

Anticipated acquisition by Scottish Sea Farms Limited of Grieg Seafood Hjaltdland UK Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6951/21

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 8 December 2021. Full text of the decision published on 7 January 2022.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

SUMMARY

1. Scottish Sea Farms Limited (**SSF**) has agreed to acquire Grieg Seafood Hjaltdland UK Limited (**GSH**) (the **Merger**). SSF and GSH are together referred to as the **Parties**, and, for statements referring to the future, the **Merged Entity**.
2. The Parties overlap in the farming and primary processing of Scottish Atlantic salmon (**Scottish salmon**). One of SSF's indirect parent companies is also active in the supply of various products such as feeding systems used in the farming of salmon.
3. The CMA assessed the impact of the Merger in the farming and primary processing of Scottish salmon in the UK. The CMA found that Scottish salmon is sold at a premium to Norwegian salmon, is perceived to be of higher quality and can only be produced in Scotland. The CMA therefore considered that it would not be appropriate to widen the product frame of reference to include all farmed Atlantic salmon.

4. The CMA considered whether the Merger would give rise to a substantial lessening of competition (**SLC**) as a result of horizontal unilateral, coordinated and vertical effects.
5. In assessing the competitive effects of the Merger, the CMA considered a range of evidence including shares of supply, the Parties' internal documents and third-party evidence. In relation to potential horizontal unilateral effects, the CMA found that the Parties' combined share of supply of [20-30]% is not sufficient to give the Merged Entity market power. The available evidence also shows that the Merged Entity will continue to face sufficient competitive constraints from three large suppliers.
6. In relation to coordinated effects, the CMA considered whether coordination could take place over price or quantity given that the Merger reduces the number of suppliers in the market, increases their symmetry (in terms of shares of supply) and that Scottish salmon is mostly an undifferentiated product. These factors could make it easier for suppliers to coordinate their behaviour post-Merger. However, the CMA did not find any evidence of pre-existing coordination as regards Scottish salmon and found that there is insufficient transparency over price and quantity for suppliers of Scottish salmon to be able to reach the terms of coordination and for any coordination to be internally sustainable. As regards vertical effects, the CMA found that the Merged Entity would have no ability to foreclose rivals.
7. The CMA therefore believes that the Merger does not give rise to a realistic prospect of a SLC as a result of horizontal unilateral, coordinated or vertical effects in the farming and primary processing of Scottish salmon in the UK.
8. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties and transaction

9. SSF is a UK-based company active in marine aquaculture, specifically the farming and primary processing of Scottish salmon.¹ SSF operates 42 farming sites across the west coast of Scotland, Orkney and Shetland.² SSF also has

¹ Final merger notice submitted to the CMA on 18 October 2021 (**FMN**), page 8.

² FMN, page 10.

two processing facilities and two hatcheries.³ In the financial year ending 2020, SSF's turnover in the UK was approximately [REDACTED].⁴

10. SSF is owned by Norskott Havbruk which is a 50/50 joint venture between Leroy Seafood Group ASA (**Leroy**) and SalMar ASA (**SalMar**).⁵ Leroy and SalMar are Norwegian companies listed on the Oslo Stock Exchange. Leroy and SalMar are active in marine aquaculture including the farming and processing of Norwegian salmon.⁶ Neither is active in the farming or primary processing of Scottish salmon.⁷
11. GSH is a UK-based investment holding company that owns Grieg Seafood Shetland Limited (**GSSL**), which is active in the farming and primary processing of Scottish salmon. GSH operates 21 farming sites and a processing facility in Shetland.⁸ GSH is a wholly owned subsidiary of Grieg Seafood ASA (the **Seller**), a public limited company listed on the Oslo Stock Exchange.⁹ In the financial year ending 2020, GSSL's UK turnover was approximately £37 million.¹⁰
12. On 29 June 2021, pursuant to a share purchase agreement, SSF agreed to acquire GSH from the Seller.¹¹

Jurisdiction

13. Each of SSF and GSH is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
14. The Act also requires the CMA to assess whether either the turnover of the target in the UK exceeds £70 million (the **turnover test**) or the merger results in a combined share of supply or acquisition of goods or services of any description of 25% or more (the **share of supply test**).

³ FMN, page 10.

⁴ FMN, page 18.

⁵ FMN, page 8.

⁶ FMN, page 8. Leroy's largest shareholder is Austevoll Seafood ASA (52.69%) while SalMar's ultimate parent company is Kvarv AS. FMN, pages 6-7.

⁷ Both of SSF's parents (Leroy and SalMar) are active in the farming and primary processing of Norwegian Atlantic salmon but not Scottish salmon. SSF's parent companies also trade a small volume of Scottish salmon [REDACTED]. SSF's parents also engage in some limited secondary processing and wholesale distribution of Scottish salmon [REDACTED]. FMN, pages 10-11.

⁸ FMN, page 12. GSH also owns Isle of Skye Salmon Limited which is a dormant company.

⁹ FMN, page 8. The largest shareholder in Grieg Seafood ASA is Grieg Aqua AS which is a wholly-owned subsidiary of Grieg Maturitas II AS, 75% of which is owned by Grieg Maturitas AS. The beneficial owners of Grieg Maturitas AS are the members of the Grieg family.

¹⁰ GSSLs UK turnover is all the UK revenue attributable to GSH's activities as GSH itself generated no additional revenue in 2020. FMN, pages 15-16.

¹¹ FMN, Annex 001.

15. The turnover test is not met because GSH's turnover in the UK is below £70 million.
16. For the purposes of deciding whether the share of supply test is met, section 23(5) of the Act provides that the CMA shall apply such criterion (whether value, cost, price, quantity, capacity, number of workers employed, etc), or such combination of criteria, as it considers appropriate for the purposes of calculating whether the 25% threshold is satisfied.¹²
17. The Parties overlap in the farming and primary processing of Scottish salmon and the CMA has assessed the share of supply test by reference to capacity, measured by the number of active farming sites (ie sites that produced Scottish salmon in the last three years) in the UK.¹³ On this basis, the Parties have a combined share of supply of 31% with an increment of 9%.¹⁴ The share of supply test is therefore met.
18. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
19. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 21 October 2021 and the statutory 40 working day deadline for a decision is therefore 15 December 2021.

Counterfactual

20. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers, the counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition.¹⁵
21. In determining the appropriate counterfactual, the CMA will generally focus only on potential changes to the prevailing conditions of competition where there are reasons to believe that those changes would make a material difference to its competitive assessment.¹⁶ In Phase 1 investigations, if the CMA must consider multiple potential counterfactual scenarios where each of

¹² See section 23(5) of the Act.

¹³ The CMA considers that the use of active farming sites to measure capacity is appropriate as such sites are a key input for the farming and primary processing of Scottish salmon, which determine the amount of Scottish salmon that each supplier can produce. Information on allowable biomass across active farming sites (a potential alternative measure of capacity) for all suppliers was not available to the CMA.

¹⁴ CMA's analysis of SSF's response to RFI 3 dated 23 September 2021.

¹⁵ [Merger Assessment Guidelines](#), paragraph 3.2.

¹⁶ [Merger Assessment Guidelines](#), paragraph 3.9.

those scenarios is a realistic prospect, it will choose the one where the merger firms exert the strongest competitive constraint on each other, and where third parties exert the weakest competitive constraints on the merger firms.¹⁷

22. The Parties submitted that there were several other bidders for GSH, including [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].¹⁸ A number of these bidders are not active in the farming and primary processing of Scottish salmon.
23. The CMA therefore considers that the appropriate counterfactual is one where GSH would have continued to operate as an independent competitor either under current ownership or under new ownership (ie as in the prevailing conditions of competition).
24. The CMA therefore assessed the Merger against the prevailing conditions of competition.

Competitive assessment

Background

25. The Parties overlap in the farming and primary processing of Scottish salmon in Scotland.
26. The production of Scottish salmon consists of two main steps: farming and primary processing.
27. Farming involves growing salmon eggs until they reach the juvenile stage (also known as **smolts**) in fresh water, and transferring the smolts to net pens in seawater to grow into adult salmon which are then harvested. The production cycle takes about three years to complete.
28. The primary processing of Scottish salmon consists of transporting the harvested salmon to primary processing plants where the salmon is slaughtered, gutted, graded and packed for subsequent transport. Salmon may subsequently be processed further (so-called secondary processing) into various value-added products for human consumption, such as smoked salmon, salmon portions or ready-made meals.¹⁹ Neither of the Parties (or their parent companies) are active in secondary processing of salmon in the UK.²⁰

¹⁷ [Merger Assessment Guidelines](#), paragraph 3.12.

¹⁸ Parties' response to RFI 1 dated 11 August 2021.

¹⁹ FMN, page 37.

²⁰ See paragraph 9 for details.

29. Both Parties supply Scottish salmon to customers (eg retailers, secondary processors, etc) in the UK, Europe and globally.²¹ Customers typically purchase Scottish salmon using a mix of contracts and spot purchases. The CMA's investigation found that contracts are typically short, lasting three months to a year, and cover the price and volume to be supplied. Spot sales involve bilateral negotiations typically on a weekly basis with customers on prices and volume requirements.

Frame of reference

30. The assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise.²²
31. Market definition can sometimes be helpful in developing certain types of evidence that may be relevant for the competitive assessment.²³ For example, the relevant market can be used as the basis for calculating market shares or for constructing other measures of concentration, which may be helpful in some cases (especially where products are homogenous).²⁴ On the other hand, measures of concentration can often be interpreted without concluding on a bright-line market definition.²⁵
32. In this case, the CMA has considered the product and geographic frame of reference together, as they are inter-related.
33. The Parties submitted that there are two potential relevant market definitions: a wider market for farming and primary processing of farmed Atlantic salmon; or a narrow market for farming and primary processing of farmed Scottish salmon.
34. In its 2006 decision in [Panfish/Marine Harvest](#), the OFT assessed the impact of the merger on the supply of farmed Atlantic salmon (including both Norwegian and Scottish salmon).²⁶ This is because the OFT found a price correlation between Scottish and Norwegian salmon with prices moving together over time and third-party feedback suggested that some customers are indifferent to the origin of farmed Atlantic salmon.²⁷ However, the OFT

²¹ FMN, page 24.

²² [Merger Assessment Guidelines](#), paragraph 9.1.

²³ [Merger Assessment Guidelines](#), paragraph 9.3.

²⁴ [Merger Assessment Guidelines](#), paragraph 9.3.

²⁵ [Merger Assessment Guidelines](#), paragraph 9.3.

²⁶ [Panfish/Marine Harvest](#), paragraphs 28.

²⁷ [Panfish/Marine Harvest](#), paragraphs 15-22.

noted that there appeared to be a distinct set of customers that regarded Scottish salmon as a differentiated premium product.²⁸

35. In this case, the CMA's investigation found that on the demand-side:
- (a) The majority of customers that responded to the CMA's Merger investigation stated that Scottish salmon is priced at a premium to Norwegian salmon (of around 40-60 pence per kilogram, that is Scottish salmon is approximately 10% more expensive than Norwegian salmon), other than during coronavirus (COVID-19) when the price of Scottish salmon was similar to or lower than Norwegian salmon.
 - (b) One competitor stated that Scottish salmon is differentiated from salmon from other origins due to factors including feed type, nutritional value, stocking density, and general certification that contribute to the premium price of Scottish salmon. Another competitor and one customer stated that Scottish salmon is perceived to be of higher quality than Norwegian salmon; and
 - (c) Customers generally indicated that they would not switch to purchasing Norwegian salmon for their customers, who specifically require Scottish salmon.
36. On the supply-side, the CMA found that Scottish salmon can only be produced in Scotland and salmon farmed in Norway cannot be labelled as Scottish salmon. Moreover, the Parties do not supply Norwegian salmon to customers in the UK.
37. The Parties' internal documents also generally only discuss Scottish salmon rather than all Atlantic salmon (eg when analysing competitive conditions).²⁹
38. While both Parties sell Scottish salmon to customers outside of the UK, as noted above, all producers of Scottish salmon have to be located in the UK. The Parties' internal documents also generally discuss strategy and the competitive landscape with respect to the UK.³⁰ As such, the CMA has focused its assessment of the effects of the Merger on the farming and primary processing of Scottish salmon in the UK.
39. The CMA therefore considers that the appropriate frame of reference is the farming and primary processing of Scottish salmon in the UK.

²⁸ [Panfish/Marine Harvest](#), paragraph 28.

²⁹ See for example, FMN, Annex 017 and Annex 018.

³⁰ See for example, for SSF – Annex 25-S109, Annex 26-S109, Annex 182-S109; For GSH – Annex S109-4, Annex S109-4 , Annex S109-4.

Theories of harm

40. The CMA has considered whether the Merger may give rise to a realistic prospect of an SLC as a result of (i) horizontal unilateral effects, (ii) coordinated effects and (iii) vertical effects.

Horizontal unilateral effects

41. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity profitably to raise prices or degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals.³¹
42. The CMA assessed whether the Merger may be expected to result in an SLC in relation to horizontal unilateral effects in the farming and primary processing of Scottish salmon in the UK. In its assessment of the effects of the Merger the CMA considered: (i) the market structure, including shares of supply; (ii) the Parties' internal documents; and (iii) third-party views.
43. The Parties submitted that Scottish salmon is a commodity product and that the Parties' Scottish salmon is highly substitutable with other farmed Scottish salmon, with sales to customers being largely based on price, secure and stable supply, and consistency of quality.³²
44. The CMA found that Scottish salmon is largely an undifferentiated product. Although there are some variations in the type of Scottish salmon produced by certain suppliers (for example organic, Label Rouge, etc), these variants only account for a small proportion of total volumes of Scottish salmon supplied.³³ The CMA also found that most suppliers supply Scottish salmon using a mix of both spot purchases and longer term contracts.³⁴ Therefore the CMA believes shares of supply are a good reflection of the competitive strength of suppliers.
45. The Parties submitted shares of supply estimates based on annual volumes of Scottish salmon produced in 2020, based on published information for larger suppliers and on SSF's estimates for the smaller suppliers in the market.³⁵ The CMA considers that while SSF may not have detailed

³¹ [Merger Assessment Guidelines](#), paragraph 4.1.

³² FMN, page 33.

³³ For example, organic farmed Scottish salmon accounted for 6.5% of all Scottish salmon produced in 2020. Scottish Government (2020), [Scottish Fish Farm Production Survey 2020](#), Tables 24 and 39; FMN, page 34. Neither Party supplies organic Scottish salmon and only SSF produces [redacted] of Label Rouge Scottish salmon.

³⁴ See paragraph 29.

³⁵ FMN, Annex 021.

knowledge of the annual volumes of Scottish salmon for those suppliers that do not publish this information, the estimated shares of supply are broadly consistent with data collected by the CMA from some smaller suppliers as well as publicly available information.³⁶

Table 1: Shares of supply estimates for the farming and primary processing of Scottish salmon (gutted weight tonnes of Scottish salmon produced), 2020

Supplier	Shares of supply
Scottish Sea Farms	[10-20]%
GSH	[5-10]%
Combined	[20-30]%
Mowi	[30-40]%
Bakkafrost	[20-30]%
Cooke	[10-20]%
Loch Duart	[0-5]%
Wester Ross	[0-5]%

Source: CMA analysis of FMN, Annex 021.

46. The estimates in Table 1 show that pre-Merger GSH was the fifth largest supplier of Scottish salmon with a share of supply of around [5-10]%. Post-Merger, the Merged Entity will be the second largest supplier of Scottish salmon in the UK with a share of supply of around [20-30]% behind Mowi (with [30-40]%). The Merged Entity will be constrained by three large suppliers (Mowi, Bakkafrost and Cooke).
47. Evidence from the Parties' internal documents and third-party evidence is consistent with the market structure outlined above, and suggests that GSH may be a weaker competitor than the other four main suppliers. In particular:
- (a) While SSF's internal documents engage only in limited monitoring of competitors and competitive conditions, a few documents refer to GSH's [redacted] in previous years.³⁷ Similarly, one GSH internal document notes that its Shetland operation incurred [redacted].³⁸
 - (b) Most competitors ranked SSF as one of their most significant rivals, but only half included GSH amongst their top competitors, and in all instances ranked GSH lower than SSF. In addition, all competitors considered Mowi to be one of their most significant rivals, and included either Bakkafrost

³⁶ Mowi (2021), *Salmon Farming Industry Handbook 2021*, p48

³⁷ Annex s109-091, slides 8-11.

³⁸ Annex s109-4, slides 3, 32 and 39.

and/or Cooke as a top competitor (and in all instances ranked these two competitors above GSH).

48. Although some customers that responded to the CMA's Merger investigation raised concerns about the Merger and noted that the Merger would reduce the number of suppliers, the majority of these customers also identified alternative suppliers to the Parties and several also submitted that they interact and negotiate with several different suppliers for purchases of Scottish salmon. In addition, evidence from customer purchase data provided to the CMA shows that a large majority (70%) of customers purchase Scottish salmon from at least two alternative suppliers to the Parties.

Conclusion on horizontal unilateral effects

49. For the reasons set out above, the CMA considers that the Parties' combined share of supply is not sufficient to give the Merged Entity market power and that the Merged Entity will continue to face sufficient competitive constraints from three large suppliers. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the farming and primary processing of Scottish salmon in the UK.

Coordinated effects

50. Coordinated effects may arise in mergers of firms operating in the same market that act on a common understanding to limit their rivalry.³⁹ Coordination may take different forms and can affect any aspect of competition. Firms may coordinate, for example, by fixing prices, by dividing up the market between them, such as by geographic area or customer characteristics, or by allocating contracts among themselves in bidding competitions.⁴⁰ Regardless of the mechanism used, in many instances, coordination will result in firms keeping prices higher than they would otherwise have been in a more competitive market.⁴¹
51. Coordinated effects arise when a merger enables or strengthens coordination. When assessing coordinated effects, the CMA will consider whether firms in the market were coordinating pre-merger.⁴² In general a horizontal merger in a market already showing evidence of coordinated outcomes is likely to make coordination more sustainable or effective.⁴³ However, pre-existing

³⁹ [Merger Assessment Guidelines](#), paragraph 6.1.

⁴⁰ [Merger Assessment Guidelines](#), paragraph 6.2.

⁴¹ [Merger Assessment Guidelines](#), paragraph 6.2.

⁴² [Merger Assessment Guidelines](#), paragraphs 6.6 - 6.9.

⁴³ [Merger Assessment Guidelines](#), paragraph 6.9.

coordination is not a necessary condition for a coordinated effects SLC finding.⁴⁴

52. When considering whether a merger increases the likelihood of coordination or makes it more effective (more stable or profitable for example),⁴⁵ the CMA will analyse the extent to which the following three conditions are met: (i) firms are able to reach a common understanding of the terms of coordination, (ii) coordination is internally sustainable (ie firms find it in their interests to adhere to the coordinated outcome); and (iii) coordination is externally sustainable (ie it is unlikely that coordination will be undermined by competition from outside the coordinating group).⁴⁶
53. The CMA considered whether the Merger could enable or strengthen coordination between all or some of the Scottish salmon suppliers over price or quantity (ie output) given that the Merger reduces the number of suppliers in the market, increases their symmetry (in terms of shares of supply) and that Scottish salmon is mostly an undifferentiated product. These factors could make it easier for suppliers to reach a common understanding and make coordination more internally sustainable.⁴⁷
54. The CMA also notes that in 2019 the European Commission announced inspections at the premises of several companies active in the farmed Atlantic salmon sector in connection with concerns that these companies may have violated EU antitrust rules that prohibit cartels and restrictive business practices.⁴⁸
55. The Parties submitted that they did not consider that the Merger would result in any increase in the risk of anti-competitive coordinated effects.⁴⁹ The Parties submitted that while the number of Scottish salmon suppliers would decrease by one, there are significant differences between the suppliers in terms of their size, vertical integration and overall strategies.⁵⁰

Pre-existing coordination

56. The CMA did not find any evidence of pre-existing coordination as regards Scottish salmon in the internal documents that were reviewed by the CMA. In particular, these internal documents did not suggest that suppliers

⁴⁴ [Merger Assessment Guidelines](#), paragraph 6.6.

⁴⁵ [Merger Assessment Guidelines](#), paragraph 6.10.

⁴⁶ [Merger Assessment Guidelines](#), paragraph 6.10.

⁴⁷ [Merger Assessment Guidelines](#), paragraphs 6.13 and 6.15.

⁴⁸ Article 101 of the Treaty of the Functioning of the European Union. European Commission (2019), [Antitrust: Commission confirms unannounced inspections in the farmed Atlantic salmon sector](#).

⁴⁹ FMN, pages 50-51.

⁵⁰ FMN, page 50.

communicate frequently or share competitively sensitive information with each other. Additionally, no third-party raised concerns about pre-existing coordination.

57. The CMA also gathered and analysed price data from Scottish salmon suppliers. This data shows variation in the prices charged by different suppliers for Scottish salmon, that suppliers' prices do not always change at the same time or by the same magnitude and that the premium over Norwegian salmon fluctuates. The CMA considers that the dataset has significant limitations as not all the larger suppliers submitted data, and the analysis was not able to account for differences in salmon produced (for example, quality or size). Although the CMA has therefore put limited weight on this analysis, the CMA notes that it is consistent with there being no pre-existing coordination over Scottish salmon prices.

Conditions for coordination

58. The CMA has assessed whether the Merger increases the likelihood of coordination among suppliers of Scottish salmon. In particular it has considered whether there is sufficient transparency over price and/or quantity so that:
- (a) Suppliers of Scottish salmon are able to reach a common understanding of the terms of coordination post-Merger. For coordination to emerge, the firms involved need to be able to reach a common understanding about their objectives (for example, a price below which they would not sell or a maximum quantity of product they would produce). Such an understanding need not involve a precise outcome but needs to be sufficiently clear to enable their behaviour to be aligned. It need not involve explicit communication. It will be more difficult for suppliers to reach a common understanding on prices and/or quantities if these are not transparent and suppliers cannot therefore signal their intentions;⁵¹ and/or
 - (b) Coordination between suppliers of Scottish salmon would be internally sustainable post-Merger. Suppliers may have an incentive to deviate from any common understanding on price and/or quantity (to increase sales and therefore profits). In order to sustain coordination firms must be able to detect and respond to any deviation. This requires sufficient transparency for any deviations to be observed.⁵²

⁵¹ [Merger Assessment Guidelines](#), paragraphs 6.12 and 6.13.

⁵² [Merger Assessment Guidelines](#), paragraph 6.14 to 6.17.

- *Transparency over price*

59. The CMA considered whether there is sufficient transparency over the prices of Scottish salmon such that suppliers could coordinate, for example by reaching a tacit agreement on prices or on the level of premium of Scottish salmon relative to Norwegian salmon.
60. As explained above, see paragraph 26, prices for Scottish salmon are negotiated between customers and suppliers on a bilateral basis.
61. The CMA considered three potential mechanisms, which could nevertheless lead to price transparency across suppliers:
- (a) *a price index* could provide a focal point for coordination if suppliers in the relevant market contribute to the index and it is updated regularly. However the CMA found that no price index for Scottish salmon exists. The CMA found that there are indices for Norwegian salmon,⁵³ however, most customers indicated that they did not use such indices in their negotiations with suppliers of Scottish salmon. In any event, since these indices are not based on Scottish salmon prices, they would not allow Scottish salmon suppliers to observe any deviation from any terms of coordination.
 - (b) *customers sharing price offers they received with suppliers* could allow suppliers to observe the current prices which their competitors are offering in the market. However, the CMA found no evidence that this was occurring, with no customers suggesting that they share details of offers made by other Scottish salmon suppliers and no competitors suggesting that they receive such details.
 - (c) *suppliers regularly purchasing Scottish salmon from each other*, thereby revealing current prices charged to customers. However, data gathered by the CMA from Scottish salmon suppliers indicates that whilst these inter-company purchases of Scottish salmon do occur, they are infrequent compared to the typically weekly spot purchases by customers.⁵⁴ One supplier submitted data showing it only made 12 purchases between January 2018 and October 2021. Three suppliers submitted that they did not make any inter-company purchases during this time.⁵⁵ While two suppliers submitted data showing that they had made more frequent

⁵³ For example [NASDAQ salmon index](#) and [Fish Pool Index](#).

⁵⁴ See paragraph 29.

⁵⁵ SSF response to CMA's RFI 4 dated 13 October 2021.

purchases in 2018 and 2019, these purchases declined significantly in frequency in 2020 and 2021.⁵⁶

62. Additionally, no third parties that responded to the CMA's Merger investigation raised concerns on coordinated effects over price of Scottish salmon as a result of the Merger.

- *Transparency over quantity*

63. The CMA considered whether there is sufficient transparency over quantity of Scottish salmon produced such that suppliers could coordinate, for example by reaching a tacit agreement on the amount of Scottish salmon to be produced, and for the coordination to be internally sustainable.

64. The CMA found that although there is transparency over quantities of Scottish salmon produced by each supplier through an annual industry report,⁵⁷ this data only covers the previous year so is likely to be of limited use in coordinating future quantities. The CMA found that once a year, some larger suppliers publish their intended salmon production for the next year, but that not all of the larger suppliers do this, indicating there is limited transparency of future quantities of Scottish salmon.⁵⁸

65. The CMA considered an alternative way to observe future quantities of Scottish salmon, through observing inputs for production. For example, the CMA considered whether coordination could occur over the number of smolts put to sea (see paragraph 24 for an overview of the salmon production cycle). The CMA found that although this data is published, including estimated future smolt production, it is published at an aggregate regional level, rather than for each supplier.⁵⁹ This indicates there is limited transparency over inputs, and therefore limited transparency over future quantities of Scottish salmon.

66. In addition, evidence from competitors showed that they do not all forecast, or make production plans with the same frequency. For example, one competitor told the CMA it has a two year cycle, whilst another told the CMA it has a three year cycle. The CMA believes that this would likely increase the difficulty in reaching terms of coordination as suppliers appear to plan for different lengths of time.

⁵⁶ GSH response to CMA's RFI 4 dated 13 October 2021.

⁵⁷ Mowi (2021), *Salmon Farming Industry Handbook 2021*, p48.

⁵⁸ Bakkafrost and Mowi publish next year's expected harvest by region in quarter 3 of the year before. Bakkafrost (2021), *Interim Report*, page 11; Mowi (2021), *Quarterly Report Q3 2021*, page 4; See paragraph 47 above on the transparency of Scottish salmon suppliers.

⁵⁹ Scottish Government (2020), *Scottish Fish Farm Production Survey 2020*, Tables 21 and 30.

67. To the extent there is any transparency over quantity of Scottish salmon produced, the production cycle of about three years, as set out in paragraph 24, means that punishment (by increasing volumes) following deviation would not be swift. The CMA considers that these factors incentivise deviation, as the gains from deviating would be over an extended time period, which suggests that coordinating over quantities is also unlikely to be internally stable.
68. The CMA notes that none of the third parties that responded to the CMA's Merger investigation raised concerns on coordinated effects over quantity of Scottish salmon as a result of the Merger

Conclusion on coordinated effects

69. For the reasons set out above, the CMA believes that there is insufficient transparency over price or quantity of Scottish salmon for suppliers to reach the terms of coordination and for coordination to be internally sustainable. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of coordinated effects in relation to the farming and primary processing of Scottish salmon in the UK.

Vertical effects

70. Vertical mergers are those between firms active at different levels in the same industry (ie an upstream firm and a downstream firm).⁶⁰ A common concern is that vertical mergers may result in the foreclosure of current or potential rivals – ie that the Merged Entity will be able to use its position in one market to harm the competitiveness of its rivals in the other. This would weaken the constraints that the Merged Entity faces and as result harm competition and therefore customers.⁶¹
71. Where a merger involves one party that supplies an input to rivals of the other party, the merged entity may restrict these rivals' access to this input or offer it on worse terms, directly harming the rival's competitiveness and therefore competition in the downstream market (input foreclosure).⁶² The CMA's approach to assessing input foreclosure theories of harm is to analyse (i) the

⁶⁰ [Merger Assessment Guidelines](#), paragraph 7.1(a).

⁶¹ [Merger Assessment Guidelines](#), paragraph 7.2.

⁶² [Merger Assessment Guidelines](#), paragraph 7.8(a)

ability of the merged entity to foreclose competitors; (ii) the incentive of it to do so; and (iii) the overall effect of the strategy on competition.⁶³

72. There is a vertical relationship between the Parties as a result of Kvarv AS's (ultimate parent of SalMar) ownership of ScaleAQ. Scale AQ supplies inputs (feed systems and other services) to the salmon farming industry.⁶⁴ The CMA has considered whether the Merged Entity may have the ability to foreclose rivals through increasing the prices of these inputs or refusing to supply them to rivals.
73. The CMA found that for most of the inputs in question, ScaleAQ has a small share of supply and/or there are several other suppliers.⁶⁵ ScaleAQ has larger shares of supply for two products (cameras ([40-50]%) and software ([30-40]%). However, the available evidence shows that these products likely account for a small proportion of the input costs for salmon farmers and, post-Merger there will be least one other large supplier.⁶⁶ Additionally, no competitor that responded to the CMA's Merger investigation raised concerns on vertical effects as a result of the Merger.
74. For the reasons set out above, the CMA believes that the Merged Entity would lack the ability to foreclose rivals. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in relation to the farming and primary processing of Scottish salmon in the UK.

Decision

75. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.
76. The Merger will therefore **not be referred** under section 33(1) of the Act.

Naomi Burgoyne
Director, Mergers
Competition and Markets Authority

⁶³ [Merger Assessment Guidelines](#), paragraph 7.10; The CMA does not consider that the Merger will give rise to any customer foreclosure concerns. The Merged Entity's combined share of supply in the downstream farming and processing of Scottish salmon is [20-30]%, and so upstream rivals will have alternative downstream suppliers to whom they can sell their products.

⁶⁴ See paragraph 8 and footnote 6 for more information.

⁶⁵ Cages ([10-20]%), mooring ([5-10]%), nets ([5-10]%), feeding systems ([20-30]%) and feeding barges ([10-20]%). CMA analysis of FMN, Annex 058.

⁶⁶ For example, ScaleAQ accounted for [3%] of SSF's total spend on suppliers in 2020. CMA analysis of Parties response to 14 October questions and FMN, Annexes 023a, 023b, 057 and 056a.

8 December 2021