

Unclassified

English - Or. English

5 November 2024

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Global Forum on Competition

Competition in the Food Supply Chain – Contribution from Finland

- Session IV -

2-3 December 2024

This contribution is submitted by Finland under Session IV of the Global Forum on Competition to be held on 2-3 December 2024.

More documentation related to this discussion can be found at: oe.cd/gfc24.

Please contact Mr Antonio Capobianco [Antonio.Capobianco@oecd.org] and Ms Carolina Abate [Carolina.Abate@oecd.org] if you have questions about this document.

JT03554717

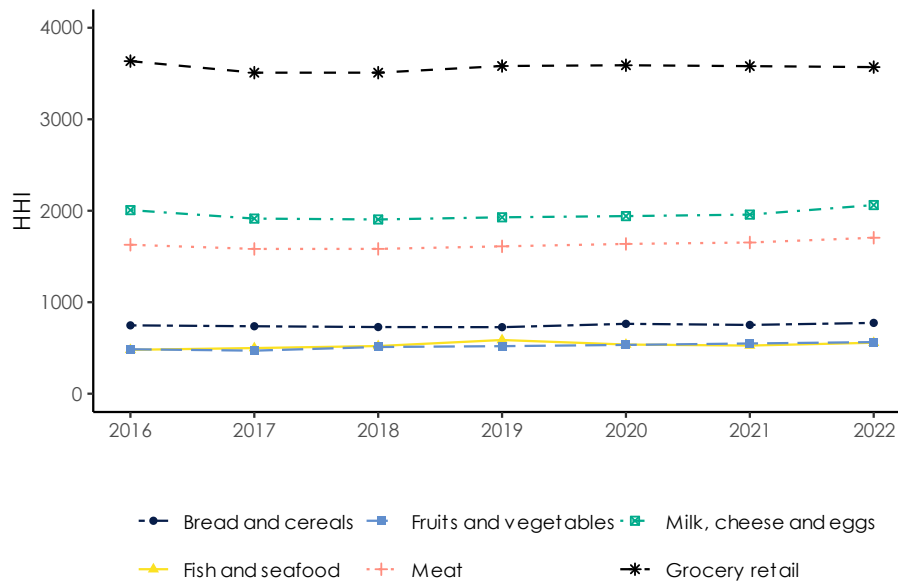
Competition in the Food Supply Chain

- Contribution from Finland –

1. Recent developments

1. The Finnish Competition and Consumer Authority (FCCA) has an ongoing research project on the functioning of the food supply chain. This section presents some findings on the recent developments in the food industry.
2. Grocery retail in Finland is highly concentrated. The three largest firms are S Group, Kesko, and Lidl, with market shares of 48%, 34%, and 10%, respectively, in 2023. Figure 1 illustrates the evolution of HHI in grocery retail and in food industry for selected product groups from 2016 to 2022. The HHIs are based on national market shares. For each product group, the HHIs were first calculated for the subgroups within the group. Then, an average was taken for each product category. For example, in the cereal and bread product group, the subcategories include biscuits, bread, frozen foods, and cereal products.
3. It is important to note that the subgroups within different product categories do not necessarily constitute relevant markets. Many product groups contain items that may not be directly substitutable for consumers, and therefore the competitive pressure they exert on each other is likely limited. For example, the bread product group includes not only staple breads but also various pastries, such as buns and other baked goods. The substitutability between staple bread and pastries may be limited for consumers. Nonetheless, the figure provides a general overview of the differences between product groups and the development of concentration levels.
4. Figure 1 shows that there have not been any significant changes in market concentration during this period. The grocery retail sector remains more concentrated than the food industry within product groups, with an HHI of approximately 3,600. However, there are notable differences across product groups. The most concentrated categories are milk, cheese, and eggs, with an HHI of around 2,000, and meat, with an HHI of approximately 1,600. In contrast, the fish and seafood, as well as fruits and vegetables categories, are much less concentrated, with HHIs around 500.

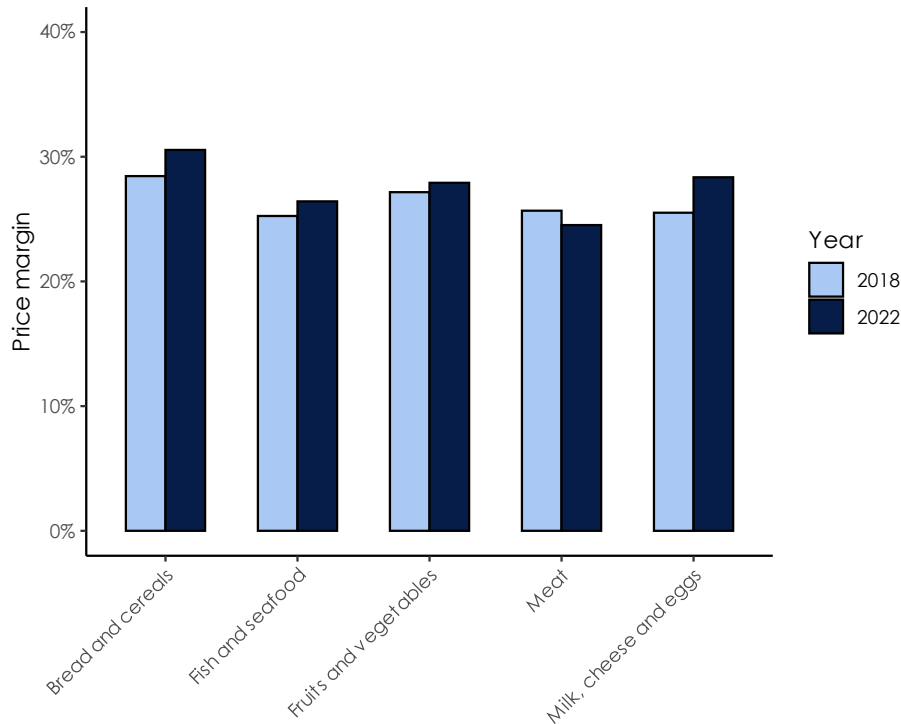
Figure 1.1. Market concentration in the retail sector and in selected product groups in the food industry



Note: The figure shows the development of national HHI in grocery retail and selected product groups in the food industry. The HHI for grocery retail is calculated by summing the squares of the market shares of all companies operating in the market. For each product group, the HHI was first calculated for the subgroups at the next category level, and then the averages were taken.

5. For the research project, the FCCA has collected a dataset that includes product-level information on retail prices paid by consumers and wholesale prices paid by retailers. The data has been gathered from three major operators in the grocery retail sector, which together hold over 90% of the market share. Figure 2 shows the average retail price margins for selected product groups. To construct the figure, product-level price margins were first calculated by dividing the difference between the retail price and the wholesale price by the retail price. Next, a weighted average for each product group was computed, using the quantities sold at the product level as weights. The figure shows that the average retail price margin has slightly increased across all product groups except for meat, where it has slightly decreased. The largest absolute increase is in the milk, cheese, and eggs category, with the price margin rising by about three percentage points. Overall, retail price margins range from approximately 25% for meat to 31% for bread and cereals.

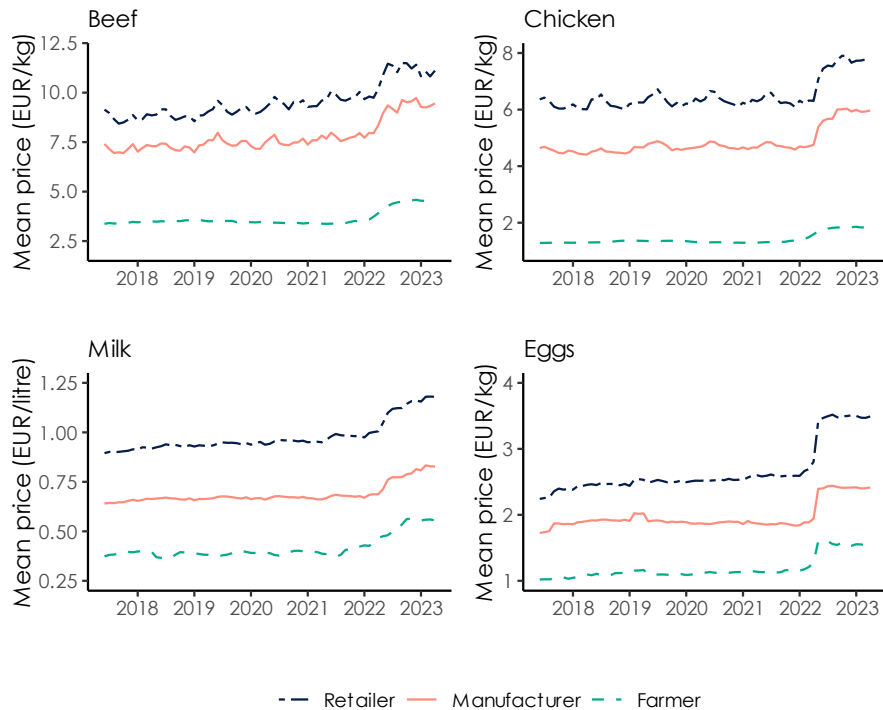
Figure 1.2. Retail price margins in selected product groups in 2018 and 2022



Notes: Figure shows the average retail price margins in 2018 and 2022 for selected product categories. First, product-level price margin is calculated by dividing the difference between the retail price and the wholesale price by the retail price: $\frac{p-c}{p}$. Then, a weighted average is taken, using the quantities sold as weight.

6. For some product groups we also observe the average producer prices paid to the farmer. Figure 3 illustrates the trends in retail and wholesale prices, as well as producer prices, across four product categories: beef, chicken, milk, and eggs. In all categories, prices remained relatively stable before the price increases observed in 2022. For beef and chicken, we observe seasonal price fluctuations, reflecting the fact that people buy on average more expensive products during summer months. In all product categories, retail, wholesale, and producer prices increased quite simultaneously.

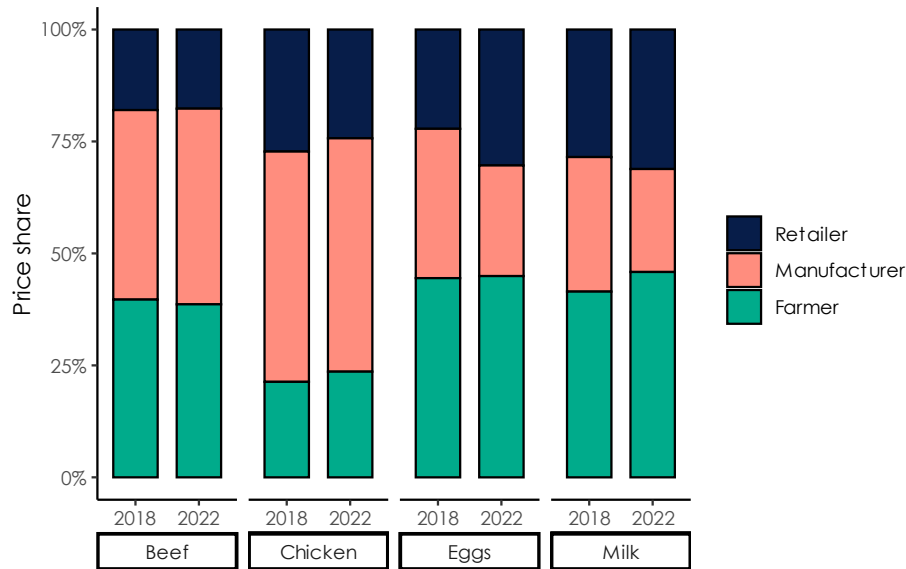
Figure 1.3. Evolution of prices across the different levels of the supply chain during 2018-2023



Note: The figure depicts the development of average retail, wholesale, and producer prices, for four agricultural products. The average prices were calculated as weighted averages, using product-level quantities as weights. The producer prices were obtained from the Natural Resources Institute Finland's statistical database. Retail prices do not include the value added tax that is 14% for food items in Finland.

7. The previous figure illustrated the evolution of prices across different stages of the food supply chain. With these three prices, we can calculate the portion of the retail price that each level of the supply chain captures. Figure 4 presents these shares for four the product categories in 2018 and 2022. The farmer's share has risen for chicken and milk, while it has remained relatively unchanged for beef and eggs. The retailer's share has declined for chicken (and slightly for beef) but increased for eggs and milk. Conversely, the manufacturer's share has decreased for eggs and milk, and remained fairly stable for chicken and beef.

Figure 1.4. Share of price for each level of the supply chain in 2018 and 2022



Note: The retailer's share is calculated by subtracting the purchase price paid by the retailer from its selling price, and then dividing the difference by the retailer's selling price. The industry's share is similarly calculated by dividing the difference between the industry's selling price and the producer price by the retailer's selling price. The producer's share is obtained directly by dividing the producer price by the retailer's selling price.

2. Farmers' sales channels

8. Finnish farmers have options regarding whom they sell their produce to. The Finnish agricultural market allows farmers to choose between various sales channels, including:

- *Direct sales to consumers:* Farmers can sell their products directly to consumers through farm shops, farmers' markets, online platforms, and REKO rings—a Finnish model for direct local food sales without intermediaries.
- *Sales to cooperatives:* Many farmers are members of cooperatives (e.g., Valio for dairy farmers), which collect and market their products collectively.
- *Sales to wholesalers and retailers:* Farmers can sell their produce to wholesalers or directly to retailers and supermarkets.
- *Sales to food processing industries:* Farmers can enter contracts with food processing companies for bulk sales of their produce.

9. The choice of sales channel might depend on such factors as the type of produce, farm size, location of the farm, and personal preferences. There can be significant variation in the prevalence of different sales channels across agricultural production sectors, as farmers' choice of sales method often depends on the types of products they produce. The Ministry of Agriculture and Forestry of Finland has commissioned surveys that study the

prevalence of different sales channels across various production sectors. The latest survey is from 2021.¹

10. In 2021, 11% of livestock farms, approximately 1,250 in total, engaged in direct sales to consumers, 4% sold to REKO rings, and 1% to other food circles. The majority of farms, however, sell their products to the food processing industry. There is considerable variation across different types of meat. For example, only 58% of lamb producers sell to the processing industry, while 51% sell directly to consumers through farm shops. In contrast, beef cattle farms predominantly sell to the processing industry (88%), with only 7% engaging in direct sales. Cow-calf farms show higher levels of direct consumer sales, with 25% of farms involved. For pork, the percentage of farms selling to the processing industry is the highest at 93%.

11. Looking at other livestock products, milk is predominantly sold to dairies (93%), with 4% of farms engaging in direct sales to consumers. Sales channels for eggs are more varied, with 46% of egg producers selling directly to consumers and 67% selling to the processing industry. Additionally, 16% of egg producers sell through REKO rings, and 6% to other food circles.

12. The number of livestock farms engaging in direct sales has declined over the past few years. It is reported that by 2027, this trend is expected to continue as the overall number of livestock farms decreases. Approximately 900 farms, representing 11% of all remaining livestock farms, plan to sell their products directly to consumers in 2027. Additionally, around 320 farms, or 4% of the remaining livestock farms, are expecting to sell through REKO rings in 2027.

13. Looking at plant farming, in the grain sector, 49% of farmers sell to other farms. Additionally, 40% of farms supply grain directly to the processing industry, while 36% sell to the central retail chains. Only 4% engage in direct sales to consumers. In the potato sector, 44% of farms sell to the processing industry, 37% sell directly to consumers from the farm, and 11% use REKO and other food rings. Meanwhile, 32% of potato farms sell to the central retail chains, local stores, and wholesalers. For other vegetables and berries, 59% of producers sell directly to consumers via farm shops, and 18% use REKO and other food rings. Furthermore, 29% sell to the food processing industry, and 41% supply central retail chains, local stores, and wholesalers.

14. Producer organizations offer another avenue for Finnish farmers to strengthen their market position. A producer organization is an association established on the initiative of producers of a specific agricultural product. These are organizations that farmers could establish both for the sale of products and for the purchase of production inputs. Other objectives can include assisting members in production planning, marketing, or the development of cultivation methods. An association operating in the field of agricultural production can receive producer organization approval upon application. Acceptable products produced by members of a producer organization can be almost all agricultural products. Despite the potential benefits, few producer organizations have been established in Finland. As of now, there are only 11 approved producer organizations.

¹ Saarnivaara, P., Kallinen, A., & Pirttijärvi, R. (2022). Maatilojen kehitysnäkymät 2030 – Lähiuokapalvelut ja suoramyyni (in Finnish). Kantar TNS Agri Oy, The Ministry of Agriculture and Forestry of Finland.

3. The storage and transport of food

15. Finnish farmers generally have the freedom to choose between storing their produce or selling it immediately. This decision is influenced by several factors, including the type of produce, market conditions, storage capacity, and financial considerations. There are no laws in Finland that restrict farmers from choosing between storage and immediate sale of their crops. Farmers are free to make decisions that best suit their operational and financial needs. While farmers have the freedom to store their produce, they must adhere to quality and safety regulations. This includes proper storage conditions to prevent spoilage and contamination.

16. The transport of food and live animals in Finland is subject to several regulations that include licensing requirements, standards for carrier vehicles, and rules for the treatment of animals during transport. Food transport activities are subject to the requirements of Section 10, Paragraph 1 of the Food Act 297/2021, meaning that transport operations must be registered as food business activities. According to the Food Act, a food industry operator must submit a written registration notification of the food business to the authority responsible for food control in the municipality or city where the premises are located, no later than four weeks before starting or significantly modifying the operation. The exception is that farmers are not required to separately notify if they are transporting their own farm products from the farm. Starting a registered food business does not require an inspection by the supervisory authority.

17. A food industry operator engaged in food transport is responsible for:

- The safety and conditions of the food being transported during transit,
- The structure and equipment of the transport vehicles, and ensuring that the operation complies with legal requirements,
- Adequate training and instructions for personnel regarding their tasks,
- Self-monitoring to manage risks related to their operations.

18. EKY is a nationwide advocacy and entrepreneurial organization for transport companies conducting food industry transportation. It has approximately 290 member transport companies that operate around 650 vehicles in professional transportation. Thus, many firms in the industry are small businesses with one or few vehicles.

4. Importing food products

19. The requirements for imports and exports are primarily determined by two factors: whether the country is an EU member or a non-EU country, and what goods are being imported or exported. The commercial import of animal-based food products into Finland from other European Union member states, as well as certain special agreement countries like Norway and Switzerland, is monitored through municipal food control, known as Oiva inspection. The aim of this monitoring is to ensure the hygienic quality of these food products and to prevent the spread of animal diseases through them. Finnish Customs monitors the safety and compliance of imported non-animal-based food products in both external and internal EU trade. Animal products imported from outside the EU require veterinary border inspections. The importer is responsible for ensuring that the import conditions are met.

20. The official control of food and food contact materials is based on the EU Control Regulation 2017/625, which requires that the effectiveness and efficiency of the control

measures be regularly assessed through audits. Latest assessment report includes the import control results from 2023.² In 2023, Finnish Customs monitored a total of 3,208 food products and food contact materials³ by collecting samples for analysis and inspection at their laboratory. Of the products examined, 1,204 (38%) were imported directly from outside the EU. Out of 2,004 samples from internal market imports, around 600 originated from non-EU countries. By product category, the most frequently examined food items were fresh fruits and fruit products, as well as fresh vegetables and vegetable products. These fresh products were tested for pesticide residues, heavy metals, and microbiological quality.

21. Among food products and contact materials imported from non-EU countries, 20% were non-compliant with regulations, while 7% of products from within the EU were found to be non-compliant, leading to a ban on their import or marketing as is. For products posing health risks, Customs made notifications to the European Commission's RASFF (Rapid Alert System for Food and Feed). In total, Customs made 47 RASFF notifications last year.

22. It is reported that the most common reason for the rejection of food products each year is packaging labeling errors. Last year, approximately 170 food products had Finnish and Swedish language labels that did not meet the requirements. Milder labeling errors were found in over 450 food products. The second most common reason for rejection is reported to be pesticide residues, with limits being exceeded in a total of 88 products.

23. For food products, the most issues were found in food supplements and preparations intended for special groups. A total of 47 different products, accounting for 41% of the examined items, were found to be non-compliant with regulations, with all but two of these being food supplements. The most common reason for rejection insufficient or incorrect information on the packaging.

5. Assessment of vertical restraints

24. The Finnish Competition Act (948/2011) and EU competition rules prohibit agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction, or distortion of competition. The prohibition concerning restrictions of competition between undertakings is laid down in Section 5 of the Finnish Competition Act and corresponds to that included in Article 101 of the Treaty on the Functioning of the European Union ('TFEU'). Article 101 TFEU is applied together with Section 5 of the Finnish Competition Act when a restriction of competition may affect trade between EU Member States (Section 3 of the Finnish Competition Act).

25. Vertical agreements meeting specific conditions have been exempted from the prohibition of Article 101(1) TFEU with Article 2 of the Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101(3) of the TFEU to categories of vertical agreements and concerted practices ('VBER'; see also Commission Guidelines on Vertical Restraints (2022/C 248/01)). However, Section 5 of the Finnish Competition Act and Article 101 TFEU enable the FCCA to intervene also in supply and distribution agreements between undertakings operating at different levels of the production or

² Tullin tuoteturvallisuusvalvonnan tuloksia vuodelta 2023 (in Finnish).

³ Food contact materials refer to materials and objects that come into direct contact with food during processing, storage, or packaging. These can include items such as packaging materials (plastic, metal, glass), utensils, food containers, and other equipment used in food handling.

distribution chain when they involve restrictions on competition and fall outside the safe harbor created by the VBER.

26. If a vertical agreement is deemed to have as its object or effect the restriction of competition within the meaning of Section 5 of the Finnish Competition Act and Article 101(1) TFEU, the parties to the agreement may still rely on an efficiency justification. In practice, an individual exemption may be granted to a restrictive agreement when the efficiency claim can be substantiated by the parties with concrete evidence showing that all the conditions specified in Section 6 of the Finnish Competition Act and Article 101(3) TFEU are fulfilled.

6. Assessment of RPMs

27. Pursuant to Article 4(a) VBER, resale price maintenance ('RPM') falls within the category of 'hardcore restrictions' that cannot benefit from the safe harbor, or block exemption, provided for vertical agreements in Article 2 VBER. This means that the lawfulness of agreements entailing RPM is examined on a case-by-case basis under Section 5 of the Finnish Competition Act and Article 101 TFEU (see the preliminary ruling under Article 267 TFEU in Case C-211/22 *Super Bock Bebidas*).

28. Agreements that have the object of restricting the downstream firm's ability to determine its sale price, including those which establish a fixed or minimum sale price to be observed by the buyer, have been considered as 'restrictions by object' under Article 101(1) TFEU by the Court of Justice of the European Union on several occasions (see e.g. Cases C-243/83 *Binon v AMP*, and C-311/85 *VVR v Sociale Dienst van de Plaatselijke en Gewestelijke Overheidsdiensten*). In these cases, it has not been necessary to examine the effects of the agreement on competition to conclude that there has been a breach of competition rules.

29. RPM has been treated similarly also by the national courts in Finland (see Decision MAO:32/22 of the Finnish Market Court in *Isojoen Konehalli*, upheld on appeal by the Supreme Administrative Court in KHO:2023:127, and Decision MAO:594/11 of the Finnish Market Court in *Iittala*). However, no enforcement decisions nor proposals for penalty payments regarding RPM or other vertical restraints *in grocery trade* have been issued by the FCCA.

7. Grocery chain buyer power and competition rules

30. In addition to the general provisions prohibiting anti-competitive agreements between undertakings and the abuse of dominant position (Sections 5 and 7 of the Finnish Competition Act, corresponding to Articles 101 and 102 TFEU), the Finnish Competition Act includes a special provision regarding dominant position in grocery trade. According to Section 4a of the Finnish Competition Act, any undertaking or association of undertakings holding a retail market share of at least 30 % of daily consumer goods trade in Finland shall be deemed to hold a dominant position in the Finnish daily consumer goods market (including both the retail market and the procurement market).

31. When the market share of a retailer active in the markets for daily consumer goods exceeds the aforementioned threshold, the undertaking will automatically be subject to the general ban on abuse of dominant position. The sector-specific provision has no effect on the criteria for abuse, which means that all claimed abuses by an undertaking holding a dominant position in grocery trade are assessed on a case-by-case basis following the

general principles established in the relevant national and EU-level jurisprudence regarding abuses of dominance.

32. The FCCA has not adopted any infringement decisions nor proposed penalty payments in cases regarding retailers' anti-competitive practices towards distributors or producers of groceries. The sector-specific provision regarding dominance in grocery trade may have eliminated certain anti-competitive practices pre-emptively, as it has incentivized the two largest retailers in Finland to re-evaluate their practices towards distributors and producers of food and other daily consumer goods (more background information on the provision has been reported in 'Purchasing Power and Buyers' Cartels – Note by Finland', a written contribution submitted for the 138th OECD Competition Committee meeting on 22-24 June 2022).

8. Unfair trading practices

33. National rules regarding unfair trading practices ('UTPs') in the agricultural and food supply chain in Finland are based on the Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain. The UTP Directive provides for a minimum level of harmonization on prohibited UTPs in all Member States of EU, and it has been transposed into national law by the Finnish Food Market Act (1121/2018).

34. The Food Market Act lays down a list of practices which are always prohibited, even when the supplier would agree to them, and a list of practices which are prohibited only, if not clearly agreed beforehand between the parties. It applies when the supplier's turnover is smaller than the buyer's, provided the buyer's turnover exceeds €2 million, and either party is located in the European Union.

35. The Act prohibits unfair practices, such as unilateral changes to contract terms or last-minute cancellations of perishable product orders. It prohibits the buyer from setting a condition that lets them cancel a product order less than 30 days before the agreed delivery date. Furthermore, it establishes clear payment deadlines—14 days for perishable goods and up to 30 days for non-perishable items.⁴ In addition, the buyer cannot demand from the supplier of agricultural products or food any payment unrelated to the sale, payment for spoilage or loss after ownership has transferred (unless caused by the supplier's fault), or compensation for handling customer complaints unless it results from the supplier's fault. Finally, the buyer is not allowed to return unsold agricultural products or food to the supplier without paying for them or covering the cost of their disposal. However, at the supplier's initiative, a delivery agreement may allow returns for products not previously in the supplier's selection, with such an agreement valid for up to three months.

36. The designated authority in charge of supervising compliance with the prohibitions included in the Food Market Act is the Food Market Ombudsman (office established in 2019). The Ombudsman is autonomous and independent in his or her operations. The Ombudsman has not issued any enforcement decisions regarding supply contracts referred to in the Food Market Act thus far.

⁴ At the supplier's initiative, longer payment periods (up to 60 days) can be agreed upon in the contract.