

Fifteenth Meeting of the UNCTAD Research Partnership Platform

Room XIX, Palais des Nations, Geneva

3 July 2024

**Concentration in the Global Food Value Chains:
A Competition Law Response**

Presentation

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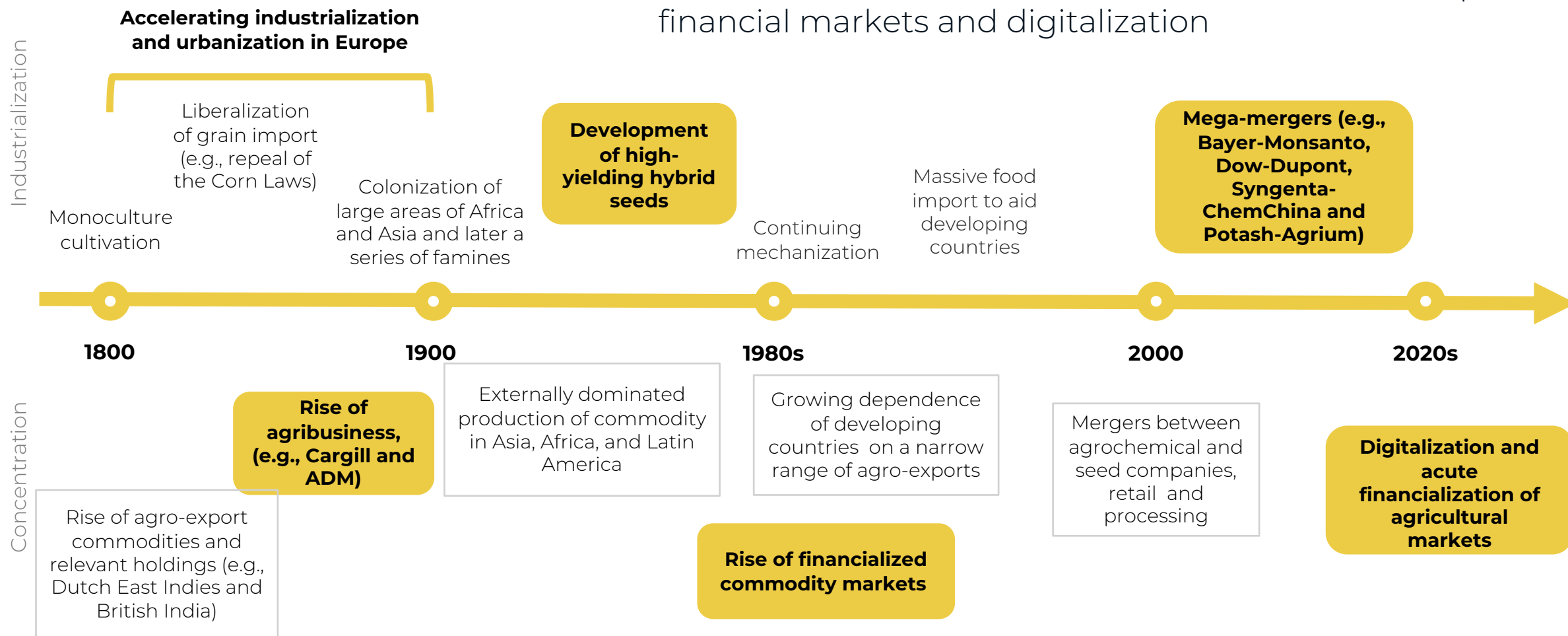
CONCENTRATION IN THE GLOBAL FOOD VALUE CHAINS: A COMPETITION LAW RESPONSE

Alexey Ivanov

BRICS Competition Law
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Director

FOOD GVCS' LASTING CONCENTRATION

Industrialization, along with globalization, has been driving concentration that accelerated in 1980s with the expansion of financial markets and digitalization



CONCENTRATION IN THE SPOTLIGHT

- Numerous expert reports ring the alarm bell about rising levels of concentration in the global food value chain (UN TDR 2023, IFPRI, 2023; ETC Group, 2022; OECD, 2016)
- Supposedly, concentration in global food value chains leads to market distortions – among them, **excessive profits of largest value chain actors, decline of farmers' welfare and agency, and extreme prices volatility**

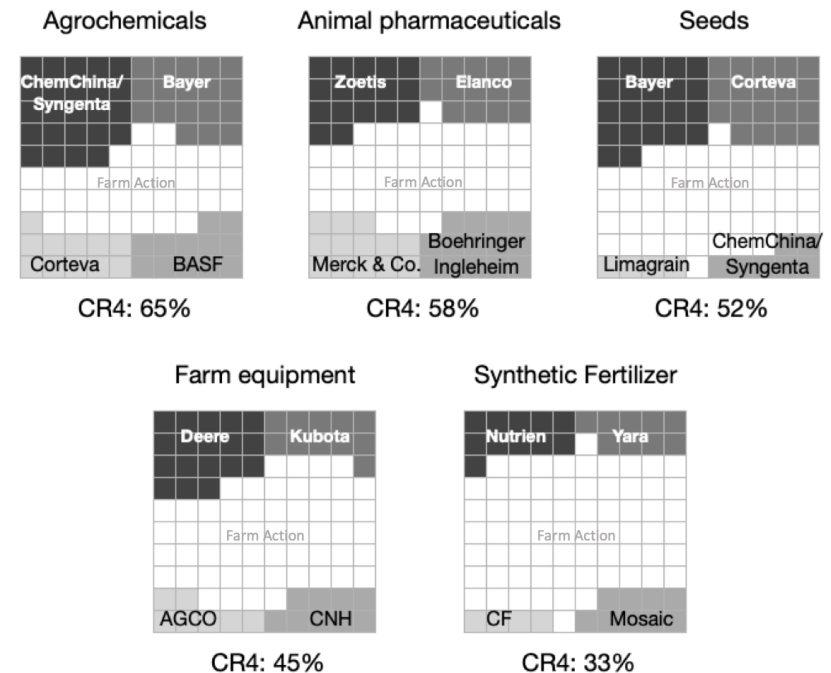
“Unfortunately, the international food policy response to the resulting food crisis has focused too much on the war in Ukraine **while overlooking the long-standing structural causes and systemic violence in food systems.**”

UN Special Rapporteur On The Right To Food, 2023

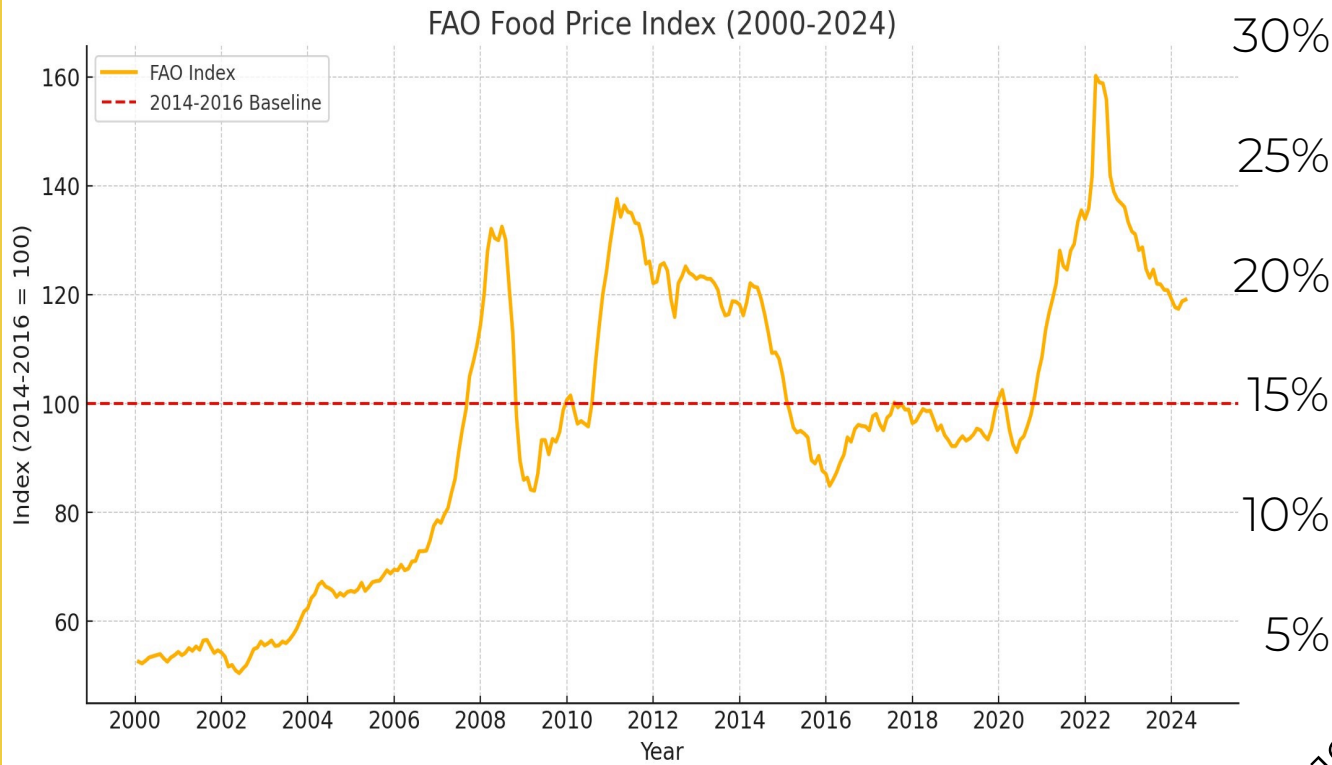
“Power is concentrated in the hands of a few corporate actors that benefit from free trade rules and export-oriented agricultural policies. Such regimes privilege large-scale agribusinesses to the detriment of others, creating instability in the global food system.”

UN Special Rapporteur On The Right To Food, 2023

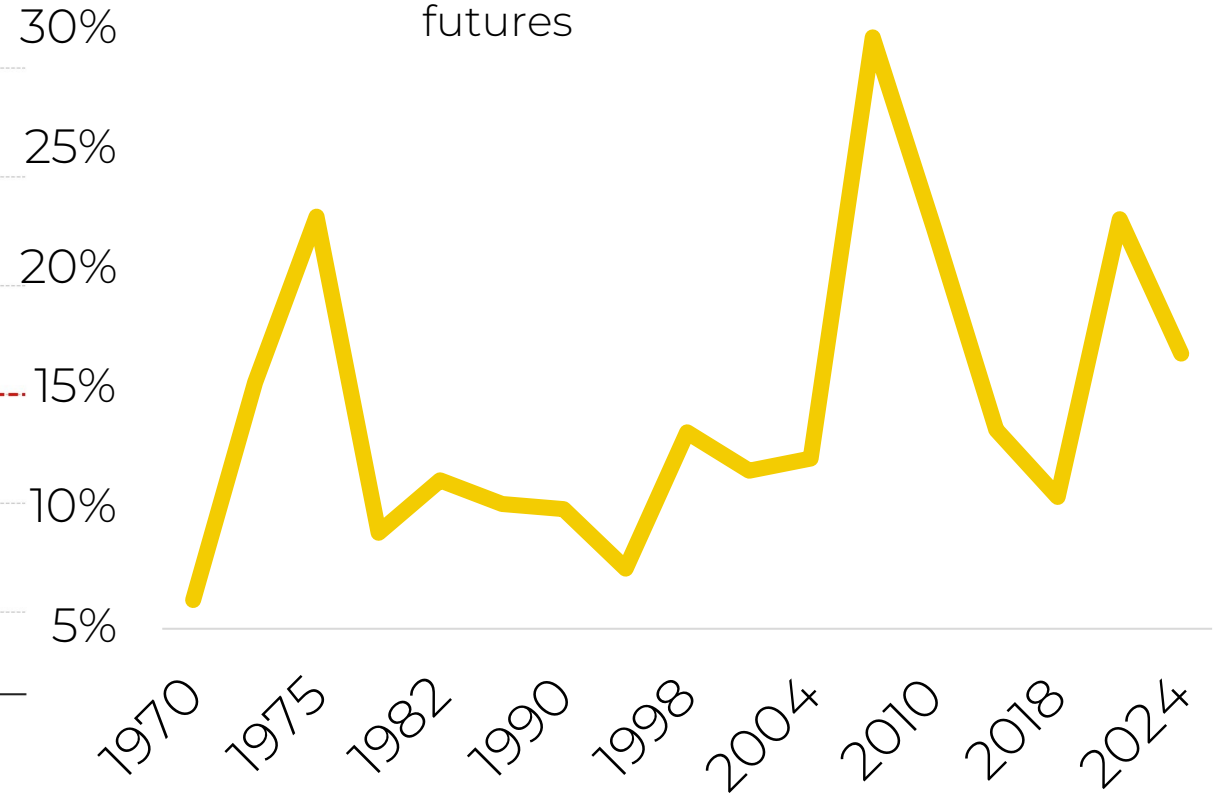
Global Market Concentration



FOOD GVCS: EXTREME VOLATILITY



12-month Average True Range (ATR) of CBOT wheat futures

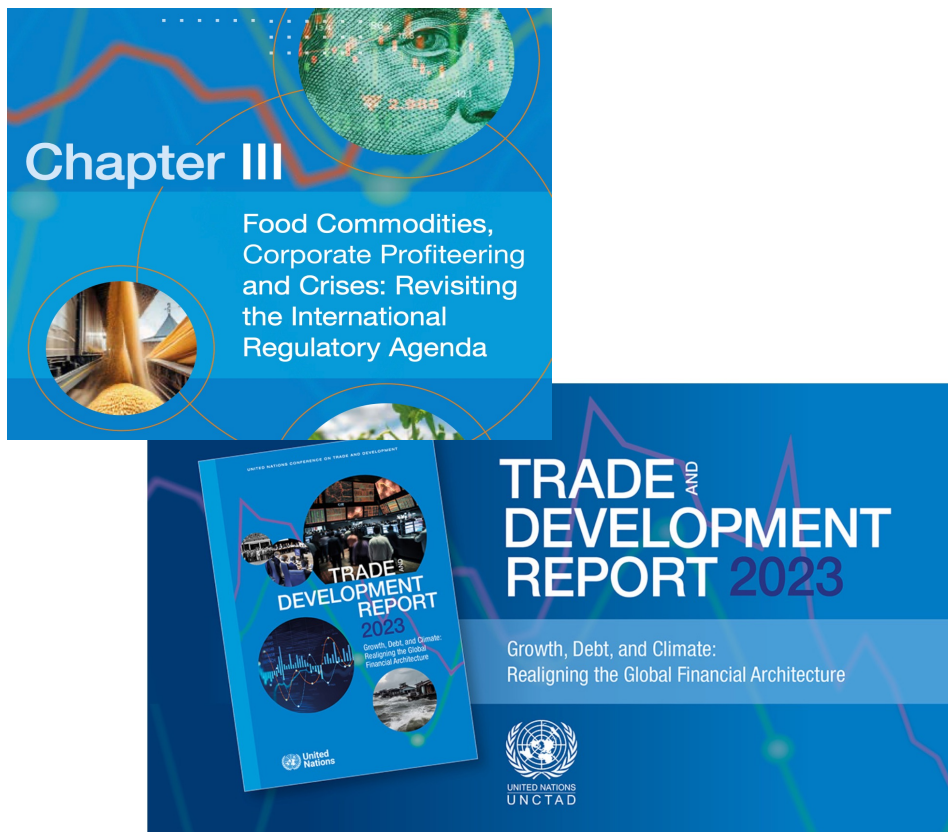


Source: TradingView

“The broad downward trajectory of international food prices since 2023 has [...] done little to alleviate pressure on the persistently high food prices faced by many consumers as weakening local currencies have continued to inflate the domestic prices of these basic goods.”

As of June 2024, smoothed ATR value reached 17,6%, which means that wheat prices oscillate by this amount monthly

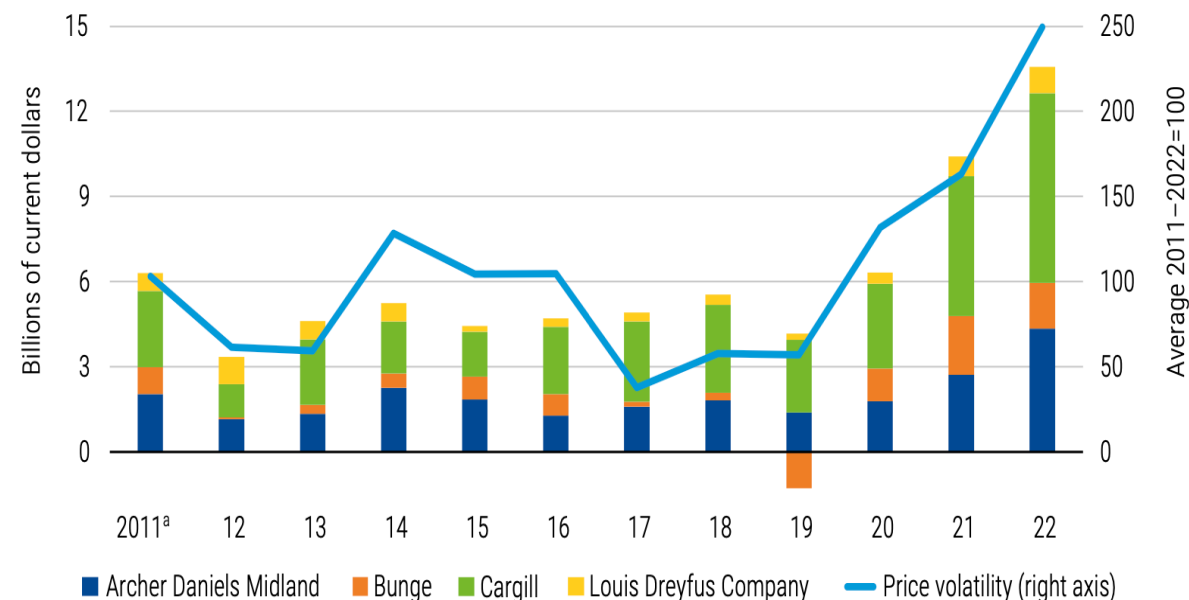
VOLATILITY FOLLOWS CONCENTRATION



04 October 2023

Figure III.4 Profits of the “ABCD” food companies surge during periods of price volatility

Profits of selected large agricultural trading firms and food price volatility



Source: UNCTAD calculations based on FAO *Real Food Price Index*, Blas and Farchy (2021: Appendix ii), Eikon Refinitiv, and Louis Dreyfus Commodities' Financial Results Reports (various issues).

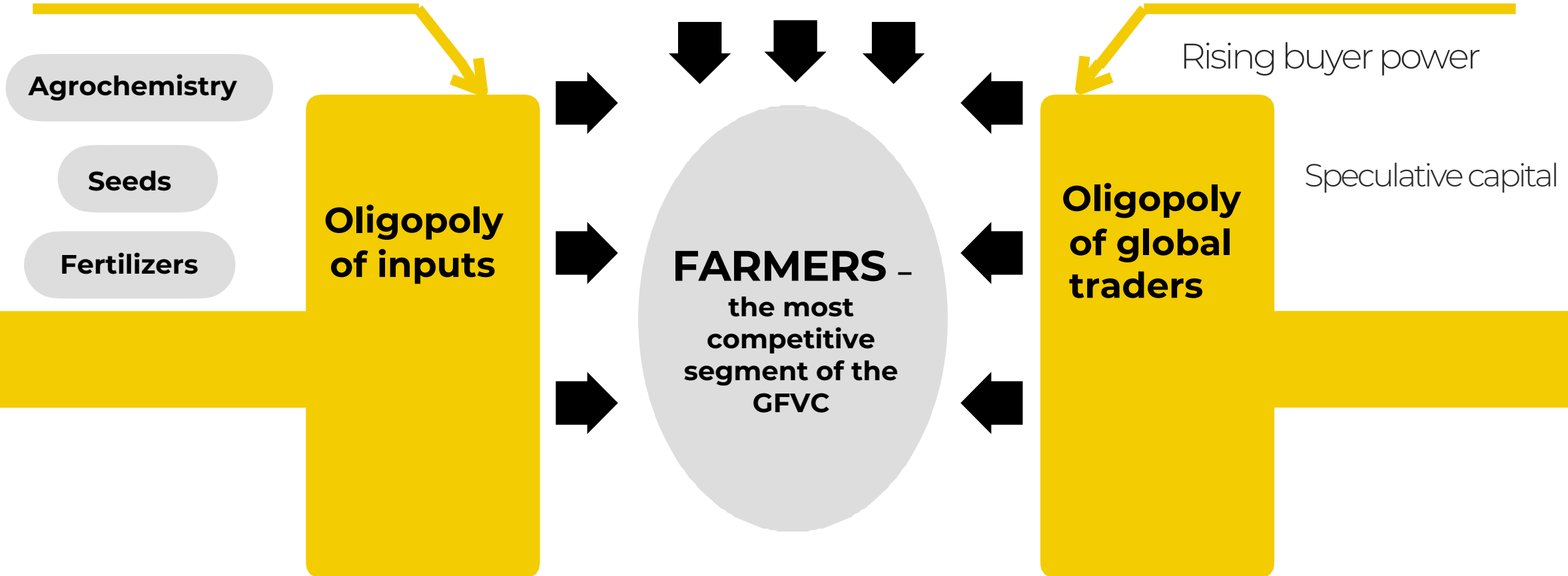
”The stark contrast between the surging profits of commodity trading giants and the widespread food insecurity of millions underscores a troubling reality: unregulated activity within the commodities sector **contributes to speculative price increases and market instability**, exacerbating the global food crisis”

DECLINE IN FARMERS' ECONOMIC AGENCY

Government policies (export quotas and restrictions, subsidies, infrastructure, grain interventions)

Market Concentration, Biotechnology Revolution and Uberization of Ag Production

Financialization of commodity trade, Hidden concentration



- Historically, food markets have been subject to direct state intervention with less involvement of competition law (e.g. exemptions for farmers and farmer cooperatives, price regulation, subsidies)
- **Source of hands-off competition approach in the digital markets:**
 - **Disruptive innovation**
 - **Rise of platforms and ecosystems as new phenomena**
- **Source of hands-off competition approach in the food markets:**
 - **Direct state intervention**
 - **Historically predetermined power concentration**

Competition authorities have long employed a hands-off approach to food value chains – now, the markets are already distorted

Need for a sustainable transition to a market-based food system: accounting for social and economic sustainability

In India, **the 2020 Farm Bills controversy** signifies the complex nature of food systems where high level of government regulation is needed to support agricultural production, especially by small farmers

Farmers protested against the bills out of fear for stronger corporatization of agriculture and removal of a level playing field

Concerns over farmers not being able to offer countervailing power to large buyer corporations

The bills were repealed in 2021

ACT LOCALLY, AND THINK LOCALLY?

- National competition authorities **rarely consider global dimension of the food value chains in merger reviews**
- Paradoxically, competition authorities prefer to focus on unilateral conduct thus missing the root of concentration: but conduct cases require more work on evidence from competition authorities compared to merger review
- **There is no predisposed right to merge** : the Russian Constitution directly prohibits monopolistic behavior placing it as a legal limit to the right for entrepreneurship; in Canada, merger control rules were amended to include a presumption of anticompetitive effects for merging parties above certain market share and concentration thresholds (same reforms are proposed in several other jurisdictions, e.g. Australia)
- **Lack of consideration of out-of-market effects as aggravating circumstance undermines sustainability of the global food system**



The economic activity aimed at monopolization shall not be allowed

Article 34 of the Constitution of Russia

BUNGE-VITERRA: A (YET ANOTHER) GFVC MERGER

Exporting countries have way too dissimilar views:

Canada's competition bureau found significant competition concerns in the merger:

- Bunge's ownership in G3 (Viterra's major competitor) is able to remove a competitor and influence prices for certain crops bought by G3 and Viterra
- For canola origination, price effects from the merger estimated at \$7-10 mln. of loss for farmers in certain regions

In Brazil, however, the merger did not raise much concern – are the exporter markets really that different? How long will regional competition hold in the presence of a powerful, vertically integrated company?

“As for assessing [deadweight loss] stemming from the merger, many links in agricultural supply chains are controlled by very concentrated industries. [...] **limited price competition at several levels of an existing supply chain could significantly amplify deadweight losses associated with the BV merger.**”

Gray, Nolan, Slade, The Economic Impact of the proposed Bunge-Viterra Merger on the Grain Sector in Western Canada

CADE referred to international grain prices as exerting competitive pressure on domestic prices – but **international stock exchange prices are largely set by the same global traders also present in the domestic market**

Do we have a Catch-22 problem with understanding the grain price dynamics?

BUNGE-VITERRA: A (YET ANOTHER) GFVC MERGER

- Cleared by COMESA, and several smaller **importing countries authorities** (e.g. Pakistan, Mexico)
- These decisions largely rely on market shares and focus on geographically narrow local markets

“It is noted that the relevant markets are characterised by a large number of players with different market shares. **Having regard to the small market position of the merging parties, it was unlikely that the transaction could contribute to increasing incentives to collude or facilitate collusive behaviour with the remaining market players.**”

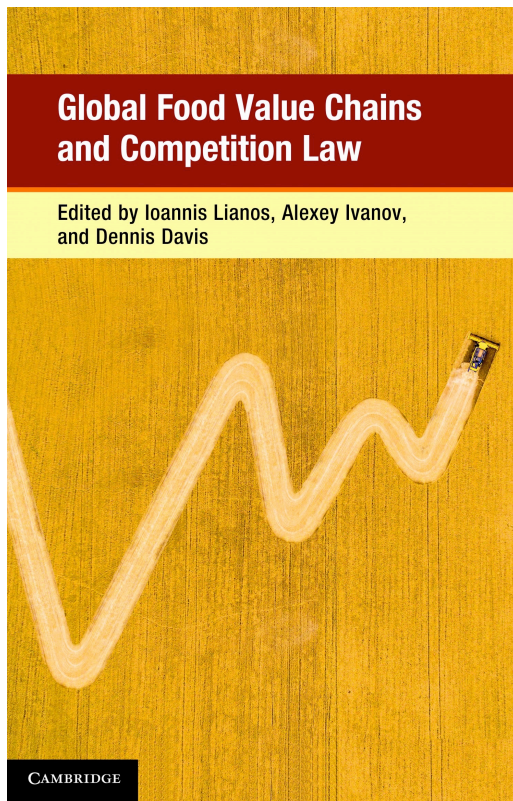
COMESA, 2023

“the [Committee] noted that the agricultural sector represents a sensitive and critical sector for the sustainable development of the Common Market, in particular having regard to recent spikes in global food prices [...]. The [Committee] was **concerned that there have been gradual consolidations in the recent past along the value chain at global level** may in the future create unfavourable or unfair trading conditions which may negatively impact consumers within the Common Market. **The [Committee] thus, directed the Commission to conduct thorough and regular monitoring of mergers [...]**”

COMESA decision greenlighting the Bunge-Viterra merger

Earlier in 2022, COMESA greenlighted Viterra’s acquisition of Gavilon

BAYER-MONSANTO: THE FIRST FRUIT OF SUCCESSFUL COOPERATION



“The Bayer-Monsanto case has become a brilliant showcase for successful cooperation between the authorities: there should be more such cases”

A respondent’s answer to the questionnaire designed by the BRICS Competition Centre

“BRICS cooperation has significantly enhanced [...] [our] ability to review global mergers”

A respondent’s answer to the question on assessment of the existing cooperation regime (questionnaire by the BRICS Competition Centre)

Merger Review Effects: Russia

150 + Russian professionals trained by Bayer top-notch crop division scientists

Leading Russian agro companies got molecular breeding agents and seeds from Bayer (corn, rape, soybean, vegetables)

Plant Biotechnology Research and Education Center created in Skoltech with support from Bayer

Merger Review Effects: South Africa

“Remedies implemented in the Bayer/Monsanto merger in South Africa had “positive effects for the wider rural economy” that encompassed “support of a larger rural community in terms of better food security, rural livelihoods, knowledge transfer and community empowerment”

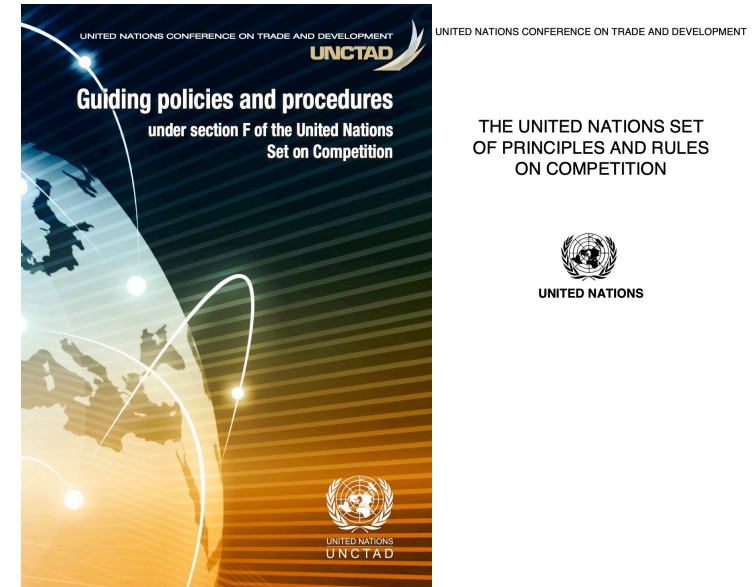
Bayer/Monsanto Impact Assessment, CCSA, 2023

THE BRICS CAN DELIVER ON THE PROMISE OF THE SECTION F OF THE UN SET

- Guiding Policies and Principles under Section F of the UN 1980 Set on Competition – the only truly international toolkit for cooperation in competition policy
- The BRICS Competition Centre aims at creating effective and inclusive regional cooperation among like-minded jurisdictions developing the framework laid down by the Section F of the UN Set

78. We note the progress in cooperation among the BRICS countries' competition authorities, aimed at ensuring conditions for fair competition in priority markets and those critical for socio-economic development, improving competition policy and enforcement. We note the extension of the Memorandum of Understanding between the BRICS Competition Authorities on cooperation in the field of competition law and policy. We acknowledge the BRICS International Competition Law and Policy Center activities[...]

XII BRICS Summit Moscow Declaration



[...] Recognizing also the increasing interconnection of economies and the importance of addressing Member States' calls for practical guidance on enforcement cooperation related to potential anticompetitive practices and mergers having cross-border effects
[...]
Preamble to the UN Guiding Policies and Procedures under Section F of the UN Set on Competition

- In 2023, the BRICS Competition Law and Policy Centre did a survey of the BRICS competition authorities' assessment of their international cooperation in policy and enforcement
- Particular focus on global mergers that have an impact in the BRICS markets
- Overall, competition authorities assess the existing mode of cooperation as positive, (4/5 where 5 is the highest score)
- 4/5 authorities responded that **“a certain enhancement of the existing cooperation regime is needed”**

| What instruments do you think can be adopted to increase the efficiency of information exchange in global merger reviews? | N of authorities that responded positively |
|--|---|
| A global binding agreement/soft law document on exchange of information | 3/5 |
| A BRICS binding agreement on exchange of information | 3/5 |
| Establishing a permanent inter-agency office | 2/5 answered positively, 2 supported the idea with conditions |
| Two agencies proposed to establish a coordinated review regime for merging parties to file in all jurisdictions at once. This would also require to align (harmonize) merger review timelines where necessary | |

“BRICS cooperation has significantly enhanced [...] [our] ability to review global mergers ”

A respondent's answer to the question on assessment of the existing cooperation regime

CREEPING CONCENTRATION IN THE VALUE CHAIN

- While mergers are normally notifiable, **less evident forms of concentration (joint ventures, joint investment projects, strategic partnerships) often go unreviewed**
- Effects from creeping forms of concentration are less visible globally due to lack of a global competition regime or at least a monitoring body
- Cross- and common ownership increase cartelization risks: in Canada's review of the Bunge-Viterra merger, the regulator was concerned with Bunge's material influence over Viterra's closest competitor



- Price volatility
- Food insecurity
- Joint ventures & investments
- Financialization
- Corporate concentration



JVs, strategic partnerships and investments are becoming the norm in technologized industries (the same is happening in the AI value chain)

JOINT MARKET STUDIES FOR THE FOOD GVCS

- Market studies and sector inquiries provide a helicopter view of the value chain beyond just a relevant market (-s)
- **BRICS scale market studies can provide better understanding of price dynamics and price formation in the food GVCs**

Highlights the need for regional cooperation in merger review and joint policies to enhance regional value chains

Evidence of concentration in several segments along the fresh produce value chain, some of this concentration predetermined by earlier consolidation in the global markets



BRICS—SCALE MERGERS IN THE GLOBAL FOOD VALUE CHAINS

- A joint review regime for mergers and other forms of concentration that have a potential effect on the global value chain, BRICS regional value chains and national value chains
- New cooperation mechanisms – joint market studies and impact assessments, as well as remedy coordination, to ensure the BRICS-scale effect is not ignored

“Recognising that BRICS countries produce one third of the world's food, **we reaffirm our commitment to strengthen agricultural cooperation and promote sustainable agriculture and rural development of BRICS countries for enhancing food security both within BRICS and worldwide. We emphasize the strategic importance of facilitating steady access to agricultural inputs, on ensuring global food security.**”

Johannesburg II Declaration, 2023