trade practices, and authorization of agreements in the poultry sector. The general focus of the inquiry will cover aspects including market structure and market outcomes, along with any arrangements that may restrict, prevent and distort competition or results in unfair trade to the detriment of consumers.
7. Having had concerns in the sector, the Commission will be conducting a market inquiry as it has reason to believe that there are features of the industry (including, but not limited to, the levels of concentration and vertical integration) that may have an effect of preventing, distorting, or restricting competition within the sector, and/or has elements of unfair trading that hinder achievement of the purposes of the Act.
8. Section 5 of the Act mandates the Commission to, inter alia, "*review the operations of markets in Zambia and the conditions of competition in those markets; review the trading practices pursued by enterprises doing business in Zambia; act as a primary advocate for competition and effective consumer protection in Zambia; to advise Government on laws affecting competition and consumer protection; and, do all such acts and things as are necessary, incidental or conducive to the better carrying of its functions under this Act*".
9. This market inquiry is thus an analysis of the industry, including the market structure, market outcomes and relevant policy and regulations, rather than a narrow investigation of specific conduct by any firm.
10. Although the ToRs delimit the scope of the market inquiry as currently envisaged, additional, and related matters not identified herein may arise during the conduct of the inquiry. If the Commission believes that the ToRs should be amended in any way, either through the addition of new matters

or exclusion of matters currently identified herein, the ToRs may be amended accordingly.

Objectives

11. The primary objectives of this inquiry are;
 1. to analyze the market structures in the commercial poultry industry at different levels including production, inputs including breeding stock, animal feed and its main constituents, poultry processing and retail;
 2. examine the industry arrangements and relations locally, regionally and internationally that have, or may have, an effect in Zambia;
 3. examine the structural arrangements, shareholding structures and agreements, or lack thereof, that may have an effect in Zambia;
 4. examine market outcomes, pricing, supply arrangements, and related terms and conditions, for local and export markets, and as regards imports;
 5. assess how legal and regulatory factors affect competition in the sector and to understand how Government interventions shape incentives for firms to compete and invest.

SCOPE AND PURPOSE OF THE INQUIRY

12. The inquiry will cover all market participants in the commercial poultry industry including poultry producers, input suppliers, customers, among others.
13. The study will focus on the time-period from 2019 to 2023.

Technical aspects

- (i) A review of the markets and supply at different levels of the value chain, including breeding and supply of day-old chicks, animal feed constituents, animal feed supply, and processing of poultry, in Zambia, including in terms of market outcome and arrangements, enterprise profiling, concentration levels and ownership structures.

- (ii) Production and supply dynamics, pricing levels and structures, and associated terms and conditions of trade, on the domestic and export market as well as associated costs and margins. The inquiry will also look at underlying factors influencing pricing, competition and market power, and assess the competitiveness of Zambian products.
- (iii) A review of local, regional and international arrangements, shareholding and ownership structure of key players in the sector as well as contractual agreements, licencing and trade arrangements.
- (iv) A review of the various existing laws, policies and regulations governing or having a bearing on the functioning of the sector including the roles, influence and power of associations.

Geographical aspects

- (v) While the analysis will cover Zambia, regional and international market dynamics with an effect on the Zambian market will be considered. Focus will in particular be on the major poultry producing and consuming regions, locally and regionally.

Operational aspects

- (vi) The inquiry will include: (i) desktop reviews of past studies and inquiries into the sector, reviews of cases investigated and mergers undertaken relating to the sector as well as a review of publicly available information on the sector; (ii) data gathering which will involve requests for information to identified stakeholders and enterprises, and interviews.
- (vii) Pursuant to Section 40 as read with section 55(4) of the Act and 25 of the Competition and Consumer Protection Commission (Amendment) Act No 21 of 2023, the Commission will employ its powers of investigations to ensure that information requested is submitted to the inquiry.

MARKET INQUIRY TIMELINES AND PROCESS

- 14. The inquiry will be carried out primarily by a team of the Commission staff or any Inspector appointed pursuant to Regulation 5(3) of the Regulations.
- 15. Pursuant to Section 40 of the Act, the Commission may invite interested parties to submit information to it and may exercise, in relation to any enterprise that it considers to be involved in the matters covered by the

inquiry, its powers of investigation under the Act. The Commission's powers of investigations pursuant to Section 55(4) include a notice in writing served on any person, requiring that person to;-

- a. furnish to the Commission, in a statement signed by that person or, in the case of a body corporate, by a director or member or other competent officer, employee or agent of the body corporate, within the time and in the manner specified in the notice, any information pertaining to any matter specified in the notice which the Commission considers relevant to the investigation;
 - b. produce to the Commission, or to a person specified in the notice, any document or article, as specified in the notice, which relates to any matter which the Commission considers relevant to the investigation; or
 - c. appear before the Commission, or before a person specified in the notice, at a time and place specified in the notice, to give evidence or to produce any document or article specified in the notice.
16. It is an offence to disregard the Commission's requests and any person who, or an enterprise which, contravenes the Act commits an offence and is liable to a fine not exceeding 10% of the enterprises turnover.
 17. The participants in this market inquiry include firms directly or indirectly involved in the commercial poultry value chain, as well as those that have an impact on competition in the sector. The inquiry will also include participation by business and trade associations, government departments, public entities, regulatory authorities, consumers and consumer groups, and any other stakeholder that may be able to provide information relevant to the market inquiry. Members of the public are encouraged to participate fully in the inquiry process.
 18. At the conclusion of the inquiry pursuant to Section 41(1) of the Act, the Commission will publish its findings on its website and in a daily newspaper of general circulation in Zambia.
 19. The Commission is committed to the principles of fairness, transparency and integrity and will conduct the inquiry in accordance with these principles. The Commission will further allow stakeholders a fair and reasonable opportunity to provide input into the inquiry process and its

outcomes. For this reason, the Commission will release the inquiry interim report at the conclusion of the market inquiry for public consideration.

20. The inquiry commences on 8th April 2024