

***Case No COMP/M.7035 - AUSTEVOLL  
SEAFOOD/ KVEFI/ 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: 19/12/2013

***In electronic form on the EUR-Lex website under  
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 19.12.2013  
C(2013)9774 final

PUBLIC VERSION

MERGER PROCEDURE

**To the notifying parties:**

Dear Sir/Madam,

**Subject: Case No COMP/M.7035 - AUSTEVOLL SEAFOOD/ KVEFI/ JV  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

- (1) On 15 November 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "Merger Regulation") by which the undertakings Austevoll Seafood ASA ('AUSS', Norway) and Kvefi AS ('Kvefi', Norway) controlled by Kverva AS ('Kverva', Norway) intend to acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of a newly created company constituting a joint venture ('JV', Norway) by way of purchase of shares (AUSS and Kvefi are designated hereinafter as the 'Parties').<sup>2</sup>

**1. THE PARTIES**

- (2) AUSS is active in (i) the processing of pelagic fish for human consumption, as well as (ii) the production and sale of fishmeal and fish oil. AUSS has its European-based production facilities in Norway, the UK and Ireland. AUSS is also active in salmon farming and processing in Norway through its subsidiary Lerøy Seafood Group ASA, as well as in fishing and processing of pelagic fish in Chile and Peru.
- (3) Kvefi is active in (i) the processing of pelagic fish for human consumption and (ii) the production and sale of fishmeal and fish oil. Kvefi's production facilities are

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1. With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> Publication in the Official Journal of the European Union No C 342, 22.11.2013, p.9.

located in Norway and Denmark. Kvefi is controlled by Kverva, a privately-owned investment company with investments in the seafood sector. Kverva is further active in salmon farming and processing through its subsidiary Salmar ASA, in the production and sale of fishmeal and fish oil from salmon offcuts and in the secondary processing of red and white fish.

## **2. THE OPERATION**

- (4) The operation entails the creation of a joint venture, to which AUSS and Kvefi will contribute 100 % of the shares of certain wholly-owned subsidiaries, by way of contribution in kind.
- (5) Specifically, in accordance with the transaction agreement entered into by AUSS and Kvefi on 12 August 2013, AUSS will contribute its European pelagic fish activities via the following companies:
- Norway Pelagic ASA (Norway) ('NPEL'), a wholly-owned subsidiary active in the primary and secondary processing of pelagic fish. It operates 12 production facilities for primary processing in Norway<sup>3</sup> and one in Shetland (Scotland); and
  - Welcon Invest AS (Norway) ('Welcon'), an indirectly wholly-owned subsidiary active in the production and sale of fishmeal and fish oil. Welcon owns six facilities for fishmeal and fish oil production in Norway, the UK and Ireland.<sup>4</sup> Welcon also jointly controls four tank facilities and two production facilities for fish protein concentrate and fish oil in Norway and one facility in the UK.<sup>5</sup>
- (6) Kvefi will contribute all the shares in its wholly-owned subsidiary Egersund Fisk AS (Norway) ('Egersund') to the JV. Egersund is active in the primary and secondary processing of pelagic fish and the production and sale of fishmeal and fish oil. Egersund has two primary processing facilities in Norway and one secondary processing facility in Denmark. It has one facility for fishmeal and fish oil production in Norway.

## **3. THE CONCENTRATION**

- (7) Post-Transaction, AUSS and Kvefi will each own 50 % of the shares of the JV and will be entitled to appoint an equal number of members of the JV Board. The Chairman of the Board will not have a casting vote and to be quorate, each Board meeting will require the attendance of at least one board member appointed by each Party. The adoption of decisions of strategic importance for the JV (i.e. decisions relating to business plan, budget, appointment of key personnel, etc.) will require unanimity among the directors appointed by the Parties.
- (8) With respect to full-functionality, the JV will have sufficient resources to operate independently on a market. Indeed, both AUSS and Kvefi will contribute to the JV

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<sup>3</sup> The facility in Kalvag (Norway) is the only one that is also engaged in secondary processing of pelagic fish.

<sup>4</sup> Three facilities are located in Norway, two in the UK and one in Ireland.

<sup>5</sup> Hordafor AS, which owns the four tank facilities and the two production facilities in Norway, is jointly controlled by Welcon and PR Karoløs ANS. Rossyew Ltd, which owns the facility in the UK, is jointly controlled by Welcon and A P Jess Ltd.

current wholly-owned subsidiaries which are already fully active on the market for pelagic fish, fish meal and fish oil. The JV will purchase raw fish from third party fishermen and sell pelagic fish, fish meal and fish oil to various customers throughout the EEA. It will have adequate resources, including tangible assets and staff, to carry out its activities on a lasting basis.

- (9) In view of the above, the Transaction constitutes a concentration within the meaning of Article 3 (1) (b) of the Merger Regulation.

#### **4. EU DIMENSION**

- (10) The undertakings concerned have a combined aggregate world-wide turnover<sup>6</sup> of more than EUR 2 500 million.<sup>7</sup> In three Member States the combined aggregate turnover of the undertakings concerned is more than EUR 100 million and the aggregate turnover of at least two of the undertakings concerned is more than EUR 25 million.<sup>8</sup> The aggregate EU-wide turnover of each of the undertakings concerned is more than EUR 100 million<sup>9</sup>, but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The Transaction therefore has an EU dimension within the meaning of Article 1(3) of the EU Merger Regulation.

#### **5. APPLICABILITY OF THE EEA AGREEMENT**

- (11) All the pelagic fish, fish oil, fish meal and offcuts products affected by the proposed concentration fall outside the scope of the Agreement on the European Economic Area ('EEA Agreement'). Article 8(3)(a) of the EEA Agreement states that products falling within Chapters 1 to 24 of the Harmonised Commodity Description and Coding System are not covered by the EEA Agreement, unless such products are listed in Protocol 3 of said Agreement. Therefore fish products which are listed in Chapter 3 (fish), Chapter 15 (fish oil), Chapter 16 (preparations of fish) and Chapter 23 (fish oil) of the Harmonised Commodity Description and Coding System and are not listed in Protocol 3 of the EEA Agreement are not covered by the EEA Agreement.
- (12) The assessment of the impact of the Transaction in the EFTA States hence falls outside the jurisdiction of the Commission.<sup>10</sup>

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<sup>6</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation.

<sup>7</sup> AUSS: EUR [...] million, Kvefi: EUR [...] million.

<sup>8</sup> France: AUSS: EUR [...] million, Kvefi: EUR [...] million; Germany: AUSS: EUR [...] million, Kvefi: EUR [...] million; Poland: AUSS: EUR [...] million, Kvefi: EUR [...] million.

<sup>9</sup> AUSS: EUR [...] million, Kvefi: EUR [...] million.

<sup>10</sup> The proposed concentration was also notified in Norway on 22 November 2013.

## 6. MARKET DEFINITION

### 6.1. Introduction

#### 6.1.1. Overview of the value chain

- (13) Pelagic fish refer to fish that generally swim in the pelagic zones of the oceans, i.e., in the upper water masses of the sea (from the surface of the sea down to 200 metres). The main species of pelagic fish are herring, mackerel and sardine<sup>11</sup>.
- (14) Pelagic fish can be used for human consumption (i.e. production of consumer products), as well as for non-human consumption (i.e. production of compound feed).
- (15) The production of pelagic fish products for human consumption involves the following stages:

Fishery (supply of raw whole fish)	Fishery takes place under regulated quota regimes. The harvest is delivered at coastal facilities.
Primary processing (supply of primary fish)	Sorting/grading, filleting, deep-freezing and packing at coastal facilities. Transported fresh or deep-frozen for secondary processing.
Secondary processing (supply of processed fish)	Further processing into various human consumption products for retail sale.
Retail sales (supply of consumer products)	Distribution and sale of various human consumption products to end users.

- (16) Pelagic fish for non-human consumption is used for the production of fishmeal, fish protein concentrate (FPC) and fish oil, which are all ingredients for compound feed for the aquaculture (e.g. salmon farming) and agricultural industries. In addition, offcuts from processing of fish for human consumption can be used as an alternative ingredient for fishmeal, FPC and fish oil.

#### 6.1.2. General context of the pelagic fish procurement system in Norway

- (17) The Parties have no activities in fisheries and since they are based in Norway, they are obliged to procure pelagic fish under a mandatory auction regime organised by the Norwegian pelagic fishery industry, Norges Sildesalgslag (Norwegian Fishermen's Sales organisation for pelagic fish, hence referred to as 'NSSL').<sup>12</sup>
- (18) According to the rules of this auction regime, all raw pelagic fish caught by Norwegian registered vessels or landed at facilities in Norway, regardless of the vessel's nationality, has to be sold through the auction regime. On the other hand, all facilities in Norway are required by law to purchase raw fish through the auction regime.<sup>13</sup> Buyers can only conclude direct contracts with the fishermen if the size of the catch is less than 50 tonnes or the fish has been caught outside of the

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<sup>11</sup> Other species used for human consumption include horse mackerel, anchovy, sandeel, capelin, blue whiting and Norwegian pout.

<sup>12</sup> Cf. Norwegian Raw Fish Act Section 2.

<sup>13</sup> International buyers and sellers (from Sweden, Denmark, Scotland, Ireland, Faroe Island, Germany and Russia) may also participate in the auction regime on equal conditions as Norwegians, provided that their facilities are located in one of the bidding areas.

main catching periods. Notwithstanding this, 80% to 90% of the sales are carried out through the auction system.

- (19) The Norwegian auction regime is a closed electronic auction, by which each authorised buyer enters<sup>14</sup> the system and makes its bids (without seeing the other bids). The buyer with the highest bid in each catch lot will win the auction. Once the auction is finished, the data results (quantity and price) from the auction are made available to everyone online.
- (20) The bidding areas for the individual catches are determined by the fishermen. While still at sea, the vessel reports information about the catch to the NSSL and determines the bidding areas. Only buyers with facilities located in the bidding areas are allowed to participate. Conversely, the bidding areas are also partly determined based on where production facilities are located. For instance, bidding areas will have to include foreign buyers, e.g. in Ireland, if the vessel is passing by the buyers' facilities in Ireland.
- (21) NSSL tries to maximise the competition in each bidding area. Hence, minimum bidding areas have to include at least two buyers. The size of the bidding area often depends on the size of the catch. According to NSSL, as an average, bidding areas may be smaller for small catches (including only two buyers), whereas for the largest catches a bidding area may include eight to ten buyers. In general, the number of buyers increases as the size of the catch increases.
- (22) The NSSL also establishes a minimum bidding price for the catches in order to protect the small vessels (guaranteeing that their catches are not sold below value). This minimum price is set after discussion with the buyers' organisations. Generally, an agreement on the minimum price, which tends to reflect the market price, is reached. If many buyers are present in the bidding area, the final auction price tends to be above the minimum price, while if the market is under pressure (with high volumes) the auction price tends to be closer to the minimum price. It is rare that no buyer is willing to pay the minimum price, but this has happened (e.g. in bidding areas with a small number of buyers). If there are no sales in an auction due to the minimum price level, new negotiations with the buyers to fix a new minimum price will take place. There is also an obligation to re-negotiate the minimum price if one side asks for a re-negotiation.<sup>15</sup>

## **6.2. Relevant product and geographic markets**

- (23) The activities of the Parties being contributed to the JV overlap horizontally in (i) the supply of primary pelagic fish (fish that has undergone primary processing such as slaughtering, gutting and packing but no further treatment) for human consumption; (ii) the supply of secondary pelagic fish (fish that has undergone secondary processing such as marinating, smoking, etc.) for human consumption;

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<sup>14</sup> Any bidder must be registered as a buyer with the Directorate of Fisheries in accordance with Act no. 34 of 24 June 1994.

<sup>15</sup> The price negotiation takes place once a year for each fish species, unless something unexpected happens that requires a new price negotiation. The price negotiations for each fish species do not take place at the same time of the year. For example, the minimum price negotiation for mackerel takes place once a year, whereas the minimum price negotiation for herring takes place twice a year (normally a new minimum price is fixed for the summer due to a differentiation between North Sea herring - autumn spawner, and the Norwegian Spring Spawning herring).

(iii) the production and sale of fishmeal and fish oil; and (iv) the supply of pelagic fish offcuts as raw material for fishmeal and fish oil.

- (24) As regards the supply of secondary pelagic fish, the transaction would give rise to a negligible overlap, which would remain below [0-5]% at the EEA level and in any case always below [0-5]% in the individual countries to which the JV' products are sold. Therefore, this market will not be further discussed in this decision.
- (25) Additionally, both Parties have activities in salmon farming and processing, which however are outside the scope of the Transaction as they will not be contributed to the JV.<sup>16</sup>

### **6.2.1. Primary pelagic fish**

#### *6.2.1.1. Relevant product market*

- (26) Primary processing of pelagic fish involves the purchase and receipt of the catch from fishing vessels for sorting/grading, filleting and packing at a processing facility. Primary processing may include freezing, depending mainly on logistical considerations (deep-freezing allows transportation over long distances). Transportation to customers, fresh or deep-frozen, is handled mainly by ship and land-based transport. The buyers of primary fish are either secondary processors or importers/wholesalers or traders that resell the fish, mainly to secondary processors.
- (27) The Commission has not previously considered primary processing of pelagic fish, although it has considered primary processing markets for other fish species such as salmon (in that case, the primary processing activity was associated with farming).<sup>17</sup>
- (28) The Parties submit that the market for the supply of primary pelagic fish constitutes a separate product market and that no further segmentation should be made.

#### Fresh vs. Frozen primary pelagic fish

- (29) The Parties take the view that the supply of primary pelagic fish includes both fresh and frozen fish since fresh and frozen primary pelagic fish are fully interchangeable from the perspective of secondary processors.
- (30) The Commission has not previously considered a distinction between fresh and frozen products as regards pelagic fish, although it has envisaged that frozen fish do not exercise a strong competitive constraint on fresh fish for other fish species such as salmon.<sup>18</sup> The question was ultimately left open.

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<sup>16</sup> This activity is not directly related to the activities of the JV, and the creation of the JV is unlikely to increase the risk of co-ordination between the parent companies in this respect. Moreover, customers of fishmeal and fish oil indicated during the market investigation that they do not expect that the combination of AUSS' and Kvefi's activities in fishmeal and fish oil would have a significant impact on competition in salmon farming even if fishmeal and fish oil is used as an input into compound feed used by salmon farmers given that the Parties are not active in the production of compound feed.

<sup>17</sup> See M.6850 Marine Harvest/Morpol, §31 to 34.

<sup>18</sup> See M.6850 Marine Harvest/Morpol, §37-38.

- (31) The market investigation indicated that from a demand-side perspective, most customers of fresh primary pelagic fish do not consider it to be equivalent to frozen primary pelagic fish, although most of them buy both types. From a supply-side perspective, the process of freezing the fish requires some additional know-how.

#### Whole fish vs. Fillets

- (32) The Parties submit that whole fish and other variants (such as fillets) form part of the same product market. In fact, the Parties submit that filleting is an optional operation that may take place during primary processing or alternatively may be carried out by secondary processors.
- (33) The Commission has not previously considered a distinction between whole fish and fillets (or other parts of the fish) as regards pelagic fish, nor for other species of fish.
- (34) Regarding the segmentation between whole fish and fillets, most customers responding to the market investigation considered that these are not equivalent. From a supply-side perspective, the market investigation confirmed that the production of fillets requires additional filleting machines and equipment.

#### Pelagic fish species

- (35) The Parties also consider that primary processing of pelagic fish cannot be separated into different markets for each species of fish. The supply of various species of pelagic fish is determined by natural conditions and quota regimes. Facilities for primary processing normally receive and process all pelagic fish species that are caught in the maritime zone constituted by the North Sea, the Norwegian Sea, the Barents Sea and parts of the North Atlantic Ocean. The equipment for grading, filleting, freezing, etc. may be used for any species of pelagic fish (excluding tuna, which is significantly larger and in which neither Party is active). The major customers of primary pelagic fish generally purchase several species.
- (36) However, according to the market investigation, the secondary processing of specific species (e.g. mackerel, herring) requires specific production technology compared to the secondary processing of other species. For instance, mackerel is used mainly for smoking, while herring is mainly used for canning, marinating and salting. Furthermore, most of the secondary processors would not switch from purchasing a given species to another one, if the price of that species were to increase by 5-10%. Similarly, most of the primary processors would not switch from sourcing a given species to sourcing another one if the price of that species were to increase by 5-10%. Finally, since the supply of pelagic fish in the EEA is primarily determined by quota regimes set by species, the competitive conditions may differ according to the main species of pelagic fish.

#### Conclusion

- (37) The market investigation suggests that segmentations by species, fresh/frozen fish and whole fish/fillets might be appropriate for the market for the supply of primary pelagic fish. However, the Commission considers that for the purposes of this decision, the precise product market definition can be left open since, irrespective of the exact market definition, the competitive assessment would remain the same.



#### 6.2.1.2. *Relevant geographic market*

- (38) The Parties consider that the geographic market for primary pelagic fish is worldwide or at least EEA-wide in scope. A significant proportion of the total catch of pelagic fish processed in Norway is exported over large distances, including between continents. Fish may be transported over short distances as fresh fish, while fish that is exported is normally deep-frozen. [...]% of the Parties' primary pelagic fish is sold outside the EEA ([...]% of the primary herring and [...]% of the primary mackerel).
- (39) According to the market investigation, most of the primary processors supply primary pelagic fish worldwide, regardless of the fish type (fresh, frozen, whole fish or fillets) and the fish species (herring, mackerel or other pelagic fish). From a demand-side perspective, the majority of customers located in the EU source primary pelagic fish cross-border within the EEA, as well as from outside the EEA.
- (40) In conclusion, the Commission considers that the supply of primary pelagic fish is at least EEA-wide.

#### 6.2.2. *Production of fishmeal and fish oil*

##### 6.2.2.1. *Relevant product markets*

- (41) The Parties consider that the production of fishmeal and fish oil is part of an overall market for single feed, which encompasses different types of raw materials for the production of compound animal feed.
- (42) In previous decisions, the Commission considered that there are at least separate markets for the supply of: (i) single feed; and (ii) compound feed. However, the issue whether the market for single feed should be further segmented on the basis of the ingredients (e.g. fishmeal) was left open.<sup>19</sup>

##### Fishmeal vs fish oil

- (43) The Parties claim that the overall market for single feed includes all raw materials, regardless of whether they are based on vegetable, marine or animal resources. In fact, compound feed manufacturers source the most cost-effective feedstuff components to achieve the highest nutritional value at the lowest possible price. Accordingly, customers can normally substitute fishmeal with other sources of protein (e.g. soy meal), and substitute fish oil with other sources of fats (e.g. rapeseed oil) for their compound feed production.
- (44) On the other hand, the Parties acknowledge that it is appropriate to consider protein sources and fat sources as separate markets within single feeds. For compound feed manufacturers, sources of protein cannot be substituted with sources of fats, and vice-versa. Accordingly, according to the Parties, fishmeal forms part of a market for protein sources for compound feed and fish oil is part of a market for fat sources for compound feed.
- (45) According to the market investigation, from a demand-side perspective single feed made from vegetable, marine and animal sources are not substitutable in view of

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<sup>19</sup> See e.g. COMP/M.6573 Forfarmers / Agricola.

the different end-applications and nutritional content, and protein sources and fat sources are also not substitutable. This implies that fishmeal and fish oil should be separated from the other types of single feed and may belong to separate relevant markets.

#### FPC vs fishmeal

- (46) The Parties also submit that FPC, which has higher water content than standard (dried) fishmeal, is highly interchangeable with standard fishmeal as sources of protein for the production of aquafeed.
- (47) Most of the customers have indicated that fishmeal and FPC are not equivalent for their production of compound feed given the difference in the nutritional value and properties.

#### Conclusion

- (48) The market investigation suggests that the markets for fishmeal and fish oil constitute separate markets.
- (49) As regards the possible further segmentation between FPC and fishmeal, the Commission considers that for the purposes of this decision, the precise product market definition can be left open since, irrespective of the exact market definition, the competitive assessment would remain the same.

#### *6.2.2.2. Relevant geographic market*

- (50) The Parties take the view that the geographic market for fishmeal and fish oil is worldwide in scope, and under no circumstances narrower than EEA-wide. A significant proportion of global production of fishmeal and fish oil is exported over large distances, including between continents (40% of fishmeal and 50% of fish oil). Both fishmeal and fish oil are commodities that are traded internationally, with no barriers to inter-state trade.
- (51) In previous decisions, the Commission considered that the geographic scope of the market for single feed is at least EEA-wide.<sup>20</sup>
- (52) According to the market investigation, customers located in the EU source fishmeal, fish oil and FPC cross-border within the EEA, as well as from outside the EEA. The majority of producers of fishmeal, fish oil and FPC supply at EEA or worldwide level. Hence, the Commission considers that the supply of fishmeal and fish oil is at least EEA-wide.

#### **6.2.3. Trading of fishmeal and fish oil**

##### *6.2.3.1. Relevant product market*

- (53) The Parties consider that trading of fishmeal and fish oil does not constitute a separate market as traders and manufacturers compete with each other. These products are mainly sold to feed manufacturers. According to the Parties, a

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<sup>20</sup> See e.g. COMP/M.6573 Forfarmers / Agricola.

hypothetical monopolist in trading could not profitably increase prices, as these customers would then purchase directly from producers.

- (54) The Commission considers that for the purposes of this decision, the precise product market definitions can be left open since, irrespective of the exact market definition, the competitive assessment would remain the same.

#### 6.2.3.2. *Relevant geographic market*

- (55) According to the Parties, a hypothetical market for trading would be defined on a worldwide basis. The market investigation confirmed that all traders buy fishmeal and fish oil at a worldwide level, and the overwhelming majority re-sell also worldwide. The vast majority of customers confirmed that they source from traders located across the EEA and at a worldwide level.

- (56) In conclusion, the Commission considers that the trading of fishmeal and fish oil is at least EEA-wide.

#### 6.2.4. *Pelagic fish offcuts*

##### 6.2.4.1. *Relevant product markets*

- (57) Offcuts are a by-product of the processing of fish for human consumption. They are used as raw material for the production of fishmeal, FPC and fish oil.

- (58) The Parties consider that for the producers of fishmeal and fish oil, offcuts and whole (non-human consumption) fish are equivalent raw materials, although the latter represents a larger share of the total raw material volumes in Norway.

- (59) According to the Parties, some producers also use silage as an alternative to offcuts in their production of FPC and fish oil. Silage is fresh offcuts to which formic acid has been added for preservation. Moreover, offcuts and silage used in the production of fishmeal and fish oil include trimmings mainly from pelagic fish, some from red fish (salmon farming) and, to a lesser extent, offcuts from white fish.

- (60) In any case, the Parties submit that the relevant market should not be further segmented on the basis of the type of fish and should be defined on a broader basis as the market for the supply of raw material (including silage, whole fish and offcuts) for the production of fishmeal, FPC and fish oil.

- (61) The market investigation confirmed that single feed manufacturers use interchangeably offcuts and whole fish as input to their production. However, none of them considered silage to be a substitutable raw material to whole fish and offcuts.

- (62) However, the Commission considers that for the purposes of this decision, the precise product market definition can be left open since, irrespective of the exact market definition, the competitive assessment would remain the same.

##### 6.2.4.2. *Relevant geographic market*

- (63) Offcuts, as well as whole fish used for the production of single feed, are a low-value and high volume input of short durability. Silage has long durability but high volumes,

and given its low value it is thus not transported over long distances. According to the Parties, this market could therefore be considered national in scope.

- (64) The market investigation confirmed that all EEA manufacturers source raw material at a national level. Therefore, for the purposes of this decision, the Commission considers that this market is national in scope.

## 7. COMPETITIVE ASSESSMENT

### 7.1. *Horizontal overlaps*<sup>21</sup>

#### 7.1.1. *Market for the supply of primary pelagic fish*

- (65) The supply of pelagic fish depends on total allowable catches, based on which quotas are granted to the fishing industry of each country. In the case of herring and mackerel, the quotas granted to Norway represent respectively 41.6% and 27.6% of the EEA quota. Post-Transaction, the JV would become the most important buyer of pelagic fish for human consumption in the Norwegian auction regime, representing [50-60]% of the total purchases, and in particular [50-60]% of the herring purchases and [40-50]% of the mackerel purchases.
- (66) However, given that the downstream market for the supply of primary pelagic fish and its potential segmentations are at least EEA-wide, the Parties' combined market shares for the relevant EEA or worldwide markets of primary pelagic fish remain, for the most part, below 15%. Only when considering possible segmentations by species, the hypothetical EEA-wide markets for the supply of primary herring and primary mackerel would be affected.<sup>22</sup>

Supply of primary pelagic fish (volume) (2012)						
	Total		Herring		Mackerel	
	Worldwide	EEA	Worldwide	EEA	Worldwide	EEA
<b>AUSS</b>	[0-5]%	[5-10] %	[5-10]%	[10-20]%	[5-10]%	[10-20]%
<b>Kvefi</b>	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%
<b>AUSS and Kvefi combined</b>	[0-5]%	[10-20] %	[10-20]%	[20-30]%	[5-10]%	[10-20]%
<b>AUSS retained</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

- (67) If the relevant markets for primary pelagic fish are further segmented on the basis of the distinction between frozen and fresh fish, the hypothetical EEA-wide markets for the supply of frozen primary herring and for the supply of frozen primary mackerel would be affected.<sup>23</sup>

<sup>21</sup> As a result of the transaction, the Norwegian market for the supply of pelagic fish offcuts would be affected. However, since this product category is not covered by the EEA agreement, the horizontal effects on this market are out of the scope of this investigation.

<sup>22</sup> Herring and mackerel represent respectively [...] % and [...] % of the Parties' primary processing activities, whereas other species only account for [...] %. In any case, the Parties' combined market shares for the segmentations involving other pelagic fish species remain below [0-5] %.

<sup>23</sup> There is no overlap between the Parties in the hypothetical market for the supply of fresh primary pelagic fish, since only AUSS is active in the supply of fresh primary pelagic fish.

Supply of frozen primary pelagic fish (volume) (2012)						
	Total		Herring		Mackerel	
	Worldwide	EEA	Worldwide	EEA	Worldwide	EEA
AUSS		[5-10]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%
Kvefi		[0-5]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%
AUSS and Kvefi combined	[0-5]%	[10-20]%	[5-10]%	[20-30]%	[5-10]%	[10-20]%
AUSS retained	NA	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

- (68) If the relevant markets for primary pelagic fish are segmented on the basis of the distinction between whole fish and fillets, affected markets arise on an EEA-wide basis for whole primary herring, whole primary mackerel, primary herring fillets and primary mackerel fillets as well as on the level of fillets without segmenting by species. On a worldwide basis affected markets would only arise in relation to whole primary herring.<sup>24</sup>

Supply of whole primary pelagic fish (volume) (2012)						
	Total		Herring		Mackerel	
	Worldwide	EEA	Worldwide	EEA	Worldwide	EEA
AUSS	[0-5]%	[5-10]%	[10-20]%	[10-20]%	[5-10]%	[10-20]%
Kvefi	[0-5]%	[0-5]%	[0-5]%	[10-20]%	[0-5]%	[5-10]%
AUSS and Kvefi combined	[0-5]%	[5-10]%	[20-30]%	[20-30]%	[5-10]%	[10-20]%
AUSS retained	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Supply of primary pelagic fish fillets (volume) (2012)						
	Total		Herring		Mackerel	
	Worldwide	EEA	Worldwide	EEA	Worldwide	EEA
AUSS	[0-5]%	[10-20]%	[0-5]%	[10-20]%	[0-5]%	[10-20]%
Kvefi	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%
AUSS and Kvefi combined	[0-5]%	[10-20]%	[5-10]%	[20-30]%	[0-5]%	[10-20]%
AUSS retained	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

- (69) The combined market shares would remain below 25% under all possible segmentations with the exception of the hypothetical market for whole primary herring (where the market share would be [20-30]%).

<sup>24</sup> Since 99% of the primary pelagic fish is sold frozen, the segmentation fillets/ round fish for the market of frozen primary pelagic fish would have a similar market structure to the segmentation fillets/ round fish for the market of primary pelagic fish.

- (70) The Parties argue that even if the JV were to reduce its purchases in the auction regime and its supplies of primary pelagic fish to the market, so as to induce a price increase, other primary processors are likely to buy those volumes through the auction regime.<sup>25</sup> As such, output reduction is not feasible.
- (71) Moreover, the Parties argue that primary pelagic fish is a homogeneous product and that the industry is characterized by excess production capacity and low entry barriers. The Parties also consider that post-Transaction the JV would continue to have low market shares and face a significant degree of competition from several strong competitors.
- (72) The results of the market investigation confirmed that there are several alternative suppliers of primary pelagic fish in the EEA such as Samherji HF, HB Grandi, Skagerak Pelagic A/S, Fresh Catch, Iceland Pelagic, and customers of primary pelagic fish usually multi-source from different suppliers. Moreover, the majority of customers indicated that they can switch suppliers easily and the vast majority of them have switched between suppliers in the last three years. The market investigation also confirmed that there is excess production capacity in primary processing and capacity expansion does not require considerable investment costs. Furthermore, suppliers indicated that the only constraint to their production expansion (or indeed utilisation of any spare capacity) is set by the quotas regime and the seasonality of catch. In fact, any restrictions on primary pelagic fish production would only depend on quota variations as all the quotas tend to be fully harvested.
- (73) Two specific concerns<sup>26</sup> were raised in the course of the market investigation about the impact of the transaction on the supply of primary pelagic fish.
- (74) The first concern relates to the JV's potential ability to leverage its strong buying position in certain pelagic fish segments in Norway, in order to obtain better purchasing conditions from fishermen. However, since the JV would continue to be subject to the rules of the Norwegian auction system, any such attempt would be prevented by the possibility for the NSSL to control minimum prices and redefine bidding areas to maximize competition.
- (75) The second concern relates to the supply of frozen skinless herring fillets. Apparently high quality frozen skinless herring fillets only come from Norway, because large herrings are caught in the surrounding Arctic Zone. One customer claimed that post-Transaction there would be only two suppliers left, including the JV, in Norway. However, the Parties clarified<sup>27</sup> that the quality of raw herring depends on a number of factors, including the nutritional content (i.e. fat content), size and consistency as well as the harvesting season and stock from year to year. Thus, not all catches from one geographic area would be of a higher or lower quality than the fish caught in another area. As already mentioned, the vast majority of customers indicated that there are valid alternative suppliers of primary herrings in Norway and in other countries to which they could turn to in case of a

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<sup>25</sup> NSSL confirmed that bidding areas in the Norwegian auction regime are defined so as to have at least two buyers and maximize competition between buyers.

<sup>26</sup> A number of respondents raised doubts as to whether the availability and/or price of primary pelagic fish would be negatively affected by the transaction. However, these respondents did not substantiate their doubts and generally confirmed that alternative sources for primary pelagic fish exist.

<sup>27</sup> Note from the Parties dated 4 December 2013.

price increase. Moreover, since there is significant over-capacity among primary processors in Norway, if the JV purchases less herring through the auction system, other processors would buy these volumes and supply to the market. If, on the contrary, the JV were to buy all the herring and foreclose competitors in Norway, it would still face competition from other firms located across the EEA, which would continue to discipline its pricing behaviour.

- (76) AUSS will retain activities in Chile and Peru which overlap with those of the JV. However, these activities mostly concern other pelagic fish species where the JV would have a less relevant position ([0-5]% at worldwide level). Therefore, the transaction is unlikely to increase coordination between AUSS and the JV.
- (77) Therefore, the Commission concludes that the transaction does not raise serious doubts as to its compatibility with the internal market in relation to the market for the supply of primary pelagic fish and its possible segmentations.

#### 7.1.2. *Markets for the supply of fishmeal and fish oil*

As illustrated by the table below, only the hypothetical market for the supply of fishmeal defined on an EEA-wide basis could be potentially affected by the Transaction.

Market for the supply of fishmeal, fish oil and FPC (volume) (2012)						
	Fishmeal <sup>28</sup>		Fish oil		FPC	
	Worldwide	EEA	Worldwide	EEA	Worldwide	EEA
<b>AUSS</b>	[0-5]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[30-40]%
<b>Kvefi</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>AUSS and Kvefi combined</b>	[0-5]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[30-40]%
<b>AUSS retained</b>	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%
<b>Kverva retained</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

- (78) The Parties maintain that the Transaction would not have any anticompetitive effect on the market for fishmeal. First, they underline that the Transaction would not significantly modify the structure of the single feed markets, in view of the small increments in market shares brought about by the transaction ([0-5]%). Moreover, according to the Parties, the existence of significant excess production capacity in the industry and the absence of significant entry barriers in this market imply that post-transaction the JV would continue to face strong competition from other players.<sup>29</sup>

<sup>28</sup> In the hypothetical relevant market of fishmeal excluding FPC, the combined market share (in value) would be [0-5]% worldwide and [10-20]% EEA-wide. The retained market share of Kverva would be lower than [0-5]%.

<sup>29</sup> Post-transaction, the JV would become the largest buyer of pelagic fish for non-human consumption in the Norwegian auction system, representing [70-80]% of the total purchases. However, the JV is not a supplier of whole pelagic fish to single feed producers and competes on the markets for fishmeal and fish oil on an at least EEA-wide basis.

- (79) The vast majority of respondents to the market investigation considered that the Parties would not benefit from any particular competitive advantage vis-à-vis their competitors in the supply of fishmeal. In addition, all the customers indicated that there are several valid suppliers of fishmeal in alternative to AUSS and Kvefi. Moreover, the majority of customers indicated that they usually multi-source fishmeal, that they can switch suppliers of fishmeal easily and that they have in fact engaged in switching in the last three years. Finally, the vast majority of customers did not expect that the Transaction would have any impact on the market for the supply of fishmeal.
- (80) As regards the fact that the parent companies will retain some activities in the production of fishmeal and fish oil, the Parties point out that this would have no consequence on the markets for fish oil and fishmeal. In fact, AUSS' retained activities would be located outside the EEA (Chile and Peru). As regards Kvefi, its retained production of FPC and fish oil in Norway is based on salmon farming offcuts (rather than pelagic fish offcuts). Therefore, on the one hand, there would be no link between the JV and the parent companies' activities; on the other hand, given the different product and geographic scopes of the parent companies' retained activities, co-ordination would be very unlikely.
- (81) Therefore, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the market for the supply of fishmeal.

## **7.2. Vertical relationships**

### *7.2.1. Vertical relationship between the market for the supply of pelagic fish offcuts and the markets for the supply of FPC*

- (82) The JV will be active as a supplier of (i) pelagic fish offcuts (upstream) and (ii) fishmeal, fish oil and FPC (downstream). Pelagic fish offcuts are used as input for the production of fishmeal, fish oil and FPC. However, only the vertical relationship between pelagic fish offcuts and FPC would lead to an affected market. Therefore, these are potentially vertically affected markets.



Market for the supply of raw material for the production of fish meal, fish oil and FPC in Norway (volume) 2012 <sup>30</sup>			
	Raw material (whole fish, offcuts and silage)	Raw material from pelagic fish (pelagic whole fish, pelagic offcuts and silage)	Pelagic fish offcuts (including silage)
AUSS	[0-5]%	[0-5]%	[5-10]%
Kvefi	[0-5]%	[5-10]%	[10-20]%
AUSS and Kvefi combined	[5-10]%	[5-10]%	[20-30]%

- (83) No specific concerns were raised regarding the vertical relationship between these two activities of the Parties except by one producer of fishmeal, fish oil and FPC, who indicated that the Parties would control the supply of pelagic fish offcuts to the production of FPC, and therefore could charge higher prices or foreclose access to this input.
- (84) However, whereas the market for raw material is national in scope, the downstream market for the supply of FPC is at least EEA-wide. This implies that the JV would not be able to engage in input foreclosure vis-à-vis its rivals in the EEA-wide market for FPC.
- (85) Moreover, the Parties point out that producers of FPC could use alternative inputs for their production, namely whole pelagic fish (for non-human consumption). This was confirmed by the market investigation according to which all producers of single feed use both pelagic fish offcuts and whole pelagic fish and consider both to be equivalent inputs. Therefore, the existence of a high degree of substitutability makes any attempt of input foreclosure likely to fail.
- (86) Therefore, the Commission concludes that the transaction does not raise serious doubts as to its compatibility with the internal market, in relation to the vertical relationship between the market for the supply of fish offcuts and the market for the supply of FPC.

7.2.2. *Vertical relationship between the markets for the supply of fishmeal and fish oil and the markets for trading of fishmeal and fish oil*

- (87) Another potential vertical relationship would arise between the JV's activity as a supplier of fishmeal and fish oil and the activity in trading of fishmeal and fish oil carried out by Norsildmel AS, in which the JV will have a 50% interest.
- (88) However, on the one hand, the JV would have a limited market share in the hypothetical upstream market for the supply of fishmeal and fish oil (exceeding 25% only in the hypothetical segment for FPC, where the JV would have [30-40]% share). On the other hand, the JV, via Norsildmel AS, would also have a limited

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<sup>30</sup> In the hypothetical markets for whole fish (for non-human consumption), red fish offcuts and white fish offcuts, there would be no overlap as none of the Parties is active in these markets. In the hypothetical market for pelagic silage and pelagic offcuts (excluding silage), there would no overlap as Kvefi is only active in pelagic silage, whereas AUSS is only active in pelagic offcuts (excluding silage).

market position in the downstream hypothetical market for trading of fishmeal and fish oil both on a EEA ([20-30]% in trading of fishmeal, less than [10-20]% in trading of fish oil) and worldwide level ([5-10]% in trading of fishmeal, [10-20]% in trading of fish oil).<sup>31</sup>

- (89) As regards the likelihood of customer foreclosure, in the course of market investigation, customers of fishmeal and fish oil expressed a clear preference for buying directly from manufacturers (in order to build a direct relationship with the primary supplier of the product). Consequently, if Norsildmel AS were to trade only the JV's single feed production, competitors in the supply of fishmeal and fish oil would not only find alternative traders, but could also easily negotiate directly with final customers.
- (90) As regards the likelihood of input foreclosure, in the market investigation all traders indicated that there are several alternative suppliers to the Parties and that they can easily switch between suppliers of fishmeal, fish oil and FPC.
- (91) Finally, no specific concern was raised in the course of the market investigation in relation to this vertical relationship.
- (92) Therefore, the Commission concludes that the transaction does not raise serious doubts as to its compatibility with the internal market, in relation to the vertical relationship between the markets for the supply of fishmeal and fish oil and the markets for trading of fish meal and fish oil.

## **8. CONCLUSION**

- (93) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission  
(signed)  
Joaquín ALMUNIA  
Vice-President*

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<sup>31</sup> As regards the trading of FPC, the Parties were not able to provide market shares, but estimated that the value of sales of FPC by Norsildmel AS represent approximately [0-5]% of the EEA market for the supply of FPC and approximately [0-5] % of the worldwide market for the supply of FPC.