



EUROPEAN COMMISSION  
DG Competition

***Case M.10699 - SALMAR / NTS***

Only the English text is available and authentic.

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

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Article 6(1)(b) in conjunction with Art 6(2)  
Date: 31/10/2022

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EUROPEAN COMMISSION

Brussels, 31.10.2022  
C(2022) 8013 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

SalMar ASA  
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Norway

**Subject: Case M.10699 – SALMAR / NTS  
Commission decision pursuant to Article 6(1)(b) in conjunction with  
Article 6(2) of Council Regulation No 139/2004<sup>1</sup> and Article 57 of the  
Agreement on the European Economic Area<sup>2</sup>**

Dear Sir or Madam,

- (1) On 12 September 2022, the Commission received the notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004, by which SalMar ASA, incorporated in Norway ('SalMar' or 'the Notifying Party') will acquire sole control within the meaning of Article 3(1)(b) of the Merger Regulation over NTS ASA, incorporated in Norway ('NTS' or 'the Target', together with SalMar referred to as 'the Parties').<sup>3</sup> The proposed transaction takes place by way of purchase of shares ("the Transaction").

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<sup>1</sup> 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.

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

<sup>3</sup> Publication in the Official Journal of the European Union No C 364, 23.9.2022, p. 5.

## **1. THE PARTIES**

- (2) SalMar is a salmon farming company listed on the Oslo Stock Exchange. SalMar is controlled by Kverva Industrier AS ('Kverva Industrier'), which in turn is held by Kverva AS ('Kverva'), which is controlled by Kvarv AS ('Kvarv'). SalMar's activities cover all aspects of the supply chain for the production of salmon, in particular farming, harvesting and primary processing. SalMar has farming operations in Norway, Iceland and Scotland. Of relevance to the present Transaction are, in addition to SalMar, Kvarv's subsidiaries Scale Aquaculture Group AS ('ScaleAQ'), a supplier of equipment to the aquaculture industry, as well as Insula AS ('Insula') and SalMar's subsidiary Vikenco AS ('Vikenco'), both active in the secondary processing of farmed fish, including salmon.<sup>4</sup>
- (3) NTS is an aquaculture company listed on the Oslo Stock Exchange. NTS controls SalmoNor AS ('SalmoNor'), which is active in farming and primary processing of salmon in North and central Norway, and Norwegian Royal Salmon ASA ('NRS'), a publically listed company with salmon farming operations in North and central Norway and Iceland. NTS also controls Frøy ASA ('Frøy'), which is active within the supply of service boats, sea transport vessels and wellboats used to transport fish from the farm to the harvesting facilities.<sup>5</sup>

## **2. THE TRANSACTION**

- (4) On 14 February 2022, SalMar made public its intention to launch a voluntary offer to purchase all outstanding shares in NTS. The voluntary offer was launched on 17 March with an acceptance period from 18 March to 1 April, subsequently extended to 29 April. The final results showed that SalMar had received acceptances of its offer from shareholders representing 52.69% of NTS' shares.<sup>6</sup>
- (5) The Transaction thus constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **3. UNION DIMENSION**

- (6) SalMar and NTS have a combined aggregate worldwide turnover of more than EUR 2 500 million (SalMar: EUR 2 319 million; NTS: 672 million in 2020).<sup>7</sup> In at least three Member States, the combined aggregate turnover of the Parties exceeds EUR 100 million ([...]: EUR [...]; [...]: EUR [...]; [...]: EUR [...]; [...]: EUR [...]; [...]: EUR [...]).

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<sup>4</sup> Form CO, paragraphs 4-5, 9, 25, 88, 97, 154 and 612.

<sup>5</sup> Form CO, paragraphs 6, 88 and 97.

<sup>6</sup> Form CO, paragraphs 1 and 74.

<sup>7</sup> 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). The Parties' audited figures for 2021 are not available but the Parties have confirmed that their turnover data for 2021 do not have an impact on the turnover thresholds as outlined in Article 1(3) of the Merger Regulation.

[...]). In three of the Member States mentioned above the aggregate turnover of each of the Parties exceeds EUR 25 million (SalMar EUR [...] and NTS EUR [...] in [...]; SalMar EUR [...] and NTS EUR [...] in [...]; SalMar EUR [...] and NTS EUR [...] in the [...]). The aggregate EU-wide turnover of the Parties exceeds EUR 100 million (SalMar: EUR [...]; NTS: EUR [...]). Furthermore, neither of the Parties achieves more than two-thirds of its aggregate EU-wide turnover within one and the same Member State.

- (7) The Transaction therefore has an EU dimension pursuant to Article 1(3) of the Merger Regulation.

#### **4. HORIZONTAL OVERLAPS**

- (8) SalMar and NTS are both active in the market for farming and primary processing of salmon. SalMar has farming operations in Iceland, North and South Norway and Scotland. NTS has farming operations in Iceland and North Norway.

- (9) Farming is the activity of growing the salmon from juvenile salmon (called smolt) to ready to harvest salmon in seawater. After having reached a harvestable size, the salmon is transported to primary processing plants where it is slaughtered, gutted and sometimes filleted. Afterwards, the salmon is used captively by farmers in their own secondary processing plants or is sold in primary processed form to third parties, i.e. secondary processors, traders, exporters, food-service providers or retailers. Secondary processing includes the transformation of primary processed salmon into value-added products, such as smoked salmon, salmon portions, salmon fillets and ready-made meals.<sup>8</sup>

##### **4.1. Product market definition**

###### *4.1.1. The Commission's past practice*

- (10) The Commission has previously distinguished between farmed salmon and wild salmon, as wild salmon is subject to seasonal availability and since farmed and wild salmon are perceived to be different in terms of taste, quality and price.<sup>9</sup> The Commission has also found that farming and primary processing of salmon constitute a separate product market from secondary processing of salmon.<sup>10</sup>
- (11) In addition, the Commission has previously considered that salmon farmed within the EEA is a separate product market from salmon farmed outside the EEA.<sup>11</sup> The Commission has also considered that salmon farmed in Scotland constitutes a separate product market from salmon farmed elsewhere in the EEA, mainly due

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<sup>8</sup> Form CO, paragraphs 145, 152 and 163-164.

<sup>9</sup> M.6850 – Marine Harvest/Morpol, paragraphs 27-28.

<sup>10</sup> M.6850 – Marine Harvest/Morpol, paragraph 34.

<sup>11</sup> M.6850 – Marine Harvest/Morpol, paragraph 40.

to consumer preference leading to a price premium for Scottish salmon in the market.<sup>12</sup> The Commission has not previously considered whether, within the EEA, salmon farmed in other geographies, such as Iceland, Norway or the Faroe Islands, could similarly constitute separate relevant product markets. The Commission has neither considered whether salmon farmed in different regions within Norway could constitute separate product markets.

#### 4.1.2. *The Notifying Party's view*

- (12) The Notifying Party agrees with the Commission's past practice referred to in Section 4.1.1. However, the Notifying Party submits that, unlike salmon farmed in Scotland, which constitutes a separate product market, salmon farmed in Iceland and salmon farmed in Norway do not constitute separate product markets. The Notifying Party argues that there is no genetic or physical difference between Icelandic salmon and Norwegian salmon, as Icelandic and Norwegian farmers procure salmon eggs from the same suppliers and since sea temperature and local conditions do not affect the taste, visual qualities, nutritional content or achieved price per kilogram of the farmed salmon. It also argues that there is no difference in price between Icelandic and Norwegian salmon, *inter alia* by referring to SalMar's sales of salmon. Furthermore, the Notifying Party submits that there is no customer preference for Icelandic salmon over Norwegian salmon, since such a preference would have been reflected in the price for Icelandic salmon. To that end, the Notifying Party submits *inter alia* that despite the higher transport costs for Icelandic salmon that the producers bear, the price for Icelandic salmon is not higher than that for Norwegian salmon, which shows that there is no customer preference for Icelandic salmon. Moreover, the Notifying Party submits that any customer preferences due to downstream marketing or labelling of products based on country of origin have not lead to brand awareness or reputational benefits or affected the price of the product.<sup>13</sup>
- (13) The Notifying Party further submits that salmon farmed in North Norway does not constitute a separate product market from salmon farmed in South Norway. To that end, the Notifying party argues that there is no difference in the physical condition of the product and no customer preferences for one product over the other, as well as that any differences in price have not arisen due to the geographic origin of the salmon but rather because of the specifics of the harvest profile.<sup>14</sup>

#### 4.1.3. *The Commission's assessment*

- (14) The market investigation has shown that primary processed Icelandic and Norwegian salmon constitute separate product markets. This is in line with

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<sup>12</sup> M.6850 – Marine Harvest/Morpol, paragraph 58.

<sup>13</sup> Form CO, paragraphs 174-186; The Notifying Party's letter of 27 September 2022, paragraphs 30-32 and 34-36; Form RS, Schedule 1.

<sup>14</sup> Form CO, paragraphs 187-219; The Notifying Party's letter of 27 September 2022, paragraphs 21-29.

previous decisional practice, whereby primary processed Scottish salmon was found to constitute a separate product market from primary processed Norwegian salmon. Indeed, the evidence supports that the demand-side substitutability between primary processed Icelandic salmon and primary processed Norwegian salmon is limited.

- (15) *First*, although there do not appear to be any genetic differences between Icelandic and Norwegian salmon, numerous customers and competitors have pointed out that there are exogenous factors, such as water temperature and the risk of disease, that differ between the Iceland and Norway. Some customers highlighted that this leads to differences in the quality of the salmon.<sup>15</sup> NTS’s Icelandic subsidiary has explained that due to Icelandic hydrographic conditions, fish may be kept at sea for longer periods of time without risking biological problems, and that the cold Icelandic water acts as a natural defence against sea lice. Indeed, according to NTS, there is a risk for several viral diseases and parasites for Norwegian salmon but not for Icelandic salmon.<sup>16</sup> NTS has also stated in an investor presentation that it has received customer feedback stating that “[a customer is] *willing to pay a premium for this quality*”.<sup>17</sup>
- (16) *Second*, the market investigation revealed that a majority of customers having expressed an opinion indicated that their contracts for the purchase of salmon specify that the salmon is of a specific geographic origin. Customers have also indicated that, when they have a labelling requirement, they cannot easily substitute Icelandic salmon by Norwegian salmon, for logistical reasons. One customer explained that, “*FNAS<sup>18</sup> from Iceland and Norway has different end-user preference in the market. FNAS is mainly marketed based on Country of Origin, hence Icelandic and Norwegian FNAS has different preferences in the market place.*”<sup>19</sup> On the retail market, there are numerous examples of Icelandic salmon specifically labelled as “*original Icelandic salmon*”<sup>20</sup> or even recipes specifically requiring the use of Icelandic salmon.<sup>21</sup> Hence, the market investigation suggests that, in such situations, customers may be unable to substitute Norwegian salmon for Icelandic salmon, or vice versa. Indeed, downstream labelling requirements which specify a geographic origin are quite rigid, and cannot quickly be changed. Furthermore, whilst the Notifying Party submits that labelling and marketing of products based on geographic origin do not lead to brand awareness or reputational benefits or affect the price of the product, the future sales and marketing strategies

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<sup>15</sup> Responses to questionnaire Q1 sent to customers, questions 6 and 6.1; Responses to questionnaire Q2 sent to competitors, question 8.

<sup>16</sup> Form RS, Schedule 4, page 52.

<sup>17</sup> Form RS, Schedule 4, page 32.

<sup>18</sup> FNAS refers to farmed North Atlantic salmon.

<sup>19</sup> Responses to questionnaire Q1 sent to customers, questions 5, 5.1, 7 and 9.

<sup>20</sup> Translated from the German original (“*Original Isländischer Lachs*”), see <https://shop.rewe.de/p/wechsler-s-isolaender-lachs-asc-100g/7969657>.

<sup>21</sup> See, for example, <https://www.deutschese.de/rezepte/island-lachs-mit-knaeckebrotkruste.html>.

of NTS's Icelandic subsidiary are “based on Icelandic identity and branding to achieve price premium”.<sup>22</sup>

- (17) *Third*, a majority of customers having expressed an opinion stated that salmon farmed in Iceland differs from salmon farmed in Norway on price, with one customer explaining that “*Icelandic prices were higher due to shipping costs*”.<sup>23</sup> Numerous competitors have also indicated that Icelandic salmon differs from Norwegian salmon on price.<sup>24</sup> In addition, the Norwegian government has recently proposed a new legislation imposing a 40% tax on Norwegian salmon that would apply from 1 January 2023 if adopted, which risks leading to a significant increase in prices for Norwegian salmon in the coming years, due to an increased cost base for Norwegian salmon.<sup>25</sup>
- (18) *Fourth*, numerous customers have indicated that Norwegian and Icelandic salmon differ on availability and transport to customers as regards time, mode and cost. Several customers have indicated that Icelandic salmon is not always available due to difficulties in transport and logistics and that therefore they cannot easily purchase it, since it takes longer to reach the market.<sup>26</sup> Competitors have similarly highlighted differences in transport modalities, both on its costs and on its duration to market.<sup>27</sup> Thus, even if producers bear the costs of transport, there are still differences in availability between Icelandic salmon and Norwegian salmon as it takes longer for Icelandic salmon to reach the market.
- (19) In view of the above, and for the purpose of this decision, the Commission considers the market for farming and primary processing of Icelandic salmon constitutes a separate product market from the market for farming and primary processing of Norwegian salmon.
- (20) Moreover, with regard to a potential further segmentation of the market for Norwegian primary processed salmon between salmon farmed in North Norway and salmon farmed in South Norway<sup>28</sup>, the market investigation revealed the following. A majority of customers having expressed their opinion stated that the quality, texture, appearance and processability differ between salmon farmed in North Norway and salmon farmed in South Norway. Several customers explained that salmon from North Norway is of better quality than salmon from South

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<sup>22</sup> Form RS, Schedule 4, page 19.

<sup>23</sup> Responses to questionnaire Q1 sent to customers, questions 5, 7 and 7.1

<sup>24</sup> Responses to questionnaire Q2 sent to competitors, question 7.

<sup>25</sup> See the website of the Norwegian government:

<https://www.regjeringen.no/no/aktuelt/grunnrenteskatt-pa-havbruk/id2929113/>  
(visited on 28 October 2022).

<sup>26</sup> Non-confidential minutes of a conference call with a customer on 6 July 2022, paragraph 17.

<sup>27</sup> Responses to questionnaire Q1 sent to customers, questions 5, 5.1, 6, 6.1, 7 and 7.1; Responses to questionnaire Q2 sent to competitors, question 7.

<sup>28</sup> The delimitation between North Norway and South Norway is the east-west latitude of the city of Trondheim.

Norway. Many customers further explained that the price and availability vary between salmon from each region.<sup>29</sup> Furthermore, according to a majority of customers having expressed their opinion, there is a difference between North Norway and South Norway with regard to environmental conditions, the risk of disease, transport to primary processing facilities and transport to end-customers.<sup>30</sup>

- (21) Nevertheless, with regard to demand-side substitutability, the results of the market investigation varied. Close to half of the customers have explained that they could replace North Norwegian salmon with South Norwegian salmon, while a non-negligible number of customers have indicated that they could not always do so.<sup>31</sup> Some customers have further indicated that their purchase contracts specify whether the salmon comes from the North or the South of Norway, for example for the homologation of the packaging station. However, some customers have replied that this difference is not specified in their sales contract.<sup>32</sup>
- (22) In view of the above, there are indications that the market for farming and primary processing of salmon in Norway could be further segmented between farming and primary processing of salmon in North Norway and farming and primary processing of salmon in South Norway. However, for the purposes of this decision, the question of whether a further segmentation is appropriate can ultimately be left open, since in either market definition considered, the Transaction does not raise concerns as to its compatibility with the market for farming and primary processing of Norwegian salmon.

#### **4.2. Geographic market definition**

- (23) In previous decisions, the Commission considered the geographical scope of the market for salmon farming and primary processing to be EEA-wide.<sup>33</sup>
- (24) The Notifying Party, in line with past Commission decisions, submits that the relevant geographic market is EEA-wide.<sup>34</sup>
- (25) The Commission's market investigation confirmed its case practice and the Notifying Party's view. It revealed that a majority of competitors sell the product to customers across the EEA. Many competitors also stated that they find the conditions of competition, such as prices, transport cost and marketing activities, to be the same for sales of primary processed Norwegian salmon made to customers based in Norway as to customers based in the EU.<sup>35</sup>

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<sup>29</sup> Responses to questionnaire Q1 sent to customers, questions 5 and 5.1.

<sup>30</sup> Responses to questionnaire Q1 sent to customers, question 6.

<sup>31</sup> Responses to questionnaire Q1 sent to customers, question 8.

<sup>32</sup> Responses to questionnaire Q1 sent to customers, question 9.

<sup>33</sup> M.6850 – Marine Harvest/Morpol, paragraph 73.

<sup>34</sup> Form CO, paragraph 223.

<sup>35</sup> Responses to questionnaire Q1 sent to competitors, questions 13 and 14.



- (26) One competitor has explained that, within Europe, “*the conditions of competition are broadly similar, and the market is quite homogenous, even though there are some price differences due to the transport/logistical costs that may vary from country to country.*”<sup>36</sup> Another competitor has stated that it “*can sell primary processed salmon to customers located across the EEA.*”<sup>37</sup>
- (27) Likewise, also the Notifying Party exports Norwegian salmon to many EEA countries, and similarly exports Icelandic salmon to many EEA countries.<sup>38</sup> The Notifying Party as well as its competitors thus appear to sell across the EEA without impediment.
- (28) In view of the above, and for the purpose of this decision, the Commission considers that the geographic market for farming and primary processing of Icelandic salmon is EEA-wide and that the geographic market for farming and primary processing of Norwegian salmon is EEA-wide, regardless of whether the product market for farming and primary processing of Norwegian salmon should be further segmented.

### **4.3. Competitive assessment**

#### *4.3.1. Farming and primary processing of salmon in Iceland*

##### 4.3.1.1. The Parties’ activities

- (29) The Parties’ activities overlap in the farming and primary processing of salmon in Iceland. The output of primary processed salmon farmed in Iceland totals approx. 41,500 tonnes.<sup>39</sup> SalMar is active in Iceland via Arnarlax ehf. (‘Arnarlax’). Arnarlax has salmon farming operations in Iceland, which in 2020 produced approximately 11,000 tonnes of primary processed salmon. Arnarlax also operates a primary processing facility, and four smolt facilities (two in operation, two in preparation for operation.<sup>40</sup> NTS is active in Iceland via Arctic Fish Ehf (‘Arctic Fish’), which holds a licence of 23,100 tonnes for salmon and trout in Iceland.<sup>41</sup> SalMar and NTS are both active in the Westfjords of Iceland.

##### 4.3.1.2. The Notifying Party’s view

- (30) Since the Notifying Party considers that the relevant product market is primary processed salmon farmed in the EEA without further segmentation by specific origin, it argues that the Transaction would not lead to a horizontally affected

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<sup>36</sup> Non-confidential minutes of a conference call with a competitor on 30 May 2022, paragraph 13.

<sup>37</sup> Non-confidential minutes of a conference call with a competitor on 4 July 2022, paragraph 13.

<sup>38</sup> The Notifying Party’s letter of 27 September 2022, paragraph 27; Form RM, Schedule 1, page 5.

<sup>39</sup> Form CO, table 7.2.1.5.

<sup>40</sup> Form CO, paragraph 26.

<sup>41</sup> Form CO, paragraph 64.

market.<sup>42</sup> With regard to primary processed Icelandic salmon, the Notifying Party considers that the Transaction would not impede competition, for the following reasons. It firstly argues that an Icelandic farmer would not be able to exert market power and increase prices, due to the competitive constraint they would face from Norwegian salmon. Secondly, the Notifying Party notes that salmon farming is a developing industry in Iceland, and that, as new licence volumes are released, new entries into the market are likely.<sup>43</sup>

#### 4.3.1.3. The Commission's assessment

##### 4.3.1.3.1. The Merged Entity would have high market shares in an already concentrated market

- (31) The volume-based and capacity-based market shares of the Parties and their main competitors for Icelandic salmon are presented in Table 1 below:

**Table 1 – Market shares for farming and primary processing of salmon in Iceland (2021)<sup>44</sup>**

	Volume	Capacity (license volume)
SalMar (Arnarlax)	[30-40]%	[20-30]%
NTS (Arctic Fish)	[30-40]%	[10-20]%
<i>Combined</i>	<i>[60-70]%</i>	<i>[40-50]%</i>
Måsøval	[30-40]%	[40-50]%
Háafell	[0-5]%	[5-10]%
Total	100%	[90-100]%

*Source: Form CO.*

- (32) When considering primary processed salmon farmed in Iceland, the Transaction would lead to a horizontally affected market, with combined production-based market shares above 60%. Furthermore, the increment from the Transaction would be of [30-40]% when considering volume-based market shares, and of [10-20]% when considering capacity-based market shares. There is only one further established farmer in Iceland currently producing primary processed salmon,<sup>45</sup> and the Transaction would thus reduce the number of suppliers from three to two.

<sup>42</sup> Form CO, paragraph 168.

<sup>43</sup> The Notifying Party's letter of 27 September 2022.

<sup>44</sup> In line with the approach taken in past Commission decisions, capacity and production shares – while not fully corresponding to sales made in the EEA – appear to constitute a suitable proxy for market power in the EEA market(s) for farming and primary processing of salmon (M.6850 – Marine Harvest/Morpol, paragraph 76).

<sup>45</sup> There has been a recent entrant into the market in Iceland, Háafel, which has acquired in 2021 salmon farming licences (it was previously only active in cod and rainbow trout farming). As of today, this entrant does not yet produce any farmed and primary processed salmon. Please see paragraph 40 for more information.

- (33) The existing concentration and the increase in concentration are also reflected in the relevant Herfindahl-Hirschmann index (HHI) values. In 2021, the capacity-based market for Icelandic salmon would have a pre-Transaction value of around [3000-3500]. Post-Transaction, the HHI value would be around [4000-4500], with an increment of around [500-1000]. These values are above the thresholds for which the Commission is unlikely to find competition concerns.<sup>46</sup>
- (34) Therefore, the Commission considers that the market structure, as described above, indicates that the Transaction would lead to large or very large combined market shares. The Commission further finds that the Transaction leads to a high or very high degree of concentration in the EEA market for Icelandic salmon.

#### 4.3.1.3.2. Closeness of competition between the Parties

- (35) According to the Horizontal Merger Guidelines, products may be differentiated within a relevant market such that some products are closer substitutes than others. The higher the degree of substitutability between the merging firms' products, the more likely it is that the merging firms will raise prices significantly. For example, a merger between two producers offering products which a substantial number of customers regard as their first and second choices could generate a significant price increase.<sup>47</sup>
- (36) The market investigation has revealed that SalMar and NTS are close competitors for Icelandic salmon. First, their salmon farms are located close to each other, in the Westfjords of Iceland, and the two companies share a primary processing facility, currently owned by SalMar. NTS has an agreement in place with SalMar for the provision of primary processing services at this facility.<sup>48</sup> Their salmon output is therefore exposed to similar biological and climate conditions, and similar processing. Furthermore, when asked to name the leading suppliers of Icelandic salmon in terms of market shares, a majority of customers and competitors having expressed their opinion named SalMar and NTS as the two leading suppliers.<sup>49</sup> Similarly, a majority of customers and competitors having expressed their opinion consider the Parties to be close competitors in Iceland.<sup>50</sup>
- (37) The market investigation has revealed that Måsøval, the third large producer of Icelandic salmon, is not a close competitor of the Parties. Indeed, when asked to

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<sup>46</sup> Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31, 5.2.2004, p. 5–18) ('Horizontal Merger Guidelines'), paragraph 20.

<sup>47</sup> Horizontal Merger Guidelines, paragraph 28.

<sup>48</sup> Form RM, Section 5.5. NTS is currently in the process of constructing its own primary processing facility, with completion scheduled for the second quarter of 2023.

<sup>49</sup> Responses to questionnaire Q2 to competitors, question 14; Responses to questionnaire Q1 to customers, question 11.

<sup>50</sup> Responses to questionnaire Q2 to competitors, question 15; Responses to questionnaire Q1 to customers, question 12.

name the leading suppliers of Icelandic salmon in terms of market shares, no customers and very few competitors named Måsøval, despite them being a large producer of Icelandic salmon.<sup>51</sup> One large customer pointed out that Måsøval does not serve the same customers as the Parties, stating that “*Måsøval is not an alternative to Salmar and NTS in Iceland, as volumes are not sufficient. Måsøval (Ice Fish Farm and Laxar) is partly in special quality certifications destined for selected customers*”.<sup>52</sup>

4.3.1.3.3. Barriers to entry are high and customers expect a reduction of alternatives and price increases for primary processed Icelandic salmon after the Transaction.

- (38) The removal of NTS from this already concentrated competitive landscape would lead to a strong reduction in supplier choice for customers, and indeed some customers have pointed out that smaller national markets for salmon such as Scotland or Iceland are characterised by fewer suppliers, and therefore possibly less competition.<sup>53</sup> Indeed, as found in previous decisions, and as revealed here in the market investigation, the market structure in both Scotland and Iceland is much more concentrated than the market structure in Norway.<sup>54</sup>
- (39) Several customers expressed concerns about this reduction of the number of salmon farmers based in Iceland. One customer in particular indicated that, in a similar situation, when Scottish Sea acquired Grieg Seafood’s Scottish salmon farming sites, the competitive situation for Scottish salmon was degraded. This customer indicated that it feared the same thing could happen for Icelandic primary processed salmon following the Transaction.<sup>55</sup> This same customer states: “*Based on our experience from consolidation in the UK farming area, we are concerned that FNAS from Iceland will increase in price. There are indications that consolidation in the UK market has led to less competition and more a more challenging sourcing*”<sup>56</sup>
- (40) Finally, it is unlikely that any new competitor would exert significant pressure on the Parties in the next years. Icelandic salmon is currently a market under development, and as this market develops, capacity will grow. Therefore, the Icelandic salmon production is expected to increase, and as it increases, it is possible that new competitors would enter the market. However, the barriers to entry are rather high in this market. The Parties already have a significant infrastructure in place, such as for example primary processing facilities and a sales

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<sup>51</sup> Responses to questionnaire Q2 to competitors, question 14; Responses to questionnaire Q1 to customers, question 11.

<sup>52</sup> Responses to questionnaire Q1 to customers, question 18.1.

<sup>53</sup> Non-confidential minutes of a conference call with a customer on 31 May 2022, paragraph 11.

<sup>54</sup> See M.6850 – Marine Harvest/Morpol.

<sup>55</sup> Non-confidential minutes of a conference call with a customer on 31 May 2022, paragraph 11.

<sup>56</sup> Responses to questionnaire Q1 to customers, question 26.1.

organisation.<sup>57</sup> Furthermore, it takes approximatively two to three years for salmon to be mature enough for slaughter.<sup>58</sup> It would therefore take a number of years for a producer having been awarded farming licences to be able to reach the market. This is further evidenced by the fact that Háafell, the newest entrant in the Icelandic salmon market, currently has capacity licences for salmon farming, but does not yet produce salmon. Therefore, it is likely that it would be a number of years before a new farmer could produce Icelandic salmon in volumes meaningful enough to significantly constrain the Parties.

- (41) Finally, a majority of customers having expressed their opinion have indicated that they expect a price increase for salmon farmed and primary processed in Iceland following the Transaction.<sup>59</sup>

#### 4.3.1.3.4. Conclusion

- (42) Based on the above, and in particular in the light of (i) high combined market shares of the Parties and a significant increase of concentration level of the market, (ii) closeness of competition between the Parties pre-Transaction, (iii) the costs and barriers to entry that potential competitors are facing and (iii) the limited numbers of alternatives, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market and with the functioning of the EEA Agreement for the EEA market for farming and primary processing of Icelandic salmon.

#### 4.3.2. *Farming and primary processing of salmon in Norway*

- (43) When considering primary processed salmon farmed in Norway, the Transaction would not lead to a horizontally affected market in Norway overall. Only in a plausible segmentation of the product market between salmon farmed in North Norway and in South Norway, would North Norway be a horizontally affected market with a combined market share of [20-30]% (capacity) and [20-30]% (production). The merged entity would become the largest producer of primary processed salmon in North Norway. The production of primary processed salmon farmed in Norway totals approx. EUR 8 billion, of which EUR 5.1 billion for North Norway.

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<sup>57</sup> Form CO, paragraph 26 and footnote 158.

<sup>58</sup> Form CO, paragraph 147.

<sup>59</sup> Responses to questionnaire Q1 to customers, question 26.

**Table 2 – Market shares for farming and primary processing of salmon in Norway, North Norway and South Norway (2021)**

	Norway		North Norway		South Norway	
	<i>Production</i>	<i>Capacity (licenses)</i>	<i>Production</i>	<i>Capacity (licenses)</i>	<i>Production</i>	<i>Capacity (licenses)</i>
SalMar	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%
NTS	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%
<b>Combined</b>	<b>[10-20]%</b>	<b>[10-20]%</b>	<b>[20-30]%</b>	<b>[20-30]%</b>	<b>[10-20]%</b>	<b>[5-10]%</b>
Mowi	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%
Lerøy	[10-20]%	[10-20]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%
Cermaq	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%
Others	[40-50]%	[40-50]%	[40-50]%	[40-50]%	[40-50]%	[50-60]%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100.00%</b>	<b>100.00%</b>

Source: Form CO.

#### 4.3.2.1. Unilateral effects

- (44) The Commission has not found any indications that the Transaction could result in unilateral effects on the market for farming and primary processing of Norwegian salmon that would significantly impede competition within the internal market.
- (45) *First*, the Parties' combined shares on the plausible product markets for farming and primary processing of Norwegian or North Norwegian salmon remain moderate and do not exceed 25%.<sup>60</sup>
- (46) *Second*, while a majority of market participants consider the Parties as close and important competitors<sup>61</sup>, there are numerous other suppliers, large and small. A majority of customers buy primary processed Norwegian salmon from more than five suppliers and generally consider large suppliers, such as Mowi and Leroy, as well as small farmers as viable alternatives to the Parties.<sup>62</sup> The possibly limited competitive constraint exerted by smaller farmers will be discussed below in Section 4.3.2.2.3.4.
- (47) *Third*, NTS is only the fifth largest supplier by output and not considered a key player by most market participants.<sup>63</sup> It appears therefore unlikely that the Transaction will strengthen SalMar's market position to an extent that would significantly impede competition in the internal market with regards to unilateral effects.

<sup>60</sup> Horizontal Merger Guidelines, paragraph 18.

<sup>61</sup> Responses to questionnaire Q1 sent to customers, question 12.

<sup>62</sup> Responses to questionnaire Q1 sent to customers Q1, questions 13, 14 and 15.

<sup>63</sup> Responses to questionnaire Q1 sent to customers Q1, question 11.

- (48) Therefore, the Commission considers that the Transaction does not give rise to serious doubts about its compatibility with the internal market due to unilateral effects on the market for the farming and primary processing of Norwegian salmon.

#### 4.3.2.2. Coordinated effects

- (49) The Commission has investigated potential coordinated effects resulting from the Transaction, based on the market structure, indications of past collusion in the market and concerns voiced by customers, in the market for farming and primary processing of Norwegian salmon. The following sections detail the legal framework, the Notifying Party's argument and the Commission's assessment of such coordinated effects.

##### 4.3.2.2.1. Legal Framework

- (50) In some markets the structure may be such that firms would consider it possible, economically rational, and hence preferable, to adopt on a sustainable basis a course of action on the market aimed at selling at increased prices through a coordination of their behaviour.<sup>64</sup> A merger may increase the likelihood that firms are able to coordinate their behaviour and raise prices, even without entering into an agreement or resorting to a concerted practice within the meaning of Article 101 TFEU. A merger may also make coordination easier, more stable or more effective for firms that were already coordinating before the merger, either by making the coordination more robust or by permitting firms to coordinate on even higher prices.<sup>65</sup>
- (51) Coordination may take various forms. In some markets, the most likely form of coordination may involve keeping prices above the competitive level. Coordinating firms may also limit production or capacity, divide the market, for instance by geographic area or other customer characteristics, or allocate contracts in bidding markets.<sup>66</sup>
- (52) Coordination is more likely to emerge in markets where it is relatively simple to reach a common understanding on the terms of coordination. In addition, three conditions are necessary for coordination to be sustainable. *First*, the coordinating firms must be able to monitor to a sufficient degree whether the terms of coordination are being adhered to. *Second*, discipline requires that there is some form of credible deterrent mechanism that can be activated if deviation is detected. *Third*, the reactions of outsiders, such as current and future competitors not participating in the coordination, as well as customers, should not be able to

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<sup>64</sup> Horizontal Merger Guidelines, paragraph 39.

<sup>65</sup> Judgment in *Bertelsmann and Sony Corporation of America v Impala*, C-413/06 P, EU:C:2008:392, paragraph 122; Horizontal Merger Guidelines, paragraph 39.

<sup>66</sup> Horizontal Merger Guidelines, paragraph 40.

jeopardise the results expected from the coordination.<sup>67</sup> In applying those criteria, it is necessary to avoid a mechanical approach involving the separate verification of each of those criteria taken in isolation, while taking no account of the overall economic mechanism of a hypothetical tacit coordination.<sup>68</sup>

- (53) In examining the possibility and sustainability of coordination, the Commission should specifically consider the changes that the Transaction brings about. The reduction in the number of firms in a market may, in itself, be a factor that facilitates coordination. However, a merger may also increase the likelihood or significance of coordinated effects in other ways. For instance, a merger may involve a ‘maverick’ firm that has a history of preventing or disrupting coordination, for example by failing to follow price increases by its competitors, or has characteristics that gives it an incentive to favour different strategic choices than its coordinating competitors would prefer. If the merged firm were to adopt strategies similar to those of other competitors, the remaining firms would find it easier to coordinate, and the merger would increase the likelihood, stability or effectiveness of coordination.<sup>69</sup>

#### 4.3.2.2.2. The Notifying Party’s Arguments

- (54) According to the Notifying Party, the Transaction does not give rise to coordinated effects because the market for farming and primary processing of Norwegian salmon is not conducive to coordination and the Transaction would not increase the likelihood of coordination.<sup>70</sup>
- (55) The Notifying Party argues that absent explicit coordination or illegal exchanges of information the market for farming and primary processing of Norwegian salmon is not prone to coordination. *First*, according to the Notifying Party, the market is too fragmented for coordination to be sustainable with many materially sized players farming or exporting salmon. *Second*, the Notifying Party submits that any group seeking to coordinate would be not able to find a suitable focal point for coordination, in light of weekly bilateral price negotiations between suppliers and customers and significant weekly price fluctuations. *Third*, the Notifying Party argues that suppliers outside the coordinating group, including smaller salmon farmers, would be likely to defeat any attempt to coordinate by large firms.
- (56) The Notifying Party further submits that the Transaction would not increase the likelihood of coordination in the market for farming and primary processing of

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<sup>67</sup> Judgment of 6 June 2002, *Airtours v Commission*, T-342/99, EU:T:2002:146, paragraph 62; Judgment in *Bertelsmann and Sony Corporation of America v Impala*, C-413/06 P, EU:C:2008:392, paragraph 123; Horizontal Merger Guidelines, paragraph 41.

<sup>68</sup> Judgment in *Bertelsmann and Sony Corporation of America v Impala*, C-413/06 P, EU:C:2008:392, paragraph 125.

<sup>69</sup> Judgment in *Bertelsmann and Sony Corporation of America v Impala*, C-413/06 P, EU:C:2008:392, paragraph 125.

<sup>70</sup> PN RFI 3 Q13 Annex 40; Letter submitted by the Notifying Party on 10 October 2022, Schedule 2.



Norwegian salmon. *First*, according to the Notifying Party, the impact of the Transaction on the market structure and on links between competitors would not be material, especially because of the number of remaining large, mid-sized and small competitors. *Second*, the Notifying Party argues that NTS does not have a distinct role in the market and there are a number of other materially sized players that are not vertically integrated into secondary processing (like NTS).

#### 4.3.2.2.3. The Commission's assessment

##### 4.3.2.2.3.1. *The market for farming and primary processing of Norwegian salmon has been prone to coordination in the past*

- (57) On an introductory note, it has to be noted that there are certain indications of past coordination in the market for farming and primary processing of Norwegian salmon. Such past behaviour is important evidence when assessing coordinated effects, in particular if market characteristics have not changed appreciably or are not likely to do so in the near future.<sup>71</sup>
- (58) *First*, in 1992, the Commission found that the associations of Norwegian and Scottish salmon farmers infringed Article 85 of the EEC treaty by fixing prices for farmed salmon. According to the Commission's decision, the associations set a minimum price for Norwegian salmon and agreed on a price premium for Scottish salmon.<sup>72</sup>
- (59) *Second*, there are a number of further investigations and private litigation procedures based on allegations of collusion between Norwegian salmon farmers. In 2019, the Commission carried out unannounced inspections at the premises of several companies active in the sector of farmed Atlantic salmon based on concerns over a potential infringement of Art. 101 TFEU.<sup>73</sup> Similarly, the US Department of Justice appears to investigate potential price-fixing between Norwegian farmers of North Atlantic salmon.<sup>74</sup> Finally, this year, a number of larger Norwegian salmon farmers, including the Notifying Party, settled two class actions brought by direct and indirect customers in the United States alleging price collusion between Norwegian salmon farmers. One of these settlements covered salmon purchases between April 10, 2013 and October 2022.<sup>75</sup>
- (60) *Third*, in the Commission's market investigation concerning this Transaction, several customers voiced concerns over possible collusion between Norwegian

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<sup>71</sup> Horizontal Merger Guidelines, paragraph 43.

<sup>72</sup> Commission decision of 30 July 1992, 92/444/EC, OJ L 246/37.

<sup>73</sup> Press release of 19 February 2019

([https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_19\\_1310](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_19_1310)).

<sup>74</sup> See, for example: <https://www.seafoodsource.com/news/supply-trade/us-launches-investigation-into-mowi-price-fixing-allegations>

<sup>75</sup> See, for example: <https://www.seafoodsource.com/news/business-finance/norwegian-salmon-giants-reach-usd-33-million-settlement-in-price-fixing-lawsuit>

salmon farmers on prices as well as harvest volumes. One customer mentioned a “*suspcision [sic] of alignment between suppliers*”<sup>76</sup>, another one explained “[w]e all suspect a price pact”<sup>77</sup>. Another customer stated: “[P]rice levels are unusually homogenous in the market for farmed salmon. Indeed, from supplier to supplier, prices rarely differ, and, according to the Company, it is very difficult to get a lower price from a separate supplier. [...] it is possible that the salmon price may be open to manipulation by the salmon farmers.”<sup>78</sup>

- (61) The Commission notes that none of the more recent investigations or allegations, have, at least so far, led to a finding of collusion between Norwegian salmon farmers. The Commission has therefore not drawn any conclusions whatsoever from these investigations or litigation procedures, but instead conducted an independent investigation of possible coordinated effects.

4.3.2.2.3.2. *The market for the farming and primary processing of Norwegian salmon appears to be generally transparent*

- (62) According to the Commission’s market investigation, the market for the farming and primary processing of Norwegian salmon, in particular the prices achieved and volumes sold, is generally transparent.
- (63) *First*, numerous detailed price and volume indices are published every week. Primary processed Norwegian salmon is sold either on the spot market or under long term contracts, usually via bilateral agreements between suppliers and customers. Most sales take place on the weekly spot market, the historic and anticipated spot market prices also appear to be the basis for most long term contracts.<sup>79</sup> Detailed benchmark spot price and volume indices are published on a weekly basis for various salmon weight classes by Nasdaq, Fish Pool and the Norwegian Central Statistics Bureau (SSB). These indices are directly or indirectly based on actual transaction data submitted by suppliers of Norwegian primary processed salmon and published a few days or up to 2 weeks after the transaction has taken place.<sup>80</sup> While such indices are historic and aggregated, they give a clear picture of prices and volumes, on a weekly basis, and the respective trends.
- (64) *Second*, suppliers of primary processed Norwegian salmon trade to a significant extent amongst each other. Such trades take place either for the purposes of directly selling the primary processed salmon on to customers (for example to fulfil existing contracts) or to use the additional salmon for their secondary processing. One of SalMar’s largest customers of primary processed Norwegian salmon [...].

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<sup>76</sup> Response to questionnaire Q1 sent to customers, question 23.1.

<sup>77</sup> Responses to questionnaire Q1 sent to customers, question 23.1, translation of “*Todos dudamos de un pacto de precios*”.

<sup>78</sup> Minutes of a call with a customer on 30 June 2022, paragraph 13.

<sup>79</sup> Form CO, paragraphs 506-510.

<sup>80</sup> Form CO, paragraph 515.

SalMar also sells to [...].<sup>81</sup> NTS sells [...] volumes of primary processed Norwegian salmon to [...].<sup>82</sup> These cross-sales could allow suppliers to draw certain conclusions as to the prices and available volumes of primary processed Norwegian salmon at a given point in time.

- (65) *Third*, many farmers of Norwegian salmon seem to be related by joint operations or shareholdings. It appears to be common for Norwegian salmon farmers to share or use each other's primary processing facilities (i.e. slaughterhouses). For example, SalMar and Leroy, currently the second largest farmer of Norwegian salmon, jointly own and jointly use two large primary processing plants in Norway (Kirkenes Processing and Romsdal Processing).<sup>83</sup> Such joint slaughtering operations could allow the participating competitors to receive information on each other's production volume (e.g. weekly slaughtering output).
- (66) *Fourth*, market participants indicate that Norwegian salmon farmers sometimes coordinate their production within one production zone. One competitor explained that it coordinates its production planning for purposes of bio-planning and disease control with SalMar. According to this competitor, the information shared between the companies includes the amount of salmon which is in the pens at a given time. The competitor explained that this joint production planning allows farmers within one region to know when each will harvest their salmon. According to the competitor, such production planning is mandated by Norwegian regulations.<sup>84</sup> The Notifying Party submits that Norwegian law mandates salmon farmers within one production zone to engage in discussions and planning to safeguard the environment, prevent the spread of diseases and protect the wild salmon population. According to the Notifying Party, participating farmers exchange information on disease outbreaks, parasite levels, treatments, options to improve biosecurity, the implementation and agreement of resting periods, but not on actual production volumes.<sup>85</sup> In any event, it cannot be excluded that farmers within one production zone can deduct certain information on each other's production and output trends.

4.3.2.2.3.3. *Customers do not consider the market for farming and primary processing of Norwegian salmon to be very competitive*

- (67) The market for farming and primary processing of Norwegian salmon does not appear to be very competitive. According to a majority of customers who expressed an opinion, the prices for Norwegian primary processed salmon are generally aligned.<sup>86</sup> Almost half of the customers who expressed an opinion in the

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<sup>81</sup> Form CO, paragraphs 643-646.

<sup>82</sup> Form CO, schedule 95.

<sup>83</sup> Form CO, paragraph 26.

<sup>84</sup> Non-confidential minutes of a conference call with a competitor on 29 August 2022, paragraph 5.

<sup>85</sup> Form CO, paragraphs 808-830.

<sup>86</sup> Responses to questionnaire Q1 sent to customers, questions 21 and 24.

Commission’s market investigation explained that they receive competing offers for Norwegian primary processed salmon only sometimes or rarely.<sup>87</sup> Customers explained “[t]he differences have reduced in offers [for Norwegian salmon] over the last years”, “[t]heir offers are usually similar”, “[e]very day there are fewer offers and all more and more similar”, and “[w]e are hardly getting different competitive price and volume offers from Norwegian suppliers”.<sup>88</sup> At the same time, a majority of customers consider that the market for farming and primary processing of Norwegian salmon is becoming more concentrated.<sup>89</sup> While customers cite supply and demand as the most common reasons for recent price trends, concentration levels, alignment between suppliers and market transparency are also seen by customers as factors contributing to recent price trends.<sup>90</sup>

#### 4.3.2.2.3.4. *Smaller farmers appear to exert limited competitive constraints*

- (68) There are indications that smaller farmers of Norwegian salmon do not exert significant competitive constraints and in particular pricing power. Such smaller farmers with a market share of less than 5% make up [40-50]% of the market.
- (69) *First*, the smaller farmers do often not sell and export their salmon themselves. Instead, they sell via independent exporters or large farmers. For example, companies such as NTS and Lerøy sell large volumes of primary processed salmon procured from other farmers. According to the replies to the Commission’s market investigation, smaller farmers (i.e. with a market share of less than 5%) tend to sell the majority of their output via third parties, often larger farmers.<sup>91</sup> The majority of competitors who expressed an opinion explained that it is the third party that sets the selling price, either alone or in combination with the farmer, when selling via third parties.<sup>92</sup> These sales for smaller farmers could therefore increase the pricing power of larger farmers, and to a limited extent of exporters.
- (70) *Second*, large customers (e.g. retail chains or secondary processors), indicate that their demand and logistical requirements (e.g. weekly deliveries) cannot always and reliably be met by smaller farmers. While a majority of customers, including large ones, generally buy from more than five suppliers<sup>93</sup>, and at least sometimes also from small farmers<sup>94</sup>, they cannot always do so. The majority of customers who expressed an opinion does not consider smaller farmers an alternative to larger farmers in terms of volume.<sup>95</sup> Many customers explain that smaller farmers are not able to offer sufficient and stable quantities all year round, on a weekly basis. One

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<sup>87</sup> Responses to questionnaire Q1 sent to customers, question 22.

<sup>88</sup> Responses to questionnaire Q1 sent to customers, question 23.1.

<sup>89</sup> Responses to questionnaire Q1 sent to customers, question 21.

<sup>90</sup> Responses to questionnaire Q1 sent to customers, question 23.

<sup>91</sup> Responses to questionnaire Q2 sent to competitors, question 23.

<sup>92</sup> Responses to questionnaire Q2 sent to competitors, question 23.1.

<sup>93</sup> Responses to questionnaire Q1 sent to customers, question 13.

<sup>94</sup> Responses to questionnaire Q1 sent to customers, question 14.

<sup>95</sup> Responses to questionnaire Q1 sent to customers, question 15.

customer explained “As [a large] independent purchaser of FNAS, the smaller players are not capable to deliver in an efficient manner the total needs of the company based on supply 365 days a year.”<sup>96</sup>

- (71) *Third*, smaller farmers appear to be mainly price followers without negotiating the price for primary processed salmon. The majority of customers and competitors who expressed an opinion consider that small farmers as well as exporters and traders have low or no pricing power.<sup>97</sup> The pricing power of the larger, i.e. the largest five farmers of Norwegian salmon, is high according to a majority of customers and competitors.<sup>98</sup> Many customers replied that the smaller farmers simply follow the price negotiated and set by the larger farmers. One customer stated: “As more and more big players are becoming even more bigger by aligning all possible farmers together we are experiencing that the pricing power are among TOP 3-5 players.”<sup>99</sup> Another one replied “The big players set the price. Traders follow supply and demand. Smaller farmes [sic] and exporters have moderate to low power.”<sup>100</sup> A further customer explained “Except the big ones the others sit and wait for signals in the markets, normally based on sold volumes from bigger actors.”<sup>101</sup>

#### 4.3.2.2.3.5. *Customers are concerned of an increased risk of coordination following the Transaction*

- (72) A majority of customers expressed concerns in the Commission’s market investigation as to the effects of the Transaction. More generally, a majority of customers expect that prices for primary processed Norwegian salmon would increase as a result of the Transaction.<sup>102</sup> Specifically looking at coordinated effects, a majority of customers believe that the Transaction would make it easier for farmers of primary processed Norwegian salmon to be aware of each other’s competitive position and price.<sup>103</sup>
- (73) Most concerns were linked to the increase in concentration levels as well as the increased risk of coordination following the Transaction. Customers stated, for example, “[t]hey will have more informations [sic] because less suppliers on the marker [sic] due to concentrations”, “smaller number of people can discuss and align / the transaction will make it easier for them to align”, “To [sic] much power for 1 company, to [sic] big inpect on the market”, “Less competitive market for

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<sup>96</sup> Response to questionnaire Q1 sent to customers Q2, question 15.1.

<sup>97</sup> Responses to questionnaire Q1 sent to customers, question 25; Responses to questionnaire Q2 sent to competitors, question 24.

<sup>98</sup> Responses to questionnaire Q1 sent to customers, question 25; Responses to questionnaire Q2 sent to competitors, question 24.

<sup>99</sup> Response to questionnaire Q1 sent to customers, question 25.1.

<sup>100</sup> Response to questionnaire Q1 sent to customers, question 25.1.

<sup>101</sup> Response to questionnaire Q1 sent to customers, question 25.1.

<sup>102</sup> Responses to questionnaire Q1 sent to customers, question 26.

<sup>103</sup> Responses to questionnaire Q1 sent to customers, question 29.

*purchasing”, and “we will have one less supplier that have been our 2. biggest supplier last 5 years.”<sup>104</sup>*

*4.3.2.2.3.6. Overall, the risk of tacit collusion does not seem to increase due to the Transaction*

- (74) Based on the above, the market for farming and primary processing of Norwegian salmon appears to be generally prone to coordination. There are indications and allegations of past collusion in the market (see Section 4.3.2.2.3.1 above), the market is relatively transparent (see Section 4.3.2.2.3.2 above), customers do not perceive the market to be very competitive (see Section 4.3.2.2.3.3 above) and a large portion of market players does not appear to exert any competitive constraint or pricing power (see Section 4.3.2.2.3.4 above). The somewhat differentiated role of NTS (see paragraphs 78-80 below) and concerns from customers (see Section 4.3.2.2.3.5 above) seem to indicate that the Transaction could contribute to a risk of coordination.
- (75) However, in light of the legal framework outlined in Section 4.3.2.2.1 above, the Commission does not consider that there is sufficient evidence to find that the Transaction gives rise to serious doubts about its compatibility with the internal market because it would increase the possibility and sustainability of tacit collusion.
- (76) *First*, it appears difficult for suppliers to coordinate tacitly on prices and to monitor whether the terms of coordination are being adhered to. Published price indices only provide an aggregated and historic view, while potential information from cross-sales and joint-shareholdings would only represent a certain fragment of the market (for example, SalMar’s sales to competitors in 2021 represented less than [...] % of its total sales).<sup>105</sup> More importantly, prices for primary processed Norwegian salmon fluctuate significantly every week. According to data provided by the Notifying Party, between January 2019 and September 2022 prices fluctuated by more than 5% in half of the weeks and by more than 10% in 15% of the weeks.<sup>106</sup> This considerable volatility means that both the competitive and the optimal coordinated price would likely need to be different week by week, which would make it difficult to coordinate – absent direct discussions – as well as to monitor behaviour of other suppliers.
- (77) *Second*, numerous other suppliers exist and they may either deviate from a coordinated policy or simply not join it and therefore jeopardise it. The Parties’ market shares are limited and amount to no more than 25% under any conceivable market definition. Following the Transaction, there exists one equally large supplier, Mowi, as well as at least two further mid-sized suppliers, Leroy and

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<sup>104</sup> Responses to questionnaire Q1 sent to customers, questions 29.1 and 30.1.

<sup>105</sup> Form CO, paragraphs 640-643.

<sup>106</sup> Submission of the Notifying Party on 10 October 2022, Schedule 2, paragraph 11.

Cermaq. While the smaller farmers might not exert significant pricing power, their overall output remains significant amounting to [40-50]% of the market. Any tacit common policy, e.g. on prices, would naturally be difficult to establish and maintain in such a fragmented market.

- (78) *Third*, it appears unlikely that this specific Transaction, i.e. the acquisition and removal of NTS as an independent supplier, would significantly change the market structure and thereby increase the risk of tacit coordination, given the limited size of NTS. While, as further shown below, NTS might have a somewhat differentiated role in the market from a structural perspective, its size and significance are limited and would not lend any structural peculiarities any significant weight. Furthermore, and as explained below, the Commission has received no indication in the market investigation that NTS currently plays a role in the market whereby it could or would disrupt any potential coordination. Therefore, the Transaction would not make it more likely or sustainable to sustain tacit collusion in the market for farming and primary processing of Norwegian salmon.
- (79) It is true that certain structural characteristics could differentiate NTS from other suppliers of primary processed Norwegian salmon. NTS and in particular its subsidiary NRS trade significant volumes of salmon. 66% of NRS' sales of primary processed Norwegian salmon in 2020 were traded volumes, i.e. salmon not farmed by NRS itself.<sup>107</sup> These sales are not reflected in the capacity-based market shares outlined in Table 2 above. [...]. This trading activity exposes NRS to significantly more competitive interactions, i.e. sales, than indicated by its capacity-based market shares. In addition, NTS does not have any own secondary processing facilities. NTS and its subsidiaries therefore need to sell all their weekly output of primary processed salmon on the market. Unlike other large farmers such as SalMar or Mowi, NTS cannot captively use its salmon for secondary processing if, for example, the prices for primary processed salmon are low at a given point in time. A majority of customers explained that they prefer to buy from a farmer which is not active in secondary processing (and therefore not a competitor of them on this market level).<sup>108</sup>
- (80) However, NTS is only the fifth largest supplier by output and not considered a key player by most market participants. The majority of customers who expressed an opinion do not list NTS (or its subsidiaries NRS and SalmoNor) as one of the top 5 suppliers of primary processed Norwegian salmon.<sup>109</sup> Therefore, even though NTS trades large amounts of salmon which are not reflected in the current market shares, the market investigation has shown that from a customer perspective, NTS' trading activity does not seem to lend it significant market power beyond what is indicated by its output based market shares. Therefore, and given NTS's low market power as shown above, the Commission considers it unlikely that the

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<sup>107</sup> Form CO, footnote 60.

<sup>108</sup> Responses to questionnaire Q1 sent to customers, question 19.

<sup>109</sup> Responses to questionnaire Q1 sent to customers, question 11.

Transaction would alter the current market structure in a manner that would render tacit collusion more likely or sustainable.

- (81) Furthermore, based on NTS' current market role, the Commission considers that its removal from the market does not appear to increase the possibility and sustainability of coordination. *Firstly*, there will be post-Transaction several players remaining who are not or to a limited extent vertically integrated into secondary processing, like NTS (e.g. Grieg, Nordlaks, Bremnes, and Måsøval). Therefore, it cannot be said that NTS's business model is unique in this market.<sup>110</sup> *Secondly*, in the market investigation, a majority of customers having expressed their opinion indicated that prices between suppliers are generally aligned. Therefore, given that neither NTS' pricing nor its business model appear to be unique in the market, it cannot be said that it is likely to act in a manner that would disrupt tacit coordination. Indeed, NTS does not appear to play the role of a 'maverick' in this market, either because it has a history of differentiated pricing, or because it has characteristics that gives it an incentive to favour different strategic choices. Therefore, the Commission considers that it is unlikely that the removal of NTS from the competitive landscape would increase the possibility and sustainability of coordination.

#### 4.3.2.3. Conclusion

- (82) Overall, the Commission considers – on the basis of the information available to it, and in particular in view of the Parties' moderate combined market shares and the existence of numerous other suppliers, large and small – that the Transaction does not give rise to serious doubts about its compatibility with the internal market due to unilateral effects on the market for the farming and primary processing of Norwegian salmon.
- (83) Moreover, while the Commission's market investigation has revealed that this market is prone to coordination – before and likely also following the Transaction, the Commission considers that, given (i) that it is difficult for suppliers to coordinate tacitly on prices and to monitor whether the terms of coordination are being adhered to, (ii) that numerous other suppliers exist and they may deviate from a coordinated policy or simply not join it and therefore jeopardise it, and (iii) that NTS does not seem to play a role in the market whereby it could impede potential tacit coordination, either via a differentiated business model or a differentiated sales strategy, the Transaction would not make coordination easier, more stable, or more effective, and therefore does not give rise to serious doubts about its compatibility with the internal market due to coordinated effects on the market for the farming and primary processing of Norwegian salmon.

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<sup>110</sup> Submission of the Notifying Party on 10 October 2022, Schedule 2, paragraph 8.



## **5. VERTICAL RELATIONSHIPS**

- (84) ScaleAQ, which belongs to the same group of companies as SalMar, is a global provider of cameras and pens for the aquaculture industry. Cameras include various sensors and are used for monitoring the farming and feeding process, as well as the total biomass in a pen and the condition of the fish. While camera systems are specialised to be used in the aquaculture industry, there are no differences between cameras used for salmon farming and those used in farming of other fish species. Pens' primary function is to support the net and thereby contain the fish herd.
- (85) There is therefore a vertical link between (i) the production and supply of cameras and pens for the aquaculture industry upstream and (ii) the farming and primary processing of Icelandic salmon and farming and primary processing of Norwegian salmon downstream, given that NTS is active in these markets.

### **5.1. Product market definition**

- (86) There are no relevant past Commission decisions concerning either camera systems or pens for the aquaculture industry.
- (87) The Notifying Party submits that the relevant product markets are the market for the supply of pens for the aquaculture industry and the market for the supply of cameras for the aquaculture industry.
- (88) In any case, it is not necessary to conclude on the exact product market definition, as the outcome of the assessment of the Transaction remains the same under all plausible market definitions, regardless of whether the supply of cameras and pens for the aquaculture industry constitute one product market or separate product markets.

### **5.2. Geographic market definition**

- (89) There are no relevant past Commission decisions concerning either camera systems or pens for the aquaculture industry.
- (90) The Notifying Party submits that the geographic market for cameras systems is global, based on the following elements. ScaleAQ and its competitors supply underwater camera systems for the aquaculture industry on a global basis. Camera systems are purchased either as a result of a tender process or as call-off under existing framework agreements which invites all players to present an offer regardless of their location. Further, regulatory standards among different jurisdictions show no differences for underwater camera systems. Similarly, the Parties argue that the market for pens is global. Pens are purchased either as a result of a tender process or as a call of from an existing non-exclusive framework agreement. Components used in the manufacture of pens are sourced from sub-suppliers, which are located in various countries. Components are then usually assembled at an appropriate facility closer to the location of the farm. In countries where a supplier has no facility, the supplier will perform the assembly

on an ad-hoc basis by hiring local personnel to assemble the pen. Transportation costs are passed on to the customers.<sup>111</sup>

- (91) The market investigation has not given any indication that customers of pens and cameras do not supply on a global level. Therefore, it is likely that the relevant geographic market for cameras and pens for the aquaculture industry is global. In any case, as the outcome of the assessment of the Transaction remains the same under all plausible market definitions, whether global or narrower, such as EEA-wide, it is not necessary to conclude on the exact geographic market definition.

### 5.3. Competitive assessment

- (92) The Notifying Party has submitted that SalMar's and its main competitors' upstream market shares are as follows:

**Table 3 – Overview of upstream value-based market shares in Europe<sup>112</sup> and world-wide (2021)**

	Cameras for the aquaculture industry		Pens for the aquaculture industry	
	Europe	Global	Europe	Global
SalMar (ScaleAQ)	[30-40]%	[20-30]%	[40-50]%	[40-50]%
Akva Group	[30-40]%	[30-40]%	[30-40]%	[30-40]%
Mørenot	[10-20]%	[10-20]%	[0-5]%	[0-5]%
Others	[10-20]%	[20-30]%	[10-20]%	[10-20]%
Total	100%	100%	100%	100%

Source: Form CO.

- (93) The findings of the market investigation do not give rise to any concerns. There were no indications that the Transaction may give rise to input foreclosure effects with regard to any plausible product market definition. Market participants neither raised concerns of hampered access to cameras and pens post-Transaction nor mentioned a likelihood of increased prices.<sup>113</sup> It also seems unlikely that the Parties would have the ability to foreclose rivals: indeed, customers confirmed the existence of several alternative suppliers for both products.<sup>114</sup> Customers also indicated that given the need to optimise production, the market for new technologies such as cameras is likely to grow with few to no entry barriers in place.<sup>115</sup> Furthermore, with regard to pens specifically, they have a long life-span of approximately 15-20 years and much of the equipment has already been

<sup>111</sup> Form CO, paragraphs 256-281.

<sup>112</sup> All countries in Europe, Form CO, paragraphs 468 and 475.

<sup>113</sup> E.g., non-confidential minutes of a conference call with a competitor on 18 May 2022, paragraph 18; Non-confidential minutes of a conference call with a competitor on 10 May 2022, paragraph 13.

<sup>114</sup> Responses to questionnaire Q2 to competitors, question 5.

<sup>115</sup> Non-confidential minutes of a conference call with a competitor on 18 May 2022, paragraph 18.

purchased.<sup>116</sup> In that sense, as demand is becoming more limited, there is likely an overcapacity to supply and it is likely that competition will intensify. It is therefore unlikely that the merged entity would be able to foreclose its rivals on the plausible product market(s), as rivals to the merged entity would likely be able to cover all or most of the demand for pens. Finally, when asked, a majority of competitors having expressed their opinion did not expect the Transaction to have an impact on the market(s) for the supply of cameras and pens for the aquaculture industry.<sup>117</sup>

- (94) Therefore, given (i) the lack of concerns raised by customers and (ii) the Parties' limited ability to foreclose their rivals, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the vertical link between the supply of cameras and of pens for the aquaculture industry (upstream) and the farming and primary processing of Icelandic salmon and farming and primary processing of Norwegian salmon (downstream).

## **6. COMMITMENTS**

### **6.1. Framework for the assessment of the commitments**

- (95) Where a notified concentration raises serious doubts as to its compatibility with the internal market, the parties may undertake to modify the concentration to remove the grounds for the serious doubts identified by the Commission. Pursuant to Article 6(2) of the Merger Regulation, where the Commission finds that, following modification by the undertakings concerned, a notified concentration no longer raises serious doubts, it shall declare the concentration compatible with the internal market pursuant to Article 6(1)(b) of the Merger Regulation.
- (96) As set out in the Commission's Remedies Notice,<sup>118</sup> the commitments proposed by the parties have to eliminate the competition concerns entirely, and have to be comprehensive and effective from all points of view.<sup>119</sup> Moreover, commitments in Phase I can only be accepted where the competition problem is readily identifiable and can easily be remedied. The competition problem therefore needs to be so straightforward and the remedies so clear-cut that it is not necessary to enter into an in-depth investigation and that the commitments are sufficient to clearly rule out "serious doubts" within the meaning of Article 6(1)(c) of the Merger Regulation.<sup>120</sup>
- (97) In assessing whether the proposed commitments will maintain effective competition, the Commission considers all relevant factors, including the type,

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<sup>116</sup> Non-confidential minutes of a conference call with a competitor on 10 May 2022, paragraph 13.

<sup>117</sup> Responses to questionnaire Q2 to competitors, question 28.

<sup>118</sup> Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (OJ C 267, 22.10.2008, p. 1-27), the 'Remedies Notice'.

<sup>119</sup> Remedies Notice, paragraphs 9 and 61.

<sup>120</sup> Remedies Notice, paragraph 81.

scale and scope of the proposed commitments with reference to the structure and the particular characteristics of the market in which the competition concerns arise, including the position of the parties and other participants on the market.<sup>121</sup>

- (98) In order for the proposed commitments to comply with those principles, they must be capable of being implemented effectively within a short period of time.<sup>122</sup>
- (99) Concerning the type of acceptable commitments, the Merger Regulation gives discretion to the Commission as long as the commitments meet the required standards. Structural commitments will meet the conditions set out above only in so far as the Commission is able to conclude with the requisite degree of certainty, at the time of its Decision, that it will be possible to implement them and that it will be likely that the new commercial structures resulting from them will be sufficiently workable and lasting to ensure that effective competition will be maintained.<sup>123</sup> Divestiture commitments are normally the best way to eliminate competition concerns resulting from horizontal overlaps.
- (100) 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 basis and that is divested as a going concern. The divested 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 which are currently employed or which are necessary to ensure the business' viability and competitiveness.<sup>124</sup>
- (101) The intended effect from the divestiture will only be achieved if and once the divested 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.<sup>125</sup>
- (102) Even though normally the divestiture of an existing viable stand-alone business is required, the Commission, by observing the principle of proportionality, may also advise the parties to consider the divestiture of businesses which have existing strong links or are partially integrated with businesses retained by the parties and therefore need to be 'carved out' in those respects. Conversely, carving-out a business from the scope of the commitments can only be accepted by the Commission if it can be certain that, at least at the time when the business is transferred to the purchaser, a viable business on a stand-alone basis will be

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<sup>121</sup> Remedies Notice, paragraph 12.

<sup>122</sup> Remedies Notice, paragraph 9.

<sup>123</sup> Remedies Notice, paragraph 10.

<sup>124</sup> Remedies Notice, paragraphs 23-25.

<sup>125</sup> Remedies Notice, paragraph 47.

divested and the risks for the viability and competitiveness caused by the carve-out will thereby be reduced to a minimum.<sup>126</sup>

## **6.2. Procedure**

- (103) On 3 October 2022, the Commission informed the Parties of the serious doubts regarding farming and primary processing of Icelandic salmon arising from the preliminary assessment of the Transaction during a ‘State of Play’ meeting.
- (104) The Commission also informed the Parties during the State of Play that it did not exclude preliminary competition concerns on the EEA-wide market for the farming and primary processing of Norwegian salmon based on coordinated effects. However, following further investigation, these concerns were ultimately cleared.<sup>127</sup>
- (105) In order to remove the serious doubts raised by the Transaction and to render the concentration compatible with the internal market, on 10 October 2022, the Notifying Party formally submitted a first set of commitments under Article 6(2) of the Merger Regulation. SalMar proposed to i) divest NTS’ subsidiary Arctic Fish Holding AS and all of its direct and indirect subsidiaries (‘Arctic Fish Holding’), active in farming and primary processing of Icelandic salmon, in order to alleviate the concerns regarding the market for farming and primary processing of Icelandic salmon, and ii) divest part of NTS’ sales and trading business for Norwegian salmon (‘NTS Trading Business’) to alleviate any concerns regarding the market for farming and primary processing of Norwegian salmon.
- (106) For the purpose of market testing, the Commission asked the Parties to limit the remedies to those proposed for Icelandic salmon, so that the Commission could continue to investigate the Transaction’s effects on competition on the market for farming and primary processing of Norwegian salmon, in parallel to the market testing of the remedy for Icelandic salmon. Following additional submissions from the Parties, and as explained in section 4.3.2 above, the Commission has concluded that no serious doubts arise on the market for the production and supply of farmed and primary processed Norwegian salmon in the EEA. The commitments submitted with regard to Norwegian salmon by the Notifying Party were therefore not market tested.
- (107) On 12 October 2022, SalMar submitted an updated remedy proposal consisting only of the divestment of Arctic Fish Holding (hereinafter called the ‘Initial Commitments’).

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<sup>126</sup> Remedies Notice, paragraphs 35-36.

<sup>127</sup> See paragraph 106 for more details.

- (108) On 13 October 2022, the Commission launched a market test of the Initial Commitments in order to assess whether they were sufficient to remedy the serious doubts identified and described under Section 5 above.
- (109) Following the feedback received through the market test<sup>128</sup>, the Notifying Party formally submitted amended commitments on 25 October 2022 (the ‘Final Commitments’). The Final Commitments are annexed to this decision<sup>129</sup> and form an integral part thereof.

### **6.3. The Proposed Commitments**

#### *6.3.1. Description of the Initial Commitments*

- (110) The Initial Commitments consist of the divestiture of Arctic Fish Holding, removing the complete overlap between the Parties’ activities in the market of Icelandic salmon. The assets to be divested under the Commitments are collectively referred to as the ‘Divestment Business’. Specifically, the following is included in the Divestment Business:
- (a) The 16,346,824 shares in Arctic Fish Holding, a private limited company incorporated under the laws of Norway, currently held by NRS, but which will be owned by the Notifying Party as the legal successor of NRS at the time of the divestiture; and
  - (b) 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 (to the extent controlled by the Notifying Party):
    - the main tangible assets for the operation and function of the Divestment Business;
    - any and all databases, know-how and goodwill obtained by the operations by the Divestment Business;
    - any currently held licences, permits and authorisations required for the Divestment Business to carry on as a going concern;
    - all key contracts, leases, commitments and customer orders of the Divestment Business and all customer, credit and other records of the Divestment Business; and
    - all personnel of the Divestment Business, including its key personnel.
- (111) As the Divestment Business will come under the Notifying Party’s control post-Transaction, the Notifying Party commits, from the time of the adoption of the

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<sup>128</sup> Questionnaire Q3 sent to customers and competitors.

<sup>129</sup> The Final Commitments are annexed to this decision as Annex 1.

Commission's decision in relation to the Transaction until the transfer of the legal title to the Divestment Business to the purchaser, to keep the Divestment Business separate from the business(es) it is retaining.

- (112) The Initial Commitments provide that the purchaser of the Divestment Business will meet the following criteria:
- (a) the purchaser shall be independent of and unconnected to the Notifying Party and its 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.
- (113) The Notifying Party provides that the Divestment Business is a viable, profitable and competitive business. It is a publicly listed company, operating on a standalone basis, with board members and management obligated to independently safeguard its interests. It generated a turnover of EUR 58.6 million in 2021.

### 6.3.2. *Results of the market test*

- (114) Overall, the results of the market test were positive. A majority of respondents forming an opinion on that question confirmed the suitability of the commitments, i.e. that their scope is appropriate to effectively eliminate the competitive concerns identified by the Commission.<sup>130</sup> Indeed, a majority of participants having expressed their opinion consider that the Divestment Business would be able to effectively compete with Arnarlax in the production and sale of primary processed Icelandic salmon,<sup>131</sup> and the majority of responding customers indicated that current customers would be ready to continue purchasing from Arctic Fish Holding after the divestment.<sup>132</sup>
- (115) Market participants highlighted the importance of adequate access to primary processing facilities for the Divestment Business. In particular, a majority of market participants having expressed their opinion indicated that the Divestment

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<sup>130</sup> Responses to questionnaire Q3 sent to customers and competitors, question 4.

<sup>131</sup> Responses to questionnaire Q3 sent to customers and competitors, question 5.

<sup>132</sup> Responses to questionnaire Q3 sent to customers and competitors, question 16.

Business should have continued access to Arnarlax's primary processing facility under fair and equitable market terms and conditions until completion of its own primary processing facility, and that the successful completion of its own primary processing facility would be needed for the Divestment Business to be a viable and effective competitor to the Notifying Party.<sup>133</sup>

- (116) With regard to the key personnel that the Divestment Business would be retaining under the terms of the Initial Commitments, a majority of market participants having expressed their opinion highlighted that the Notifying Party should commit not to solicit this personnel for a duration of 12 months or more.<sup>134</sup>

### 6.3.3. *The Commission's assessment of the Initial Commitments*

- (117) As explained in Section 4.3.1.3.4 above, the Commission considers that the Transaction gives rise to serious doubts as to its compatibility with the internal market in relation to the production and sale of primary processed Icelandic salmon. The Divestment Business specified in the Final Commitments consists of the entire Icelandic salmon business of the Target, and therefore removes the full overlap between the Parties in the markets where the Commission identified serious doubts stemming from the Transaction. The Commission therefore considers that the Initial Commitments are suitable to entirely remove its preliminary competition concerns.

- (118) In the market test, a majority of respondents forming an opinion on that question confirmed the suitability of the commitments, i.e. that their scope is appropriate to effectively eliminate the competitive concerns identified by the Commission.<sup>135</sup> Indeed, a majority of participants having expressed their opinion consider that the Divestment Business would be able to effectively compete with Arnarlax in the production and sale of primary processed Icelandic salmon,<sup>136</sup> and the majority of responding customers indicated that current customers would be ready to continue purchasing from Arctic Fish after the divestment.<sup>137</sup>

- (119) Furthermore, the Commission considers that the Divestment Business is viable and would allow the purchaser to compete effectively for the production and supply of primary processed Icelandic salmon.

- (120) On the basis of information provided by the Notifying Party, the Commission notes that the Divestment Business is consistently profitable and a strong growth in revenues is forecasted in 2022 and 2023 compared to 2021.<sup>138</sup> Moreover, the Divestment Business is expected to grow in the coming years, having applied for

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<sup>133</sup> Responses to questionnaire Q3 sent to customers and competitors, questions 5 and 6.

<sup>134</sup> Responses to questionnaire Q3 sent to customers and competitors, question 15.

<sup>135</sup> Responses to questionnaire Q3 sent to customers and competitors, question 4.

<sup>136</sup> Responses to questionnaire Q3 sent to customers and competitors, question 5.

<sup>137</sup> Responses to questionnaire Q3 sent to customers and competitors, question 16.

<sup>138</sup> Form RM, Section 5.9.



further licences, and being in the process of expanding both its smolt and its slaughtering capacities.<sup>139</sup> Indeed, the Icelandic market is currently undergoing a significant expansion of its capacity, and the Divestment Business expects to grow in line with this expansion.<sup>140</sup>

- (121) Since the Divestment Business is a publicly listed company, it has a dedicated management team and board members obligated to independently safeguard its interest. It is not dependent on NTS for the provision of any material products or services.<sup>141</sup> Furthermore, the Divestment Business currently has [...], and is therefore independent from NTS for its sales. Furthermore, [...] has indicated that it considers that the Divestment Business would be continue to be an attractive commercial partner post-divestment. Therefore, the Commission considers that the Divestment Business is a standalone business, which will remain a viable and active competitive force post-divestment.
- (122) Nevertheless, the market test and the Commission’s investigation have revealed some risks associated with the Initial Commitments. *Firstly*, the Divestment Business and Arnarlax currently have a joint arrangement under which Arnarlax and the Divestment Business have a shared time charter for well boat services (including, among other things, cost sharing and use). The Notifying Party commits to continue this arrangement on fair and equitable market conditions for [...] months. However, in the market investigation, participants highlighted the importance of access to wellboat services. Indeed, as one customer explained, “[a]ll wellboats must be available for all farmers in case of emergencies to take care of fish welfare, and always be able to transport the fish to the slaughtering house”,<sup>142</sup> and a majority of participants having expressed their opinion consider that Arnarlax should offer wellboat services to the Divestment Business for at least [...] months.<sup>143</sup>
- (123) *Secondly*, as explained above, the Divestment Business currently uses the primary processing facilities of Arnarlax for the entirety of its salmon output. The Divestment Business is currently in the process of constructing its own primary processing facility, scheduled for completion by the second quarter of 2023. The Divestment Business considers that the price it pays for this service is too high, and that the construction of its own facilities will reduce its cost base.<sup>144</sup> Furthermore, in the market investigation, some customers have highlighted the importance of the Divestment Business’ independence from Arnarlax, with one customer stating that “[the Divestment Business’ primary processing plant] will provide a service for many farmers, and at the same time increase competition and less dependence on

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<sup>139</sup> Form RM, Schedule 6, page 12.

<sup>140</sup> Form RM, Schedule 6, page 45.

<sup>141</sup> Form RM, Section 5.5.

<sup>142</sup> Responses to questionnaire Q3 sent to customers and competitors, question 10.1.

<sup>143</sup> Responses to questionnaire Q3 sent to customers and competitors, question 10.

<sup>144</sup> Form RM, Schedule 6, page 23.

*Arnarlax's facilities and packing priorities*".<sup>145</sup> The completion and viability of this facility is therefore important to ensure that the purchaser of the Divestment Business would be able to compete effectively for the production and supply of primary processed Icelandic salmon.

- (124) *Thirdly*, in the market test, the majority of market participants having expressed their opinion have highlighted that SalMar (including Arnarlax) would need to commit to not solicit the key personnel of the Divestment Business for a minimum of 12 months, in order for the Divestment Business to operate as a viable business and to compete effectively with Arnarlax on a lasting basis. Furthermore, as one market participant pointed out, "*access to key people is a limitation in Iceland*".<sup>146</sup> In the Initial Commitments, the Notifying Party outlines a non-solicitation clause of the Key Personnel for a duration of 9 months.
- (125) In view of the above, the Commission considers that the Initial Commitments need to be amended by additional safeguards that would (i) ensure the completion of the Divestment Business' planned primary processed plant, in line with their pre-divestment investment plans and (ii) further assurances from the Notifying Party on a reinforcement of the non-solicitation clause for personnel of the Divestment Business.

#### 6.3.4. *Description of the Final Commitments*

- (126) Following the results of the market test of the Initial Commitments, the Commission communicated the summary of the observations made by respondents to the market test and its assessment to the Parties.
- (127) In order to address those observations, the Notifying Party formally submitted on 25 October 2022 the Final Commitments, which include the amendments below.

##### 6.3.4.1. Wellboats

- (128) The Notifying Party commits to procure that Arnarlax makes its best efforts to secure the continuation of – or make its best efforts to procure similar services to – the current joint arrangement it has with the Divestment Business in respect to [...]), for a period of at least [...] months from the closing of the Transaction, provided that terms and conditions for such continuation (or similar services) is based on fair and equitable market terms and conditions.<sup>147</sup>

##### 6.3.4.2. Slaughtering services

- (129) In the Final Commitments, the Notifying Party commits to offer the purchaser, upon expiry on [...] of the current agreement under which Arnarlax provides

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<sup>145</sup> Responses to questionnaire Q3 sent to customers and competitors, question 6.1.

<sup>146</sup> Responses to questionnaire Q3 sent to customers and competitors, question 15.1.

<sup>147</sup> Annex 1, Final Commitments, Schedule, point 2(g).

slaughtering services to the Divestment Business, to renew such arrangements on fair and equitable market terms and conditions, until [...].<sup>148</sup>

- (130) Furthermore, the Final Commitments specify that the Purchaser must confirm that it will support and not oppose the continued construction and completion of the harvesting facility currently under construction by the Divestment Business.<sup>149</sup>
- (131) In the Form RM, it is clarified that the Divestment Business had signed contracts for all major components of the new harvesting facility and started groundwork and production of equipment for the plant. The Notifying Party has also on 20 October 2022 explained, in response to an RFI, that the Divestment Business has secured in principle all funding necessary for the completion of the construction of the slaughter facility.<sup>150</sup>

#### 6.3.4.3. Non-solicitation clause

- (132) The Notifying Party commits, subject to customary limitations for a period of 24 months after the closing of the Transaction, to not solicit, and to procure that its Affiliated Undertakings do not solicit, any personnel or key personnel transferred with the Divestment Business.<sup>151</sup>

#### 6.3.5. *The Commission's assessment of the Final Commitments*

- (133) The Commission considers that, for the reasons set out below, the Final Commitments remove the serious doubts previously identified as to the compatibility of the Transaction with the market for farming and primary processing of Icelandic salmon.
- (134) Under the Final Commitments, the Notifying Party will make its best efforts to ensure that the joint arrangement for wellboat services continues for at least [...] months after the transaction closes.
- (135) The Final Commitments also set out a non-solicitation clause in regard to all personnel, with a duration of 24 months following the closing of the Transaction.
- (136) Furthermore, the Final Commitments provide that the Divestment Business shall have access to Arnarlax's slaughtering services until [...], and that the purchaser of the Divestment Business must support the completion of the construction of this slaughter facility.

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<sup>148</sup> Annex 1, Final Commitments, Schedule, point 2(g).

<sup>149</sup> Annex 1, Final Commitments, point 16(c).

<sup>150</sup> The last tranche of funding is a bank loan that has already been approved by the issuing financial authority. As at 20 October 2022, this loan approval is dependent on the authorisation from Arctic Fish's management board. In this regard, the Commission considers that Arctic Fish has the access to financing to carry out its planned CAPEX investments.

<sup>151</sup> Annex 1, Final Commitments, point 12.

- (137) Given these amendments to the Initial Commitments, as well as the clarifications from the Notifying Party with regard to the funding of the Divestment Business's construction of the slaughter facility, it is ensured that the Divestment Business can operate as a viable business that is able to compete effectively on a lasting basis. The concerns of the respondents to the market test, as set out in Section 6.3.2, are thereby addressed by the Final Commitments.
- (138) For the reasons outlined above, the Commission concludes that the Final Commitments are sufficient in scope and suitable to eliminate the serious doubts as to the compatibility of the Transaction with the internal market and with the functioning of the EEA Agreement with respect to the production and sale of primary processed Icelandic salmon at EEA-wide level.

## **7. CONCLUSION**

- (139) 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 of the Final 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*  
*Executive Vice-President*

## Case M.10699 – SaMar/NTS

### COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the “*Merger Regulation*”), SaMar ASA (the “*Notifying Party*”) hereby enters into the following Commitments (the “*Commitments*”) vis-à-vis the European Commission (the “*Commission*”) with a view to rendering completion of the public bid by the Notifying Party to take control of a majority of the shares in NTS ASA, forming the acquisition of control within the meaning of Article 3(1)(a) of the Merger Regulation (the “*Concentration*”), 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.

**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, paragraph 5 and described more in detail in the Schedule.

**Closing:** the transfer of the legal title to the Divestment Business to the Purchaser.

**Closing Period:** the period of [period] months from the approval of the Purchaser 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 including any inside information pursuant to the Regulation (EU) No 596/2014 (the Market Abuse Regulation).

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

**Divestment Business:** NTS' business within farming and primary processing of salmon in Iceland as defined in Section B and the Schedule which the Notifying Party commits to divest.

**Divestiture Trustee:** one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Notifying Party and who has/have received from the Notifying Party 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 [period] months from the Effective Date.

**Hold Separate Manager:** the person appointed by the Notifying Party 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.

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

**NRS:** Norway Royal Salmon ASA incorporated under the laws of Norway, with its registered office at Ferjemannsveien 10, 7042 Trondheim, Norway and registered with the Commercial/Company Register at Foretaksregisteret under number 864 234 232

**Parties:** the Notifying Party and the undertaking that is the target of the concentration.

**Personnel:** all staff currently employed by the Divestment Business, including staff seconded to the Divestment Business and shared personnel, including any employees employed prior to Closing, but no employees that have resigned or terms of employment been legally terminated.

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

**Purchaser Criteria:** the criteria laid down in paragraph 16 of these Commitments that a Purchaser must fulfil in order to be approved by the Commission.

**SalMar:** SalMar ASA (as the legal successor of NRS and owner of the Divestment Business at the time of Closing), incorporated under the laws of Norway, with its registered office at 7266 Kverva, Frøya, Norway and registered with the Commercial/Company Register at Foretaksregisteret under number 960 514 718

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

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

**Trustee Divestiture Period:** the period of [period] months 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 Party commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 17 of these Commitments. To carry out the divestiture, the Notifying Party commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale or divestment of the Divestment Business within the First Divestiture Period. If the Notifying Party has not entered into such an agreement at the end of the First Divestiture Period, the Notifying Party shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 29 in the Trustee Divestiture Period.
3. The Notifying Party shall be deemed to have complied with this commitment if:
  - (a) by the end of the Trustee Divestiture Period, the Notifying Party or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the Divestment Business and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 17; and
  - (b) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.
4. In order to maintain the structural effect of the Commitments, the Notifying Party shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 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 Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 43 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

5. The Divestment Business consists of
  - (a) the 16,346,824 shares in Arctic Fish Holding AS, a private limited company incorporated under the laws of Norway, registered with the Norwegian Register of Business Enterprises under registration number 825 904 042 currently held by NRS, but will be owned by the Notifying Party as the legal successor of NRS at the time of Closing; and
  - (b) the legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail 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:

- all tangible and intangible assets (including intellectual property rights);
  - all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
  - all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and
  - the Personnel and Key Personnel.
6. In addition, the Divestment Business includes the benefit, for a transitional period of up to 24 months from Closing and on fair and equitable market terms and conditions, of all current arrangements, under which the Notifying Party or its Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the Icelandic operations conducted by the Notifying Party and/or its Affiliated Undertakings.

### **Section C. Related commitments**

#### Preservation of viability, marketability and competitiveness

7. From the Effective Date until Closing, the Notifying Party shall preserve or procure the preservation of the economic viability, marketability and competitiveness 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 Party undertakes:
- (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 Party's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, the Notifying Party shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Notifying Party must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.



### Hold-separate obligations

8. The Notifying Party commits, from the Effective Date until Closing, to keep the Divestment Business separate from the business(es) it is retaining and to ensure that unless explicitly permitted under these Commitments: (i) best efforts shall be made that the current CEO of Arctic Fish Holding AS currently seconded from NRS continues its position as CEO in Arctic Fish Holding AS at least until Closing (ii) other management and staff of the business(es) retained by the Notifying Party have no involvement in the Divestment Business; (iii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by the Notifying Party and do not report to any individual outside the Divestment Business.
9. Until Closing, the Notifying Party shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the business(es) which the Notifying Party is retaining. Immediately after the adoption of the Decision, the Notifying Party shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Business independently and 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 Notifying Party. 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 7(c) of these Commitments. The Commission may, after having heard the Notifying Party, require the Notifying Party to replace the Hold Separate Manager.
10. To ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise the Notifying Party's rights as shareholder or indirect shareholder in the legal entity or entities that constitute the Divestment Business (except for its rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling the Notifying Party's obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of the Notifying Party (including its Affiliated Undertakings) or NRS. Upon request of the Monitoring Trustee, any member of the board of Arctic Fish Holding AS (including its subsidiaries) not considered to be independent of the Notifying Party or NRS shall resign as a member of the board or the Notifying Party shall cause such members of the boards to resign.

### Ring-fencing

11. The Notifying Party shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by the Notifying Party before the Effective Date will be eliminated and not be used by the Notifying Party. This includes measures vis-à-vis members of the board of directors in Arctic Fish Holding AS and its subsidiaries not considered independent from or the Notifying Party. 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 Party 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 Party is required by law or applicable stock exchange rules.

Non-solicitation clause

12. The Parties undertake, subject to customary limitations for a period of 24 months after Closing, not to solicit, and to procure that its Affiliated Undertakings do not solicit, any Personnel or Key Personnel transferred with the Divestment Business.

Due diligence

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

Reporting

14. The Notifying Party shall submit written reports in English language 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 Party 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.
15. The Notifying Party 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**

16. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:
- (a) the Purchaser shall be independent of and unconnected to the Notifying Party and its 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;
  - (c) the Purchaser shall be one who confirms that it will support and not oppose the continued construction and completion of the harvesting facility in Bolungarvik currently under construction by Arctic Fish; and

- (d) 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.
17. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When the Notifying Party has reached an agreement with a purchaser, it 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 Party 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 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**

18. The Notifying Party shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Party commits not to close the Concentration before the appointment of a Monitoring Trustee.
19. If the Notifying Party has not entered into a binding sale and purchase agreement regarding the Divestment Business [period] before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by the Notifying Party at that time or thereafter, the Notifying Party shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
20. The Trustee shall:
- (a) at the time of appointment, be independent of the Notifying Party and its 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.
21. 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 Party*

22. No later than two weeks after the Effective Date, the Notifying Party shall submit the name or names of one or more natural or legal persons whom the Notifying Party proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, the Notifying Party shall submit a list of one or more persons whom the Notifying Party proposes to appoint as Divestiture 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 20 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;
  - (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*

23. 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 Party 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 Party 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 Party*

24. If all the proposed Trustees are rejected, the Notifying Party 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 18 and 23 of these Commitments.

*Trustee nominated by the Commission*

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

## II. Functions of the Trustee

26. 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 Party, 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*

27. The Monitoring Trustee shall:

- (i) 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.
- (ii) 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 Notifying Party with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
  - (a) 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 7 and 8 of these Commitments;
  - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 9 of these Commitments;
  - (c) with respect to Confidential Information:
    - determine all necessary measures to ensure that the Notifying Party does not after the Effective Date 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 Notifying Party before the Effective Date is eliminated and will not be used by the Notifying Party, and
    - decide whether such information may be disclosed to or kept by the Notifying Party as the disclosure is reasonably necessary to allow the Notifying Party to carry out the divestiture or as the disclosure is required by law;
  - (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and the Notifying Party or Affiliated Undertakings;
- (iii) propose to the Notifying Party such measures as the Monitoring Trustee considers necessary to ensure the Notifying Party's 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;

- (iv) 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:
  - (a) 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
  - (b) potential purchasers are granted reasonable access to the Personnel;
- (v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;
- (vi) provide to the Commission, sending the Notifying Party 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 process as well as potential purchasers;
- (vii) promptly report in writing to the Commission, sending the Notifying Party a non-confidential copy at the same time, if it concludes on reasonable grounds that the Notifying Party is failing to comply with these Commitments;
- (viii) within one week after receipt of the documented proposal referred to in paragraph 17 of these Commitments, submit to the Commission, sending the Notifying Party 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
- (ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

28. 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*

29. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser

and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 16 and 17 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (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 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 Notifying Party, subject to the Notifying Party's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

30. 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 language 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 Party.

### III. Duties and obligations of the Parties

31. The Notifying Party shall provide and shall cause 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 Notifying Party's or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Notifying Party and the Divestment Business shall provide the Trustee upon request with copies of any document. The Notifying Party and the Divestment Business 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.
32. The Notifying Party 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 Party 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 Party 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.
33. The Notifying Party 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 Party shall cause the documents required for effecting the sale and the Closing to be duly executed.
34. The Notifying Party 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 Party 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.

35. At the expense of the Notifying Party, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Notifying Party’s 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 Party refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard the Notifying Party. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 34 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served the Notifying Party during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.
36. The Notifying Party agrees that the Commission may share Confidential Information proprietary to the Notifying Party 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*.
37. The Notifying Party agrees 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.
38. 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

39. 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 Party, require the Notifying Party to replace the Trustee; or
  - (b) the Notifying Party may, with the prior approval of the Commission, replace the Trustee.
40. If the Trustee is removed according to paragraph 39 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 18-25 of these Commitments.
41. Unless removed according to paragraph 39 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**

42. The Commission may extend the time periods foreseen in the Commitments in response to a request from the Notifying Party or, in appropriate cases, on its own initiative. Where the Notifying Party requests an extension of a time period, it 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 Party. Only in exceptional circumstances shall the Notifying Party be entitled to request an extension within the last month of any period.
43. The Commission may further, in response to a reasoned request from the Notifying Party 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**

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

(Signed)

[...], attorney  
duly authorised for and on behalf of  
**SalMar ASA**

## SCHEDULE

1. The Divestment Business as operated to date has the following legal and functional structure:

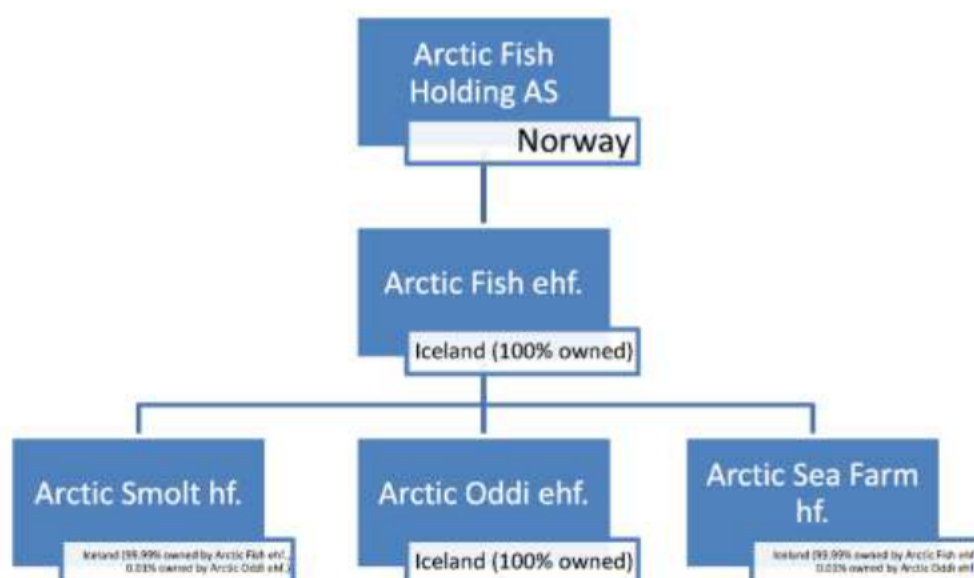
Arctic Fish Holding AS is a company with all its shares listed on the multilateral trading facility named Euronext Growth Oslo. It conducts its main operations through its subsidiaries Arctic Sea Farm hf. (Iceland) Arctic Smolt hf. (Iceland) and Arctic Oddi ehf. (Iceland). Its operations are mainly conducted in the Westfjords of Iceland. The group's principal activities are salmon farming, producing smolt in its own freshwater hatchery and farming salmon at sea before the fish is harvested and finally sold to the market.

Arctic Fish Holding AS was incorporated on 1 October 2020. It is a holding company which owns 100% of the shares in Arctic Fish ehf., the former parent company of the group, that was incorporated on 1 July 2011.

The Arctic Fish group currently holds the following main licenses permits and authorisations:

Company	Geographical presence	Type of licence	Maximum allowed biomass (tons)	Expiry
Arctic Sea Farm hf	Dýrafjörður	Commercial (salmon)	10,000	7 May 2037
Arctic Sea Farm hf	Patreksfjörður and Tálknafjörður	Commercial (salmon)	7,800	27 August 2023
Arctic Sea Farm hf	Ísafjarðardjúp	Commercial (trout)	5,300	4 September 2036
Arctic Sea Farm hf	Amarfjörður	Commercial (trout)	4,000	21 March 2038
Arctic Smolt hf	Westfjords	Hatchery	1,000	20 February 2029

Below is a structure chart of the Arctic Fish group.



2. In accordance with paragraph 5 of these Commitments, the Divestment Business includes, but is not limited to:
- (a) the following main tangible assets:
    - all shares in Arctic Fish Holding AS owned by SalMar (as legal successor to NRS) immediately after completion of the Concentration. Such shares are at the time of these Commitments owned by NRS, currently a total of 16,346,824 shares equalling approximately 51.28% of the entire voting and share capital of Arctic Fish Holding AS, and
    - any and all tangible assets required to conduct the Divestment Business in its ordinary course, including IT, electronic and computer devices, platforms and systems; office supplies; furniture; and stationery;
  - (b) the following main intangible assets:
    - any and all databases, know-how and goodwill that has been obtained by the Divestment Business (as specified above in paragraph 1 of this Schedule);
  - (c) all main contracts, agreements, leases, commitments and understandings;
  - (d) the following customer, credit and other records:
    - all benefits, assets and liabilities under the key customer contracts in the Divestment Business, and
    - all prevailing agreements at the time of Closing related to logistics services provided by third party logistics partners for operations conducted by the Divestment Business;
  - (e) the Personnel;
  - (f) the Key Personnel;
    - [...] (Chief Executive Officer)
    - [...] (Chief Financial Officer)
    - [...] (Chief Business Development Officer)
    - [...] (Quality Manager)
    - [...] (Site Manager FW)
    - [...] (Project Manager)
    - [...] (HR Manager)
    - [...] (Operation Manager SW); and
  - (g) the arrangements for the supply with the following products, services or arrangements by SalMar or Affiliated Undertakings:
    - upon expiry on [date] of the current agreement between Arnarlax (a company owned 51.02% by SalMar) and Arctic Fish, for Arnarlax to provide slaughtering services to Arctic Fish, SalMar shall until [...], offer the Purchaser to renew such arrangement on fair and equitable market terms and conditions, and
    - the Notifying Party commits to procure [obligation to continue wellboat services arrangement], provided that terms and conditions for such continuation (or similar services) is based on fair and equitable market terms and conditions.
3. If there is any asset or personnel which is not covered by paragraph 2 of 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.