

***Case No COMP/M.3722 -  
NUTRECO / STOLT-  
NIELSEN / MARINE  
HARVEST JV***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 12/04/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12/04/2005

SG-Greffe(2005) D/201724/201725

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**To the notifying Parties**

Dear Sir/Madam,

**Subject: Case No COMP/M. 3722 – Nutreco/Stolt-Nielsen/Marine Harvest JV  
Notification of 03.03.2005 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 03/03/2005, the Commission received a notification pursuant to Article 4 of Council Regulation N°139/2004 of a proposed transaction whereby Nutreco Holding N.V. (“Nutreco”) and Stolt-Nielsen S.A. (“Stolt-Nielsen”) intend to create a full-function joint-venture Marine Harvest N.V. (“Marine Harvest”), established in the Netherlands, relating to their respective fish farming activities.
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and that it does not raise any serious doubts as to its compatibility with the common market and with the EEA agreement.

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

## **I. THE PARTIES**

3. Nutreco is a Dutch company whose activities relate to high-quality food for human and animal consumption. The company is present at various stages of the fish, poultry and pork production chains. It is in particular active in the production of aqua feed through its subsidiary Skretting AS (“Skretting”), established in Norway.
4. Stolt-Nielsen is a Luxembourg company whose activities relate to transportation services, fish farming, off shore services, and software and professional services for the procurement process in the marine industry.

## **II. THE OPERATION AND CONCENTRATION**

5. Nutreco and Stolt-Nielsen intend to create a full function joint-venture Marine Harvest to which they will contribute their respective fish farming activities, including the relevant assets and staffing. Marine Harvest will be a newly-established company. Within the EEA, the activities of Marine Harvest will relate to the production and sale of salmon, cod and halibut. Outside the EEA, the joint venture will also have activities relating to the production and sale of barramundi, sturgeon, yellowtail, caviar and tilapia. None of the activities taking place outside the EEA result in any sale within the EEA.
6. Nutreco will hold 75% and Stolt-Nielsen will hold 25% of the share capital of Marine Harvest. Both Nutreco and Stolt-Nielsen will be able to block decisions which are essential for the strategic commercial behaviour of Marine Harvest, such as the appointment of the management, important investments, the adoption of the business plan and the adoption of the budget. Thus, the parties will have joint control over Marine Harvest. Marine Harvest will have its own management board responsible for the day-to-day running of the business and will be established for an indefinite period of time.
7. Therefore it can be concluded that Marine Harvest will be a full-function concentrative joint-venture, within the meaning of Article 3(4) of Council Regulation (EC) N°139/2004.

## **III. COMMUNITY DIMENSION**

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>2</sup> [in 2003, Nutreco: € 3649 million, Stolt-Nielsen: € 2643 million]. Each of the parties have a Community-wide turnover in excess of EUR 250 million [in 2003, Nutreco: €2756 million, Stolt-Nielsen: €488 million], but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

## **IV. COMPETITIVE ASSESSMENT**

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<sup>2</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

## **A. Relevant product markets**

### **Market for the production and sale of salmon**

9. The most important relevant market is the market for the production and sale of salmon. A difference must be made between farmed salmon and salmon caught in the wild. Salmon farming involves the following stages:
  - a) Breeding and growing juvenile salmon (smolts). This stage involves the harvesting of salmon eggs, hatching the eggs in specialized hatcheries, and growing the fish in fresh water.
  - b) Farming salmon to market size. In this stage, smolts are transferred to seawater cages where they are kept until fully grown.
  - c) Slaughtering, gutting, grading and packing the salmon (primary process)
  - d) Processing the gutted farmed salmon to produce fillets, portions, smoked salmon and pre-prepared recipe meals (secondary process).
10. The parties submit that there is a specific market for salmon, different from the other types of fish. This market includes both farmed salmon and salmon captured in the wild. The parties argue that wild salmon is sold and bought at the same markets as farmed salmon and competes directly with it.
11. This market for salmon also involves different types of species of salmon, such as Atlantic salmon, Pacific salmon and salmon trout. Production in the EEA relates primarily to Atlantic salmon, with limited amounts of salmon trout being produced. Sales within the EEA relates primarily to Atlantic salmon. Salmon sold within the EEA can also be differentiated according to its origin, such as Scottish salmon, Irish salmon or Norwegian salmon. According to the parties, the various species of salmon are completely substitutable and belong to the same product market.
12. The fact that there is a specific market for salmon has been confirmed by the market analysis conducted by the Commission.<sup>3</sup> With respect to the distinction between wild salmon and farmed salmon, the market investigation indicates that these two products belong to different markets. This is confirmed by the fact that wild salmon usually commands a large price premium. It can therefore be concluded that there is a specific market for farmed salmon.
13. The market investigation has not shown that this market for farmed salmon should be further subdivided according to the species and origin of the farmed salmon, other than Atlantic farmed salmon. The Commission Regulation (EC) n° 206/2005 of 4 February 2005 imposing definitive safeguard measures against imports of farmed salmon<sup>4</sup> concluded that all farmed salmon is a single product.

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<sup>3</sup> The UK Competition Commission came to same conclusion in its 2000 decision on the proposed merger between Nutreco Holding NV and Hydro Seafood GSP Ltd.

<sup>4</sup> OJEU L33/8 of 5.2.2005.

14. The Commission also investigated whether there is a specific market for organic salmon. This is confirmed by the market investigation, and the fact that the price of organic salmon is substantially higher, up to 50% on occasion. However, the market for farmed organic salmon is relatively small (EUR 25 million) and no overlap exists as organic salmon is only produced by Nutreco and not by Stolt Nielsen. It is not necessary to exactly define this market for the purpose of this case.
15. It should also be mentioned that there is a possible market for smoked farmed salmon. However, the parties have very limited activities in this sector: Stolt-Nielsen has a relatively small smokery in Belgium with sales of approximately EUR [...], which leads to a market share of [0-10]% of the EEA market. Nutreco also has a smokery in Norway, with most of the sales going to the USA. Its sales in the EEA (EUR [...]) are negligible. For the purpose of this case, it is not necessary to exactly define this market.
16. The question can also be raised as to whether the market for the production and sale of farmed salmon has to be subdivided on the basis of the customer groups. Several types of customers can be identified: wholesalers, traders, processors, foodservice, retailers. According to the parties, it has not been possible to differentiate the price of salmon between each member of the customer group identified. All buyers operate interactively and there is a downstream supply to all buyers from all producers. Therefore, in the view of the parties, it is not necessary to subdivide the market according to the type of customers. The market investigation has not permitted to invalidate this conclusion. Given that the parties consider that the market shares in view of the various categories of buyers do not differ significantly from each other and are approximately equal to the overall market share, this issue can be left open. To conclude, in the present case the Commission's market investigation pointed out that there is a relevant product market for the production and sale of farmed salmon, possibly for farmed Atlantic salmon. However, for the purpose of the present decision, since Atlantic farmed salmon represent 96% of farmed salmon consumed in the EEA, it is not necessary to exactly define the market.

#### **Market for the production and sale of cod and halibut**

17. The parties will also transfer to the joint venture their activities in relation with the production and sale of cod and halibut. These activities are very limited. If cod and halibut are to be considered as separate product markets, then the combined market shares of parties would be of approximately [0-10]% for the EEA market for halibut and even more negligible in the case of cod. For the purpose of this case, the definition of these markets can be left open.

#### **Market for the production and sale of smolts**

18. As explained above, the activity of salmon farming involves several stages, the first of which involving the breeding and growing of juvenile salmon (smolts).
19. The parties recognize that there is an independent sector producing smolts for sale to third parties. Furthermore, the majority of smolts are produced by vertically integrated farmers for their own use rather than by independent smolt producers. However, since production of smolts require planning due to the breeding cycle, it is difficult for integrated farmers to plan the required quantity exactly. This leads integrated farmers to buying or selling smolts, depending on whether they have an undersupply or an oversupply of smolts. On the basis of these elements, the Commission cannot exclude

that there is a distinct (free) market relating to the production and sale of smolts. However, for the purpose of this case, it is not necessary to finally determine this product market as no competition concerns arise on this market.

### **The market for aqua feed for salmon**

20. According to the parties, there are no horizontal overlaps on the market for production and sale of aqua feed. They submit, however, that this is a vertically affected market. Only Nutreco (through its subsidiary Skretting) is active as a supplier of aqua feed, but the transaction would possibly have an effect on future purchases of aqua feed by Marine Harvest.
21. Aqua feed is extruded feed formulated for particular species of farmed fish. The main ingredients are fishmeal, fish oil, vegetable protein, whole wheat, vitamins, pigments. Different formulations of aqua feed are required for each species of fish and for the fish at each stage of its development.
22. It is decision *CVC/PA/Europe/Provimi*,<sup>5</sup> the Commission had already considered the markets for production of animal feeds. With respect to aqua feed, the Commission noted that the production processes, ingredients, distribution channels and customers were very different from other types of animal feed, but did not further define the relevant product market. Furthermore, it appears that, even it is technically feasible, there is little economic incentive for pet food producers to switch to aqua feed manufacture in view of high costs and time loss involved.
23. All the respondents to the market investigation confirmed the existence of a separate market for aqua feed, and the existence of a distinct market of aqua feed for salmon. On the supply side, the market investigation did not confirm the view of the parties that there is a high degree of supply-side substitutability between aqua feed and other types of pet food. However, the market investigation showed that it is very easy to switch the production of aqua feed specific for a certain type of farmed fish to the production of aqua feed for another one.
24. It is probable that there is a distinct market for aqua feed for farmed salmon. However, since aqua feed for farmed salmon represents 97% of the total production of aqua feed, it is not necessary to reach a definite conclusion concerning the existence of this market as a market distinct from the overall market of aqua feed.

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<sup>5</sup> Decision in case N°COMP/M.2956, 28 October 2002.

## **B. Relevant Geographic markets**

### **Market for the production and sale of salmon**

25. With respect to the market of farmed salmon, the parties argue that the market is EEA-wide. This conclusion is based on a certain number of facts. Transport costs are relatively low and may vary from 2 to 5% of the price of salmon within the EEA. Furthermore, the development of prices of salmon within the EU Member States and the EFTA countries is very similar. The parties submit that the development of prices for Norwegian and Scottish Salmon (which are varieties of the Atlantic species) in the UK, France and the rest of Europe are closely correlated, which is consistent with a market comprising at least much of the EEA.
26. It must be underlined that a not insignificant quantity of salmon is imported into the EEA (approximately 17% of total EEA salmon consumption) and exported outside the EEA (20% of the total EEA production of salmon).
27. These elements indicate that the market for farmed salmon is at least EEA wide. This was confirmed by the market investigation carried out by the Commission. Therefore it may be concluded that the market for production and sale of farmed (Atlantic) salmon is EEA-wide in scope.

### **Market for the production and sale of cod and halibut.**

28. Given that no competition concerns arise, it is not necessary to define more specifically the geographic market for cod and halibut.

### **Market for the production and sale of smolts**

29. As smolts are sold to companies active in the production and sale of salmon, the geographic market is naturally confined to those areas where such companies are active, namely Ireland, the United Kingdom and Norway. Smolts are traded between these areas to a limited extent. Given that no competition issues are raised in this market, the precise geographic scope of the market for the production and sale of smolts, whether national or regional, can be left open.

### **Market for aqua feed**

30. With respect to aqua feed, the parties argue that aqua feed is primarily sold on a national basis, since in practice, in view of the transport costs, relative proximity of the feed plant to the farming regions is considered a significant advantage.
31. The market investigation confirmed that, mainly because of transport costs, the markets are likely to be national, with Scotland and Norway still being separate markets. Nevertheless, several respondents also indicated that the markets for aqua feed for salmon tend to become increasingly regionalised, covering the North Sea basin. However, since in this case no competition concerns are raised, it is not necessary to precisely define the market.

## **C. Competitive assessment**

### **Market of the production and sale of salmon**

32. On a EEA-wide market for the production of Atlantic farmed salmon, for 2003, Nutreco has a volume based market share of [10-20]% and Stolt-Nielsen a market share of [0-10]%. The combined market share of the parties is therefore [10-20]% ([10-20]% if one considers the general market of salmon, including wild salmon). Even on a national basis, aggregate market shares do not exceed [20-30]% in any Member State, except in Estonia ([30-40]%). These combined market shares are not generally indicative of market power and do not give rise to competition concerns.
33. It should be added that this market is quite fragmented. There are other significant competitors within the EEA such as Fjord Seafood ([0-10]% of the EEA market), Pan Fish ([0-10]%) and Leroy Seafood ([10-20]%)%. There are many more producers with market shares below 5%.
34. The market investigation has also shown that customers can easily and relatively quickly switch to other suppliers of salmon. In particular, farmed salmon is a homogeneous product and there is low brand loyalty in this sector.
35. For these reasons, it can be concluded that this transaction does not raise serious doubts as to its compatibility with the common market, on the market for the production and sale of farmed salmon.

### **Market for the production and sale of cod and halibut**

36. Given the combined market shares of the Parties (approximately [0-10]%), the transaction is not likely to raise serious doubts as to its compatibility with the common market on the markets for production and sale of cod and halibut.

### **Market of the production and sale of smolts**

37. With respect to smolts, the parties are essentially self-supporting and produce smolts only for their own use. Neither of them is actively engaged in the business of selling smolts to third parties. Only in cases of over or under-supply they buy or sell smolts externally, and then only to a limited extent. In 2003, Nutreco and Stolt both had an undersupply, and were thus net buyers of smolt. In that year, Nutreco bought [...] million smolts. This amounts to approximately [5-15]% of its own production and less than [5-15]% of the total EEA free market of smolts of approximately 46 million fish ([0-10]% of the total production of smolts in the EEA). Stolt Nielsen only bought [...] smolts from third parties in 2003, which amounts to [0-10]% of the free market for smolts in the EEA. Therefore the joint venture will represent less than [0-10]% of the free market for smolts and [0-10]% of the total production.
38. Given the above market shares, it can be concluded that, on the market for the production and sale of smolts, the transaction does not raise serious doubts with the common market.



### **Market for aqua feed for salmon**

39. Since Stolt-Nielsen is not active in the production of aqua feed, the transaction will not raise any horizontal competition issues in this market
40. In 2004, in the Norwegian market for aqua feed for salmon, Nutreco (Skretting) had a volume based market share of [35-45]%. The other suppliers of aqua feed are Biomar, with [20-30]% of the market share and Ewos, with [30-40]% of the market share. In the United Kingdom, Nutreco had a [45-55]% share of the market, Biomar, [20-30]%, Ewos [10-20]%.<sup>6</sup>
41. In 2004, Nutreco purchased [...]% of its needs in aqua feed in the United Kingdom and approximately [...]% of its aqua feed in Norway from its subsidiary Skretting. This constituted [...] tonnes of aqua feed. In the same year, Stolt-Nielsen purchased [...]% of its aqua feed in the United Kingdom ([...] tonnes) and in Norway ([...] tonnes) from Skretting. After the consummation of the transaction, the joint venture [...].
42. According to the parties, since Skretting is already supplying both Nutreco and Stolt-Nielsen with aqua feed for their total requirements, the establishment of the joint venture will not produce any material effects on the relevant markets. They submit that the market shares of Skretting for the production and sale of aqua feed in the United Kingdom and Norway will not be affected or [...]. Furthermore, it is argued that after the transaction, Nutreco will no longer have sole control over the purchase of aqua feed from Skretting for its own need, as it currently does.
43. One respondent in the context of the market investigation mentioned the risk that the transaction could eliminate the possibility for Skretting's competitors of becoming the supplier of aqua feed to Stolt-Nielsen/Marine Harvest. This possible exclusionary effect is unlikely to materialise since already before the transaction both parties bought their requirements from Nutreco's subsidiary Skretting. Therefore, the transaction does not bring about any change in this respect, even if the joint venture would continue to purchase all of its requirements in the future.
44. With regard to foreclosure of competing salmon farmers from aqua feed supplies resulting from the transaction, the transaction will have no appreciable effect since Stolt-Nielsen is already procuring all its aqua feed from Nutreco. Moreover, it is unlikely that Nutreco will withhold some [45-55]% of its total production (its highest captive proportion being some [45-55]% of sales in the UK) from sale to third parties. Furthermore, in 2004, Stolt-Nielsen ordered [0-10]% of the total sales of aqua feed in Norway and [0-10]% of the sales of aqua feed in the United Kingdom. The joint venture is therefore unlikely to have a significant exclusionary effect on the market of supply for aqua feed.
45. In the context of the market investigation, one respondent also underlined the risk of cross-subsidisation between Nutreco's aqua feed business and Marine Harvest's

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<sup>6</sup> The market shares for the overall market of aqua feed were, in the Norway: [35-45]% for Nutreco, [20-30]% for Biomar and [30-40]% for Ewos, and in the United Kingdom: [45-55]% for Nutreco, [20-30]% for Biomar and [10-20]% for Ewos.

salmon business. However, given the relatively low market shares of the joint venture in the market for the production and sale of farmed salmon, the incentive for Nutreco to practice such cross-subsidisation is very limited. Therefore, the transaction is not likely to give rise to serious competition concerns in the context of vertical restrictions.

### **Conclusion**

46. On the basis of these elements, the Commission can conclude that this transaction would not give rise to serious competition concerns on the markets described above.

### **V. CONCLUSION**

47. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission

(signed)  
Neelie KROES  
Member of the Commission