



EUROPEAN COMMISSION
DG Competition

***Case M.9110 - AMERRA /
MUBADALA / NIREUS /
SELONDA***

Only the English text is available and authentic.

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

Article 6(1)(b) in conjunction with Art 6(2)
Date: 15/02/2019

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EUROPEAN COMMISSION

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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

**Subject: Case M.9110 - AMERRA / MUBADALA / NIREUS / SELONDA
Commission decision pursuant to Article 6(1)(b) in conjunction with
Article 6(2) of Council Regulation No 139/2004¹ and Article 57 of the
Agreement on the European Economic Area²**

Dear Sir or Madam,

- (1) On 18 December 2018, the Commission received notification of a concentration pursuant to Article 4 of the Merger Regulation which would result from a proposed transaction by which AMERRA Capital Management LLC (“Amerra”), incorporated in the United States, and MDC Industry Holding Company LLC (“Mubadala”), incorporated in the United Arab Emirates, intend to acquire joint control, within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation, over Andromeda Seafood Limited (“Andromeda”) and through Andromeda over Nireus Aquaculture S.A. (“Nireus”) and Selonda Aquaculture S.A. (“Selonda”) (“the Transaction”).³ Andromeda, Nireus and Selonda are all incorporated in Greece. In this Decision, Andromeda, Nireus and Selonda are together referred as

¹ OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). 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.

² OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

³ Publication in the Official Journal of the European Union No C 6, 9.1.2019, p. 10.

the “Targets”. Mubadala and Amerra are together referred to as the “Notifying Parties”. Mubadala, Amerra and the Targets are together referred to as the “Parties”. The undertaking that would result from the Transaction is referred to as “the merged entity”.

1. THE PARTIES

- (2) Amerra is a private, alternative asset management firm providing strategic capital to upstream and midstream agri-business companies in the Americas and Western Europe. Mubadala is a wholly owned subsidiary of Mubadala Investment Company PJSC, a public joint stock company established in 2017, wholly owned by the Government of the Emirate of Abu Dhabi in the United Arab Emirates.
- (3) Andromeda, Nireus and Selonda are active in the aquaculture industry (more specifically in the production and sale of adult fish, fry and fish feed).

2. THE TRANSACTION

- (4) The Transaction is to be achieved by means of two interdependent transactions (referred to as “Transaction 1” and “Transaction 2”), which form part of a single concentration in the sense of the Consolidated Jurisdictional Notice. On 20 June 2018, two sale and purchase agreements (“the SPAs”) were signed between the Sellers⁴ and Andromeda for the sale of the Sellers’ aggregate shareholdings (common shares) in each of Nireus and Selonda to Andromeda, which amount to 74.34% and 79.62% respectively.
- (5) As explained above, with Transaction 1, Andromeda is to purchase at least the Sellers’ shares, and potentially some or all of the additional outstanding shares in both Nireus and Selonda, thus acquiring at least 74.34% in Nireus and 79.62% in Selonda, and thereby sole control over both Nireus and Selonda. [...].
- (6) With Transaction 2, Mubadala is to acquire joint control of Andromeda together with Amerra, which currently has sole control of Andromeda. On 20 June 2018, a subscription agreement was signed between Mubadala, Andromeda and Perseus Seafood LLC (the latter being the wholly owned subsidiary of Amerra through which Amerra owns Andromeda) (“the Subscription Agreement”). [...].
- (7) The two Transactions are thus interdependent and form a single concentration within the meaning of the Consolidated Jurisdictional Notice. After the two Transactions have been completed, Mubadala and Amerra will jointly control Andromeda, which in turn will directly control Nireus and Selonda.
- (8) Since the Transaction concerns three existing companies that have market presence in the EU, the entity resulting from the Transaction will have sufficient resources to operate independently on the market and will not have any significant sale/purchase relationship with the parents. The full functionality test is met under Article 3(4) EUMR.

⁴ The Sellers are the main shareholders in Nireus and Selonda: Praeus Bank, Alpha Bank, Eurobank Ergasias and the National Bank of Greece.

- (9) It follows that the Transaction would result in a concentration within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation.

3. UNION DIMENSION

- (10) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁵ (Amerra: [...], Mubadala: [...], Nireus: EUR [...], Selonda: EUR [...]) and two of them have an EU-wide turnover in excess of EUR 250 million (Amerra: EUR [...], Mubadala: [...]) but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (11) The concentration has therefore a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

- (12) The Transaction leads to:
- Horizontal overlaps in (i) the production and supply of Mediterranean (adult) farmed fish and (ii) production and supply of Mediterranean fish fry; and (iii) the production and supply of fish feed; and
 - Vertical links between the production and sale of Mediterranean fish fry and/or fish feed (upstream) and the production and supply of Mediterranean (adult) farmed fish (downstream).

4.1. Relevant product markets

4.1.1. Mediterranean (adult) fish

- (13) Mediterranean fish refers to the species of fish which are generally confined to the Mediterranean geographic area due to natural habitats and/or temperature of the waters. Mediterranean fish accounts for over 20% of the total production of farmed fish in the Union. Greece and Spain are the two largest Union producers of Mediterranean fish. The main species of Mediterranean fish are: (i) gilthead seabream (“seabream”); (ii) European seabass (“seabass”); (iii) meagre; (iv) dentex; (v) common seabream and (vi) sharpnout seabream. In addition, there are a number of other species of Mediterranean fish less commonly farmed (e.g. pagrus). Seabass and seabream combined represent approximately 95% of all Mediterranean farmed fish.⁶
- (14) The Targets are active in aquaculture of Mediterranean fish species and, as with other fish farming companies around the Mediterranean basin, the Targets are active in the farming of mainly European seabass and gilthead seabream. These are

⁵ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

⁶ Form CO, paragraph 186.

the two most important sub-species of Mediterranean fish that fish farming customers require their suppliers to produce.⁷

- (15) The Commission has not previously analysed or defined a relevant product market for the production and supply of Mediterranean (adult) farmed fish, but has considered relevant markets for the farming of other species of fish in several decisions.⁸ Since the Commission's most relevant and most recent precedents in the aquaculture sector are cases related to salmon and that a number of issues in the assessment of salmon or Mediterranean fish markets are similar, the Commission will draw inspiration from previous cases whenever relevant for the purpose of this Decision.

4.1.1.1. Species of fish

4.1.1.1.1. The Commission's and other NCAs' practice

- (16) The Commission has never assessed whether the market for Mediterranean (adult) fish could be further segmented by species of fish. However, in relation to other fish species, the Commission considered in its precedents whether salmon and salmon trout belonged to separate product markets, but ultimately left open the definition of those markets given the limited amounts of salmon trout consumed in the EU.⁹
- (17) In Case M.3722 - *Nutreco/Stoltnielsen/Marine Harvest/JV*, the Commission also considered a relevant segmentation of the market for the production and sale of farmed cod and farmed halibut, but ultimately left open the definition of these markets.
- (18) A number of NCAs, such as the French, the UK and the Hellenic NCAs, have also considered separate markets for farmed fish on the basis of different species.
- (19) For instance, the French Competition Authority considered that the market for farmed salmon is separate from the market of other farmed fish¹⁰, and previously considered a market for white fish, leaving open a possible segmentation by white fish species.¹¹
- (20) The UK Competition Authority also identified a separate market for farmed salmon,¹² and also left open whether salmon trout should be included in the market

⁷ Form CO, paragraph 115.

⁸ See, inter alia, case COMP/M.6850 – *Marine Harvest/Morpol*, Commission decision of 30 September 2013, paras. 26 – 28; case COMP/M.3722 – *Nutreco/Stoltnielsen/Marine Harvest/JV*, Commission decision of 12 April 2005, para. 9; and COMP/M.7035 – *Austevoll Seafood/Kvefi/JV*, Commission decision of 19 December 2013.

⁹ Case COMP/M.6850 – *Marine Harvest/Morpol*, Commission decision of 30 September 2013, paras. 59 – 60.

¹⁰ Case 06-A-20 *Pan Fish ASA/Marine Harvest NV*, decision of 20 October 2006; case C2006-47 letter of 1 December 2006; case C2008-07 decision of 13 March 2008; case 13-DCC-157, decision of 31 October 2013; case 13- DCC-169, decision of 20 November 2013; case 14-DCC-153, decision of 22 October 2014.

¹¹ Case C2008-07 decision of 13 March 2008.

¹² Case CM 5004 – *Nutreco Holding NV/Hydro Seafood GSP Ltd*, decision of 22 December 2000 and CC/2006-12-18 – *Pan Fish ASA/Marine Harvest NV*, decision of 18 December 2006.

of salmon as the total volumes of salmon trout farmed in the EEA and the Faeroe Islands were very small.¹³

- (21) For its part, the Hellenic Competition Authority identified a market for the production and sale of farmed Mediterranean fish as distinct from non-Mediterranean farmed fish such as salmon and trout. However, the Hellenic Competition Authority has not segmented the market further based on different species of Mediterranean fish. It considered Mediterranean fish to comprise European seabass, gilthead seabream, pagrus, meagre and sharpnose seabream, with the first two accounting for 95% of the total production of Mediterranean farmed fish.¹⁴
- (22) The Hellenic Competition Authority also considered that European seabass and gilthead seabream were substitutes both from a demand side (e.g. by consumers for their nutrition value) and from a supply side perspective and therefore concluded that they belong to the same product market.

4.1.1.1.2. The Notifying Parties' view

- (23) The Notifying Parties consider that the relevant market should, at the very least, encompass all Mediterranean fish, without any further segmentation, as both from a supply and demand perspective, Mediterranean fish species would be substitutable.¹⁵
- (24) According to the Notifying Parties, the two main species of Mediterranean fish, namely seabass and seabream, would be interchangeable as both fish are white protein fish and are either farmed or caught in the Mediterranean Sea. Further, farming those species would require the same fish farming equipment. In addition, seabream and seabass would be fed the same type of feed.
- (25) From a demand side, all customers would require a variety of fish species to satisfy direct customer demand. For instance, the Notifying Parties submit that both wholesalers and retailers sell fish to different types of customers and want to provide their customers with a large array of products. In addition, processors would have demand for a variety of fish since their customers may want to purchase different types of processed fish.
- (26) The Notifying Parties submit that, from a supply side, Mediterranean fish would be fully substitutable since in principle the same locations, fish farming equipment, farming methods and type of fish feed is used in order to farm all species of Mediterranean fish. Moreover, the Notifying Parties submit that life/breeding cycles of Mediterranean fish are generally the same as well and any difference in fish feed fed would be based on the farmer's preference and not on the species.
- (27) Moreover, the Notifying Parties submit that it would not be viable for a supplier to focus exclusively on either seabream or seabass as demand would shift, within some margin, year or year and region by region across the EEA. The Notifying Parties submit that to their best knowledge, customers switch between all types of

13 CC/2006-12-18, Pan Fish ASA/Marine Harvest NV, decision of 18 December 2006.

14 See Case 619/2015, decision of 2 November 2015, paras. 57.

15 Form CO, paragraph 441 and ff.

Mediterranean fish and, in certain instances, between other types of fish. For example, the Notifying Parties submit that there are a number of customers that previously sourced seabream from Nireus but which have recently switched sourcing seabass from Nireus and vice versa.

4.1.1.1.3. The Commission's assessment

- (28) Based on the results of the market investigation, the Commission takes the view that Mediterranean farmed fish of different species, such as seabream and seabass and other species, and seabream and seabass themselves, all belong to different product markets.
- (29) With regard to competitors, the majority of those that replied to the market investigation consider Mediterranean farmed fish of different species, such as seabream and seabass and other species, and seabream and seabass themselves, to be different products fulfilling different needs.¹⁶ One competitor stated that *“although most of the times they refer to the same clients and markets, they are considered different products because its market has its own preferences concerning the size, the price and the taste. Moreover there are differences in availability through the year between the species”*.¹⁷ Another competitor stated that *“different species provide different flesh quality and taste to customers and thus we consider they fulfil different needs”*.¹⁸
- (30) With regard to customers, the majority of those that replied to the market investigation consider Mediterranean farmed fish of different species, such as seabream and seabass and other species, and seabream and seabass themselves, to be different products fulfilling different needs.¹⁹
- (31) One customer in South West Europe²⁰ stated that *“they are not the same species, not the same products. For the consumer, it is not the same appearance, taste and not the same price”*.²¹ Another customer in South West Europe stated that *“customers often use recipes as base for the choice of their purchase and they have difficulties to switch to another fish for the same recipes”*.²² With regard to seabream and seabass, another customer in South West Europe stated that *“they are very different species with different organoleptic characteristics”*.²³ One customer in South East Europe²⁴ stated that *“the species are too different (taste, price, etc.) and so fulfil different customers' needs”*.²⁵ Another customer in South East Europe stated *“my customers are very well informed about the differences between the species”*.²⁶ Another customer in South East Europe stated *“they are considered as different products because they are different species with different level of prices*

16 Reply to questions 25 and 26 of questionnaire to competitors.

17 Reply to question 25.1 of questionnaire to competitors.

18 Reply to question 25.1 of questionnaire to competitors.

19 Reply to questions 21 and 22 of questionnaire to customers (Q1b); reply to questions 21 and 22 of questionnaire to customers (Q1a); reply to questions 21 and 22 of questionnaire to customers (Q1c).

20 For the purpose of the present decision, South West Europe refers to Spain, France and Portugal.

21 Reply to question 21.1 of questionnaire to customers (Q1b).

22 Reply to question 21.1 of questionnaire to customers (Q1b).

23 Reply to question 22.1 of questionnaire to customers (Q1b).

24 For the purpose of the present decision, South East Europe refers to Italy and Greece.

25 Reply to question 21.1 of questionnaire to customers (Q1a).

26 Reply to question 21.1 of questionnaire to customers (Q1a).

and different standards”.²⁷ More specifically, with regard to seabream and seabass, another customer in South East Europe stated “*there is no substitution among the two species as far as customers are concerned. Demand is very specific.*”²⁸ One customer in Northern Europe²⁹ stated “*they are different species and appeal to different customers and combine with different flavours*”.³⁰

4.1.1.1.4. Conclusion

(32) Therefore, in light of the results of the market investigation and of all the evidence available to it, the Commission concludes that Mediterranean farmed fish of different species, such as seabream and seabass and other species, and seabream and seabass themselves, all belong to different product markets.

4.1.1.2. Wild- caught v. farmed (adult) fish

4.1.1.2.1. The Commission’s and other NCAs’ practice

(33) The Commission has consistently held that there is a difference between wild-caught fish and farmed fish.³¹ For instance, in relation to salmon, the Commission’s market investigation in Case M.6850 - *Marine Harvest/Morpol* revealed that farmed salmon and wild salmon are considered to be different products in terms of taste, quality and price. Moreover, the Commission found that wild salmon also had limited seasonal availability whilst farmed salmon was supplied regularly throughout the year. In Case M.3722 - *Nutreco/Stoltnielsen/Marine Harvest/JV*, the Commission’s market investigation also confirmed the distinction between wild and farmed salmon.

(34) With regard to relevant NCAs’ precedents, the Hellenic Competition Authority held that consumers considered wild and farmed Mediterranean fish to be different varieties of products, since (i) only farmed fish is sold throughout the year, (ii) wild-caught fish normally has higher prices and (iii) wild-caught fish depletes fishing populations thereby reducing the possibility of substitution with farmed fish and resulting in practical supply side difficulties in substituting farmed fish with wild catch.³²

4.1.1.2.2. The Notifying Parties’ view

(35) The Notifying Parties confirm that there is a distinction between farmed fish and wild-caught fish as farmed fish is sold throughout the year, whilst wild-caught fish is seasonal. In addition, the Notifying Parties confirm that wild-caught fish is normally priced higher and may be restricted in volume as it can deplete fishing

²⁷ Reply to question 21.1 of questionnaire to customers (Q1a).

²⁸ Reply to question 22.1 of questionnaire to customers (Q1a).

²⁹ For the purpose of the present decision, Northern Europe refers to Germany, The Netherlands and the UK.

³⁰ Reply to questions 21.1 and 22.2 of questionnaire to customers (Q1c).

³¹ See, inter alia, case COMP/M.6850 – *Marine Harvest/Morpol*, Commission decision of 30 September 2013, paras. 26 – 28; case COMP/M.3722 – *Nutreco/Stoltnielsen/Marine Harvest/JV*, Commission decision of 12 April 2005, para. 9; and COMP/M.7035 – *Austevoll Seafood/Kvefi/JV*, Commission decision of 19 December 2013.

³² See Case 619/2015, decision of 2 November 2015, paras. 59 – 62; case 575/VII/2013, decision of 14 October 2013, paras. 124 – 127.

populations contrary to farmed fish. Furthermore, from a supply side, the companies that are active in the farming of fish do not generally also engage in wild catch activities.³³

4.1.1.2.3. The Commission's assessment

- (36) The market investigation results consistently showed that wild-caught fish and farmed fish, and therefore wild-caught seabass and farmed seabass and wild-caught seabream and farmed seabream, belong to different product markets.
- (37) With regard to competitors, the majority of those competitors that expressed an opinion consider that Mediterranean wild-caught fish and farmed fish, and therefore wild-caught and farmed seabream and wild-caught and farmed seabass, do not form part of the same product market.³⁴ This is mostly due to the fact that wild-caught and farmed fish, and therefore wild-caught and farmed seabream and wild-caught and farmed seabass, are priced differently, that availability and size is also different. With regard to seabream, one competitor stated “*although wild seabream and farmed seabream is fish of the same species of fish, most of the times customers perceive them as distinct products that fulfil different needs for the main reason that farmed seabream has specific sizes, stable availability and completely different price [...]*”.³⁵ Another competitor states that consumers “[...] *consider wild fish as better quality product*”.³⁶
- (38) With regard to customers, the majority of those that expressed an opinion in the market investigation consider that Mediterranean wild-caught fish and farmed fish, and therefore wild-caught and farmed seabream and wild-caught and farmed seabass, do not form part of the same product market.³⁷ One customer in South West Europe stated “*wild seabream and farmed seabream are different products. For the consumers wild seabream is the guaranty of quality and authenticity [...]*”.³⁸ Another customer in South West Europe stated that “*if, in some countries, the main criteria are look and the price (Spain), the perceived quality of wild seabream seems to be greater than the perceived quality of farmed seabream and wild fish is sold at a higher price than farmed fish*”.³⁹ Another customer in South West Europe stated “*for our customers, wild fish and aquaculture fish are considered different quality products. For purchasing department wild and aquaculture fish are different too, because aquaculture fish can be planned in quantities/time and wild fish cannot be planned*”.⁴⁰ One customer in South East Europe stated “*they are considered as different products fulfilling different consumer needs. For example a core difference between the two is the price*”.⁴¹ Another customer in South East Europe stated “*our customers consider wild seabream and farmed seabream as*

33 Form CO, paragraph 439.

34 Reply to questions 11 and 12 to questionnaire to competitors.

35 Reply to question 11.1 to questionnaire to competitors.

36 Reply to question 12.1 to questionnaire to competitors.

37 Replies to questions 7 and 8 to questionnaire to customers (Q1b); replies to questions 7 and 8 to questionnaire to customers (Q1a); replies to questions 7 and 8 to questionnaire to customers (Q1c).

38 Reply to question 7.1. to questionnaire to customers (Q1b).

39 Reply to question 7.1. to questionnaire to customers (Q1b).

40 Reply to question 7.1. to questionnaire to customers (Q1b).

41 Reply to question 7.1. to questionnaire to customers (Q1a).

different products because they have different price, colour and quality.”⁴² Another customer in South East Europe stated “wild seabass is distinct product [from] farm seabass and have different price; the farmed seabass is cheaper than wild seabass”.⁴³

4.1.1.2.4. Conclusion

- (39) Therefore, in the light of the results of the market investigation and of all the evidence available to it, the Commission concludes that Mediterranean wild-caught fish and farmed fish, and therefore wild-caught and farmed seabream and wild-caught and farmed seabass do not form part of the same product market.

4.1.1.3. Potential upstream and downstream segmentations

4.1.1.3.1. The Commission’s and other NCAs’ practice

- (40) Although the Commission has never analysed a possible segmentation between primary (upstream) and secondary (downstream) processing with respect to Mediterranean farmed (adult) fish, in Case M.6850 - *Marine Harvest/Morpol*,⁴⁴ the Commission analysed such a possible segmentation with respect to salmon.
- (41) The Commission considered that primary processing includes a number of activities at the top (upstream) of the salmon supply, namely: harvesting, head-on/head-off gutting and sometimes filleting the salmon. The Commission considered that farming and primary processing are normally carried out in nearby facilities and by the same vertically integrated operator. Secondary processing (downstream) was considered to encompass the transformation of primary processed salmon into processed products such as portions, ready-made meals and smoked salmon. Secondary processing can be carried out in plants which are far away from farms with dedicated equipment. On the other hand, barriers to develop secondary processing activities appeared to be low. Therefore, the Commission considered that farming and primary processing of salmon constitutes a separate product market from secondary processing of salmon.
- (42) In addition, in the same case, the Commission considered whether the downstream segment for secondary processing could be further segmented according to fresh, frozen and smoked salmon. However, the Commission left ultimately the exact product market definition open.
- (43) The French Competition Authority considered a possible segmentation of salmon and white fish into fresh or frozen fish, but left the exact market definition open.⁴⁵ The UK Competition Authority excluded frozen salmon from the relevant product

⁴² Reply to question 7.1. to questionnaire to customers (Q1a).

⁴³ Reply to question 8.1. to questionnaire to customers (Q1a).

⁴⁴ Primary processing includes a number of activities at the top of the salmon supply chain, namely: harvesting, head-on/head-off gutting and sometimes filleting of the salmon. Farming and primary processing are normally carried out in nearby facilities and by one and the same vertically integrated operator. Secondary processing was considered to encompass the transformation of primary processed salmon into processed products such as salmon portions, ready-made meals and smoked salmon.

⁴⁵ C2006-47 letter of 1 December 2006; case C2008-07 decision of 13 March 2008.

market since sales of frozen salmon in Europe were relatively small.⁴⁶ The Hellenic Competition Authority has identified the relevant product market to include only fresh Mediterranean farmed fish.⁴⁷ The Hellenic Competition Authority did not further consider any sub-segments in its decisional practice.

4.1.1.3.2. The Notifying Parties' view

- (44) In relation to the potential segmentation according to primary and secondary processing, the Notifying Parties consider that the Commission's considerations regarding farmed salmon do not accurately reflect the market dynamics of farmed Mediterranean fish. Primary processing only involves harvesting, grading and packaging of the farmed fish.⁴⁸
- (45) Almost all Mediterranean fish farmers will be active predominantly in primary processing and sell their fish in whole (i.e. head-on, gut included, not-filleted fish) to wholesalers/retailers for further processing. The Notifying Parties estimate that approx. [...]% of all farmed Mediterranean fish in Greece only undergo primary processing by the fish farmer and that only the remaining [...]% undergoes secondary processing by the fish farmer. Secondary processing of Mediterranean fish involves gutting, scaling and/or filleting the fish. These fish are then sold to either wholesalers or retailers.
- (46) Moreover, while in previous decisions in the context of salmon the Commission considered the activities of processing fish into ready-made meals or specific portions⁴⁹, virtually no fish farmers are involved in such activities in relation to Mediterranean fish, although certain companies are starting to engage in this activity. Accordingly, even though a distinction can be made in relation to this further level of processing of Mediterranean fish, this is not relevant to fish farmers but only to wholesalers/retailers who further process the whole fish, purchased from fish farmers.
- (47) Almost all integrated fish farmers are able to engage in secondary processing of their farmed fish. However, the demand for secondary processed fish is very low as customers require the whole fish due to reasons of quality assurance, appearance and freshness. Given the limited demand in secondary processing, the Notifying Parties submit that it would not be appropriate to further segment the segment for secondary processing into fresh or frozen fish because virtually all Mediterranean fish is sold as fresh and the Parties can transport fresh fish to the entire EEA almost always within 48 hours after harvesting.

4.1.1.3.3. The Commission's assessment

- (48) The market investigation results showed that Mediterranean whole fish and Mediterranean processed fish, and therefore whole seabream and seabass and processed seabream and seabass, do not form part of the same product market.

⁴⁶ CC/2006-12-18 Pan Fish ASA / Marine Harvest NV decision of 18 December 2006; case CM 5004 – Nutreco Holding NV/Hydro Seafood GSP Ltd, decision of 22 December 2000.

⁴⁷ Case 619/2015 decision of 2 November 2015; case 575/VII/2013, decision of 14 October 2013; case 331/V/2007, decision of 23 February 2007 section IIIA no.1.

⁴⁸ Form CO, paras 449 and ff.

⁴⁹ M.6850 – Marine harvest/Morpol, paragraph 31.

- (49) With regard to competitors, the majority of those that expressed an opinion in the market investigation consider that whole seabream and whole seabass belong to a different product market as opposed to processed seabream and processed seabass.⁵⁰ However, one competitor noted that “*currently only a small percentage of farmed seabass and seabream is processed at all (we would estimate no more than 15% of total production) and the great majority of that processing is gutting [...]*.”⁵¹
- (50) With regard to customers, the majority of those that expressed an opinion in the market investigation consider that whole seabream and whole seabass belong to a different product market as opposed to processed seabream and processed seabass.⁵² One customer in South East Europe stated “*these two products serve customer preferences that prevail in different geographies*”.⁵³ Another customer in South East Europe stated “*very different prices and weight*”.⁵⁴

4.1.1.3.4. Conclusion

- (51) Therefore, in light of the results of the market investigation and of all the evidence available to it, the Commission concludes that whole and processed seabream on the one hand, and whole and processed seabass on the other hand, do not form part of the same product market.
- (52) However, given the limited demand in secondary processing with regard to seabream and seabass, a segmentation between primary and secondary processing shall not be considered in this Decision.

4.1.1.4. Customers groups

4.1.1.4.1. The Commission’s and other NCAs’ practice

- (53) In Case M.3722 – *Nutreco Holding NV/Hydro Seafood GSP Ltd*, the Commission considered a potential segmentation according to customer groups. In that case, several types of customers were identified: wholesalers, traders, processors, foodservice, and retailers. According to the notifying parties in that case, it was not possible to differentiate the price of salmon between each member of the customer group identified and the Commission ultimately left the market definition open.

4.1.1.4.2. The Notifying Parties’ view

- (54) The Notifying Parties do not consider it appropriate to segment the market according to customer group as all relevant fish farmers sell to all the different groups of customers. Similarly, all customers purchase fish from all types of producers and there are no substantial discrepancies between prices.⁵⁵ The Parties also emphasise how in Case M. 3722 – *Nutreco Holding NV/Hydro Seafood GSP*

⁵⁰ Replies to questions 13 and 14 to questionnaire to competitors.

⁵¹ Reply to question 13.1. and 14.1 to questionnaire to competitors.

⁵² Replies to questions 9 and 10 to questionnaire to customers (Q1b); replies to questions 9 and 10 to questionnaire to customers (Q1a); replies to questions 9 and 10 to questionnaire to customers (Q1c).

⁵³ Replies to questions 9.1 and 10.1 to questionnaire to customers (Q1a).

⁵⁴ Replies to questions 9.1 and 10.1 to questionnaire to customers (Q1a).

⁵⁵ Form CO, paragraph 455 and ff.

Ltd, the Commission's market investigation did not indicate that it would be appropriate to segment according to customer group.⁵⁶

- (55) The Notifying Parties submit that as most fish farmers, the targets sell [...] their respective production of fish to wholesalers and processors. There are also [...] sales to retailers and [...] to Horeca. The exact split of sales per channel is not, however, clear cut and in fact is very blurred for a number of reasons, including: (i) the various types of customers are engaged in multiple activities (large wholesalers are, for instance, engaged in processing and some retailers engage in processing largely through contractual arrangements and (ii) some fish farmers, including Selonda, Nireus and Andromeda ([...]), are also involved in processing. These percentages of sales per customer vary from player to player.
- (56) The Notifying Parties submit that [...] the Parties' customers do not deliver directly to end consumers but instead sell the product on (possibly after having processed it) to other (smaller) retailers, processors, wholesalers, Horeca, etc. For instance, the category of wholesaler also encompasses a range of different types of wholesalers, including in relation to size of player. Wholesalers also sell to a variety of customers, including supermarkets and the Horeca channel:

Figure 1 - overview of customers of fish farmer

[...]

- (57) In terms of contracting, contracts for the sale of Mediterranean farmed fish are short-term and most sales are spot. It is usual practice that the supply arrangement is simply documented in an email exchange rather than in a contract. For instance, a wholesaler would send out a number of emails to multiple suppliers, receive offers and confirm the agreement by return email. Where sales are made pursuant to contracts, these are concluded for a year or less, and in most cases do not entail an agreement on price. It is more common for contracts to merely represent a potential opportunity to supply, not a commitment to supply and purchase. Prices are predominantly negotiated weekly, or monthly. If agreement is not reached on price, there will be no supply irrespective of whether a contact is in place.
- (58) The Notifying Parties submit that irrespective of the type of customer, and the type of arrangement used, the key parameters of a supply arrangement are availability of volumes of fish, price, credit terms and timely delivery.

4.1.1.4.3. The Commission's assessment and conclusion

- (59) In light of the fact that the Parties sell to all type of customers and the main parameters of competition are the same irrespective of the types of customers, a segmentation by customer shall not be considered in this Decision.

⁵⁶ Paragraph 16.

4.1.1.5. Fish Origin

4.1.1.5.1. The Commission's practice

(60) The Commission has never analysed a potential segmentation by fish origin, being it by different countries within the EEA or by non-EEA/EEA country, of the relevant product market for the market for the production and sale of fish. More specifically, the Commission has never analysed whether Turkish farmed fish belongs to the same market as EEA farmed fish.

4.1.1.5.2. The Notifying Parties' view

(61) The Notifying Parties submit that the Commission should not analyse a segmentation by origin.⁵⁷ To support this claim, the Notifying Parties raise the following arguments:

- *Significant competition from Turkey.*⁵⁸ Turkey plays a very important role in relation to Mediterranean farmed fish. Turkey is the largest single national producer of Mediterranean farmed fish. In 2017, Turkey accounted for [...] % of production of farmed Mediterranean fish compared to [...] % for Greece, [...] % for Egypt, and [...] % for Spain. Imports from Turkey cover all regions of the EEA. This reach is also helped by the use of hubs in various locations around Europe. Indeed, Turkish suppliers make use of third party trading and processing hubs to export their products around the EEA. The main hubs are located in the Netherlands (near The Hague), Italy (near Venice), France (Boulogne-sur-mer), and the Czech Republic. Certain Turkish fish farmers have also established their own private hubs; e.g. close to Frankfurt, Germany.
- *Turkish imports into the EEA are tariff-free*, whilst imports of fish from the EEA to Turkey are not: an import duty of 30% is imposed.
- *Origin is not a key factor in a consumer choice.* Packaging used in supermarkets very often does not identify the origin of fish, or just states that the origin is “Spain, Greece or Turkey” and, in other instances, Greek and Turkish fish are even sold together.⁵⁹ Many wholesalers or processors label the fish they buy in hubs as their own “produced fish”.⁶⁰
- *Internal documents.* The Parties submitted more than 63 internal emails from Selonda and Andromeda demonstrating that Turkish suppliers exert significant competitive pressure on the Targets throughout the EEA, including Italy and the Balkans.
- In a study by Vanhonacker, Pieniak and Verbeke titled “European consumer image of farmed fish, wild fish, seabass and seabream” of 2012⁶¹, European seabass and seabream are discussed together. As to the origin of the fish, the research states: “A study in five European countries (Belgium, Denmark, Poland, Spain and the Netherlands) has illustrated the low awareness and

57 Form CO, paragraph 471 and ff.

58 Form CO, paragraphs 121-131.

59 Form CO, paragraph 471 and figures 38 and 39.

60 Form CO, paragraph 249.

61 Form CO, paragraph 472 and Annex 20 to the Form CO.

*interest in fish origin. [...]”.*⁶² According to the research: “*European consumers have a very positive image of fish products, especially with respect to its health benefits. Fish origin appeared to be of limited importance [...]”.*

- The third party economists, CRA have conducted a price correlation analysis on Turkish versus Greek exports to assess any relevance to the origin of the fish on prices.⁶³ This price correlation analysis confirms that the available price data based on trade data do show a stable pricing relationship between Greek and Turkish exports of European seabass, seabream and other Mediterranean fish to the EEA. Since that stability has survived substantial shifts in exchange rate and trading patterns over time, the finding indicates there is material competition between sales of Turkish and Greek fish within the EEA;⁶⁴
- The method of fish farming is the same across all countries;
- *There is no difference in terms of freshness.* Fish produced in Greece and Turkey ultimately reach the customer within a similar timeframe.⁶⁵ Both Greek and Turkish suppliers use the same routes, and regularly use the same service providers to transport their products to other parts of the EEA. There are also instances where Turkish suppliers are able to get their product to customers even quicker than some Greek suppliers are.
- *There is no difference in terms of quality.* All Mediterranean fish, whether Greek, Spanish or Turkish, is being farmed in the same waters, and is largely bred using the same broodstock. There are obviously differences in quality between fish farmers but such differences do not follow national borders. There is an array of quality differences across Greece, across Turkey and across any other country and there are a lot of similarities in quality between “good” Greek and Turkish suppliers, or indeed among “bad” Greek and Turkish suppliers. Furthermore, the ability of Turkish producers to compete fiercely on price is not related to quality but mainly to their lower operating costs.⁶⁶ More specifically, the following factors allow Turkish players to price lower than the Greek players:⁶⁷

(a) Production cost fish feed: On average, Turkish competitors have substantially lower fish feed costs compared to EU fish farmers: [...].

⁶² Vanhonacker, Pieniak and Verbeke, “European consumer image of farmed fish, wild fish, seabass and seabream” (Springer Science+Business Media Dordrecht) 2012, p. 1024.

⁶³ Form CO, paragraph 473 and Annex 11 to the Form CO.

⁶⁴ This analysis shows that the available price data based on trade data do show a stable pricing relationship between Greek and Turkish exports of European seabass, gilthead seabream and other Mediterranean fish to the EEA. Since that stability has survived substantial shifts in exchange rate and trading patterns over time, that finding indicates there is material competition between sales of Turkish and Greek fish within the EEA and hence Mediterranean fish from both Turkey and Greece are part of a single product market.

⁶⁵ Form CO, paragraph 470 and Parties’ additional submission to SoP meeting dated 21 January 2019.

⁶⁶ Form CO, paragraphs 128-129 and Parties’ additional submission to SoP meeting dated 21 January 2019.

⁶⁷ Form CO, paragraphs 121-131.

(b) Rules on fish feed composition: There are differences between the composition of fish feed in Turkey compared to the EU and Greece. In Turkey (contrary to in the EU), companies are legally allowed to use products/ingredients of all land animals.

(c) Licensing system: Both Greece and Turkey have licensing systems, but the licensing process in Turkey is significantly less burdensome.

(d) Operating costs: Operating costs of Turkish fish farms are lower than in the EEA as raw materials, transport costs and labour costs are cheaper in Turkey

- *Market developments.*⁶⁸ During the period 2008-2017 Turkish sales into the EEA have increased substantially. This also includes countries such as Italy, which is the largest importer of Turkish fish after the Netherlands and before the UK. Substantial volumes of Turkish fish are being imported into Greece.

4.1.1.5.3. The Commission's assessment

(a) *Market investigation results*

(62) In the following section, and in light of the market investigation results, the Commission will demonstrate that Turkish farmed fish and EEA-farmed/Greek Mediterranean farmed fish form part of the same relevant product market.

(63) In particular, customers and competitors consider, in general, Turkish fish and Greek fish as alternatives, which is also recognised in the Parties' internal documents. However, the Commission has also found that (i) the competitive constraint exerted by Turkish Mediterranean farmed fish appears to vary from one EEA country to the other and (ii) that it cannot be excluded that this constraint will weaken significantly across the EEA in the near future. First, customers (and therefore consumers) in South East Europe, e.g. in Greece and Italy (the latter being by far the most important market in the EEA for Mediterranean farmed fish) attach strong importance to the origin of the fish they purchase. Secondly, it cannot be excluded that Turkish Mediterranean farmed fish could face import duties in the EEA in the near future. It may be recalled in that regard that Turkish farmed fish already today has to go through sanitary inspections at the EU external border, thus incurring delivery delays which fish produced within the EEA does not. In the light of these elements, the relevance of competitive pressure from Turkish fish will be discussed further in the competitive assessment.

(64) The market investigation results showed that, with the exception of customers in South East Europe, seabream or seabass farmed in Europe (Greece, Spain, Croatia, Italy) and seabream or seabass farmed outside Europe (for example Turkey, Tunisia and Egypt) are considered as alternatives. More specifically:

- With regard to competitors, the majority of those that expressed an opinion in the market investigation consider that seabream or seabass farmed in Europe (Greece, Spain, Croatia, Italy) and seabream or seabass farmed outside Europe

⁶⁸ Figure 1, Parties' additional submission to SoP meeting dated 21 January 2019 and figures 6-10 of the Form CO.

(for example Turkey, Tunisia and Egypt) are to be considered as alternatives.⁶⁹ However, one respondent to the market investigation that considered seabream or seabass farmed outside Europe as an alternative to seabream or seabass farmed in Europe, stated that origin is very important, given that it has an impact on quality and the product's shelf life, two factors that are highly regarded by consumers. In addition, the same respondent stated that farming standards and rules in Europe are higher. This as well has an impact on quality and better traceability. Moreover, the same respondent stressed that there are differences even within European farmed fish. For example, French farmed fish is preferred in France and Spanish farmed fish is preferred in Spain. Most importantly, the same respondent draws the attention on the fact that over the last years, Turkish producers have priced their fish below production cost and EEA producers' price. Therefore, Turkish fish would be at the bottom of the value scale in e.g. Spain, Portugal and France and retailers have been cautious and sourcing within the EEA at large.⁷⁰

- With regard to customers in South West Europe and Northern Europe, the majority of those customers that expressed an opinion in the market investigation consider that seabream or seabass farmed in Europe (Greece, Spain, Croatia, Italy) and seabream or seabass farmed outside Europe (for example Turkey, Tunisia and Egypt) are to be considered as alternatives.⁷¹ One customer in South West Europe stated that *“the seabream/seabass farmed in Turkey is considered as the same quality as the seabream/seabass farmed in Europe and take the two origins as alternatives. Nevertheless [...] the seabream/seabass farmed in Tunisia and Egypt are perceived as lower quality and the final consumer do not take these seabreams/seabass as alternatives for the European seabream/seabass”*.⁷²
- However, with regard to customers in South East Europe, the majority of these customers that expressed an opinion in the market investigation consider that seabream or seabass farmed in Europe (Greece, Spain, Croatia, Italy) and seabream or seabass farmed outside Europe (for example Turkey, Tunisia and Egypt) are to be considered as different products fulfilling different needs.⁷³ One customer stated that *“in our opinion they have to be considered commercially different products not because of being different farming species but for the different quality of the product which generally means different final selling price or different commercial demand. The farmed seabream/seabass inside Europe has to meet European guides and regulation regarding farming process and also fish harvesting process and the way they are delivered at the various sales points. The respect of such strict regulations as well as the longer distance for carry and delivery makes the out Europe product less qualitative than the into Europe product. [...]”*⁷⁴

⁶⁹ Replies to questions 15 and 16 of questionnaire to competitors.

⁷⁰ Replies to questions 15.1 and 16.1 of questionnaire to competitors.

⁷¹ Replies to questions 11 and 12 to questionnaire to customers (Q1b); replies to questions 11 and 12 to questionnaire to customers (Q1c).

⁷² Reply to question 11.1 and 12.1 to questionnaire to customers (Q1b).

⁷³ Replies to questions 11 and 12 to questionnaire to customers (Q1a).

⁷⁴ Reply to question 11.1 and 12.1 to questionnaire to customers (Q1a).

- (65) Given that seabream or seabass farmed in Greece is, geographically speaking, close to Turkey and that for this reason farming conditions or the quality of water might be similar, the Commission investigated whether seabream or seabass farmed in Greece and seabream or seabass farmed in Turkey form part of the same market. The market investigation results showed that, with exception of customers in South East Europe, the majority of those that expressed an opinion in the market investigation consider that both are to be considered as alternatives. More specifically:
- With regard to competitors, the majority of those that expressed an opinion in the market investigation consider that seabream or seabass farmed in Greece and seabream or seabass farmed in Turkey are alternatives.⁷⁵ However, one competitor who considers them as alternatives stated that *“they considered as alternatives because they are fulfilling completely the same needs. They refer to the same markets and to the same customers. Of course most of the times Greek seabream/seabass is more expensive than Turkish sea bream and moreover customers considered Greek sea bream better quality product than Turkish seabream/seabass.”*⁷⁶
 - With regard to customers in South West Europe and in Northern Europe, the majority of those that expressed an opinion in the market investigation consider that seabream or seabass farmed in Greece and seabream or seabass farmed in Turkey are alternatives.⁷⁷
 - However, with regard to customers in South East Europe, the majority of those that expressed an opinion in the market investigation consider that seabream or seabass farmed in Greece and seabream or seabass farmed in Turkey are different products fulfilling different needs.⁷⁸ One customer stated that *“the products have sometimes different quality due to longer way of transport”*.⁷⁹
- (66) In addition, the market investigation results showed that, with the exception of customers in South East Europe, the majority of those that expressed an opinion in the market investigation indicated that with respect to Greek and Turkish farmed seabream or seabass, their customers would switch volumes from Greek seabream or seabass to Turkish seabream or seabass following a permanent price increase of 5-10% of Greek seabream or seabass. More specifically:
- With regard to competitors and customers in South West Europe and in Northern Europe, the majority of those that expressed an opinion in the market investigation indicated that with respect to Greek and Turkish farmed seabream or seabass, their customers would switch volumes from Greek seabream or seabass to Turkish seabream or seabass following a permanent price increase of 5-10% of Greek seabream or seabass.⁸⁰

⁷⁵ Replies to questions 17 and 18 to questionnaire to competitors.

⁷⁶ Replies to questions 17.1 and 18.1 to questionnaire to competitors.

⁷⁷ Replies to questions 13 and 14 to questionnaire to customers (Q1b); replies to questions 13 and 14 to questionnaire to customers (Q1a).

⁷⁸ Replies to questions 13 and 14 to questionnaire to customers (Q1a).

⁷⁹ Replies to questions 13.1 and 14.1. to questionnaire to customers (Q1a).

⁸⁰ Replies to questions 19 and 20 to questionnaire to competitors. Replies to questions 15 and 16 to questionnaire to customers (Q1b); replies to questions 15 and 16 to questionnaire to customers (Q1c).

- However, with regard to customers in South East Europe, the majority of those that expressed an opinion in the market investigation indicated that with respect to Greek and Turkish farmed seabream or seabass, their customers would not switch volumes from Greek seabream or seabass to Turkish seabream or seabass following a permanent price increase of 5-10% of Greek seabream or seabass.⁸¹ One customer stated “*the Greek seabream has better quality than Turkish. My customers are interested in the quality of the fish. [...]*”.⁸² Another customer stated that “*even if such products (Greek fish and Turkish fish) fulfil the same need, their quality is not comparable. In addition, logistics inefficiencies related to Turkish fish causes the fish to be delivered in Italy less fresh than the Greek fish*”.⁸³ Another customer stated “*Greek product has a perceived value higher than 10%*”.⁸⁴
- (67) The market investigation results also showed that the majority of competitors indicated that their customers have already switched volumes from Greek seabream or seabass to Turkish seabream and seabass and vice versa. On the other hand, with the exception of customers from Northern Europe, the majority of those that expressed an opinion in the market investigation indicated that they have not already switched volumes from Greek farmed seabream or seabass to Turkish farmed seabream or seabass. More specifically:
- With regard to competitors, the majority of those that expressed an opinion in the market investigation indicated that their customers have already switched volumes from Greek seabream or seabass to Turkish seabream and seabass and vice versa.⁸⁵ One competitor stated “*most of the times customers switch volumes from Greek to Turkish fish because of the prices (Turkish fish usually cheaper than Greek fish) and switch Turkish to Greek because of the quality (Greek fish better quality than Turkish fish)*”.⁸⁶ Another competitor flagged that wholesalers switched mainly due to the very low prices of Turkish fish caused by the current crisis in Turkey. Even if Turkish producers are subsidised, they are stressed and offer their products at very low prices to generate liquidity. If the market conditions were normal, there would have been no switch.
 - With regard to customers in Northern Europe, the majority of those that expressed an opinion in the market investigation indicated that they have already switched volumes from Greek farmed seabream or seabass to Turkish farmed seabream or seabass.⁸⁷
 - However, with regard to customers in South West Europe and in South East Europe, the majority of those that expressed an opinion in the market

⁸¹ Replies to questions 15 and 16 to questionnaire to customers (Q1a).

⁸² Reply to question 15.1 and 16.1 to questionnaire to customers (Q1a).

⁸³ Reply to question 15.1 and 16.1 to questionnaire to customers (Q1a).

⁸⁴ Reply to question 15.1 and 16.1 to questionnaire to customers (Q1a).

⁸⁵ Replies to questions 21 and 22 to questionnaire to competitors.

⁸⁶ Replies to questions 21.1 and 22.1. to questionnaire to competitors.

⁸⁷ Replies to questions 17 and 18 to questionnaire to customers (Q1c).

investigation indicated that they have not already switched volumes from Greek farmed seabream or seabass to Turkish farmed seabream or seabass.⁸⁸

(68) The market investigation results showed that the majority of competitors that expressed an opinion consider that they or their customers do not consider Greek farmed seabream or seabass as fresh as Turkish seabream or seabass. On the other hand, customers, with the exception of those from South East Europe, consider Greek farmed seabream or seabass as fresh as Turkish seabream or seabass. More specifically:

- With regard to competitors, the majority of those that expressed an opinion in the market investigation indicated that they or their customers do not consider Greek farmed seabream or seabass as fresh as Turkish seabream or seabass.⁸⁹ One competitor stated that “*Customers consider Greek sea bream Fresher than Turkish sea bream for the following reasons: (i) Geographical and logistics reasons. In most of the European countries Greek sea bream arrives to the customers one day earlier than Turkish sea bream. (ii) Greek companies can keep the cold chain better and more easily in the whole production and packaging process than Turkish sea bream. (iii) Greek companies have some restrictions regarding the fish feed they use because of the European Union That Turkish companies don't have. So they use better quality fish feed. (iv) Greek companies have more packaging stations with bigger capacity.*”⁹⁰
- With regard to customers in South West Europe and in Northern Europe, the majority of those that expressed an opinion in the market investigation indicated that they or their customers consider Greek farmed seabream or seabass as fresh as Turkish seabream or seabass.⁹¹
- However, with regard to customers in South East Europe, the majority of those that expressed an opinion in the market investigation indicated that they or their customers do not consider Greek farmed seabream or seabass as fresh as Turkish seabream or seabass.⁹²

(69) In conclusion, in light of the overall market investigation results, the Commission takes the view that Turkish farmed fish and EEA-farmed/Greek Mediterranean farmed fish form part of the same relevant product market in the EEA.

(b) *Price correlation and stationarity analysis*

(70) On 27 November 2018, the Notifying Parties submitted an economic report⁹³ prepared by Charles River Associates (CRA) supporting the view that the Mediterranean fish from both Turkey and Greece are part of a single product market.

⁸⁸ Replies to questions 17 and 18 to questionnaire to customers (Q1b); replies to questions 17 and 18 to questionnaire to customers (Q1a).

⁸⁹ Replies to questions 23 and 24 to questionnaire to competitors.

⁹⁰ Replies to question 23.1 and 24.1 to questionnaire to competitors.

⁹¹ Replies to questions 19 and 20 to questionnaire to customers (Q1b); replies to questions 19 and 20 to questionnaire to customers (Q1c).

⁹² Replies to questions 19 and 20 to questionnaire to customers (Q1a).

⁹³ Analysis of price developments of Turkish and Greek exports to the EEA.

- (71) The claim is based on (i) correlation between the export prices to the EEA of Turkish and Greek fish over the last five years and (ii) stationarity analysis of the price ratio between Turkish and Greek exports.
- (72) The econometric analysis is based on export data⁹⁴ and therefore regards wholesale prices rather than retail prices. In particular, CRA focused on whole fresh fish prices of Mediterranean fish and on whole fresh fish prices of seabream and seabass separately.
- (73) According to the Party, the economic report demonstrates that the export prices to the EEA of Mediterranean Turkish and Greek fish over the last five years are highly correlated, as well as that the price ratio between Turkish and Greek prices follows a stationary path over time. These results apply to both species, seabream and seabass.
- (74) As regards overall sales of all Mediterranean fish, CRA Study reports a correlation coefficient for prices of [...] % and a long-run stable relationship with about [...] % difference in prices. The stationarity result is confirmed by econometric evidence.
- (75) The Study also evaluates the overall sales for seabream and seabass separately. As concerns seabream, the CRA Study reports a correlation coefficient of [...] % and stationary relative price. As regards seabass, the correlation coefficient between prices is of [...] % and long-run stable pricing relationship.
- (76) According to CRA's view, the stationarity analysis is supported by two substantial shocks in the last years: (i) the shift in exchange rate between the Turkish Lira and the Euro from over 0.4 Lira per Euro in 2012 to around 0.2 Lira per Euro in 2018⁹⁵ and (ii) the almost threefold increase in Turkish exports to the EEA. Albeit these two shocks, the long-term ratio between export prices is statistically stable as shown by econometric diagnostic test, e.g. the Augmented Dickey-Fuller Test. The Party's view is that stationarity of price ratios subject to a shock in one of the two prices highlights that the pricing relationship is the result of competition between the products. The Party therefore concludes that Turkish and Greek fish are part of a single relevant product market.
- (77) In the Commission's view the Study is not entirely convincing for the following reasons (i) due to the unavailability of detailed information on whole and fillets in Greece, the study includes whole fresh fish for Turkey and fish, including fillets, from Greece, which makes a comparison imprecise; (ii) volumes that cannot be allocated to either seabass or seabream are reassigned to both species, therefore the prices of fresh fish in general and of the two species may appear more similar independent of potential changes in product mix of Turkish and Greek exports; and (iii) lack of controlling for seasonality.
- (78) The Commission acknowledges that relative high price correlations, as well as stationary price-ratios, are an indication that Turkish and Greek Mediterranean fish belong to a single product market. Nevertheless, the Commission consider that price correlation, as well as price-ratio stationarity, is a necessary but non-sufficient condition for concluding a single product market. Furthermore, CRA has not

⁹⁴ Provided by third party Kontali.

⁹⁵ Based on Eurostat data.

further addressed some technical concerns, such that the results are acknowledged but not verified. Hence, the Commission assesses the presented results of the economic report as inconclusive.

(c) *Internal documents and relevant regulatory framework*

- (79) The Commission has also examined a number of the Parties' internal documents. According to the Parties' internal documents, Turkish fish and Greek fish are recognised as alternatives.
- (80) More specifically, according to one of the Parties' internal documents,⁹⁶ [...]:
- [...].
 - [...].
 - [...].
 - [...].
 - [...].
- (81) Even though this internal document dates back to [...], it raises at least two points, which have also come up during the market investigation, that are worth mentioning, i.e. (i) the more stringent regulations under which EEA fish is produced as opposed to Turkish fish and (ii) the possible duties on Turkish fish entering the EEA market (although the tariff referred in the 2016 document was ultimately not imposed).
- (82) With regard to (i), several pieces of the Union legislation are applicable to the aquaculture sector. More specifically, aquaculture producers in the Union need to comply with a set of stringent rules, such as rules on environmental impact assessment, on water use, on discharges into the water, on animal health, on animal welfare, on food safety & hygiene, on veterinary medicines, on use of non-native species, on the top of other national/regional/local rules for granting permission to build infrastructure or to regulate the use of public space.
- (83) With regard to (ii), there are currently no duties levied by the Union on Turkish fish being imported in the EEA. On the other hand, farmed fish is not part of the customs union with Turkey and faces customs clearance and prior veterinary checks just like imports from any third country. Veterinary checks consist of documentary checks, identity checks and veterinary (food safety) inspection of each consignment. Under EU law minimum fees apply for veterinary checks, which have to be paid by the operator. For imports of farmed fish into the EU the minimum fees are as follows: (i) EUR 55 per consignment, up to six tonnes, (ii) EUR 9 per tonne, up to 46 tonnes, thereafter, (iii) EUR 420 per consignment, over 46 tonnes. The minimum fees are considerably lower for farmed fish produced in the EU.

⁹⁶ [...].

- (84) If a consignment fails veterinary clearance, the next ten consignments from the same operator are subject to intensified checks, which means higher density of inspection, laboratory testing, leading to long delays at the border and potentially a ban from importing into the Union. Since 2010, there have been 19 records of problems with Turkish fish but all concerned other fish species (mainly trout).
- (85) In addition, imports of farmed fish from Turkey have to be covered by documents from Turkish authorities showing compliance with the monitoring programme for the control of medicinal products, in particular antibiotics and growth promoters. This monitoring programme is subject to audits by the Commission.
- (86) [...].
- (87) [...].
- (88) Overall, whilst internal documents of the Parties would rather point towards a single market for Greek and Turkish fish, the veterinary and phyto-sanitarian checks carried out at the EU border, as well as the potential imposition of tariffs on Turkish fish are likely to have an impact on the ability to compete of Turkish fish, which will be analysed in the competitive assessment.

(d) *Conclusion*

- (89) In the light of the above, the Commission concludes that, for the purpose of this Decision, Turkish farmed fish exert some competition concerns on EEA farmed fish and could be included in the same relevant product market as EEA farmed fish. The extent to which competition from Turkish fish is more or less strong will be analysed in the competitive assessment, notably as regards South-East Europe, where competition from Turkish fish plays a minor role.

4.1.1.6. Conclusion: Mediterranean (adult) fish

- (90) In light of the above, the Commission considers that, for the purpose of this Decision, even though the competitive constraint exerted by Turkish Mediterranean farmed fish varies from one EEA country to the other and while it cannot be excluded that this competitive constraint will weaken in the near future, the relevant product market is the market for the production and supply of farmed seabream/seabass including Turkish seabream/seabass.^{97 98}

⁹⁷ The Notifying Parties do not consider it appropriate to distinguish the relevant market for Mediterranean farmed fish according to organic and non-organic since the Notifying Parties submit that virtually no substantial demand exists for organic Mediterranean fish. For instance, in Greece only approximately [...] % of all Mediterranean farmed fish is sold as organic fish ([...] tonnes). In addition, the Notifying Parties confirm [...]. Given that the Targets are not active in a hypothetical segment for organic Mediterranean farmed fish, for the purpose of this Decision, the Commission considers that such a segmentation is not appropriate. The Commission will therefore not assess the proposed Transaction on a segmentation by organic and non-organic seabream/seabass.

⁹⁸ The Commission considers that a market segmentation by fish size cannot be excluded. However, for the purpose of this Decision, the Commission considers that such a segmentation is not relevant for the purpose of this Decision given that the proposed Transaction would raise serious doubts regardless of the fish size that is taken into account.

4.1.2. Fry

4.1.2.1. Overview

(91) Fry or juvenile fish is the very small fish that is nurtured in hatcheries prior to reaching a size when it can be moved to large nets (or cages) in the open sea. Fry refers to the commercially tradable fry of between [1-5]g (and can occasionally be sold up to [5-15]gr). Juvenile fish of larger size is generally not traded.

4.1.2.2. The Commission's and other NCAs' practice

(92) The Commission has not previously defined a relevant product market for the production and sale of Mediterranean fry. In *Nutreco/Stoltnielsen/Marine Harvest*, the Commission considered a separate market for breeding and growing juvenile salmon (also called smolts) for sale to third parties, but ultimately it did not determine the exact product market.

(93) A number of national competition authorities have also considered relevant markets for fry.⁹⁹ The Hellenic Competition Authority, for instance, has considered a separate upstream market for the production and supply of fry of Mediterranean farmed fish.¹⁰⁰ The Hellenic Competition Authority disregarded a potential further segmentation according to species of fish within the Mediterranean fish species. It considered the production of (European) seabass and (gilthead) seabream fry as a single market. It also considered that there is considerable substitutability between the species (produced in the same locations, with a similar way of feeding and the same breeding cycle).¹⁰¹

4.1.2.3. The Notifying Parties' view

(94) The Notifying Parties consider it questionable whether there is in fact a 'market' for the production and supply of Mediterranean fry, or whether this activity is simply part of the overall value chain of production of adult fish.

(95) From a supply side perspective, the production of Mediterranean fry is carried out predominantly by vertically integrated fish farmers. The focus of the production is to ensure that the producer has sufficient pieces of fry of the right size and at the right time to be able to produce the relevant volumes of adult fish. The focus is not on the external sale of fry. This is demonstrated by the fact that, with the exception of only four suppliers that the Parties are aware of, all suppliers of fry in the EEA/Mediterranean basin are integrated fish farming companies.

(96) There are a number of reasons why a producer may produce more fry than needed for their downstream operations, including:

(97) At the time of deciding how many pieces of fry to develop, in principle a fish farmer would not yet be in a position to determine, with certainty, the volumes of fish needed for its downstream operations. Actual volumes are only agreed upon

⁹⁹ Case 16-DCC-55, decision of 22 April 2016 (trout eggs); precedent: case CM 5004 – Nutreco Holding NV/Hydro Seafood GSP Ltd, decision of 22 December 2000, paras. 2.67 – 2.69 (smolts).

¹⁰⁰ Case 619/2015, decision of 2 November 2015, para. 55 and 62; case 575/VII/2013, decision of 14 October 2013, para. 68 and 77; case 331/V/2007, decision of 23 February 2007 section III.A. no.2.

¹⁰¹ Case 575/VII/2013, decision of 14 October 2013, footnote 52.

when the fry have already been placed in the hatcheries. Once the fish farmer has better visibility on the level of demand for adult fish, it will determine whether it is nurturing the right number of pieces of fry. This could result in a fish farmer having either a surplus of fry, or a shortfall for its adult fish production.

- (98) During the nurturing process from fish egg to fry, mortality rates are between [...]. In addition, certain numbers of fry will die (or not develop) during the growing process of fry, with standard mortality rates of between [...]. (actual figures may also be higher or lower). Other external factors, such as climate-related factors, diseases or human error in the growing process could also affect the success of the fry growing process, and thus impact the survival rate referred to above.
- (99) With this in mind, fish farmers seek to sell surplus pieces of fry produced (rather than discard them), or purchase any shortfall required. [...].
- (100) From a demand side perspective, demand for external fry is volatile and decreasing significantly.
- (101) First, since the vast majority of fish farmers are vertically integrated (or in the process of becoming vertically integrated) and primarily produce their own fry, the above described unpredictability of the exact volumes of fry to produce equally leads to instability in the demand for fry. Vertically integrated fish farmers only need to acquire fry to the extent that their own production turned out insufficient.
- (102) Furthermore, in certain countries there may only be one or two customers of fry. This means that if one of the Targets sells its fry to the only customer in a country, it has a market share of 100%. However, given that the contracts for fry are non-exclusive and short-term contracts, it may well be that the following year that Target's market share falls from 100% to 0%.
- (103) Moreover, a large portion of the demand in fry comes from fish farmers who have not yet developed their own fry production facilities, but are in a transition period to vertical integration. When setting up or expanding an aquaculture business, it is common as a first step to set up a fish farm and acquire the fry needed to produce the fish. Once the farm is up and running, fish farmers typically decide to integrate their businesses by setting up their own hatcheries, as this is a simple and non-capital intensive activity. As soon as the hatchery is operational, there will be a significant drop in demand. This is for instance demonstrated by [...].
- (104) In any event, the Parties consider that the Commission's assessment should focus on the Parties' respective positions in the production and supply of adult fish as activities in the production of fry are intrinsically linked to the activities in the production and supply of adult fish.

4.1.2.4. The Commission's assessment

- (105) The market investigation has not confirmed the submission of the Notifying Parties that it is questionable whether a fry market exists. On the contrary, a number of small competitors have indicated that they source fry from external sources, notably from the Parties, and that fry is a necessary input for the production of farmed fish as not all farmed fish producers are vertically integrated upstream.

- (106) Moreover, the market investigation results show that the production and sale of fry is indeed a separate market and that, consistently with the downstream market for the production and sale of Mediterranean adult farmed fish, it should be segmented by species.
- (107) The majority of those competitors that expressed an opinion in the market investigation consider that they or their customers consider Mediterranean fry of different species as distinct products fulfilling different needs.¹⁰² In particular, one competitor states that *“they are considered as different products fulfilling different needs since the farmed fish of different species are considered as different products aiming at specific markets”*.¹⁰³ Another competitor states that *“they are considered different products because they have different demand, production cycle, availability and price”*.¹⁰⁴ Another competitor states that *“different species [...] will end up in different flesh quality whole fish as well”*.¹⁰⁵
- (108) As a consequence, the majority of competitors that expressed an opinion in the market investigation consider that they or their customers view Mediterranean fry of seabream and seabass as distinct products fulfilling different needs.¹⁰⁶ One competitor states *“seabream and seabass are different species, they have different life and production cycle, nutritional needs and on-growing techniques”*.¹⁰⁷

4.1.2.5. Conclusion

- (109) In light of the above and taking the result of the market investigation into account, the Commission considers that the market for the production and sale of fry segmented by species is indeed a relevant product market. The Commission will therefore assess the impact of Transaction on such a market.

4.1.3. Fish feed

4.1.3.1. The Commission’s and other NCAs’ practice

- (110) Fish feed refers to the feed eaten by farmed fish and excludes feed produced for pet fish, such as goldfish. Fish feed is a mixture product – that is a mix of several ingredients. The main ingredients of fish feed are fishmeal, fish oil, vegetable protein, whole wheat, vitamins, and pigments.¹⁰⁸
- (111) The Commission previously considered that fish feed, also referred to as aqua feed, was to be considered as a separate relevant market.¹⁰⁹ Fish feed is a dry feed

¹⁰² Reply to question 27 of questionnaire to competitors.

¹⁰³ Reply to question 27.1 of questionnaire to competitors.

¹⁰⁴ Reply to question 27.1 of questionnaire to competitors.

¹⁰⁵ Reply to question 27.1 of questionnaire to competitors.

¹⁰⁶ Reply to question 28 of questionnaire to competitors.

¹⁰⁷ Reply to question 28.1 of questionnaire to competitors.

¹⁰⁸ Fish feed is usually produced using a technique called “dry extrusion technology”, which results in the production of dry feed. Different ingredients are mixed together and cooked under high temperatures, high pressure and within a very short period of time. The temperatures are so high that the fish feed gets dried during the process.

¹⁰⁹ Case COMP/M.7015 – Bain Capital/Altor/Ewos, Commission decision of 1 October 2013, paras. 17 - 18; Case COMP/M.3722 – Nutreco/Stoltnielsen/Marine Harvest, Commission decision of 12 April 2005, paras. 20 – 24; Case COMP/M.2956 – CVC/PAI Europe/Provimi, Commission decision of 28 October 2002, para. 11.

produced via dry extrusion technology. The Commission previously noted that the production processes, ingredients, distribution channels and customers were very different from other types of animal feed.¹¹⁰ The Commission considered that fish feed is extruded feed formulated for particular species of farmed fish.

- (112) Within fish feed, no further distinction has been considered. The main ingredients are fishmeal, fish oil, vegetable protein, whole wheat, vitamins, and pigments. Different formulations of aqua feed are required for each species of fish and for the fish at each stage of its development but the main ingredients remain the same.¹¹¹
- (113) While in *Nutreco/Stoltnielsen/Marine Harvest*,¹¹² the existence of a distinct market of aqua feed for salmon was considered, 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.¹¹³ In a more recent decision, the Commission also considered a separate market for fish feed, but did not further segment it according to different species. Instead, the Commission considered a market for the production and supply of complete compound fish feed for salmonid (salmon and trout) farmed fish.¹¹⁴ Ultimately, the Commission left the exact definition of the market open.
- (114) A number of NCAs have also considered relevant markets for fish feed, without segmenting fish feed further according to species of fish.¹¹⁵

4.1.3.2. The Notifying Parties' view

- (115) Nireus and Selonda are active in the production of fish feed. Further, all three of the Targets purchase and use fish feed for their fish farming activities. Based on their knowledge of the market, both from a supply and demand side perspective, the Notifying Parties do not consider it appropriate to further segment the market for fish feed.¹¹⁶
- (116) The Notifying Parties submit that it would not be appropriate to further segment such a market due to the following reasons:
- (117) From a demand side, it is not appropriate to further segment this market based on species of fish, since all dry fish feed is consumed by all species of fish. In general,

¹¹⁰ Case COMP/M.3722 – Nutreco/Stoltnielsen/Marine Harvest, Commission decision of 12 April 2005, para. 22; Case COMP/M.6468 – Forfarmers/Hendrix, Commission decision of 16 March 2012, para. 27; Case COMP/M.2956 – CVC/PAI Europe/Provimi, Commission decision of 28 October 2002, para. 11.

¹¹¹ Case COMP/M.7015 – Bain Capital/Altor/Ewos, Commission decision of 1 October 2013, para. 16; Case COMP/M.3722 – Nutreco/Stoltnielsen/Marine Harvest, Commission decision of 12 April 2005, paras. 20 – 24.

¹¹² Case COMP/M.3722 – Nutreco/Stoltnielsen/Marine Harvest, Commission decision of 12 April 2005.

¹¹³ Case COMP/M.3722 – Nutreco/Stoltnielsen/Marine Harvest, Commission decision of 12 April 2005, para. 23.

¹¹⁴ Case COMP/M.7015 – Bain Capital/Altor/Ewos, Commission decision of 1 October 2013, paras. 17 - 18.

¹¹⁵ Case 619/2015, decision of 2 November 2015, paras. 53 and 62; case 575/VII/2013, decision of 14 October 2013, paras. 68 and 77; and case 331/V/2007, decision of 23 February 2007, section III.A. no.3.; case 16-DCC-55, decision of 22 April 2016; case CM 5004 – Nutreco Holding NV/Hydro Seafood GSP Ltd, decision of 22 December 2000, para. 2.79.

¹¹⁶ Form CO, paragraph 367 and ff.

customers demand the same product, irrespective of the type of fish concerned. Different fish farmers may use different feed mixtures for the same species of fish while the same feed may be fed to different species, e.g. a producer of farmed seabream may have discovered that its fish respond best to mixture A, whereas another producer of farmed seabream may consider that its fish respond best to mixture B. This means that in practice, a number of fish farmers will request customised feed mixtures from their suppliers. Moreover, both fry and adult fish in principle eat the same dry fish feed.¹¹⁷ The most important difference is the size of the pellets or granules of the fish feed.

- (118) From a supply side perspective, the Notifying Parties note that all producers of fish feed can produce fish feed for all relevant species. This is because all fish feed is produced as pellets that constitutes the same main ingredients: (i) fish meal, (ii) fish oil, (iii) vegetable protein, (iv) vitamins, and (v) pigments. Mixing or shaping fish feed does not require different assets, know-how or expertise based on the formula/mix or size/shape.

4.1.3.3. The Commission's assessment

- (119) The market investigation results show that the market for fish feed should be segmented by species and by fry versus adult fish. The majority of competitors that expressed an opinion in the market investigation consider that they or their customers view fish feed for different fish species as different products fulfilling different needs.¹¹⁸ In addition, the majority of competitors that expressed an opinion in the market investigation consider that they or their customers consider that fish feed may also be segmented by fry versus adult fish.¹¹⁹
- (120) However, given that the Transaction would not raise serious doubts under any plausible segmentation, the Commission considers that the precise market definition could be left open and will assess the Transaction on the overall market for fish feed.

4.1.3.4. Conclusion

- (121) In light of the above, the Commission concludes that the precise market definition could be left open, as the Transaction would not raise serious doubts under any plausible market segmentation. Therefore, the Commission will assess the Transaction on the overall market for fish feed.

4.1.4. *Conclusion on product market definition*

- (122) In light of the above and taking the result of the market investigation and of all the available evidence into account, the Commission will assess the impact of Transaction on the following product markets: (i) the market for the production and supply of farmed seabream/seabass including Turkish seabream/seabass at EEA and national level, (ii) the production and supply of seabream/seabass fry, (iii) fish

¹¹⁷ For completeness, the Notifying Parties also submit that in the very early stages of evolution of the fish eggs into fully grown fry, the Mediterranean fry cannot yet eat fish feed. For those early stages of development, fry are fed "live feed" – i.e. feed consisting of larvae and microorganisms usually found in the ocean/seas. None of the Parties produce or sell this kind of live feed.

¹¹⁸ Reply to question 29 to questionnaire to competitors.

¹¹⁹ Reply to question 30 to questionnaire to competitors.

feed. The extent to which Turkish Mediterranean farmed fish competes with Mediterranean farmed fish of Greek origin in the relevant Member States will be discussed in the competitive assessment.

4.2. Relevant geographic markets

4.2.1. Adult fish

4.2.1.1. The Commission's and other authorities' past practice

- (123) The Commission has not assessed the geographic scope of the markets for seabream and seabass in previous cases. In relation to salmon, the Commission previously considered that the market for the production and sale of farmed salmon was EEA-wide, mainly because salmon is transported from its farming locations (Norway, Scotland and Ireland) all across the EEA and the rest of the world and transport costs do not appear to affect customers' sourcing decisions to any appreciable extent. The Commission however did not exclude that the smoked salmon market is national in scope due to different consumer preferences and the different role played by brands at Member State level.
- (124) The Hellenic Competition Authority has considered the relevant geographic scope for the production and sale of fresh Mediterranean farmed fish as being EEA-wide as well.¹²⁰

4.2.1.2. The Notifying Parties' view

- (125) The Notifying Parties submit that the geographic scope of the market for the production and sale of farmed Mediterranean fish is at least EEA-wide in scope but is more likely to also encompass at least Turkey, if not other Mediterranean countries as well, for the following reasons. First, the vast majority of supply of bream and bass is coming from Greece and Turkey and is delivered across Europe. Second, price developments of European seabass and seabream over time follow very similar patterns across the main consuming countries. Third, the transportation costs for shipping farmed fish are relatively low and shipping farmed Mediterranean fish from for instance Greece to countries within the EEA and the Mediterranean region can be done within 48 hours at relatively low cost. Andromeda, Nireus and Selonda achieve relatively low volumes of their turnover ([...]) within Greece.¹²¹

4.2.1.3. The Commission's assessment

- (126) The market investigation in this case has provided some indications that the geographic scope of the market for the production and sale of farmed Mediterranean fish may be narrower than EEA because the competition conditions vary to some extent in different countries across the EEA. Although it is true that seabream and seabass are shipped from Greece (and Spain for Andromeda) to the various consuming countries, there are a number of factors that would support a narrower geographic scope for the geographic market. The Commission has

¹²⁰ See Case 619/2015, decision of 2 November 2015, paras. 65 – 68; case 575/VII/2013, decision of 14 October 2013, paras. 131 – 133.

¹²¹ Form CO, paragraphs 478-486.

assessed the scope of the geographic market for adult fish in particular by analysing (a) how prices are set across the EEA; (b) different consumer preferences and consumption habits leading to various market shares of players (c) the strategy of players focusing on some countries as regards marketing actions and logistics. The Commission has in particular focused its assessment on the countries where the activities of the Parties overlap to a significant extent, namely Greece, Italy, Spain, Portugal and France.

- (127) First, the market investigation has shown that prices of farmed seabream and seabass sold to wholesalers and to retailers may to some extent vary from one country to the other. Competitors have indicated during the market investigation that as selling prices depend on origin of product and logistic cost to reach destination within EEA,¹²² there may be significant variations of prices across the EEA. As explained by one competitor, “[f]or whole fish there are different prices depending on the country because of logistic costs. For instance, the transportation cost from Greece to Spain or England is significantly higher than the one for Italy”.¹²³ Another competitor has explained in relation to sales to retailers: “Yes depending on the country there are differences of selling prices to retailers for the main reason of freshness and logistic cost”.¹²⁴
- (128) Customers having responded to the market investigation have in general confirmed these differences in prices between EEA countries. As explained by a Portuguese retailer “[p]rices differ from country to country, from supplier to supplier, according to local availability, and the valuation that each producer gives to his fish”.¹²⁵ A Greek customer submitted that “there are differences for example between Greece Italy purchasing product at list 0,50 euros per kilo”.¹²⁶ Another Portuguese retailer has described the process through which the price is set between the retailer and the supplier and highlighted its national dimension: “The process through fish is purchased begins with the sales operations in a given country requesting to purchase a specific volume for that country. Then the sourcing organisation goes out and requests price quotes for the specific volume requested for the specific country”.¹²⁷
- (129) The Parties have provided the Commission with transaction data on seabream and seabass sales. [...]¹²⁸. Overall, these observations do not enable the Commission to reach a firm conclusion on the scope of the geographic market.
- (130) Second, while it is correct that most producers of farmed seabream and bass sell across Europe, the consumption patterns of seabream and bass differ considerably across Europe, notably in the main consuming countries, highlighting a certain degree of differentiation across EEA countries. For example, Italy sources more than half of its seabream and seabass consumption from Greece whilst local production plays a minor role. By contrast, the majority of the seabass consumed in Spain is sourced in Spain and this is the case for a significant share (between

122 Questionnaire Q2 to competitors, questions 35 to 40.

123 Questionnaire Q2 to competitors, question 35.

124 Questionnaire Q2 to competitors, question 35.

125 Questionnaire Q1b to customers, question 26.

126 Questionnaire Q1a to customers, question 25.

127 See agreed non-confidential minutes of a call with a customer on 18 January 2019.

128 [...].

40 and 50%, depending on season) of the seabream.¹²⁹ Spain is a major exporter to Portugal and France whilst Greece accounts for the majority of exports to Italy and Turkish fish is primarily targeted to Northern Europe. These differences are also linked to the unequal familiarity with the product across Europe as explained by one competitor: “Northern countries are less familiar with Mediterranean fish and usually have a preference for processed fish (hence the dominance in the markets of Germany, northern France, and the UK of Turkish fish which can be processed more competitively than Greek fish)”.¹³⁰ Freshness is also an important factor in that regard because these differences also depend on how close to the end EEA market the fish is produced. As such, French farmed fish will be preferred in France and Spanish in Spain.

- (131) These variable consumption patterns are reflected in different market shares in the main consuming countries. For example, Andromeda has a share of [0-5]% in France for bream and bass together, but its share in Spain is [...] ([10-20]%). This is also the case for Nireus whose market share for bream and bass are [20-30]% in Greece and France but around [0-5]% in Czechia and Poland. Finally Selonda has a market share for bream and bass in Portugal ([30-40]%) which is [...] than its market share for bream and bass in Spain ([5-10]%). These discrepancies in the market shares of the main players may indicate that different competitive conditions exist across different Member States.
- (132) Third, during the market investigation the Commission found evidence that the Parties are carrying out strategies that are particularly targeted at specific countries [...]. Such targeted strategies are in the Commission’s view indicative of different conditions of competition in the countries in question, notably in relation to prices. For example, [...].¹³¹ [...] ¹³² [...] ¹³³ [...] ¹³⁴ Although these companies serve customers in the whole of Europe, they may shift their focus on some specific countries depending on business opportunities.
- (133) In conclusion, the Commission considers that, for the purposes of this Decision, it is appropriate to assess the farmed Mediterranean fish markets at both national level, given the degree of differentiation of these markets, and at a broader EEA level. In any event, the exact scope of the geographic market definition can be left open in this case because the concentration raises serious doubts under either of the alternative market definitions.

4.2.2. Fry

4.2.2.1. The Commission's and other authorities’ past practice

- (134) The Commission has not assessed in previous cases the scope of the geographic market as regards seabream fry and seabass fry. As regards salmon, in *Nutreco/Stolt Nielsen/Marine Harvest*, the Commission considered that the geographic market for smolts (which are salmon fry) was confined to areas where

129 Seabass and seabream, Monthly reports by Kontali.

130 Questionnaire Q2 to competitors, questions 34.

131 [...].

132 [...].

133 [...].

134 [...].

farmed salmon companies were active (i.e. Ireland, the United Kingdom and Norway). The Commission also found that some smolts were traded between those areas, albeit to a limited extent. However, the Commission ultimately left open the exact scope of the geographic market.¹³⁵

- (135) The Hellenic Competition Authority has considered a geographic market for fry which was at least national in scope but possibly wider. In this respect, the Hellenic Competition Authority also considered other geographic markets, which included the EEA (and possibly Turkey).¹³⁶

4.2.2.2. The Notifying Parties' view

- (136) The Notifying Parties consider that any market for the supply of Mediterranean fry should not be viewed on a national basis but would naturally comprise at least the Mediterranean area, including EEA and non-EEA countries. The Notifying Parties reach this conclusion on the basis of existing trade flows of fry in the Mediterranean basin (producers from EEA countries, including the three Targets, export fry to other non- EEA Mediterranean countries) as well as on low transportation costs.¹³⁷

4.2.2.3. The Commission's assessment

- (137) The market investigation has provided evidence that smaller fish farmers which do not have breeding and fry producing capacities are sourcing their fry from various producers located in Europe. Notably French producers such as Fermes Maritimes du Douhet is delivering seabream fry to Croatia, Portugal and Italy whilst Pannitica, an Italian fry producer, is active in fry supply in Spain and in Croatia. As regards the Parties, [...].¹³⁸
- (138) The market investigation has shown that non-EEA producers have not been identified as suppliers of fry for EEA farmers who do not have breeding capacity, which indicates that the geographic scope of the fry market is at most the EEA. Moreover, according to the results of the investigation, small Greek farmers are in general supplied by Greek fry producers (notably the Parties): this is almost exclusively the case for seabream, while for bass a minority of Greek farmers also procure fry from non-Greek suppliers.¹³⁹ Small Greek farmers have also submitted in the market investigation that geographic proximity is an important parameter in their choice of fry supplier.¹⁴⁰ These factors would therefore point to a narrower scope of the geographic market for fry (potentially national as regards Greece).
- (139) In conclusion, the Commission considers that, for the purposes of this Decision, it is appropriate to assess the Mediterranean fry markets at the national level, given the degree of differentiation of these markets, and at the broader EEA level. In any event, the exact scope of the geographic market definition can be left open in this

¹³⁵ Case COM/M.3722 Nutreco/Stolt Nielsen/Marine Harvest, paragraph 29.

¹³⁶ See Case 619/2015, decision of 2 November 2015, paras. 69 – 70 and 85; case 575/VII/2013, decision of 14 October 2013, paras. 135 and 199.

¹³⁷ Form CO, paragraphs 403-407.

¹³⁸ Form CO, paragraph 406.

¹³⁹ Questionnaire Q2 to competitors, questions 44.

¹⁴⁰ Questionnaire Q2 to competitors, questions 48.

case because the concentration raises serious doubts under either of the alternative market definitions.

4.2.3. *Fish feed (vertical relationships)*

- (140) The Commission has previously considered the market for aqua feed to be national, mainly because of the high transport costs, but also consider that the market for aqua feed for salmon is in a progress of being regionalised with a distinct market for the North Sea basin.¹⁴¹
- (141) National competition authorities have thus far considered national markets for different markets for dry fish feed, mainly on the basis of the low level of fish feed imports (at or below 5%). The Hellenic Competition Authority for instance has considered a national fish feed market for Greece, but left the exact definition of the market open.¹⁴² The market investigation did not provide any indication signalling the need to depart from this geographic definition.
- (142) For the purposes of the present case, the exact definition of the relevant market can be left open as the concentration does not result in any competition concerns regardless of the geographic market definition.

5. COMPETITIVE ASSESSMENT

5.1. Analytical framework

- (143) Pursuant to Article 2(2) and 2(3) of the Merger Regulation, the Commission is required to examine whether notified concentrations are to be declared compatible or incompatible with the internal market by assessing whether they would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.
- (144) In this respect, a merger may entail horizontal and/or non-horizontal effects. Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. Non-horizontal effects are those deriving from a concentration where the undertakings concerned are active in different relevant markets.
- (145) The Commission appraises horizontal effects in accordance with the guidance set out in the relevant notice, that is to say the Horizontal Merger Guidelines.¹⁴³ Additionally, the Commission appraises non-horizontal effects in accordance with

¹⁴¹ Case COMP/M.7015 – Bain Capital/Altor/Ewos, Commission decision of 1 October 2013, paras. 30 - 32; and case COMP/M.3722 – Nutreco/Stoltnielsen/Marine Harvest, Commission decision of 12 April 2005, paras. 30 – 31.

¹⁴² Case 619/2015, decision of 2 November 2015, para 73; case 575/VII/2013, decision of 14 October 2013, para. 136 – 138. However, in an earlier decision, the Hellenic Competition Commission found that the geographic scope of the market for fish feed was at least EEA-wide, see case 331/V/2007, decision of 23 February 2007, section III.B.

¹⁴³ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C 31, 05.02.2004.

the guidance set out in the relevant notice, that is to say the Non-Horizontal Merger Guidelines.¹⁴⁴

- (146) Paragraph 25 of the Horizontal Merger Guidelines distinguishes two ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects.¹⁴⁵
- (147) Under the substantive test set out in Article 2(2) and 2(3) of the Merger Regulation, mergers that do not lead to the creation or the strengthening of the dominant position of a single firm may also be incompatible with the internal market. The Merger Regulation provides that "*under certain circumstances, concentrations involving the elimination of important competitive constraints that the merging parties had exerted upon each other, as well as a reduction of competitive pressure on the remaining competitors, may, even in the absence of a likelihood of coordination between the members of the oligopoly, result in a significant impediment to effective competition*".¹⁴⁶
- (148) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant horizontal non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. That list of factors applies equally, regardless of whether a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of these factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list.¹⁴⁷
- (149) Finally, the Horizontal Merger Guidelines describe a number of factors which could counteract the harmful effects of the merger on competition, including buyer power, entry and efficiencies.
- (150) In the present case, the Parties' activities give raise to horizontally affected markets in relation to (i) the production and sale of (adult) farmed Mediterranean fish and (ii) the production and sale of Mediterranean fish fry.
- (151) As regards non-horizontal mergers, two broad types of such mergers may be distinguished: vertical mergers and conglomerate mergers.¹⁴⁸ Vertical mergers

¹⁴⁴ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Non-horizontal Merger Guidelines"), OJ C 265/6, 18.10.2008.

¹⁴⁵ In the present decision, the Commission has not found evidence that the Transaction would raise serious doubts as regards its compatibility with the internal market with respect to coordinated effects in any of the horizontally affected markets. During the market investigation, the Commission received no concerns about possible anti-competitive coordinated effects arising from the Transaction.

¹⁴⁶ Recital 25 of the Merger Regulation Similar wording is also found in paragraph 25 of the Horizontal Merger Guidelines.

¹⁴⁷ Horizontal Merger Guidelines, paragraph 26.

¹⁴⁸ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Non-Horizontal Merger Guidelines"), OJ C 265, 18.10.2008, paragraph 3.

involve companies operating at different levels of the supply chain.¹⁴⁹ Conglomerate mergers are mergers between firms that are in a relationship, which is neither horizontal (as competitors in the same relevant market) nor vertical (as suppliers or customers).¹⁵⁰

- (152) In the present case, vertically affected markets arise between the Parties's upstream activities in fry and in fish feed (only Nireus and Selonda) and their downstream operations in the production and sale of adult fish.

5.2. Horizontal assessment: Adult fish

5.2.1. *The Notifying Parties' view*

- (153) In the Notifying Parties' view, the concentration does not give rise to any significant impediment to competition in relation to farmed Mediterranean fish.

- (154) First, the Notifying Parties submit that a number of alternative fish farmers will still be active in the production of farmed Mediterranean fish after the merger, some based within the EEA and others outside it (in particular in Turkey). Second, according to the Notifying Parties, customers have significant bargaining power and can switch away easily as they are not bound by long-term contracts. Customers' buyer power vis-à-vis fish farmers arises from the specificities of the farming process and from the specificities of the resulting product.¹⁵¹ Third, the Notifying Parties submit that customers typically source from more than one supplier at any given time and can therefore switch easily between suppliers.

5.2.2. *The Commission's assessment at EEA-wide level*

5.2.2.1. Market shares and market structure

- (155) On the potentially relevant EEA-wide markets for the production and sale of farmed Mediterranean fish, the Targets' combined market share would be as shown in the Tables below.

Table 1: Volume market shares for adult farmed Mediterranean fish, all species (EEA)

| Year | Market size (T) | Andromeda | Nireus | Selonda | Combined |
|------|-----------------|-----------|----------|----------|-----------------|
| 2015 | 235 500 | [5-10]% | [10-20]% | [5-10]% | [20-30]% |
| 2016 | 255 700 | [5-10]% | [10-20]% | [10-20]% | [20-30]% |
| 2017 | 273 510 | [5-10]% | [10-20]% | [10-20]% | [20-30]% |

Source: Parties

¹⁴⁹ Non-Horizontal Merger Guidelines, paragraph 4.

¹⁵⁰ Non-Horizontal Merger Guidelines, paragraph 5.

¹⁵¹ At a certain point in time, a fish must be harvested because it would otherwise become too big to sell and too expensive to maintain. Further, once a fish is harvested it should be delivered to the customer [...].

Table 2: Volume market shares for adult farmed Mediterranean seabream (EEA)

| Year | Market size (T) | Andromeda | Nireus | Selonda | Combined |
|------|-----------------|-----------|----------|----------|-----------------|
| 2015 | 116 600 | [5-10]% | [10-20]% | [10-20]% | [20-30]% |
| 2016 | 122 390 | [0-5]% | [10-20]% | [10-20]% | [20-30]% |
| 2017 | 133 200 | [0-5]% | [10-20]% | [10-20]% | [30-40]% |

Source: Parties

Table 3: Volume market shares for adult farmed Mediterranean seabass (EEA)

| | Market size (T) | Andromeda | Nireus | Selonda | Combined |
|------|-----------------|-----------|----------|---------|-----------------|
| 2015 | 115 240 | [0-5]% | [10-20]% | [5-10]% | [20-30]% |
| 2016 | 128 400 | [0-5]% | [10-20]% | [5-10]% | [20-30]% |
| 2017 | 135 120 | [0-5]% | [10-20]% | [5-10]% | [20-30]% |

Source: Parties

5.2.2.2. Competitive assessment

- (156) While the Targets' combined market shares at EEA-wide level appear to remain relatively moderate, [20-30]% depending on the fish species, there are strong indications suggesting that such market share figures do not fully reflect the Targets' actual combined market power in the EEA and that the concentration risks giving rise to a significant reduction in competition.
- (157) First, the merged entity resulting from the concentration would be the clear market leader among suppliers of farmed Mediterranean fish in the **EEA**, with the second largest player remaining far behind, both in terms of harvested volumes and in terms of production capacity.¹⁵²The market would become significantly more concentrated than it currently is and the means of production would be to a large extent concentrated in the Targets' hands.
- (158) Second, the Commission's investigation has shown that the Targets are particularly **close competitors in a differentiated market**. The Targets indeed appear to compete more closely with each other than they do with other fish farmers located inside and especially outside the EEA. Not all remaining competitors appear to be competing equally head-to-head with the Targets. Several observations can be made based on the results of the Commission's investigation.
- (159) Firstly, the Targets are currently the three main fish farmers producing in Greece. Greece in turn is the main country of origin for Mediterranean farmed fish sold in the EEA, with the consumption of Greek farmed fish accounting for ca. [30-50]% of the total consumption for Mediterranean farmed fish in the EEA. Together, the Targets would control more than [60-70]% of the relevant Greek production capacity.

¹⁵² The Notifying Parties have not been able to provide market shares for their competitors. [...].

- (160) Secondly, when asked which competitor competes most closely with each of the Targets, the vast majority of respondents to the Commission's market investigation, regardless of their country of origin, cited one of the other two Targets as competing most closely with each Target. More specifically, Nireus was cited most and Selonda second most as closest competitor to Andromeda; Selonda most and Andromeda second most as closest competitor to Nireus; and Nireus most and Andromeda second most as closest competitor to Selonda¹⁵³.
- (161) Thirdly, competitors based outside the EEA (specifically in Turkey) appear unable to compete as effectively as the Targets do in the EEA. As discussed in paragraphs (62) through (90) on product market definition, Turkish imports face a number of factors which may diminish their ability to compete in the EEA as effectively as the Targets do. These factors include in particular the following:
- a perception among some buyers and consumers, in particular in southern countries of the EEA, that fish farmed in Turkey is of lower quality and/or freshness;
 - the loss of ca. 1-2 days of shelf life due to longer transportation and delays incurred through phyto-sanitarian checks performed at the EEA border upon entrance.
- (162) In addition, Turkish producers may face significant insecurity regarding their continued ability to compete, effectively or at all, in the EEA in the future. In particular, the possibility of import duties being imposed on Turkish fish may negatively impact Turkish producers to compete in the EEA going forward.
- (163) It may be stressed that if Turkish imports of Mediterranean farmed fish were to disappear in whole or in part from the EEA markets, this would considerably inflate the Targets' combined market share. In fact, without Turkish imports into the EEA markets, the Targets' current combined market share in the EEA would, based on the Parties' estimates, amount to 35-45% overall. Such market share levels suggest that absent the current levels of Turkish imports, the future of which is uncertain, the merged entity may dominate the EEA markets for farmed Mediterranean fish.
- (164) Fourthly, each of the Targets is vertically integrated upstream with their own fry production and sales of fry to third parties. Whereas some of the Targets' competitors also have integrated fry production, other do not. As the Targets themselves confirm, the competitive pressure exerted by such smaller farms which do not have breeding and fry producing capacities is more limited. In addition, as discussed above in paragraphs (221) *et seq.*, two of the Targets have particularly strong genetic programmes for Mediterranean fry.
- (165) Fifthly, the Commission has found in its investigation strong indications that the concentration risks to lead to a significant and lasting increase in the prices for farmed Mediterranean fish. In particular, most respondents to the Commission's market investigation considered that the concentration would have an effect on

¹⁵³ Replies to Questions 36-38 of Q1a, Q1b and Q1c to customers and Questions 59-61 of Q2 to competitors.

their business¹⁵⁴. Most respondents also considered that the concentration would have an effect on the price of fish and a significant number of them expressly stated that it would lead to higher prices¹⁵⁵.

- (166) In particular, one customer stated *“The companies joining together already supply most of the market. They will reach a more powerful (sic) position in the market and can dictate prices and outperform smaller competitors easier. As a result, price increases will follow”*¹⁵⁶. Another customer explained: *“With this acquisition, this will be a super group, which will control in the European Union, almost all bass and bream production, which will result in a total control of prices, leading to an imbalance of negotiation capacity”*¹⁵⁷. Yet another customer stated: *“The transaction could determine in Greece a concentration of farmed fish in the hands of only one Company and generate a generalized increase in purchase prices also in other farmers’ countries because up to now Greece has applied very aggressive prices. All this will also result in an increase in sales prices”*¹⁵⁸. One competitor identified a *“positive effect”* for its own business, *“because [the Parties] will act in the future as a single company and so they will not compete between themselves which gradually will end up in an increase of price”*¹⁵⁹.
- (167) Moreover, a number of internal documents of the Targets’ to which the Commission has had access in the context of its investigation contain statements that appear to confirm the Targets’ ability to increase prices in a lasting way.
- (168) For instance, in one document from Amerra, [...]¹⁶⁰. Another document from Amerra [...]¹⁶¹:

Figure 2 - Excerpt from an internal document

[...]

- (169) A document prepared by Mubadala [...]¹⁶².
- (170) Moreover, the Commission has not found any credible evidence that the risk of a significant loss of competition resulting from the concentration would be adequately offset by future new entries onto the market. On the contrary, when asked whether they expect new suppliers to enter the market in the near future, an overwhelming majority of respondents to the Commission’s market investigation replied that they did not expect any such entry to occur¹⁶³.

154 Replies to question 45 of Q1a, Q1b and Q1c to customers and to question 82 of Q2 to competitors.

155 Replies to question 47 of Q1a, Q1b and Q1c to customers and to question 84.3 of Q2 to competitors.

156 Reply to question 45.1 of Q1c to customers.

157 Reply to question 45.1 of Q1b to customers.

158 Reply to question 49 of Q1a to customers.

159 Reply to question 84.3 of Q2 to competitors.

160 [...].

161 [...].

162 [...].

163 Replies to question 44 of Q1a, Q1b and Q1c to customers and replies to question 81 of Q2 to competitors.

- (171) The low likelihood of future new entries is in line with the high barriers to entry in the sector. The barriers to entry are set out in some detail in an internal document prepared by Mubadala, [...]:

Figure 3 - Excerpt from an internal document

[...]

- (172) Finally, even assuming that new licences for the running of fish farms will be made available by the Greek authorities in the future in the context of the multiannual national aquaculture plan¹⁶⁴, it is likely that such licences would be attributed to a significant extent to the Targets – likely proportionately to their current share in Greek production.

5.2.3. The Commission’s assessment at national level

- (173) The Commission has also assessed the impact of the concentration at national level. Table 4 below provides market shares at national level in the affected markets in the EEA for all Mediterranean fish combined. A distinction according to the species of fish (seabream and seabass) would not bring significantly different numbers.

5.2.3.1. Market shares and market structure

- (174) This Transaction gives rise to horizontally affected markets in relation to the Targets' activities in farmed Mediterranean fish in 11 European countries.¹⁶⁵
- (175) The table below lists the countries where the effects of the concentration are likely to be more pronounced for farmed Mediterranean fish due to the combined market share of the Targets in all types of farmed Mediterranean fish or the extent of the overlap. In these countries, the Targets' combined market share ranges from [20-30]% (Germany) to [50-60]% (Portugal).

¹⁶⁴ See memorandum from the Notifying Parties “Greek Government perspective “submitted on 4 November 2018.

¹⁶⁵ In addition to the 9 countries listed in the Table below (Greece, Italy, Portugal, France, Spain, the Netherlands, Germany, Czechia and Poland), the concentration also gives rise to horizontally affected markets in Denmark (for seabass) and in Romania (for seabream). In Austria, Latvia, Luxembourg and Slovakia, only one of the merging parties is active with a market share above 20%.

Table 4: National volume market shares for adult farmed Mediterranean fish (2017)

| | Market size in tonnes | Andromeda | Nireus | Selonda | Combined |
|------------------------|------------------------------|------------------|---------------|----------------|-----------------|
| Greece | 27 620 | [5-10]% | [20-30]% | [10-20]% | [40-50]% |
| Italy | 79 970 | [5-10]% | [5-10]% | [10-20]% | [20-30]% |
| Portugal | 18 470 | [5-10]% | [10-20]% | [30-40]% | [50-60]% |
| France | 27 510 | [0-5]% | [20-30]% | [5-10]% | [30-40]% |
| Spain | 52 390 | [10-20]% | [5-10]% | [5-10]% | [20-30]% |
| The Netherlands | 10 990 | [0-5]% | [5-10]% | [10-20]% | [20-30]% |
| Germany | 14 000 | [0-5]% | [10-20]% | [5-10]% | [20-30]% |
| Czechia | 370 | [30-40]% | [0-5]% | [0-5]% | [30-40]% |
| Poland | 650 | [0-5]% | [0-5]% | [20-30]% | [20-30]% |

Source: Notifying Parties – Note: Sales from Turkish producers are included in the market size estimates

(176) The Commission considers that, following the Transaction, the Targets would obtain a combined market share above 30% in several EEA countries, notably in Greece, Portugal, France and Czechia. The Commission has also carefully analysed the Italian market, to the extent that Italy has the highest consumption of farmed Mediterranean fish in Europe and accounts for [20-30]% of the EEA-wide market for farmed Mediterranean fish. The Commission has therefore assessed these markets more in detail.

5.2.3.1.1. Greece

(177) Based on an assessment at national level, there are strong indications suggesting that the concentration would significantly reduce competition on the market in Greece in particular.

(178) First, in Greece, country of origin of all three of the Parties, the combined market share of the Targets would be very high, at [40-50]% for all Mediterranean farmed fish. The Notifying parties have provided updated market shares in the course of the investigation after they realized that part of the Greek sales were in reality sales to Italian wholesalers directly picked up in Greece by Italian customers. On that basis, the combined market share of the Parties would remain significant in Greece around [30-40]%.

(179) Second, as discussed above in the assessment at EEA-wide level, the Targets compete closely. This is particularly the case in Greece, due to the fact that the Targets are the three main Greek players producing in Greece.

(180) Third, a number of Greek respondents to the Commission's market investigation have expressed strong concerns with the concentration, highlighting their

expectation that prices would increase as a result of the concentration¹⁶⁶. Some Greek competitors, although not apparently raising concerns with the concentration, in fact consider that it will be beneficial to their business as prices might rise in the overall market¹⁶⁷.

- (181) Fourth, as discussed above in the assessment at EEA-wide level in relation to South-East Europe, it is uncertain whether Turkish imports are and will remain able to compete as effectively as the Targets do in the EEA. This is especially true for Greece, where the Commission's market investigation has shown that consumer preferences are particularly unfavourable to Turkish imports.
- (182) Fifth, as discussed above in the assessment at EEA-wide level, no new entries can be expected to mitigate the effects of the concentration.
- (183) For these reasons, based on an assessment at national level, the Commission has serious doubts regarding the compatibility of the concentration with the internal market specifically regarding Greece because it is likely that the concentration would eliminate an important competitive constraint and result in non-coordinated effects on product and price competition.

5.2.3.1.2. Italy

- (184) Although the combined market share of the Targets appears to remain relatively moderate ([20-30]% in volume after the update of Greek sales mentioned above), the Commission's investigation has shown that the concentration nevertheless risks to significantly reduce competition on the market in Italy.
- (185) First, as discussed above in the assessment at EEA-wide level, the Targets compete closely. This is also the case in Italy, particularly in the absence of a strong local player to challenge the Targets.
- (186) Second, a number of Italian respondents to the Commission's market investigation have expressed strong concerns with the concentration. Both customers from the wholesale and from the retail channel in Italy have indicated that they expect prices to increase following the concentration¹⁶⁸.
- (187) Third, as discussed above in the assessment at EEA-wide level in relation to South-East Europe, it is uncertain whether Turkish imports are and will remain able to compete as effectively as the Targets do in the EEA. This is especially true for Italy, where the Commission's market investigation has shown that consumer preferences are particularly unfavourable to Turkish imports.
- (188) Fourth, as discussed above in the assessment at EEA-wide level, no new entries can be expected to mitigate the effects of the concentration.
- (189) For these reasons, the Commission has serious doubts regarding the compatibility of the concentration with the internal market specifically regarding Italy because it

¹⁶⁶ Replies to question 47 of Q1a to customers.

¹⁶⁷ Reply to question 84.3 of Q2 to competitors.

¹⁶⁸ Replies to question 47 of Q1a to customers.

is likely that the concentration would eliminate an important competitive constraint and result in non-coordinated effects on product and price competition.

5.2.3.1.3. Portugal

- (190) Based on an assessment at national level, there are strong indications suggesting that the concentration would significantly reduce competition on the market in Portugal in particular.
- (191) First, the combined market share of the Targets is very high ([50-60]% all species combined), above the threshold at which dominance is presumed to exist.
- (192) Second, as discussed above in the assessment at EEA-wide level, the Targets compete closely. This is also the case in Portugal, particularly in the absence of a strong local player to challenge the Targets.
- (193) Third, a number of Portuguese respondents to the Commission's market investigation have expressed strong concerns with the concentration. Customers based in Portugal have indicated that they expect prices to increase following the concentration.
- (194) Fourth, as discussed above in the assessment at EEA-wide level, no new entries can be expected to mitigate the effects of the concentration.
- (195) For these reasons, the Commission has serious doubts regarding the compatibility of the concentration with the internal market specifically regarding Portugal due to non-coordinated effects, because it is likely that the concentration would create a dominant position.

5.2.3.1.4. France

- (196) Based on an assessment at national level, there are no strong indications suggesting that the concentration would significantly reduce competition on the market in France in particular.
- (197) First, the combined market share of the Targets in France remains below 40%.
- (198) Second, although the Targets compete closely in France as well, a significant competitive constraint appears to be exerted by French and Spanish suppliers, on the one hand, and by Turkish imports, on the other. In particular, a number of French retailers do not purchase Mediterranean fish from the Parties, [...].
- (199) Third, French respondents to the Commission's market investigation did not express strong concerns regarding the competitive impact of the Transaction.
- (200) For these reasons, the Commission does not have serious doubts regarding the compatibility of the concentration with the internal market specifically regarding France.

5.2.3.1.5. Czechia

- (201) Based on an assessment at national level, there are no strong indications suggesting that the concentration would significantly reduce competition on the market in Czechia in particular.

- (202) First, the combined market share of the Targets in Czechia remains below 40%. The total fish consumption in Czechia is much lower than in the other countries analysed, and the market for Mediterranean fish in Czechia appears particularly small. Nireus and Selonda together have only sold [...] of Mediterranean fish in Czechia in 2017.
- (203) Second, although the Targets compete closely in Czechia as well, the competitive constraint exerted by Turkish imports appears to be significantly more important than in Member States such as Greece and Italy.
- (204) Third, Czech respondents to the Commission's market investigation did not express any concerns regarding the competitive impact of the Transaction.
- (205) For these reasons, the Commission does not have serious doubts regarding the compatibility of the concentration with the internal market specifically regarding Czechia.

5.2.3.1.6. Other Member States

- (206) Based on an assessment at national level, there are no strong indications suggesting that the concentration would significantly reduce competition on the market in any of the other Member States where the market may be affected (Spain, Germany, the Netherlands and Poland for farmed Mediterranean fish overall, as well as Denmark for seabass and Romania for seabream).
- (207) First, in each of these other Member States, the combined market share of the Targets remains relatively moderate, below 30%.
- (208) Second, although the Targets are close competitors in such other Member States as well, based on the results of the Commission's market investigation, the competitive constraint exerted by Turkish imports in those countries appears significantly stronger than in Member States such as Greece and Italy, notably as regards Poland, the Netherlands and Germany. As regards Spain, between 40 and 50% of the seabass and seabream consumed in Spain originates from Spanish farms, notably from competitors of the parties such as Culmarex.¹⁶⁹
- (209) Third, respondents from these countries to the Commission's market investigation did not raise strong objections against the concentration.
- (210) For these reasons, the Commission does not have serious doubts regarding the compatibility of the concentration with the internal market specifically regarding any other Member States.

5.2.3.2. Conclusion

- (211) In view of the reasons set out in paragraphs (153) through (173) above, the Commission considers that the concentration raises serious doubts as regards its compatibility with the internal market in the markets for the production and sale of farmed Mediterranean seabream and of farmed Mediterranean seabass in the EEA, and in particular in Greece and Italy and Portugal because the concentration would

¹⁶⁹ Among the Parties, only Andromeda has farms in Spain.

eliminate important competitive constraints on parties which are close competitors in the fish market.

5.2.4. *Horizontal assessment: Fry*

5.2.4.1. The Notifying Parties' view

- (212) The Notifying Parties submit that the production of fry forms part of the overall process of fish farming and should not be considered as a separate market activity. For example, [...].
- (213) Moreover, according to the Notifying Parties, many farmers that are not currently vertically integrated are expected to vertically integrate through acquisitions (of shares or assets) by larger operators. This happened with a significant number of smaller players in recent years. The Notifying Parties submit that potential competitors can easily enter the market for the production of fry, particularly since there are no significant barriers in place that could restrict competitors (or non-vertically integrated customers) from setting up their own hatcheries.
- (214) The Notifying Parties also note that fry is a relatively minor input for the production of fish (accounting for only a small proportion of total costs of fish production; between [...]%). Given that fry represents such a small cost element for the total production of fish and these multiple alternative sources, a supplier of fry has no leverage, through such a supply relationship, over a customer of fry.
- (215) Finally, for customers who currently purchase some of their fry requirements from the Targets, there will remain a number of alternative suppliers of Mediterranean fry available to fish farmers, including Greek producers of fry (namely Galaxidi, Bitsakos Hellenic and Plangton), French fry producer FMD and other suppliers in Italy, Spain, Turkey and Tunisia).

5.2.4.2. Market shares and market structure

- (216) Table 5 lists the Parties' and main competitors' market shares for the sale of Mediterranean fry on a potential EEA and Mediterranean basin market. The combined share of the Parties is [20-30]% in 2016-2017 ([30-40]% for seabream and [20-30]% for seabream) and [20-30]% in 2018.
- (217) The Notifying Parties submit that, due to the absence of reliable data sources to estimate the total market size in the EEA, they are unable to provide reliable market shares for an EEA only market (excluding the non-EEA countries in the Mediterranean basin).
- (218) The Commission notes that about 50% of the market is accounted for by two Turkey-based producers, Kilic and Gumusdoga. The Commission also notes that none of the EEA fry customers that replied to its questionnaire mentioned Turkish producers among their current or potential suppliers they would switch to in case of a supply shortage or a significant price increase of their current fry suppliers.¹⁷⁰

¹⁷⁰ See replies to Q44, Q45, Q46 and Q47 of eQ2.

- (219) If, on this basis, sales of Turkey based suppliers were removed from the total market, the Commission estimates that the total market size would drop to 188 million pieces of fry and therefore the Parties' combined market share in the EEA plus Mediterranean basin would increase to [60-70]% in 2018 ([60-70]% for seabream and [40-50]% for seabass in 2017).

Table 5: Sales shares for all fry in the EEA plus the Mediterranean basin, including Turkish imports

| | 2016 | | 2017 | | 2018 | |
|------------------|--------------|-----------------|--------------|-----------------|--------------|-----------------|
| | Pieces (mio) | Market share | Pieces (mio) | Market share | Pieces (mio) | Market share |
| Andromeda | [...] | [5-10]% | [...] | [10-20]% | [...] | [10-20]% |
| Nireus | [...] | [5-10]% | [...] | [5-10]% | [...] | [5-10]% |
| Selonda | [...] | [5-10]% | [...] | [5-10]% | [...] | [5-10]% |
| Combined | [...] | [20-30]% | [...] | [20-30]% | [...] | [20-30]% |
| Kilic | [...] | [40-50]% | [...] | [40-50]% | [...] | [50-60]% |
| Panittica | [...] | [5-10]% | [...] | [5-10]% | [...] | [5-10]% |
| FMD | [...] | [0-5]% | [...] | [0-5]% | [...] | [5-10]% |
| EMG | [...] | [0-5]% | [...] | [0-5]% | [...] | [0-5]% |
| Gumusdoga | [...] | [0-5]% | [...] | [0-5]% | [...] | [0-5]% |
| Others | [...] | [10-20]% | [...] | [10-20]% | [...] | [5-10]% |
| Total | 545 076 | 100% | 520 560 | 100% | 459 000 | 100% |

Source: Parties

Table 6: Sales shares for fry in the EEA plus the Mediterranean basin by species

| 2017 | Andromeda | Nireus | Selonda | Combined |
|-----------------|-----------|---------|---------|-----------------|
| Seabream | [10-20]% | [5-10]% | [5-10]% | [30-40]% |
| Seabass | [5-10]% | [5-10]% | [5-10]% | [20-30]% |

Source: Parties

- (220) Based on an assessment at national level, the only EEA countries where the Parties' activities overlap are Greece and Spain. The Parties' combined share for all fry would be almost [50-60]% in Greece ([40-50]% for seabass and [60-70]% for seabream) and [80-90]% in Spain ([90-100]% for seabass and [80-90]% for seabream). Even taking into account the fact that [...], the combined share of the Parties in Spain would be still above 60%.

Table 7: National sales shares for all fry

| 2017 | Andromeda | Nireus | Selonda | Combined |
|---------------|------------------|---------------|----------------|-----------------|
| Greece | [10-20]% | [10-20]% | [20-30]% | [50-60]% |
| Spain | [60-70]% | [20-30]% | [0-5]% | [80-90]% |

Source: Parties

Table 8: National sales shares for seabass

| 2017 | Andromeda | Nireus | Selonda | Combined |
|---------------|------------------|---------------|----------------|------------------|
| Greece | [0-5]% | [10-20]% | [30-40]% | [40-50]% |
| Spain | [50-60]% | [30-40]% | [0-5]% | [90-100]% |

Source: Parties

Table 9: National sales shares for seabream

| 2017 | Andromeda | Nireus | Selonda | Combined |
|---------------|------------------|---------------|----------------|-----------------|
| Greece | [20-30]% | [10-20]% | [20-30]% | [60-70]% |
| Spain | [70-80]% | [5-10]% | [0-5]% | [80-90]% |

Source: Parties

5.2.4.3. The Commission's assessment

- (221) The Commission considers that, following the Transaction, the Parties would obtain very high market shares for fry in the EEA as a whole (especially if Turkish imports are excluded from the market), and in particular in Greece and Spain. Other European players are much smaller and do not seem to be in a position to challenge the Parties' significant positions.
- (222) The market investigation overwhelmingly confirmed that the Parties are key players for the supply of fry, especially to non-vertically integrated fish farmers, and with very limited alternatives. The vast majority of the competitors who replied to the Commission's questionnaire (i) consistently listed Nireus, Andromeda and Selonda among their current or potential suppliers of fry;¹⁷¹ and (ii) clearly pointed to the lack of alternatives for Mediterranean fry in case the Parties stopped supplying them with fry or increased the prices of fry. To this point, one competitor observed that “[q]uantities of fish fry available to the market from ANDROMEDA, NIREUS and SELONDA cannot be substituted due to insufficiency of the other hatcheries to cover market needs. In the event this would happen, would be disastrous for the non-vertically integrated fish farms (without own hatcheries).”¹⁷² Another competitor noted “Because those companies produce and control very big percentage of the total production of sea bass fry. Thus they could control the

¹⁷¹ See replies to Q44 of eQ2.

¹⁷² See replies to Q47 of eQ2.

availability and price of bream fry in Greece after the merger. Moreover they are very good organised companies with good quality and sale service”.¹⁷³

- (223) The market investigation also provided evidence to rebut the Notifying Parties’ claim that competitors currently not vertically integrated can vertically integrate in the production of fry and/or that potential competitors can easily enter the market for the production of fry. In this regard, the vast majority of respondents to the market investigation confirmed that running a hatchery requires highly skilled personnel and know-how and that the production of eggs and fry is a R&D intensive business.¹⁷⁴ To this end, competitors noted that “*there are sophisticated techniques involved*”, “*It is a business that needs special skills, studies and very good know-how*”, “*In order to hatch larvae from the eggs and grow them up to 2,5gr juveniles ready for stocking them in cages, requires biological know how of the species, veterinary knowledge for their health and knowledge of engineering.*”
- (224) Regarding the R&D intensity for the production of egg and fry, one competitor observed that “[p]ressure in prices on the markets leads to a continues improvement in hatcheries in order to improve egg and fry quality using genetics-new hatching technics and test of new recipes for juvenile fish feeds. All the above must fulfill an improved protocol for a more fast growing fish which will minimize hopefully the production cost.”
- (225) Due to the above-mentioned difficulties to set up/run hatcheries, the vast majority of competitors does not see creating their own egg/fry production facility in response to a permanent price increase of 5-10%.¹⁷⁵ In this regard one competitor noted that “*THE COST OF BUILDING A HATCHERY IS TOO HIGH FOR SMALL COMPANIES*” (sic), another that “[t]his price advantage will not suffice in case of smaller fish farms due to the high investment cost for creating a marine hatchery”.¹⁷⁶
- (226) The existence of barriers to entry/development for fry is also confirmed in the Parties’ internal documents: [...].
- (227) The Parties’ strengths in relation to fry also emerge from the fact, compared to other competitors, that they have genetic programmes for fry of a high quality. In this regard, internal documents of the Parties show that the Transaction will create [...].
- (228) Because of the above views, fish farmers, especially non-integrated ones, see a serious risk that the Transaction would lead to price increases for fry. One competitor noted “*Since the three companies have the majority of production of the fries in Greece there is a possibility of price control and supply of the fries in the future.*” while another observed that transaction would lead to “*MONOPOLY OF FRY FOR THIRD PARTIES*”. Other competitors also mention that the Transaction would lead to monopoly with respect to fry.

¹⁷³ See replies to Q47 of eQ2.

¹⁷⁴ See replies to Q67 and Q68 of eQ2.

¹⁷⁵ See replies to Q74 of eQ2.

¹⁷⁶ See replies to Q74.1 of eQ2.

- (229) In conclusion, the Commission finds that the Parties are the most important competitors in the markets for the production and sale of Mediterranean fry and that the competitive constraints imposed by competitors are limited.

5.2.4.4. Conclusion

- (230) In view of the reasons set out in paragraphs (221) through (228) above, the Commission considers that the concentration raises serious doubts as regards its compatibility with the internal market in the markets for the production and sale of seabream and seabass fry at the level of the EEA as well as in Greece and Spain because the Parties have high market shares, there are few alternatives and barriers to entry are significant.

5.2.5. Vertical assessment: Fish feed

- (231) Both Selonda and Nireus produce and sell fish feed. They use the fish feed predominantly for their own downstream fish farming activities. In addition, Selonda and Nireus purchase fish feed from third parties to cover some of their needs. Andromeda, on the other hand, does not produce any fish feed and is fully dependent on third party producers for its fish feed needs.

- (232) The Transaction does not give rise to any horizontally affected markets as regards fish feed as the combined market share of Nireus and Selonda is [0-5]% in Greece and [0-5]% in the EEA.¹⁷⁷ There are no indications that these market shares would be higher if narrower segmentations are taken into account. In view of the limited market power of the merged entity as regards fish feed, there is no risk of input foreclosure either.

- (233) As regards customer foreclosure, all the Targets purchase fish feed from other suppliers in Greece, the EEA or the wide Mediterranean basin. The Notifying Parties have estimated that the total external demand for fish feed from the Targets would be roughly [10-20]% of the total Greek demand for fish feed and [10-20]% of the total EEA demand for fish feed. There is therefore an ample number of customers outside of the Parties to provide outlets for current suppliers of fish feed. Finally, no respondent to the Commission's market investigation has raised any concerns in relation to fish feed.

- (234) In light of the above, the Commission considers that the concentration does not raise serious doubts as regards its vertical impact on fish feed.

6. REMEDIES

- (235) In order to render the concentration compatible with the internal market, the Notifying Parties have modified the notified concentration by entering into the following commitments, which are annexed to this decision and form an integral part thereof.

- (236) The Notifying Parties submitted commitments on 25 January 2019. A slightly revised version of those commitments was submitted on 29 January 2019

¹⁷⁷ Form CO, paragraph 578.

(the “First Commitments”). The Commission market tested the First Commitments on 30 January 2019.

- (237) In order to address a number of issues that emerged from the market test, the Notifying Party eventually submitted a final set of commitments on 8 February 2019 (the “Final Commitments”).

6.1. General principles for the assessment of commitments

- (238) As set out in the Remedies Notice,¹⁷⁸ the following principles apply where parties to a merger choose to offer commitments.
- (239) Where a concentration raises competition concerns in that it could significantly impede effective competition, the Parties may seek to modify the concentration in order to resolve the competition concerns and thereby gain clearance of their merger.¹⁷⁹
- (240) The Commission only has power to accept commitments that are capable of rendering the concentration compatible with the internal market so that they will prevent a significant impediment to effective competition in all relevant markets where competition concerns were identified.¹⁸⁰
- (241) To that end, the commitments have to eliminate the competition concerns entirely and have to be comprehensive and effective from all points of view.¹⁸¹ In assessing whether proposed commitments are likely to eliminate its competition concerns, the Commission considers all relevant factors including *inter alia* the type, scale and scope of the commitments, judged by reference to the structure and particular characteristics of the market in which those concerns arise, including the position of the Parties and other participants on the market.¹⁸²
- (242) Moreover, commitments must be capable of being implemented effectively within a short period of time.¹⁸³ In case of implementation risks and implementation uncertainties for instance related to third party consents, it is incumbent on the Parties to remove such uncertainties.¹⁸⁴
- (243) Where a proposed concentration threatens to significantly impede effective competition, the most effective way to maintain effective competition, apart from prohibition of the concentration, is to create the conditions for the emergence of a new competitive entity or for the strengthening of existing competitors via divestitures by the merging parties.¹⁸⁵
- (244) The divested activities must consist of a viable business that, if operated by a suitable purchaser, can compete effectively with the merged entity on a lasting

¹⁷⁸ Commission’s Notice on Remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (“Remedies Notice”), OJ C 267, 22.10.2008, p. 1.

¹⁷⁹ Remedies Notice, paragraph 5.

¹⁸⁰ Remedies Notice, paragraph 9.

¹⁸¹ Remedies Notice, paragraph 9.

¹⁸² Remedies Notice, paragraph 12.

¹⁸³ Remedies Notice, paragraph 9.

¹⁸⁴ Remedies Notice, paragraph 11.

¹⁸⁵ Remedies Notice, paragraph 22.

basis and that is divested as a going concern. The business must include all the assets which contribute to its current operation or which are necessary to ensure its viability and competitiveness and all personnel currently employed or necessary to ensure the business' viability and competitiveness.¹⁸⁶

- (245) Personnel and assets which are currently shared between the business to be divested and other businesses of the Parties, but which contribute to the operation of the divested business or which are necessary to ensure its viability and competitiveness, must also be included. Otherwise, the viability and competitiveness of the business to be divested would be endangered.¹⁸⁷
- (246) Normally, a viable business is a business that can operate on a stand-alone basis, which means independently of the merging parties as regards the supply of input materials or other forms of cooperation other than during a transitory period.¹⁸⁸
- (247) The intended effect of the divestiture will only be achieved if and once the business is transferred to a suitable purchaser in whose hands it will become an active competitive force in the market. The potential of a business to attract a suitable purchaser is an important element of the Commission's assessment of the appropriateness of the proposed commitment.¹⁸⁹

6.2. Scope of the First Commitments

- (248) The First Commitments submitted by the Notifying Party have the following three main components (the "Divestment Business"):
 - a. a commitment to divest Mediterranean fish farms, as identified by the purchaser, from the farms located in [...], up to a total volume of 10,000 tonnes of Mediterranean fish (see map in paragraph (250)). [...].
 - b. a commitment to divest hatcheries, as identified by the purchaser, that produced 50 million pieces of Mediterranean fry. The hatcheries to be disposed of will contain broodstock that is of the same quality as the broodstock that would be retained by the Notifying Parties post-Transaction, enabling the Purchaser to produce equivalent quality of fry and as a result fish. [...].
 - c. a commitment to divest packaging facilities, as identified by the purchaser, that have the capacity to package 10,000 tonnes of Mediterranean fish [...].
- (249) In addition, the Divestment Business shall include at the purchaser's or purchaser's request, an agreement for the supply of Mediterranean fish feed sufficient for up to 10,000 tonnes of Mediterranean fish per annum, supplied by the Parties for a transitional period of up to two years from Closing. The terms and conditions applicable to any such agreement, shall be on the better terms of (a) existing terms and conditions under which the relevant farm or site is being supplied; and (b) market terms.

¹⁸⁶ Remedies Notice, paragraphs 23-25.

¹⁸⁷ Remedies Notice, paragraph 26.

¹⁸⁸ Remedies Notice, paragraph 32.

¹⁸⁹ Remedies Notice, paragraph 47.

(250) The map below shows in red circles the retained business and in black circles (or triangles) the potential divestment business.

[...]

(251) The Divestment Business includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:

- a. all tangible and intangible assets (including intellectual property rights);
- b. all licences, permits and authorisations issued by any governmental organisation for the benefit for the Divestment Business;
- c. all contracts, leases, commitments of the Divestment Business; and
- d. the Personnel and Key Personnel.

6.3. Assessment of the First Commitments

(252) The Commission has assessed the appropriateness of the First Commitments in the light of the above-mentioned principles underlying its commitments policy and the results of the market test carried out.

(253) As set out in the Remedies Notice, the proposed commitments, once implemented, would need to fully and unambiguously resolve the competition concerns identified by the Commission. The Commission would therefore need to be able to conclude - with the requisite degree of certainty - that the new commercial structures resulting from the proposed remedies will be sufficiently workable and lasting to ensure that all grounds for serious doubts as to the compatibility of the Transaction with the internal market will be removed.

(254) The First Commitments include the divestment of fish farms for up to a total volume of 10,000 tonnes of Mediterranean fish and of hatcheries for 50 million pieces of Mediterranean fry.

(255) As regards Mediterranean farmed fish, an overall volume of 10,000 tonnes would remove [70-80]% of the sales of the second largest player in Greece, Italy and Portugal.

(256) As regards fry, a purchaser would use about 36 million pieces of fry to produce 10,000 tonnes of fish and would sell the remaining 14 million pieces to non-integrated fish farmers as external sales. This volume of external sales would remove almost completely the overlap with Nireus in Greece¹⁹⁰, where the highest number of concerns as regards fry have been expressed in the market investigation.

(257) Respondents to the market test have overall given positive feedback regarding the suitability of the Initial Commitments to remove the serious doubts identified by the Commission, as well as with respect to the long-term viability of the Divestment Business. However, some concerns have been expressed in the market test, mainly in relation to i) the fish farmed listed for sales and their location, and

¹⁹⁰ [...].

ii) the hatcheries to be disposed of, access to the Parties' genetic programme for fry and fish feed. The Commission presents them in turn.

6.3.1. *Size and location of the farms to be divested*

- (258) As regards the fish farmed listed for sales and their location, respondents considered in general that the divested volumes could be sufficient to eliminate competition concerns but that the modalities and the choice of farms were crucial to enable a buyer to run a competitive business. One major competitor noted in that regard *“Our main concern relates to the specific makeup of the commitments, specifically that the proposed farms be located geographically in such a manner as to be cost-effective and viable. The 3 most important elements for the proposed Divestment Business to be viable and meaningful are: Size of divested entity today, Potential for growth, and Structure: viable, cost competitive”*.¹⁹¹ Another observed *“10000 tonnes maybe is ok but the problem is the choice of the farms concerning the location and capacity. [...]”*.¹⁹²
- (259) Respondents to the Commission's questionnaire pointed out that the diverse geographical locations of the fish farms to be divested and the 60/40 split between the Mainland Farms and the Island Farms may have a potentially detrimental effect on the competitiveness of the Divestment Business.¹⁹³ In this regard, one competitor observed that *“In order to be competitive production sites of 5-10,000mt pa each served by a single production management team and all other resources must be assembled.”* and *“The diverse geographical locations of the proposed production areas to be divested makes the assets to be purchased uncompetitive. The requirement for a single buyer to include a minimum of 40% of non-mainland farms makes these problems even worse.”*¹⁹⁴ Another one observed *“The purchaser will have to deal with many farms spread in different parts of Greece”*. A third one pointed out that *“for viability reasons the acquired percentage should be, if possible, in one area and in any case if it's going to be splitted in 2 areas noone of areas should be an island”*.
- (260) In particular, farms in the Islands were not seen as equally suitable to serve the export markets as farms located in the Mainland clusters due to transportation issues with the mainland.¹⁹⁵ One competitor noted *“They are not equally suited since they are farther away [...] with clear implications for the freshness of the product. It is equally important to note that many of the Island Farms may not have daily ferry boats to the mainland, and may often be cut off from ferry boat service due to bad weather. The distance to market, inability to deliver every day and inconsistency of access to export markets make Island Farms inferior to Mainland Farms in terms of serving export markets.”* Another considered *“It takes a lot of time to arrive to Piraeus port because of very bad weather conditions during wintertime”* and another *“island farms have a disadvantage in terms of logistics due to the fact that there is not an everyday connection between the island and Piraeus, Also, the trip to Piraeus is 8-12 hours long, so the island farms have to*

¹⁹¹ See replies to Q2 of the questionnaire on remedies.

¹⁹² See replies to Q4 of the questionnaire on remedies.

¹⁹³ See replies to Q10 and Q11 of the questionnaire on remedies.

¹⁹⁴ See replies to Q5 of the questionnaire on remedies.

¹⁹⁵ See replies to Q14 of the questionnaire on remedies.

harvest a day before the ones in the mainland in order to serve the same customer in EEA”.

- (261) Some respondents indicated that, in order to become an active and viable competitor of the Parties, the Divestment Business should include also fish farms in other locations, such as Western Greece and Northern Evia (see map above). In this regard, one competitor noted “[...] *there are farms in Western Greece that are necessary to create an active competitor*”¹⁹⁶, and another one “*From a qualitative perspective, farms located in Western Greece or Northern Evia are more suited to the production of sea bass and as such adding some sites from these locations would be advantageous. A viable competitor needs to be able to produce both species of farmed fish, sea bass as well as sea bream.*”¹⁹⁷
- (262) Market participants also considered that the Divestment Business should include a larger number of larger farms (or farms that are easy to aggregate to gain scale related efficiencies) to become a viable and competitive force for the production and sale of farmed fish.¹⁹⁸ One competitor observed that “[y]ou need big farms in the correct environmental conditions in order to become competitive.” and another one “*In order to be competitive and achieve economies of scale, it is important for the farms to be of adequate size (800-1000 tons) currently or to be close enough geographically so as to allow for the building of clusters.*”

6.3.2. *The hatcheries, access to the Parties’ genetic programme for fry and fish feed*

- (263) Market participants have hinted at that hatcheries capable of producing a volume of 50 million pieces of Mediterranean fry may not be enough to be used by the Divestment Business for its production of (10000 tons) of fish as well as for external sales.¹⁹⁹ In this regard, one competitor of the Parties noted that “[t]he majority of third parties’ production relies on the parties fry production. 50M fry divestment will follow the 10K fish production divestment, thus leaving the third parties to the mercy of the parties as far as availability and terms and prices.” and another one that “[t]he total juvenile production capacity proposed (50 million) is adequate to provide an alternative commercial juvenile producer and thus remove any competition concerns for the juvenile market. It may however not be sufficient to ensure that the purchaser of 10.000 tons of production proposed can be viable and vertically integrated. It is important to know the production of the proposed hatcheries as it is not clear that each of these are viable on their own”. These competitors have called for a divestment of hatcheries with a capacity up to 70-100 million pieces of Mediterranean fry and that all hatcheries located in the geographic clusters where farm divestments take place be included in the hatcheries which the purchaser(s) can choose from.²⁰⁰
- (264) Regarding the quality of the hatcheries included in the Divestment Business, respondents to the Commission’s market test consider that the included hatcheries may not be adequate to create a viable and active competitor of the Parties, in particular because some hatcheries owned by the Parties were excluded from the

¹⁹⁶ See replies to Q12 of the questionnaire on remedies.

¹⁹⁷ See replies to Q12 of the questionnaire on remedies.

¹⁹⁸ See replies to Q13 of the questionnaire on remedies.

¹⁹⁹ See replies to Q3 of the questionnaire on remedies.

²⁰⁰ See replies to Q7 and Q9 of the questionnaire on remedies.

Divestment Business. In this regard, one competitor noted: “*We believe that the proposed hatcheries are not adequate to produce the requisite number of juveniles for both a 10.000 ton production and to provide a viable competitor in the commercial juvenile market.*” and another one that “[a]ll the rest of the hatcheries that are *not* in the mentioned areas, are good hatcheries because specifically for hatcheries someone has to know the quality of environmental conditions in order to produce good quality fries.[emphasis added]”.²⁰¹

- (265) Access to the Parties’ genetic programmes for fry was considered by market participants key for the Divestment Business to become fully viable and competitive. A majority of respondents to the Commission’s questionnaire on remedies has indicated that the hatcheries included in the Divestment Business should have full access to genetic improvement programmes of the Parties to become a viable and active competitor.²⁰² This is because such programmes matter for the overall quality of fry and take long times to be developed. One participant observed that “[t]he genetic programs of the parties are long established and present a significant contribution to the quality of the brood stock, thus improving the quality of the fry produced. So, the Divestment Business should participate in these programs.” Another considered that “[t]hey need a lot of time to develop their own genetic programme, so in some years they will need some information and support about genetic programs.” a third one “It will allow the new business to start producing from a running position and be able to compete with equivalent quality.” and a fourth one “The technology achieved by Andromeda Selonda and Nireus after many years of experience allows to contain the loss of fry significantly. To make the buyer of the Divestment Business competitive, we believe that at least in the first period we must guarantee access to the genetic improvement programs of Andromeda, Nireus and Selonda”.
- (266) Finally, market participants also considered that, in order to become a viable and competitive force as regards sale of Mediterranean farmed fish the Divestment Business would benefit from a supply agreement for the supply of fish feed sufficient for up to 10,000 tonnes of Mediterranean fish per annum for a transitional period of up to two years from Closing.²⁰³ The supply of fish feed under such transitional agreement should be at cost.²⁰⁴
- (267) In light of the above, the Commission considers that, subject to improvements in the size and location of the farms to be divested and in the hatcheries, the First Commitments may be considered suitable for removing the serious doubts identified in relation to the markets for Mediterranean farmed fish and Mediterranean fry.

6.4. The final commitments

- (268) On 8 February 2019, the Notifying Parties submitted Final Commitments aimed at improving and refining the First Commitments, by upgrading the Divestment Business to ensure that the commercial structures resulting from the proposed remedies will be sufficiently workable and lasting.

²⁰¹ See replies to Q16 of the questionnaire on remedies.

²⁰² See replies to Q17 of the questionnaire on remedies.

²⁰³ See replies to Q18 of the questionnaire on remedies.

²⁰⁴ See replies to Q19 of the questionnaire on remedies.

- (269) The Final Commitments include the following improvements to the First Commitments:
- (a) Upgrading of the Divestment Business as it follows:
- (1) in the case of a single purchaser:
- (a) any one of the following combinations:
- (1) [...] to reach a total of approximately but not less than 10,000 tonnes.
- (2) [...] to reach a total of approximately but not less than 10,000 tonnes.
- (3) [...] to reach a total of approximately but not less than 10,000 tonnes.
- (4) [...] to reach a total of approximately but not less than 10,000 tonnes.
- (b) any combination of Hatcheries, as identified by the purchaser from the Hatcheries, that produced approximately but not less than 50 million pieces of Mediterranean fry. The Notifying Parties commit to ensure that the best genetic improvement programme and related know-how for each of seabass and seabream owned by the Targets at Closing, is shared with the Purchaser. The hatcheries to be disposed of will contain broodstock that is of the same quality as the broodstock that would be retained by the Notifying Parties post-Transaction as well as the data and know-how associated with the broodstock that they will be supplied with.
- (c) any combination of Packaging Facilities, as identified by the purchaser, that have the capacity to package approximately but not less than 10,000 tonnes of Mediterranean fish.
- (2) in the case of two purchasers:
- (a) any combination of Mediterranean fish farms, [...] that produced a combined volume of approximately but not less than 10,000 tonnes of Mediterranean fish;
- (b) any combination of Hatcheries, as identified by each of the two purchasers, that produced approximately but not less than 50 million pieces of Mediterranean fry. Each purchaser should acquire a Hatchery, or Hatcheries, capable of producing at least a sufficient volume of fry corresponding to the volumes of Mediterranean fish that each purchaser has agreed to purchase (applying a multiplier of approximately three thousand pieces of fry for each tonne of fish farmed). The Notifying Parties commit to ensure that the best genetic improvement programme and related knowhow for each of seabass and seabream owned by the Targets at Closing, is shared with the Purchaser. The hatcheries to be disposed of will contain broodstock that is of the same quality as the broodstock that would be retained by the Notifying Parties post-Transaction as well as the data and know-how associated with the broodstock that they will be supplied with.
- (c) any combination of the Packaging Facilities currently serving the farms to be acquired, as identified by each of the two purchasers, that has, or have, the

capacity to package the corresponding volumes of Mediterranean fish that each purchaser has agreed to purchase.

- (270) In addition, at the option of the Purchaser, the Divestment Business includes:
- (a) a supply agreement of Mediterranean fish feed for a transitional period of up to two years from Closing. The terms and conditions offered to the Purchaser shall, on average, be equivalent to those that the post-Transaction entity is able to obtain from own supply and third party supplier; and
 - (b) technical support and assistance for the Purchaser to utilise the genetic improvement programme and related know-how shared with the Purchaser and the data transferred with the broodstock for a period of up to six months from Closing.
- (271) The Assets that the Notifying Parties will agree to sell to the Purchaser shall ensure that the Divestment Business will be able to replicate at least a comparable level of competitiveness as the retained business. This will be assessed by the Commission assisted by the Monitoring Trustee on the basis of objective criteria such as ability to form clusters, ability to expand, and size of farms and cages and objective metrics to assess biological suitability. To the extent that certain farms chosen by the Purchaser do not meet such criteria, the Notifying Parties may seek approval from the Commission to exclude such farms from the assessment set out in this paragraph (271). The Commission, assisted by the Monitoring Trustee, may agree to exclude such farms from the assessment provided that the overall objectives of the Commitments are achieved by the remaining assets to be acquired by the Purchaser.

6.5. Assessment of the Final Commitments

- (272) The Final Commitments improve in several respects the First Commitments for the following reasons.
- (273) First, the Divestment Package now includes additional farms, [...] as requested by respondents to the market test. A prospective buyer has therefore more options to choose fish farms assets that can be combined with its existing assets with the view to form an efficient cluster.
- (274) Second, the Final Commitments further improve [...].
- (275) Third, the Final Commitments contain a provision stating that the Divestment Business will be able to replicate at least as comparable level of competitiveness as the retained business, including Western Greece. This will be assessed by the Commission assisted by the Monitoring Trustee on the basis of objective criteria such as ability to form clusters, ability to expand, and size of farms and cages and objective metrics to assess biological suitability.²⁰⁵ This provision ensures that the Divestment Business will not be less efficient than the retained business allowing therefore the prospective buyer to compete intensively with the post-merger entity as well as with the other competitors. Moreover, the equivalence in terms of

²⁰⁵ [...].

competitiveness between the divestment and retained businesses will be assessed by the Commission on the basis of objective criteria defined ex-ante.

- (276) Fourth, the Final Commitments include all the hatcheries owned by Selonda and Nireus [...], as requested by respondents to the market test, including high quality hatcheries [...] that were not included in the First Commitments. A prospective buyer has therefore again more options to choose which hatcheries better serve their needs in terms of populating its fish farms and/or selling Mediterranean fry. In addition, the hatcheries to be disposed of will contain broodstock that is of the same quality as the broodstock that would be retained by the Notifying Parties post-Transaction as well as the data and know-how associated with the broodstock that they will be supplied with.
- (277) The additional hatcheries included in the Divestment Business, [...], are high-quality assets and should therefore have a lower mortality rate for fry. The Commission has also assessed the fry volume included in the commitments based on the multiplier from fry to fish contained in the Parties' internal documents. For example, Andromeda in its operations manages to achieve a mortality rate of [...]%. The Commission considers that if the Divestment Business reaches over time a mortality rate comparable to the one achieved by Andromeda ([...]),²⁰⁶ 50 million pieces of fry should enable the Divestment Business to have enough fry for its operations as well as to be a credible competitor on the market for Mediterranean fry.
- (278) Fifth, the Final Commitments include a commitment for the Notifying Parties (i) to ensure that the best genetic improvement programme and related know-how for seabass and seabream owned by the targets at closing will be shared with the Purchaser; (ii) to provide the prospective buyer with technical support and assistance for the Purchaser to utilise the genetic improvement programme and related know-how shared with the Purchaser and the data transferred with the broodstock for a period of up to six months from Closing. This provision will achieve the objective for prospective buyer to replicate the Parties' strengths in fry as indeed also stated by the Notifying Parties "*This would enable the Purchaser to produce equivalent quality of fry and as a result fish*".²⁰⁷
- (279) Sixth, the supply agreement of Mediterranean fish feed will be at terms and conditions equivalent to those of the post-Transaction entity. This would ensure the continued competitiveness of the divestment business.

6.6. Conclusion on the remedies

- (280) For the reasons outlined above, the commitments entered into by the undertakings concerned are sufficient to eliminate the serious doubts as to the compatibility of the transaction with the internal market.
- (281) Pursuant to the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the

²⁰⁶ [...].

²⁰⁷ See Section B of the Final Commitments, paragraph 6 a) b. and paragraph 6 b) b.

commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.

- (282) The fulfilment of a measure that gives rise to a structural change of the market is a condition, whereas the implementing steps which are necessary to achieve that result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market and the EEA Agreement no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6) (b) of the Merger Regulation. The Undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.
- (283) The commitments in Section B, paragraph 6, and Section D paragraphs 18 and 19, of the Annex constitute conditions attached to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in the Annex constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market.

7. CONCLUSION

- (284) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in Section B, paragraph 6, and Section D paragraphs 18 and 19 of the commitments annexed to the present Decision and with the obligations contained in the other Sections of the said commitments. This Decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Margrethe VESTAGER

Member of the Commission

Annex

Case M.9110 – Amerra/Mubadala/Nireus/Selonda

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the *Merger Regulation*), AMERRA Capital Management LLC (together with its controlled funds and affiliates, *Amerra*) and MDC Industry Holding Company LLC (together with its controlled funds and affiliates, *Mubadala* and together with Amerra the *Notifying Parties*) hereby enters into the following Commitments (the *Commitments*) vis-à-vis the European Commission (the *Commission*) with a view to rendering the Notifying Parties' acquisition of joint control over Andromeda Seafood Limited (together with its controlled subsidiaries, referred to as *Andromeda*), and through Andromeda over Nireus Aquaculture S.A. (together with its controlled subsidiaries, referred to as *Nireus*) and Selonda Aquaculture S.A. (together with its controlled subsidiaries, referred to as *Selonda*) (the *Transaction*) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the *Decision*), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the *Remedies Notice*).

Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the *Consolidated Jurisdictional Notice*).

Amerra: AMERRA Capital Management LLC together with its controlled funds and affiliates.

Andromeda: Andromeda Seafood Limited together with its controlled subsidiaries.

[...].

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraphs 6 to 9 and described more in detail in the Schedule.

[...].

[...].

[...].

Closing: the transfer of the legal title to the Divestment Business to the Purchaser(s).

Closing Period: the period of [...] from the approval of the Purchaser(s) of the Purchaser(s) and the terms of sale by the Commission.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestment Business: the business or businesses as defined in Section B and the Schedule, which the Parties commit to divest.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Notifying Parties and who has/have received from the Notifying Parties the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [...] from the Effective Date.

Hatchery: one or more of the hatcheries described in the Schedule.

Hold Separate Manager: the person, or persons, appointed by the Notifying Parties for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule, including the Hold Separate Manager.

[...].

Mediterranean fish: European seabass and gilthead seabream.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Notifying Parties, and who has/have the duty to monitor the Notifying Party's compliance with the conditions and obligations attached to the Decision.

Mubadala: MDC Industry Holding Company LLC together with its controlled funds and affiliates.

Nireus: Nireus Aquaculture S.A. together with its controlled subsidiaries.

[...].

[...].

Notifying Parties: AMERRA Capital Management LLC and MDC Industry Holding Company LLC.

Packaging Facility: one or more of the designated fish packaging facilities described in the Schedule.

Parties: the Notifying Parties together with Andromeda Seafood Limited, Nireus Aquaculture S.A. and Selonda Aquaculture S.A.

Personnel: all staff currently employed by either Nireus or Selonda (as applicable) that perform functions that contribute to the operation of the Divestment Business, including staff seconded to the Divestment Business, shared personnel as well as the additional personnel listed in the Schedule.

Purchaser: the entity, or entities, approved by the Commission as acquirer, or acquirers, of the Divestment Business in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 17 of these Commitments that the Purchaser, or Purchasers, must fulfil in order to be approved by the Commission.

Schedule: the schedule to these Commitments describing in more detail the Divestment Business.

Selonda: Selonda Aquaculture S.A. together with its controlled subsidiaries.

[...].

Targets: Andromeda, Nireus and Selonda.

Transaction: the proposed acquisition of joint control by the Notifying Parties of the Targets.

Transitional Period: the period of two years commencing on the first day following the end of the Closing Period.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of [...] from the end of the First Divestiture Period.

Section B. The commitment to divest and the Divestment Business

Commitment to divest

2. In order to maintain effective competition, the Notifying Parties commit to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period to a purchaser or purchasers, and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 18 of these Commitments. To carry out the divestiture, the Notifying Parties commit to find a purchaser, or purchasers, and to enter into a final binding sale and purchase agreement(s) for the sale of the Divestment Business within the First Divestiture Period. If the Notifying Parties have not entered into such an agreement at the end of the First Divestiture Period, the Notifying Parties shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the produce described in paragraph 32 in the Trustee Divestiture Period.

3. The Transaction shall not be implemented before the Notifying Parties or the Divestiture Trustee has entered into a final binding agreement, or agreements, for the sale of the Divestment Business and the Commission has approved the purchaser, or purchasers, and the terms of sale in accordance with paragraph 18.
4. The Notifying Parties shall be deemed to have complied with this commitment if:
 - a) by the end of the Trustee Divestiture Period, the Notifying Parties have entered into a final binding sale and purchase agreement, or agreements, and the Commission approves the proposed purchaser, or purchasers, and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 18; and
 - b) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.
5. In order to maintain the structural effect of the Commitments, the Notifying Parties shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 47 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Notifying Parties showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 46 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Business

6. The Divestment Business consists of the following:
 - a) *in the case of a single purchaser:*
 - a. any one of the following combinations:
 - i. [...] to reach a total of approximately but not less than 10,000 tonnes.
 - ii. [...] to reach a total of approximately but not less than 10,000 tonnes.
 - iii. [...] to reach a total of approximately but not less than 10,000 tonnes.
 - iv. [...] to reach a total of approximately but not less than 10,000 tonnes.
 - b. any combination of Hatcheries, as identified by the purchaser from the Hatcheries, that produced approximately but not less than 50 million pieces of Mediterranean fry. The Notifying Parties commit to ensure that the best genetic improvement programme and related know-how for each of seabass and seabream owned by the Targets at Closing, is shared with the Purchaser. In addition, the hatcheries to be disposed of will contain broodstock that is of the same quality as the broodstock that would be retained by the Notifying Parties post-Transaction as well as the data and know-how associated with the broodstock that they will be supplied with (as described in the Schedule). This would enable the Purchaser to produce equivalent quality of fry and as a result fish; and

- c. any combination of Packaging Facilities, as identified by the purchaser, that have the capacity to package approximately but not less than 10,000 tonnes of Mediterranean fish.
- b) *in the case of two purchasers:*
- a. any combination of Mediterranean fish farms, [...] that produced a combined volume of approximately but not less than 10,000 tonnes of Mediterranean fish;
 - b. any combination of Hatcheries, as identified by each of the two purchasers, that produced approximately but not less than 50 million pieces of Mediterranean fry. Each purchaser should acquire a Hatchery, or Hatcheries, capable of producing at least a sufficient volume of fry corresponding to the volumes of Mediterranean fish that each purchaser has agreed to purchase (applying a multiplier of approximately three thousand pieces of fry for each tonne of fish farmed). The Notifying Parties commit to ensure that the best genetic improvement programme and related know-how for each of seabass and seabream owned by the Targets at Closing, is shared with the Purchaser. In addition, the hatcheries to be disposed of will contain broodstock that is of the same quality as the broodstock that would be retained by the Notifying Parties post-Transaction as well as the data and know-how associated with the broodstock that they will be supplied with (as described in the Schedule). This would enable the Purchaser to produce equivalent quality of fry and as a result fish; and
 - c. any combination of the Packaging Facilities currently serving the farms to be acquired, as identified by each of the two purchasers, that has, or have, the capacity to package the corresponding volumes of Mediterranean fish that each purchaser has agreed to purchase.

The volumes referred to in this paragraph 6 shall be calculated by reference to the average production volumes of fish or fry (as relevant) over the last three financial years, but not including any financial year in which the relevant farm or hatchery (as relevant) suffered an event that materially impacted the volumes of fish or fry (as relevant) produced. It is for the Notifying Parties to satisfy the Commission, with the assistance of the Monitoring Trustee, that such an event merits discounting a relevant year for the purposes of these calculations.

7. The legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more details in the Schedule, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:
- a) all tangible and intangible assets (including intellectual property rights);
 - b) all licences, permits and authorisations issued by any governmental organisation for the benefit for the Divestment Business;
 - c) all contracts, leases, commitments of the Divestment Business; and
 - d) the Personnel and Key Personnel.

8. In addition, at the option of the Purchaser, the Divestment Business includes the benefit of (i) a transitional period of up to two years from Closing, and on terms and conditions described in the Schedule, of a supply agreement of Mediterranean fish feed; and (ii) technical assistance for the Purchaser to utilise the data transferred for a period of up to six months from Closing as described in the Schedule.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

9. From the Effective Date until Closing, the Notifying Parties shall, and shall procure that Nireus and Selonda, preserve the economic viability, marketability and competitive of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular, the Notifying Parties undertake:
- a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
 - b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
 - c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to the Notifying Parties' remaining business. [...].

Hold separate obligations and ring fencing

10. The Notifying Parties commit to procure that the Divestment Business is kept separate from the business(es) that the Notifying Parties will be retaining and, after closing of the Transaction to keep the Divestment Business separate from the business that the Notifying Parties are retaining, and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the business(es) retained by the Notifying Parties have no involvement in the Divestment Business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by the Parties and do not report to any individual outside the Divestment Business.
11. Until Closing, the Notifying Parties shall assist, and shall procure that Nireus and Selonda assist, the Monitoring Trustee in ensuring that the Divestment Business is managed as a saleable entity separate from the business(es) which the Parties are retaining. Immediately after the adoption of the Decision, the Notifying Parties shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Business in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 9 c) of these Commitments.

Ring-fencing

12. The Notifying Parties shall implement, or procure to implement, all necessary measures to ensure that they do not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by the Notifying Parties before the Effective Date will be eliminated and not be used by the Notifying Parties. This includes measures vis-à-vis the Notifying Parties' appointees on the supervisory board and/or board of directors of the Divestment Business. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. The Notifying Parties may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which to the Notifying Parties is required by law.

Non-solicitation clause

13. The Notifying Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Personnel transferred with the Divestment Business for a period of three years after Closing.

Due diligence

14. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, the Notifying Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process, procure that Nireus and Selonda:
 - a. provide to potential purchasers sufficient information as regards the Divestment Business;
 - b. provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel and Key Personnel.

Reporting

15. The Notifying Parties shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). The Notifying Parties shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.
16. The Notifying Parties shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

17. In order to be approved by the Commission, a Purchaser must fulfil the following criteria:
- a) The Purchaser shall be independent of and unconnected to the Notifying Parties and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);
 - b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors; and
 - c) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.
18. The Notifying Parties will organise an open sales process and will keep the Commission and the Monitoring Trustee regularly informed about its progress, to enable the Monitoring Trustee to ensure that potentially suitable purchasers are given the opportunity to participate in the sales process on an equal and non-discriminatory way. This is to ensure that the Purchaser, post-acquisition of the Divestment Business, will be a viable and active competitive force in competition with the Parties and other competitors.
19. The Assets that the Notifying Parties will agree to sell to the Purchaser shall ensure that the Divestment Business will be able to replicate at least as comparable level of competitiveness as the retained business. This will be assessed by the Commission assisted by the Monitoring Trustee on the basis of objective criteria such as ability to form clusters, ability to expand, size of farms and cages and objective metrics to assess biological suitability. To the extent that certain farms chosen by the Purchaser do not meet such criteria, the Notifying Parties may seek approval from the Commission to exclude such farms from the assessment set out in this paragraph 19. The Commission, assisted by the Monitoring Trustee, may agree to exclude such farms from the assessment provided that the overall objectives of the Commitments are achieved by the remaining assets to be acquired by the Purchaser.
20. The final binding sale and purchase agreement(s) (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When the Notifying Parties have reached an agreement with a purchaser, they shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. The Notifying Parties must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets (in particular Hatcheries and/or Packaging Stations that may not be needed by a purchaser) or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment procedure

21. The Notifying Parties shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Parties commit not to close the Transaction before the appointment of a Monitoring Trustee.
22. If the Notifying Parties have not entered into a binding sale and purchase agreement regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by the Notifying Parties at that time or thereafter, the Notifying Parties shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
23. The Trustee shall:
 - a) at the time of appointment, be independent of the Notifying Party and their Affiliated Undertakings;
 - b) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
 - c) neither have nor become exposed to a Conflict of Interest.
24. The Trustee shall be remunerated by the Notifying Party in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by the Notifying Parties

25. No later than two weeks after the Effective Date, the Notifying Parties shall submit the names of one or more natural or legal persons whom the Notifying Parties propose to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 23 and shall include:
 - a) The full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
 - b) The outline of a work plan which describes how the Trustee intends to carry out its assigned tasks; and
 - c) An indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

26. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to

fulfil its obligations. If only one name is approved, the Notifying Parties shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Notifying Parties shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Notifying Parties

27. If all the proposed Trustees are rejected, the Notifying Parties shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 21 and 26 of these Commitments.

Trustee nominated by the Commission

28. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Notifying Parties shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

29. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Notifying Parties, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

30. The Monitoring Trustee shall:

- a) Propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;
- b) Oversee, in close co-operation with the Hold Separate Manager the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Parties with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (i) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 9 and 10 of these Commitments;
 - (ii) supervise the management of the Divestment Business as distinct and saleable entities, in accordance with paragraph 10 of these Commitments;

- (iii) with respect to Confidential Information:
 - determine all necessary measures to ensure that the Parties do not after Closing obtain any Confidential Information relating to the Divestment Business;
 - in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business
 - make sure that any Confidential Information relating to the Divestment Business obtained by the Parties before Closing is eliminated and will not be used by the Parties; and
 - decide whether such information may be disclosed to or kept by the Parties as the disclosure is reasonably necessary to allow the Parties to carry out the divestiture or as the disclosure is required by law.
 - (iv) Monitor the splitting of assets and the allocation of Personnel between the Divestment Business and the Parties or Affiliated Undertakings;
- c) Propose to the Notifying Parties such measures as the Monitoring Trustee considers necessary to ensure the Notifying Parties' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- d) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:
- (i) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and
 - (ii) potential purchasers are granted reasonable access to the Personnel;
- e) Act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;
- f) Provide to the Commission, sending the Notifying Parties a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture;
- g) Promptly report in writing to the Commission, sending the Notifying Parties a non-confidential copy at the same time, if it concludes on reasonable grounds that the Notifying Parties are failing to comply with these Commitments;
- h) Within one week after receipt of the documented proposal referred to in paragraph 18 of these Commitments, submit to the Commission, sending the Notifying Parties a non-confidential copy at the same time, a reasoned opinion as to the suitability and

independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser; and

- i) Assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

31. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

32. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, or purchasers, provided that the Commission has approved both the purchaser(s) and the final binding sale and purchase agreement(s) (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 17 and 18 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement(s) (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement(s) such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of the Parties, subject to the Notifying Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
33. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Notifying Parties

III. Duties and obligations of the Notifying Parties

34. The Notifying Parties shall provide and shall cause Nireus, Selonda and its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Parties' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Notifying Parties shall provide the Trustee upon request with copies of any document. The Parties shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
35. The Notifying Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which

are currently carried out at headquarters level. The Notifying Parties shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. The Notifying Parties shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

36. The Notifying Parties shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, the Notifying Parties shall cause the documents required for effecting the sale and the Closing to be duly executed.
37. The Notifying Parties shall indemnify the Trustee and its employees and agents (each an “*Indemnified Party*”) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Notifying Parties for, any liabilities arising out of the performance of the Trustee’s duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
38. At the expense of the Notifying Parties, the Trustee may appoint advisors (in particular for corporate finance or legal advice) and/or an industry expert (in particular to assist in verifying compliance with paragraph 18 of the Commitments), subject to the Notifying Parties’ approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should the Notifying Parties refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard the Notifying Parties. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 33 of these Commitments shall apply *mutatis mutandis*.
39. The Parties agree that the Commission may share Confidential Information proprietary to the Parties with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served the Notifying Parties during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.
40. The Notifying Parties agree that the Commission may share Confidential Information proprietary to the Parties with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.
41. The Notifying Parties agree that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.

42. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

43. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

a) The Commission may, after hearing the Trustee and the Notifying Parties, require the Notifying Parties to replace the Trustee; or

b) The Notifying Parties may, with the prior approval of the Commission, replace the Trustee.

44. If the Trustee is removed according to paragraph 43 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 21 – 28 of these Commitments.

45. Unless removed according to paragraph 43 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The review clause

46. The Commission may extend the time periods foreseen in the Commitments in response to a request from the Notifying Parties or, in appropriate cases, on its own initiative. Where the Notifying Parties request an extension of a time period, they shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Parties. Only in exceptional circumstances shall the Notifying Parties be entitled to request an extension within the last month of any period.

47. The Commission may further, in response to a reasoned request from the Notifying Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Entry into force

48. The Commitments shall take effect upon the date of adoption of the Decision.

[signatures]

SCHEDULE

1. Sales and supply contracts are not farm or site specific contracts and are therefore not part of the Divestment Business. These contracts are concluded at group level. To the extent that there are any farm or site specific sales or supply contracts, these will be transferred with the Divestment Business.
2. The Purchaser will be offered the option to transfer the following Key Personnel who are not allocated to any specific farm or site but would operate at Divestment Business level: [...]. Such Key Personnel will be existing Selonda or Nireus personnel with the requisite experience and qualifications to perform such functions.

PART A – FISH

3. In accordance with these Commitments, and as further described above, the Divestment Business shall include any combination of Mediterranean fish farms as identified by the Purchaser in accordance with paragraph 6 of the Commitments, from the fish farms located in [...], and as further described below.
4. [...].^{1,2}
5. [...].
6. [...].
7. [...].
8. [...].
9. [...].
10. [...].
11. If there is any asset or personnel which is not covered by this Schedule, but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.

¹ Note that certain site managers cover more than one farm.

² Please refer to Annex 3 to the Form RM for a map of the POAY regions. Please note that the Parties devised this map, and that the numbers allocated to the different POAY regions are not government-set numbers.

PART B – PACKAGING FACILITIES

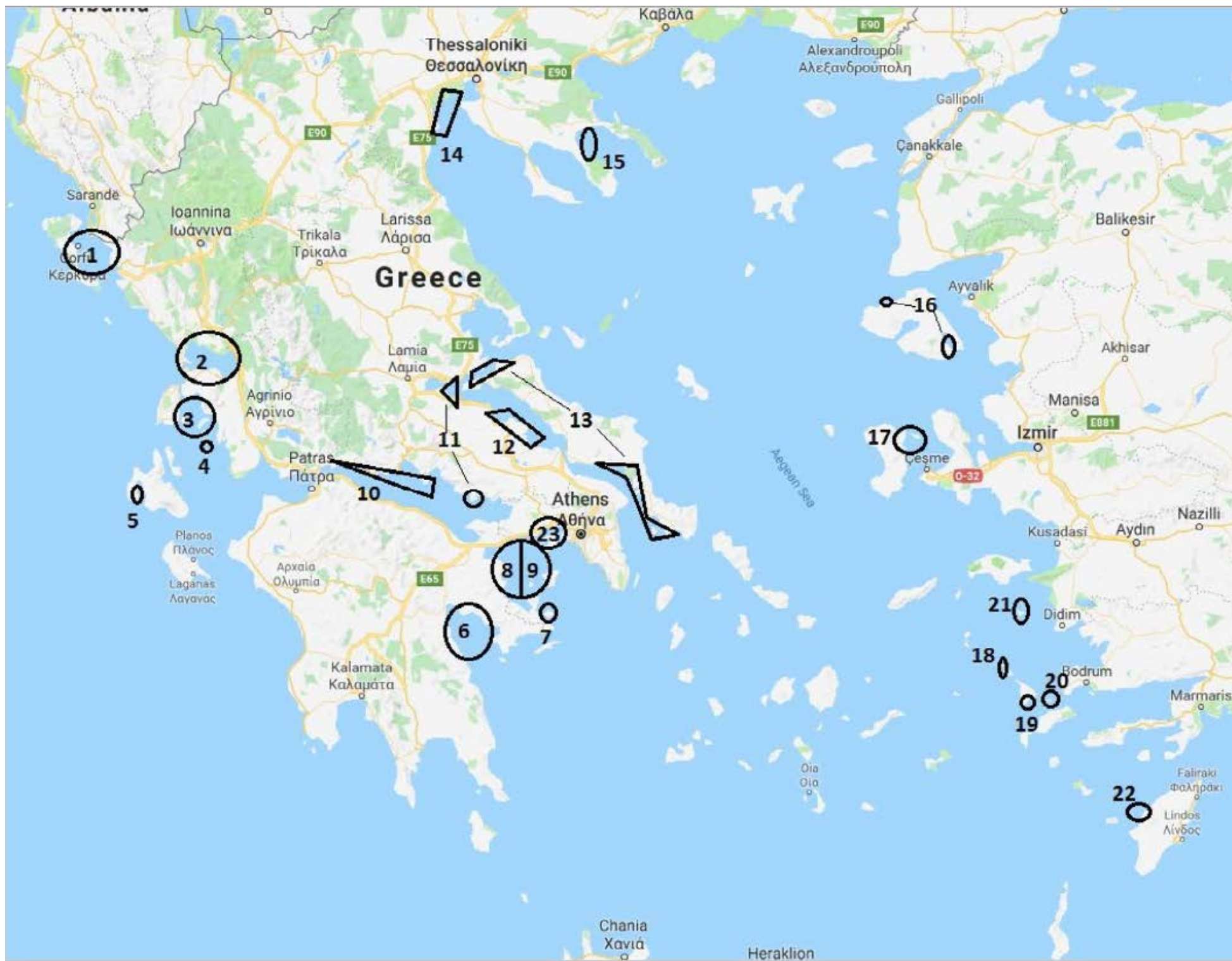
1. In accordance with these Commitments, and as further described above, the Divestment Business shall include any combination of packaging facilities as identified by the Purchaser in accordance with paragraph 6 of the Commitments, from the packaging facilities located in [...], and as further described below.
2. [...].
3. [...].
4. If there is any asset or personnel which is not covered by this schedule, but which is both used (exclusively or not) by one of the packaging facilities and necessary for the continued viability and competitiveness of that packaging facility, that asset or adequate substitute will be offered to potential purchasers.

PART C – FRY

1. In accordance with these Commitments, and as further described above, the Divestment Business shall include any combination of hatchery/hatcheries as identified by the Purchaser in accordance with paragraph 6 of the Commitments, from the hatchery/hatcheries located in [...], and as further described below.
2. [...].
3. In addition and in accordance with the Commitments, the Notifying Parties commit to ensure that the best genetic improvement programme and related know-how for each of seabass and seabream owned by the Targets at Closing, is shared with the Purchaser. In addition, the hatcheries to be disposed of will contain broodstock that is of the same quality as the broodstock that would be retained by the Notifying Parties post-Transaction as well as the data and know-how associated with the broodstock that they will be supplied with. Such data would include a dataset that would contain the following information:
 - a. An (animal) identification number(s): serial numbers to identify the individual fish.
 - b. Mating date: the date when mating took place.
 - c. Hatching date: the date on which the egg hatched into a fry.
 - d. Family identification number: the serial number of the fish' family (necessary to prevent inbreeding).
 - e. Tag date: the date on which the fish was tagged.
 - f. Harvest weight: weight of the fish at harvest.
 - g. Harvest length: length of the fish at harvest.
 - h. Sex date: the date when the fish changed sex (note that seabream and seabass are hermaphrodites).
 - i. Process date: date when the fish was processed.
 - j. Process weight: weight of the fish at processing.
 - k. Gutted weight: weight of the fish after gutting.
 - l. Fillet weight: weight of the fillet.
 - m. Fillet fat: amount of fat in the fillet.
4. In addition, and in accordance with the Commitments, the Divestment Business shall include at the Purchaser's request and for a period of up to six months from Closing, technical support and assistance for the Purchaser to utilise the genetic improvement programme and related know-how shared with the Purchaser and the data transferred with the broodstock.
[...]
5. If there is any asset or personnel which is not covered by this schedule, but which is both used (exclusively or not) by one of the hatcheries and necessary for the continued viability and competitiveness of that hatchery, that asset or adequate substitute will be offered to potential purchasers.

PART D – FISH FEED SUPPLY AGREEMENT

1. In accordance with these Commitments, and as further described above, the Divestment Business shall include at the Purchaser's request, an agreement for the supply of Mediterranean fish feed sufficient for up to 10,000 tonnes of Mediterranean fish per annum, supplied by the Parties for a transitional period of up to two years from Closing.
2. The Notifying Parties shall ensure that the terms and conditions offered to the Purchaser shall, on average, be equivalent to those that the post-Transaction entity is able to obtain from own supply and third party suppliers, taking into account costs incurred by the Targets in producing fish feed and sourcing fish feed from third parties. This assessment shall assume that the post-Transaction entity and the Purchaser shall on average have equivalent terms and conditions for the supply of fish feed, if the Purchaser exercises the option to enter into a supply agreement.



2_Legend to Map of POAY

| Number in Map | AREAS OF AQUACULTURE DEVELOPMENT / ΠΕΡΙΟΧΕΣ ΑΝΑΠΤΥΞΗΣ ΥΔΑΤΟΚΑΛΛΙΕΡΓΕΙΑΣ | |
|------------------|---|--|
| A | AREAS WITH EXTENSIVE DEVELOPMENT / ΠΕΡΙΟΧΕΣ ΙΔΙΑΙΤΕΡΑ ΑΝΑΠΤΥΓΜΕΝΕΣ | |
| 1 | A.1 | SAGIADA-KALAMAS-VALTOS RAGIOU / ΣΑΓΙΑΔΑ-ΚΑΛΑΜΑΣ-ΒΑΛΤΟΣ ΡΑΓΙΟΥ |
| 5 | A.2 | KOLPOS ARGOSTOLIΟΥ / ΚΟΛΠΟΣ ΑΡΓΟΣΤΟΛΙΟΥ |
| 3 | A.3 | WEST COAST AIT/NIAS / ΔΥΤ. ΑΚΤΕΣ ΑΙΤ/ΝΙΑΣ |
| 4 | | |
| 6 | A.4.1 | AKTES ARKADIAS / ΑΚΤΕΣ ΑΡΚΑΔΙΑΣ |
| | A.4.2 | |
| | A.5 | VOURLIAS - ORMOS KORAKIAS / ΒΟΥΡΛΙΑ- ΟΡΜΟΣ ΚΟΡΑΚΙΑΣ |
| | A.6 | NISOS PLATEIA / ΝΗΣΟΣ ΠΛΑΤΕΙΑ |
| 9 8 | A.7 | WEST SARONIKOS / ΔΥΤΙΚΟΣ ΣΑΡΩΝΙΚΟΣ |
| 7 | A.8 | POROS / ΠΟΡΟΣ |
| 6 | A.9 | METHANA-TROIZINIA / ΜΕΘΑΝΑ-ΤΡΟΙΖΗΝΙΑ |
| 9 | A.10 | SALAMINA-MEGARA / ΣΑΛΑΜΙΝΑ-ΜΕΓΑΡΑ |
| 13 | A.11 | SOUTH EVOIKOS (KAKIA SKALA-KAKODIKI-MPRAGAZAKI-FIDONISI-POUNTA-PORTO MPOUFALO ELAFI-TOURKOLIMANO-MARMARI) / ΝΟΤ.ΕΥΒΟΙΚΟΣ (ΚΑΚΙΑ ΣΚΛΑ - ΚΑΚΟΔΙΚΗ - ΜΠΡΑΓΑΖΑΚΙ - ΦΙΔΟΝΗΣΙ - ΠΟΥΝΤΑ - ΠΟΡΤΟ ΜΠΟΥΦΑΛΟ ΕΛΑΦΙ - ΤΟΥΡΚΟΛΙΜΑΝΟ -ΜΑΡΜΑΡΙ) |
| 12 | A.12 | LARIMNA-SKORPONERIA / ΛΑΡΥΜΝΑ - ΣΚΟΡΠΟΝΕΡΙΑ |
| | A.13 | ATALANTI / ΑΤΑΛΑΝΤΗ |
| 11 | A.14 | MALLIAKOS KOLPOS / ΜΑΛΛΙΑΚΟΣ ΚΟΛΠΟΣ |
| 11 | A.15 | DIAYLOS OREON / ΔΙΑΥΛΟΣ ΩΡΕΩΝ |
| 14 | A.16 | THERMAIKOS KOLPOS / ΘΕΡΜΑΙΚΟΣ ΚΟΛΠΟΣ |
| 14 | A.17 | CHALASTRA-EPANOMI / ΧΑΛΑΣΤΡΑ-ΕΠΑΝΩΜΗ |
| 17 | A.19 | LAGKADA-KARDAMILA-OINOUSES / ΛΑΓΚΑΔΑ-ΚΑΡΔΑΜΥΛΑ-ΟΙΝΟΥΣΕΣ |
| B | AREAS WITH MARGINS OF FURTHER DEVELOPMENT / ΠΕΡΙΟΧΕΣ ΜΕ ΠΕΡΙΘΩΡΙΑ ΠΕΡΑΙΤΕΡΩ ΑΝΑΠΤΥΞΗΣ | |
| | B.1.1 | SOUTHEAST COAST ITHACA / ΝΟΤΙΟΑΝΑΤΟΛΙΚΕΣ ΑΚΤΕΣ ΙΘΑΚΗΣ |
| | B.1.2 | SOUTHWEST COAST ITHACA / ΝΟΤΙΟΔΥΤΙΚΕΣ ΑΚΤΕΣ ΙΘΑΚΗΣ |
| | B.2 | SOUTHEAST COAST KEFALLONIA / ΝΟΤΙΟΑΝΑΤΟΛΙΚΕΣ ΑΚΤΕΣ ΚΕΦΑΛΟΝΙΑΣ |
| 10 | B.3 | ERATINI / ΕΡΑΤΕΙΝΗ |
| 10 | B.4 | GALAXIDI / ΓΑΛΑΞΙΔΙ |
| 10 | B.5 | ANTIKIRA / ΑΝΤΙΚΥΡΑ |
| 11 | B.6 | VOURLIA / ΒΟΥΡΛΙΑ |
| 23 | B.7 | MEGARA / ΜΕΓΑΡΑ |
| 13 | B.8 | KANDILI (NORTH EVOIKOS) / ΚΑΝΔΗΛΗ (Β. ΕΥΒΟΙΚΟΣ |
| | B.9 | STOMIO / ΣΤΟΜΙΟ |
| 15 | B.10 | AMPELOS SITHONIAS / ΑΜΠΕΛΟΣ ΣΙΘΩΝΙΑΣ |
| | B.11 | IERISSOS / ΙΕΡΙΣΣΟΣ |
| | B.12 | STRIMONIKOS KOLPOS / ΣΤΡΥΜΩΝΙΚΟΣ ΚΟΛΠΟΣ |
| | B.13 | IRAKLEITSA-NEA PERAMOS / ΗΡΑΚΛΕΙΤΣΑ - ΝΕΑ ΠΕΡΑΜΟΣ |
| | B.14 | AGIASMA-KERAMOTI-ERASMIO / ΑΓΙΑΣΜΑ - ΚΕΡΑΜΩΤΗ - ΕΡΑΣΜΙΟ |
| | B.15 | MARONIA / ΜΑΡΩΝΕΙΑ |
| | B.16 | KOLPOS KALLONIS / ΚΟΛΠΟΣ ΚΑΛΛΟΝΗΣ |

| | | |
|----|------|---|
| 16 | B.17 | ΜΠΑΛΟΥΤΣΟΣ ΣΚΑΛΟΧΩΡΙΟΥ / ΜΠΑΛΟΥΤΣΟΣ ΣΚΑΛΟΧΩΡΙΟΥ |
| 16 | B.18 | ΓΕΡΑ-ΛΕΣΒΟΥ / ΓΕΡΑ - ΛΕΣΒΟΥ |
| 18 | B.19 | ΛΕΡΟΣ ΓΛΑΡΟΝΗΣΙΑ / ΛΕΡΟΣ ΓΛΑΡΟΝΗΣΙΑ |
| 19 | B.20 | ΚΑΛΙΜΝΟΣ-ΨΕΡΙΜΟΣ / ΚΑΛΥΜΝΟΣ - ΨΕΡΙΜΟΣ |
| 20 | | |
| 19 | B.21 | ΚΑΛΙΜΝΟΣ-ΕΜΠΟΡΕΙΟΣ / ΚΑΛΥΜΝΟΣ - ΕΜΠΟΡΕΙΟΣ |
| 22 | B.22 | ΚΑΜΕΙΡΟΣ ΡΟΔΟΥ-ΧΑΛΚΙ / ΚΑΜΕΙΡΟΣ ΡΟΔΟΥ - ΧΑΛΚΗ |
| | Γ | DIFFICULT TO ACCESS AREAS WITH SIGNIFICANT POSSIBILITIES FOR MARINE AQUACULTURE DEVELOPMENT / ΔΥΣΠΡΟΣΙΤΕΣ ΠΕΡΙΟΧΕΣ ΜΕ ΣΗΜΑΝΤΙΚΕΣ ΔΥΝΑΤΟΤΗΤΕΣ ΑΝΑΠΤΥΞΗΣ ΤΩΝ ΘΑΛΑΣΣΙΩΝ ΥΔΑΤΟΚΑΛΛΙΕΡΓΕΙΩΝ |
| | Γ1 | ΔΙΑΠΟΝΤΙΟΙ ΝΗΣΟΙ / ΔΙΑΠΟΝΤΙΟΙ ΝΗΣΟΙ |
| 21 | Γ2 | ΑΓΑΘΟΝΗΣΙ / ΑΓΑΘΟΝΗΣΙ |
| | Δ | AREAS WITH SIGNIFICANT SENSITIVITY REGARDING THE NATURAL AND CULTURAL ENVIRONMENT / ΠΕΡΙΟΧΕΣ ΜΕ ΙΔΙΑΙΤΕΡΗ ΕΥΑΙΣΘΗΣΙΑ ΩΣ ΠΡΟΣ ΤΟ ΦΥΣΙΚΟ ΚΑΙ ΠΟΛΙΤΙΣΜΙΚΟ ΠΕΡΙΒΑΛΛΟΝ |
| 2 | Δ1 | ΑΜΒΡΑΚΙΚΟΣ ΚΟΛΠΟΣ / ΑΜΒΡΑΚΙΚΟΣ ΚΟΛΠΟΣ |
| | Δ2 | ΒΙΣΤΩΝΙΚΟΣ ΚΟΛΠΟΣ / ΒΙΣΤΩΝΙΚΟΣ ΚΟΛΠΟΣ |