



EUROPEAN COMMISSION
DG Competition

Case M.10699 - SALMAR / NTS

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

Decision on the implementation of the commitments -
Purchaser approval

Date: 22/12/2022



EUROPEAN COMMISSION

Brussels, 22.12.2022
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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

SalMar ASA
Industriveien 51
N-7266 Kverva
Norway

Dear Sir or Madam,

**Subject: Case M.10699 – SALMAR / NTS
Approval of Mowi ASA as purchaser of Arctic Fish Holding AS
following your letter of 2 November 2022 and the Trustee’s opinion of
19 December 2022**

1. FACTS AND PROCEDURE

- (1) By decision of 31 October 2022 (the ‘Decision’) based on Article 6(1)(b) in connection with Article 6(2) of the Merger Regulation, the Commission declared the acquisition of sole control, within the meaning of Article 3(1)(b) of the Merger Regulation, of NTS ASA (‘NTS’) by SalMar ASA (‘SalMar’) (the ‘Transaction’) compatible with the internal market and the functioning of the EEA Agreement, subject to certain conditions and obligations (the ‘Commitments’). SalMar and NTS are collectively referred to as the ‘Parties’.

- (2) The Commitments consist in the divestment of NTS's Icelandic subsidiary Arctic Fish Holding AS and all of its direct and indirect subsidiaries (the 'Divestment Business' or 'Arctic Fish'). In particular, the Divestment Business includes the following¹:
- (a) the 16,346,824 shares in Arctic Fish Holding AS, a private limited company incorporated under the laws of Norway, held by SalMar post-Transaction; and
 - (b) 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.
- (3) Furthermore, SalMar has committed to procure that its subsidiary Arnarlax ehf. ('Arnarlax') [content of contractual obligations related to wellboat services arrangements], for a period of at least [timeframe] from the closing of the Transaction, provided that such continuation (or similar services) is based on fair and equitable market terms and conditions.²
- (4) SalMar also committed to offer the purchaser, upon expiry on [expiry date] of the current agreement under which Arnarlax provides slaughtering services to the Divestment Business, to renew such arrangements on fair and equitable market terms and conditions, until [...].³
- (5) SalMar has further committed, subject to customary limitations, for a period of 24 months after the closing of the Transaction, not to solicit, and to procure that its affiliated undertakings do not solicit, any personnel or key personnel transferred with the Divestment Business.⁴
- (6) By letter of 2 November 2022 (the 'Reasoned Proposal'), SalMar proposed Mowi ASA ('Mowi') for approval by the Commission as purchaser of the Divestment Business. On 26 October 2022, SalMar submitted a Share Sale and Purchase Agreement ('Original SPA') concluded between SalMar and Mowi on 25 October 2022. Following three requests for information ('RFI') from the Commission to SalMar, SalMar submitted on 17, 21 and 30 November 2022, respectively, further information on e.g. the proposed purchaser. On 16 November 2022, SalMar shared with Mazars LLP (the 'Trustee') a revised

¹ Commitments, Section B, paragraph 5 and the Schedule to the Commitments.

² Schedule to the Commitments, paragraph 2(g).

³ Ibid.

⁴ Commitments, Section C, paragraph 12.

Share Sale and Purchase Agreement (the ‘Revised SPA’), which was subsequently signed by SalMar and Mowi on 9 December 2022. On 19 December 2022, SalMar submitted to the Trustee an agreement (‘Harvesting Agreement’) regulating Arnarlax’s continued supply of slaughtering services to Arctic Fish and [wellboat services arrangement] (together with the Revised SPA the ‘Proposed Agreements’) for approval by the Commission.

- (7) On 25 November 2022, the Trustee submitted its initial assessment of Mowi’s suitability as a purchaser (the ‘Draft Reasoned Opinion’). On 19 December 2022, the Trustee submitted a final version of its assessment on the purchaser’s suitability (the ‘Reasoned Opinion’) in which it concludes that Mowi fulfils the purchaser requirements in Section D of the Commitments attached to the Decision. In this assessment, the Trustee also concludes that, on the basis of the Proposed Agreements, the Divestment Business would be sold in a manner consistent with the Commitments.

2. ASSESSMENT OF THE PROPOSAL

2.1. Description of the proposed purchaser

- (8) Mowi is a seafood company and the world’s largest producer of farmed salmon. Mowi is present in 25 countries, employs approximately 11 500 people and sells its products in more than 70 countries. Mowi is organised in three business areas: Feed, Farming and Sales & Marketing. Feed comprises Mowi’s feed plants in Norway and Scotland. Farming incorporates Mowi’s farming operations in Norway, Scotland, Canada, Chile, Ireland and the Faroe Islands. Mowi’s Farming operations also include Mowi’s Breeding & Genetics program and processing activities mainly related to primary processing. Sales & Marketing includes Mowi’s secondary processing and value-added operations in Europe, the United States and Asia, as well as sales and delivery of Mowi’s products.⁵

2.2. Purchaser criteria

- (9) In order to be approved by the Commission, the purchaser must fulfil the following criteria in accordance with the Commitments⁶:
- (a) the purchaser shall be independent of and unconnected to the Parties and their affiliated undertakings;
 - (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 the Divestment Business; 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,

⁵ Reasoned Proposal, Section 3.

⁶ Commitments, Section D, paragraph 16. See also the 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 (‘Remedy Notice’), section 1.5(a).

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.

2.3. Independence from the Parties

- (10) In its Reasoned Proposal,⁷ SalMar submits that Mowi is independent of and unconnected to the Parties and their affiliated undertakings. Mowi does not have any shareholdings in a company controlled by the Parties, or vice versa, and no director of Mowi is a member of the board of the Parties, or vice versa. The only exception is a non-controlling minority shareholding of 0.81%, which Kverva Finans AS ('Kverva Finans'), a subsidiary of SalMar's ultimate parent company, holds in the Divestment Business. However, Kverva Finans [...].⁸
- (11) Furthermore, SalMar submits that, while there are ordinary commercial purchase and supply links between SalMar/NTS and Mowi, consisting of purchases and sales of goods and services at an arm's length and on market terms, such purchase and supply links are common in the industry and do not establish a particular link between the Parties and Mowi.⁹ The following commercial and supply links exist between the Parties and Mowi.
- (12) *First*, such purchase and supply agreements include spot sales of salmon by the Parties to Mowi, and vice versa. SalMar submits that such purchases are made for the purpose of (i) ensuring sufficient volumes for its secondary processing activities and (ii) ensuring sufficient volumes to deliver according to concluded sales contracts.¹⁰ In 2021, Mowi sold [...] tonnes of primary processed salmon to SalMar, which represent [0-5]% of Mowi's overall sales of primary processed salmon, as well as [0-5]% of the overall volumes of salmon processed in SalMar's secondary processing facility that year. To NTS, Mowi sold [...] tonnes of primary processed salmon in 2021, representing [0-5]% of Mowi's overall sales of primary processed salmon that year. Moreover, SalMar sold [...] tonnes of primary processed salmon to Mowi in 2021, representing [0-5]% of SalMar's overall sales of primary processed salmon and [10-20]% of Mowi's total purchases of primary processed salmon that year. NTS sold [...] tonnes of primary processed salmon to Mowi in 2021, representing less than [0-5]% of NTS's overall sales of primary processed salmon and [0-5]% of Mowi's total purchases of primary processed salmon that year.¹¹
- (13) *Second*, Mowi purchases aquaculture equipment from ScaleAQ, which is controlled by SalMar. SalMar submits that the sales are conducted on market terms and on an arms-length basis. In 2021, ScaleAQ sold aquaculture equipment to Mowi for a value of [value of agreement], representing [10-20]% of ScaleAQ's sales of such equipment overall and [10-20]% of Mowi's total purchases of aquaculture equipment that year.¹²

⁷ Reasoned Proposal, Section 2.

⁸ SalMar's reply to RFI 14, questions 1-2.

⁹ Reasoned Proposal, Section 2.

¹⁰ Ibid.

¹¹ SalMar's reply to RFI 14, questions 5-6.

¹² SalMar's reply to RFI 14, question 7.

- (14) *Third*, Mowi and SalMar recently entered into an agreement for the provision of [services at an agreed upon location]. SalMar submits that the agreement has been entered into on market terms and conditions, reflecting market prices.¹³
- (15) Based on the information provided by SalMar and the Trustee, the Commission finds that, besides Kverva Finans's shareholding of 0.81% in the Divestment Business, [...], there are no cross-shareholdings between the Parties and Mowi and no common board members. Since the purchase and supply agreements between Mowi and the Parties are limited in scope and carried out on market terms and at an arm's length, they do not impede the independence of Mowi from the Parties and their affiliated undertakings.
- (16) The Trustee shares this view and submits that, between Mowi, the Parties and their affiliated undertakings, the risk of cross-shareholdings is very limited and there are no common shareholdings, with the exception of the non-controlling shareholding of SalMar's parent company in the Divestment Business, or common executive or non-executive directors on their boards. The Trustee further submits that the value of the sale and purchase agreements between SalMar and Mowi is low compared to the total revenue and sales/purchases of each party, and that they are therefore unlikely to give rise to independence concerns.¹⁴
- (17) In light of the foregoing, the Commission considers that Mowi is independent and unconnected to SalMar, NTS and their affiliates.

2.4. Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor

2.4.1. Financial resources to maintain and develop the Divestment Businesses as a viable and active competitor

- (18) SalMar submits that Mowi has significant financial resources to continue the development of Arctic Fish as a viable and active competitive force in competition with SalMar, as Mowi's revenue in 2021 amounted to EUR 1 407.4 million and since it has available credit lines of approximately [amount of available credit lines] and an equity ratio exceeding 50%.¹⁵
- (19) Based on the information provided by SalMar and the Trustee, the Commission finds that Mowi has credit lines sufficient to fund the purchase of the Divestment Business for NOK 1 879 884 760 (approximately EUR 181 million), as well as financial results sufficient for maintaining and developing the Divestment Businesses as a viable and active competitor.
- (20) The Trustee shares this view and submits that Mowi is in a financially strong position and has the financial resources to acquire and develop the Divestment Business. To that end, the Trustee refers to Mowi's revolving credit facility of [amount of revolving credit facility] that will be used to finance the acquisition of the Divestment Business, Mowi's strong performance in 2021 and year-to-date

¹³ SalMar's reply to RFI 14, question 8.

¹⁴ Reasoned Opinion, paragraphs 86-114.

¹⁵ Reasoned Proposal, Section 3.

September 2022, as well as its Net debt to EBITDA ratio of [Net debt to EBITA ratio] and equity ratio of above 50%.¹⁶

- (21) Based on the above, the Commission considers that Mowi has sufficient financial resources to maintain and develop the Divestment Businesses as a viable and active competitor.

2.4.2. *Proven expertise to maintain and develop the Divestment Businesses as a viable and active competitor*

- (22) SalMar puts forward that Mowi, active in feed, farming and sales and marketing operations, harvested a total of 466 000 tonnes gross weight ('gw') salmon in 2021 and sells its products in over 70 countries. Mowi is present in 25 countries and employs approximately 11 500 people. SalMar submits that, as evidenced by Mowi's history, scale and the nature of its operations, Mowi has proven expertise within all aspects of salmon farming and that, through its geographic presence and track record, Mowi has a proven record with salmon farming operations in harsher climates similar to the climate of the Icelandic Fjords.¹⁷

- (23) SalMar further submits that Mowi, originally a Norwegian aquaculture company, has a history of successfully establishing farming operations in other countries through acquisitions. For example, through the acquisition of Morpol in 2014, Mowi evolved into value-added processing in new geographies such as Poland, Germany, Italy and the Czech Republic, and as per the acquisition of Northern Harvest in 2017-2018, Mowi established a farming presence on the Canadian East Coast. Today, Mowi produces considerable volumes of salmon in Norway, Chile, Ireland, the Faroe Islands, Canada and Scotland.¹⁸

- (24) Based on the information provided by SalMar and the Trustee, the Commission finds that Mowi has proven expertise in salmon farming and processing given that it has previously successfully integrated and developed salmon farming operations in other geographies.

- (25) The Trustee shares this view and submits that Mowi has significant proven expertise in acquiring and successfully integrating business and assets in the Mowi Group. In particular, Mowi has specific experience of owning majority shareholdings and acquiring independently run companies and successfully developing these as subsidiaries of Mowi.¹⁹

- (26) Given the above, the Commission considers that Mowi has proven expertise to maintain and develop the Divestment Businesses as a viable and active competitor.

2.4.3. *Incentive to maintain and develop the Divestment Businesses as a viable and active competitor and long-term commitment to maintain the Divestment Businesses viable, competitive, and well-capitalised*

- (27) SalMar puts forward that, in the countries where Mowi has established farming operations, Mowi has a proven track record of expanding operations, investing in local operations and increasing harvest volumes. Moreover, Mowi has invested a

¹⁶ Reasoned Opinion, paragraphs 143-159.

¹⁷ Ibid.

¹⁸ SalMar's reply to RFI 14, question 9.

¹⁹ Reasoned Opinion, paragraph 190.

considerable amount of capital in its acquisition of Arctic Fish. SalMar submits that, as any commercially motivated operator, Mowi is therefore greatly incentivised to maximise the return on its investment by ensuring the success of Arctic Fish, notably by continuing to maximise Arctic Fish's harvest volumes going forward.²⁰

- (28) Considering Mowi's investment in the Divestment Business and that Mowi has previously successfully developed the salmon farming operations it has acquired, the Commission is of the view that Mowi has the incentive to maintain and develop the Divestment Business as a viable competitor.
- (29) The Trustee shares this view and submits that the acquisition of Arctic Fish has an attractive growth trajectory and complements Mowi's ambition to establish operations in all main farming regions such as Iceland, where the company does not currently have any operations. Mowi has acquired 10 businesses within its global organisation and integrated 10 of these, the remaining 2 to be integrated by January 2023.²¹
- (30) In light of the foregoing, the Commission considers that Mowi has the incentive to maintain and develop the Divestment Businesses as a viable and active competitor, and long-term commitment to maintain the Divestment Businesses viable, competitive and well-capitalised.

2.5. Support of the completion of Arctic Fish's harvesting facility

- (31) SalMar submits that Mowi has undertaken a contractual obligation in the SPA to support and not oppose the continued construction of the harvesting facility in Bolungarvik currently under construction by Arctic Fish.²²
- (32) Based on the information provided by SalMar and the Trustee, the Commission is of the view that Mowi will support and not oppose the continued construction of the harvesting facility, considering the contractual obligation to do so as well as Mowi's interest to maximise the profits from its investment in the Divestment Business.
- (33) The Trustee shares this view and submits that Mowi has the incentive to support the completion of Arctic Fish's harvesting facility [content and context of contractual obligations].²³
- (34) On this basis, the Commission concludes that Mowi complies with the purchaser requirement to support and not oppose the completion of Arctic Fish's harvesting facility.

2.6. Absence of prima facie competition problems

2.6.1. Farming and primary processing of Icelandic salmon

- (35) SalMar submits that there are no horizontally overlapping market activities between Mowi and the Divestment Business with regard to farming and primary

²⁰ Reasoned Proposal, Section 3.

²¹ Reasoned Opinion, paragraphs 215-217.

²² Reasoned Proposal, Section 4.

²³ Reasoned Opinion, paragraphs 219-220.

processing of Icelandic salmon. Mowi has no presence or activities in Iceland, while the activities of the Divestment Business consists solely of farming and primary processing of salmon in Iceland.²⁴

- (36) The Commission notes that farming and primary processing of Icelandic salmon was defined as a distinct product market in the Decision. Since Mowi is not active in this market, in which the Divestment Business operates, the Commission finds that there is no horizontal overlap between the activities of Mowi and the Divestment Business.
- (37) The Trustee submits that the acquisition would not give rise to prima facie competition concerns, given the lack of horizontal overlaps in the market for farming and primary processing of Icelandic salmon.²⁵
- (38) In light of the above, the Commission concludes that the acquisition of Arctic Fish by Mowi would not give rise to prima facie competition concerns in the market for farming and primary processing of Icelandic salmon.
- (39) This prima facie assessment is based on the information available for the purpose of this buyer approval and does not prejudice the competition assessment of the acquisition of the Divestment Business by Mowi by a competent competition authority under applicable merger control rules.

2.6.2. *Production and sale of aqua feed for farmed salmon*

- (40) SalMar submits that there are no competition concerns in relation to Mowi's production of aqua feed for farmed salmon, an important input for salmon production. As the Divestment Business is only active in the production of Icelandic salmon and since Mowi does not produce feed in Iceland or sell to customers located in Iceland, there are no vertical links between the activities of Mowi and the Divestment Business. SalMar further submits that, in the North Sea basin, Mowi had a market share of [0-5]% in 2021 in the market for the production and sale of aqua feed for farmed salmon.²⁶
- (41) The Commission finds that there is no horizontal overlap between the activities of Mowi and the Divestment Business with regard to the production and sale of aqua feed, since the latter is not active in the production or sale of feed. With respect to the potential vertical relationship between Mowi and the Divestment Business, the Commission finds that Mowi is not active in the market for the production and sale of aqua feed for farmed salmon in Iceland and has low market shares when defining the geographic scope of such market as the North Sea basin. The Commission further finds that the importance of the Divestment Business as a customer of aqua feed is limited, as there are several other competitors of the Divestment Business remaining as potential purchasers of aqua feed after the acquisition of the Divestment Business by Mowi, such as for example in Iceland, Salmar, Måsøval, and Háafell, and others outside of Iceland.
- (42) The Trustee submits that with respect to the vertical relationship between Mowi and Arctic Fish, the Trustee finds no prima facie risk of input foreclosure given that Mowi makes only de minimis sales of fish feed in the North Sea Basin and has no

²⁴ Reasoned Proposal, Section 5.

²⁵ Reasoned Opinion, paragraph 243.

²⁶ SalMar's reply to RFI 14, questions 11-12.

sales in Iceland. As for customer foreclosure, the Trustee holds that the acquisition would not deprive feed suppliers of a particularly important customer in the context of their overall customer base, and other customers such as Arnarlax, Måsøval and Haafell would continue to be outlets for the feed suppliers in Iceland, not to mention other customers elsewhere in the North Sea Basin.²⁷

- (43) In light of the above, the Commission is of the view that the acquisition would not give rise to prima facie concerns with regard to the production and sale of aqua feed for farmed salmon.
- (44) This prima facie assessment is based on the information available for the purpose of this buyer approval and does not prejudice the competition assessment of the acquisition of the Divestment Business by Mowi by a competent competition authority under applicable merger control rules.

2.6.3. *Secondary processing of salmon*

- (45) SalMar submits that there are no competition concerns in relation to Mowi's secondary processing of salmon, an activity that is downstream to farming and primary processing of salmon.²⁸ SalMar puts forward that Mowi has no secondary processing operations in Iceland, does not process Icelandic salmon in its secondary processing facilities and does not sell or market its salmon products as originating in Iceland. Since Mowi is not active in the market for secondary processing of Icelandic salmon, there is no vertical link between the parties. Moreover, SalMar submits that, also when considering a wider product market comprising of an overall market for secondary processing of salmon regardless of origin, Mowi's acquisition of the Divestment Business would not impact competition negatively. To that end, SalMar refers to that the Divestment Business' production volumes constitute a limited amount of the annual production of farmed Atlantic salmon in Europe and that the market for secondary processing of farmed Atlantic salmon is highly diversified and characterized by a wide range of strong and competitive players.²⁹
- (46) The Commission finds that there is no horizontal overlap between the activities of the Divestment Business and Mowi on the market for secondary processing of salmon. The Divestment Business is not active in secondary processing of salmon.
- (47) There is, however, a potential vertical relationship between the Divestment Business' activities on the upstream market for farming and primary processing of Icelandic salmon and SalMar's activities on the market for secondary processing of salmon. Upstream, the Divestment Business had a volume market share of [30-40]% and a capacity market share of [10-20]% in 2021 for farming and primary processing of Icelandic salmon.³⁰ Downstream, Mowi had a volume market share of [10-20]% in the EEA in 2021 for secondary processing of all salmon – irrespective of origin. As per a potential segmentation of the downstream market for secondary processed salmon along fresh, frozen and smoked products,³¹

²⁷ Reasoned Opinion, paragraphs 236-242.

²⁸ Reasoned Proposal, Section 5.

²⁹ SalMar's reply to RFI 14, question 16.

³⁰ The Decision, para 31.

³¹ In M.6850 – *Marine Harvest/Morpol*, paras. 63-67, the Commission considered the possibility of separate markets for fresh, frozen and smoked secondary processed salmon, but ultimately left the product market definition open.

Mowi's volume market shares in the EEA in 2021 were [10-20]%, [5-10]% and [20-30]%, respectively. As per a potential segmentation of the downstream market for secondary processed salmon on a national level,³² Mowi estimates that it did not have market shares exceeding [30-40]% in secondary processing except in the following cases. Mowi estimates that in 2021, it had a market share of approximately [30-40]% in the market for secondary processed smoked salmon in Germany, approximately [30-50]% in the markets for secondary processed fresh salmon and smoked salmon in the Czech Republic and Slovakia, as well as approximately [30-40]% in the markets for secondary processed fresh salmon and smoked salmon in Austria and Slovenia.³³

- (48) The Commission concludes that the outlined potential vertical relationship does not give rise to prima facie competition concerns. There is no likely risk of customer foreclosure in light of numerous secondary processors active across the EEA, to which farmers of Icelandic salmon can sell their output. There also seems to be no appreciable risk that Mowi could or would foreclose downstream secondary processors from access to primary processed Icelandic salmon. *First*, the Divestment Business' upstream capacity-based market shares of [10-20]% are moderate. In addition to the Divestment Business and SalMar, there exists another supplier with significant capacity shares of [40-50]% (Måsøval) and a new entrant with capacity shares of [5-10]% (Háafell) in the upstream market for farming and primary processing of Icelandic salmon.³⁴ These farmers constitute viable supply alternatives of Icelandic salmon for secondary processors. *Second*, Mowi is currently not active in the secondary processing of Icelandic salmon. A vertical relationship would therefore only be a potential one. *Third*, despite separate upstream product markets for Icelandic and Norwegian salmon, both markets are close and commercially interrelated. It cannot be fully excluded that secondary processors could, at least to a certain extent, shift (or threaten to shift) their purchases from Icelandic to Norwegian salmon and therefore avoid an overly strong dependence on Icelandic salmon. *Fourth*, there are some indications that the markets for secondary processing of salmon show a certain level of cross-EEA homogeneity. While the exact geographic market definition can be left open, the Commission notes that there are significant and increasing cross-EEA border sales of secondary salmon. On such EEA-wide downstream market, Mowi's market shares would be [10-20]%. *Fifth*, the Commission has not observed any input foreclosure strategies employed in the salmon industry. Integrated salmon farmers such as Mowi typically do not secondary process all of their farmed salmon in-house, but sell a significant share of their primary processed salmon to third-party secondary processors. The Commission has not found any indications that Mowi would divert from this industry practice. *In conclusion*, there appear to be no prima facie indications that SalMar would have the ability or incentives to employ an input foreclosure strategy.
- (49) In its Reasoned Opinion, the Trustee submits that the proposed transaction would not give Mowi the ability to engage in customer foreclosure since post-Transaction a large number of large and small secondary processors would remain across the EEA and on a national level to whom upstream competitors in farming and primary

³² In M.6850 – *Marine Harvest/Morpol*, paras. 72-73, the Commission did not exclude that the market(s) for secondary processing of salmon could be national in scope, but ultimately left the exact geographic market definition open.

³³ SalMar's reply to RFI 14, questions 14 and 15.

³⁴ The Decision, table 1.

processing of salmon could sell their salmon. With regard to input foreclosure, the Trustee finds that secondary processors will continue to be able to procure Icelandic salmon from Arnarlax and Måsøval post-transaction. Måsøval's share in the market for farming and primary processing of Icelandic salmon accounted for [30-40]% by volume and [40-50]% by capacity in 2021, while the equivalent figures for Arnarlax were [30-40]% and [20-30]%, respectively. Further, supply from Haafell, the new entrant in Iceland representing [5-10]% of capacity, can be expected to come on stream in the near future. The Trustee is therefore of the view that input foreclosure is unlikely to result from the proposed acquisition.³⁵

- (50) In light of the foregoing, the Commission concludes that the acquisition of Arctic Fish by Mowi is unlikely to give rise to prima facie competition concerns in relation to secondary processing of salmon.
- (51) This prima facie assessment is based on the information available for the purpose of this buyer approval and does not prejudge the competition assessment of the acquisition of the Divestment Business by Mowi by a competent competition authority under applicable merger control rules.

3. ASSESSMENT OF THE PROPOSED AGREEMENTS

- (52) The acquisition of the Divestment Business by Mowi will be carried out in accordance with the Proposed Agreements, i.e. the Revised SPA and the Harvesting Agreement whereby Arnarlax will i) provide slaughtering services to Arctic Fish from [timeframe] and ii) continue the [wellboat services arrangement].
- (53) SalMar submits that the Divestment Business is being sold in a manner consistent with the Commitments. With regard to the Revised SPA, SalMar submits, *inter alia*, that it accurately reflects the scope of the Divestment Business as specified in the Commitments, that it includes an obligation for the purchaser to support the construction of Arctic Fish's harvesting facility and that the closing reflects the timeframe set out in the Commitments. SalMar further submits that the Harvesting Agreement is offered on fair and equitable market terms. As for [wellboat services arrangement], SalMar submits that the offered terms provide for the continuation of the current joint arrangement, which is based on [content of contractual obligations]. Moreover, SalMar submits that the conditions of the offer for slaughtering services are [...]. The increase in price is due to increased costs largely due to inflation, as well as an increased risk for [...], as the [...]. Finally, SalMar submits that the Harvesting Agreement is set to terminate in [...], which should fulfil the Commitments since that should be sufficient time for [...]. However, so as to better reflect the Commitments, SalMar has [content of contractual obligations], which would ensure that Arctic Fish has access to such services in line with the Commitments.³⁶
- (54) Based on the information provided by SalMar and the Trustee, the Commission is of the view that the Proposed Agreements, as revised, are consistent with the Commitments. The contractual obligations set out in the Revised SPA are in line with the requirements of the Commitments.

³⁵ Reasoned Opinion, paragraphs 250-252.

³⁶ SalMar's reply to RFI 18, question 1.

- (55) The Commission finds that the Harvesting Agreement is in accordance with the Commitments in the sense that it requires SalMar to continue to offer slaughtering services to the Divestment Business and make its best efforts to [wellboat services arrangement]. With regard to the [wellboat services arrangement], the Commission finds that the offered terms and conditions are not materially different from the current arrangement for such services. The Commission further notes that [wellboat services arrangement]. In light of the foregoing, the Commission finds that the Harvesting Agreement is in line with the Commitments in this regard.
- (56) Moreover, with regard to the terms and conditions of the slaughtering services set out in the Harvesting Agreement, the Commission finds that these are equivalent to fair and equitable market terms. The price of the slaughtering services is based on [...]. The Commission will continue to monitor that [content of contractual obligation].
- (57) However, the Harvesting Agreement is set to terminate in [expiry date] and does therefore not correspond to the Commitments, which requires the slaughtering services to be provided by Arnarlax until [required term]. Given SalMar's offer to include the possibility to extend the Harvesting Agreement up to [timeframe], the Commission is of the view that the Divestment Business will have access to Arnarlax's slaughtering services until [...], and that the duration of the Harvesting Agreement is therefore ultimately in line with the Commitments.
- (58) The Trustee considers that the Revised SPA is consistent with the requirements of the Commitments. Specifically, the Trustee submits that it has no concerns in relation to the agreed purchase price and considers that Mowi is well positioned to raise the funds needed.³⁷ Furthermore, the Trustee considers that the SPA is aligned with paragraph 17 of the Commitments, which requires that the final binding SPA shall be conditional on the Commission's approval.³⁸ The Trustee also finds that the transfer of shares will be effectuated in a way consistent with paragraph 3(b) of the Commitments, requiring the closing of the Transaction to take place within the Closing Period as defined in the Commitments.³⁹ The Trustee also finds that the SPA is consistent with the Closing Period, defined in paragraph 1 of the Commitments as a period of 3 months from the Commission's approval of the purchase and terms of sales, and makes it clear that SalMar has committed to Closing taking place within this Closing Period.⁴⁰ With regard to the conditions set out in the SPA for terminating the SPA, the Trustee finds that they are in line with the Commitments.⁴¹ The Trustee further finds that the SPA is consistent with paragraph 12 of the Commitments, which sets out that SalMar must not solicit personnel of Arctic Fish for 24 months after closing.⁴² The Trustee is also of the view that the scope of the Divestment Business as set out in the SPA is in line with paragraph 5 of the Commitments and the Schedule to the Commitments, setting out the assets included in the Divestment Business which are to be transferred to the purchaser.⁴³ Moreover, the Trustee considers that the licenses, permits and authorisations listed in the Schedule to the Commitments will transfer with the business, consistent with the requirements of the Commitments. Similarly, the

³⁷ Reasoned Opinion, paragraph 274.

³⁸ Reasoned Opinion, paragraph 276.

³⁹ Reasoned Opinion, paragraph 279.

⁴⁰ Reasoned Opinion, paragraph 283.

⁴¹ Reasoned Opinion, paragraphs 285-290.

⁴² Reasoned Opinion, paragraph 293.

⁴³ Reasoned Opinion, paragraph 303.

Trustee considers that the relevant contracts listed in the Schedule to the Commitments, will transfer with the Divestment Business in accordance with the requirements of the Commitments.⁴⁴ Lastly, the Trustee considers that the Personnel and Key Personnel as defined in the Commitments are to be transferred in accordance with the requirements of the Commitments.⁴⁵

- (59) The Trustee considers that the Harvesting Agreement satisfies paragraph 5 of the Commitments and paragraph 2(g) of the Schedule to the Commitments to the extent that it ensures the continuation of the supply of harvesting services by Arnarlax to Arctic Fish and [wellboat services arrangement] beyond the divestment of Arctic Fish. In particular, with regard to the wellboat services, the Trustee submits that the terms of this service do not appear to have changed from the current arrangement. The Trustee notes that Arctic Fish has not expressed any concerns on the pricing, [other wellboat services arrangements]. Moreover, with regard to the slaughtering services, the Trustee reviewed the cost structure and mark-ups of past agreements and concludes that the terms and prices of Arnarlax's new offer are equivalent to fair and equitable market terms and conditions.⁴⁶ Finally, the Trustee submits that, although the Harvesting Agreement will terminate in [expiry date], [...] [timeframe].⁴⁷
- (60) Based on the foregoing, the Commission concludes that the Proposed Agreements, as revised, are fully compliant with the Commitments.

4. CONCLUSION

- (61) On the basis of the above assessment, pursuant to conditions, the Commission approves Mowi as a suitable purchaser for the above-mentioned reasons.
- (62) On the basis of the Proposed Agreements, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
- (63) This decision only constitutes approval of the proposed purchaser identified herein and of the SPA. This decision does not constitute a confirmation that SalMar has complied with its Commitments. This decision is based on the information available for the purpose of this buyer approval and does not prejudice the competition assessment of the acquisition of the Divestment Business by Mowi by a competent competition authority under applicable merger control rules.
- (64) This decision is based on Section B, paragraph 3 of the Commitments attached to the Commission Decision of 31 October 2022.

For the Commission

(Signed)
Olivier GUERSENT
Director-General

⁴⁴ Reasoned Opinion, paragraphs 309, 313, 315.

⁴⁵ Reasoned Opinion, paragraph 323.

⁴⁶ Reasoned Opinion, paragraphs 335-359.

⁴⁷ Reasoned Opinion, paragraphs 363-366.