



Ms. A. Wilton
Office of Fair Trading
Fleetbank House
2-6 Salisbury Square
London EC4Y 8JX

Dear Ms. Wilton,

I am writing regarding the implications of the merger of Pan Fish ASA with Marine Harvest N.V. and Fjord Seafood. I understand that the Office of Fair Trading began reviewing this merger on May 10, 2006 and has invited comments on this anticipated acquisition before May 24, 2006.

Below, I present information, which could warrant a reference of a “relevant merger situation” by the Office of Fair Trading to the Competition Commission. Included¹ are a:

- Justification of a “relevant merger situation”
 - Two or more enterprises have ceased to be distinct enterprises at a time
 - The value of the take over exceeds £70 million
 - At least one-quarter of all goods supplied in UK supplied by one entity
- Discussion of the impacts of this merger, specifically:
 - Employment loss within the Scottish salmon farming sector
 - UK consumer salmon price increase
- Review of Pan Fish & Marine Harvest concerns, regarding:
 - Environment and safety
 - Disclosure
 - Reporting discrepancies

We understand that this is not the first proposed merger of salmon farming companies operating in Scotland. In 2000, UK authorities blocked the merger of Nutreco with Hydro Seafoods (a subsidiary of Norwegian company Norsk Hydro). At that time, Competition Minister Kim Howells said the Competition Commission found that the “merger would reduce competition in the market for salmon feed and lead to increased prices.”²

¹ For your interest, we have attached numerous documents to which we refer in this letter.

² *BBC News*. 23 December 2000. “Salmon firm takeover blocked.” Available at:

I write to you as the director of the Pure Salmon Campaign, a partnership of organizations in Scotland, Canada, the United States, and Chile. Our goal is to promote sustainable salmon aquaculture and thus, we ask for production methods that prevent escapes, and disease transfer, stop chemical pollution, eliminate waste, and leave the ocean with more, not fewer wild fish.

Global consumers and those communities where salmon is farmed, such as Scotland, have voiced concerns about current salmon farming practices. In Scotland, as you are aware, there is increasing concern over job losses on salmon farms and processing plants. Although Scottish farmed salmon production levels have increased significantly over the past 15 years, quadrupling from 40,000 tonnes per annum to 160,000 tonnes per annum between 1992 and 2003, employment levels have actually fallen.³

The latest official figures show that the Scottish salmon farming industry employs less than 1,500 people in Scotland directly.⁴ With the expected job losses from the proposed Pan Fish-Marine Harvest merger, economic and social benefits will be further reduced in Scotland. According to *The Sunday Herald* (12 March 2006): “One industry source said that ‘When Stolt Sea Farms merged with Marine Harvest in April 2005, there were, I think, about 200 job losses. I would suggest we will see at least the same again with the current merger.’”⁵

Dr. Michael Foxley, vice-convenor of Highland Council, told *The West Highland Free Press* on 10 March 2006: “In the West Highlands and islands, communities still reeling from swingeing cuts implemented by Marine Harvest last year are preparing for further job losses... I think it is very sad that we have this monopolistic control over our natural resources by companies from a foreign country.”⁶

We believe that a competitive salmon farming industry, by nature, is more responsive to these consumer and community concerns. To date, some of the leading salmon producers have at least pledged to resolve these problems over time. And some have entered into dialogues with conservation organizations to work towards improved practices. We are concerned that a monopolized or oligopolized industry will be less responsive to those consumer and community concerns than a competitive industry.

As you are aware, two Pure Salmon Campaign consultants, Bart Naylor and Don Staniford, are scheduled to meet with you on 25 May 2006. We look forward to

<http://news.bbc.co.uk/1/hi/scotland/1084044.stm>

³ Scottish Executive. December 2005. Scottish Fish Farms Annual Production Survey 2004.

http://www.marlab.ac.uk/Delivery/Information_Resources/information_resources_view_document.aspx?contentid=1864

⁴ Ernst and Young. 23 December 2005. “Review of Current Trends in the Scottish Salmon Farming Industry.” Available via: www.hie.co.uk/Salmon-farming-trends-Dec05.pdf

⁵ *Sunday Herald*. 12 March 2006. “Pan Fish: Job Cuts Exaggerated.”

⁶ *The West Highland Free Press*. 10 March 2006 “Dismay over latest fish farm merger.”

discussing these issues in greater detail. If you need anything further, please do not hesitate to contact Bart Naylor or me prior to or after our meeting.

Sincerely,

Andrea Kavanagh
Director
Pure Salmon Campaign

JUSTIFICATION OF A RELEVANT MERGER SITUATION

According to the Enterprise Act of 2002, there are several criteria to determine if a “relevant merger situation” has taken place.

First, “two or more enterprises have ceased to be distinct enterprises at a time.” Second, “the value of the turnover in the United Kingdom of the enterprise being taken over exceeds £70 million.” In addition, “in relation to the supply of goods of any description, at least one-quarter of all the goods of that description which are supplied in the United Kingdom, or in a substantial part of the United Kingdom must either be supplied by one and the same person or are supplied by the persons by whom the enterprises concerned are carried on.”

The Act also states that:

For the purpose of deciding whether the proportion of one-quarter...is fulfilled with respect to goods or (as the case may be) services of any description, the decision-making authority shall apply such criterion (whether value, cost, price, quantity, capacity, number of workers employed or some other criterion, of whatever nature), or such combination of criteria, as the decision-making authority considers appropriate.⁷

Below, we provide evidence that the Pan Fish-Marine Harvest-Fjord situation meets these requirements for reference to the Competition Commission.

Two or more enterprises have ceased to be distinct enterprises at a time

The consolidation of the global salmon farming industry began roughly in June 2005, when Mr. John Fredriksen (until recently a Norwegian citizen and Norway’s richest man) purchased about half of Pan Fish for \$131 million. Since last year, Pan Fish and Fredriksen, Pan Fish’s largest shareholder, have moved quickly to achieve control of the salmon farming industry, including acquisitions of the first and fourth largest salmon farming companies in the world.

In its 31 March 2006 notification to the Norwegian Competition Authority (Konkurransetilsynet), Pan Fish summarized the structure of its transactions as follows:

- On 6 March 2006, Geveran Trading (Geveran) entered into a share purchase agreement (the SPA) with the owners of Marine Harvest (Nutreco Holding NV and Stolt Sea Farming Investments B.V.) for the purchase of 100% of the shares in Marine Harvest. Under the terms of the agreement, Geveran reserved the right to assign its rights and obligations under the agreement to Pan Fish. At the time, Geveran held 56% of the shares in Pan Fish;

⁷ Enterprise Act 2002. Available: <http://www.opsi.gov.uk/acts/acts2002/20020040.htm>

- On the same day, Geveran agreed to assign its rights under the SPA to Pan Fish on satisfaction of the certain conditions by 24 March 2006 (approval by an extraordinary general meeting, adoption of a capital increase and the entering into of a guarantee and loan facility). Those conditions were satisfied on 24 March at which time the Pan Fish assignment agreement became final and binding. The acquisition by Pan Fish (as with the initial agreement entered into by Geveran) is conditional upon, amongst other things, all requisite clearances having been obtained by the competent competition authorities.⁸

The same day as Pan Fish announced its Marine Harvest transaction, Pan Fish also announced its purchase (from Fredriksen's Geveran Trading Ltd.) of 25.7 % of Fjord Seafood, the fourth largest Atlantic salmon producer. On 16 March 2006, Pan Fish acquired an additional 14.27% of share in Fjord. Along with its 31 March 2006 notification to the Norwegian Competition Authority of its concentration with Marine Harvest, Pan Fish also notified them regarding "the impact of consolidation of Fjord Seafood with the concentration of Pan Fish and Marine Harvest."⁹

Despite a 6 April 2006 announcement by Pan Fish CEO Atle Eide on the Oslo Stock Exchange that "Pan Fish is very comfortable with the ownership position in Fjord Seafood as it is today," on 7 April 2006 Pan Fish purchased an additional 17.7% of Fjord, bringing its shares in Fjord to 57.7%.¹⁰

In an extraordinary shareholders meeting held on April 26, 2006, the Pan Fish board announced that it would meet mandatory requirements to put in an offer for the remaining outstanding shares in Fjord Seafood within the four weeks deadline. This offer is required of the company under the Norwegian Securities Act, which states that a bid of this sort must be made if one acquires more than 40% of a company. Pan Fish's bid to purchase 100% of Fjord Seafood shares was approved by the Oslo Stock Exchange on 10 May 2006.

In response to the impending takeover of Fjord Seafood by Pan Fish, Fjord Seafood CEO Helge Middtun explained that he felt the takeover was "slightly unjust" and "agreed with IntraFish's characterization of Pan Fish's acquisition as a raid."¹¹

The value of the take over exceeds £70 million

⁸ Wiersholm Mellbyesbech to Konkurransetilsynet. 31 March 2006. "Standard Merger Notification Regarding Pan Fish-Marine Harvest (possibly Fjord Seafood)."

⁹ Wiersholm Mellbyesbech to Konkurransetilsynet. 31 March 2006. "Standard Merger Notification Regarding Pan Fish-Marine Harvest (possibly Fjord Seafood)."

¹⁰ Oslo Stock Exchange. 7 April 2006. Available at: http://www.newsweb.no/index.asp?languageID=0&symbol=PAN&melding_ID=125437&lang=&date_start=01.01.1900&date_stop=&ncat_id=114

¹¹ *IntraFish Media*. 10 May 2006. "Brussels exclusive: Fjord CEO unhappy with Pan Fish takeover"

There are various estimates available regarding the total production of farmed salmon in Scotland and specific production by salmon farming companies, which one can use to estimate the value of the take over in this merger.

- According to Cermaq (Norwegian-based salmon farming company) close to 137,000 tonnes of farmed salmon were produced in Scotland in 2004¹². Using the Scottish Parliament's estimate that Pan Fish-Marine Harvest (not including Fjord Seafood) will control up to 50% of total salmon production in Scotland, this would suggest that the new company will produce about 70,000 tonnes in Scotland alone. At £2/kg (or £2000/tonne)¹³, this would suggest that **the value of the take over of Pan Fish-Marine Harvest is about £140 million in terms of production.**
- In its 7 March 2006 presentation, Pan Fish estimates that in 2006, Pan Fish-Marine Harvest will produce between 53,000 to 55,000 tonnes in Scotland. Again, using the £2000/tonne value, **the total value of the take over of Pan Fish-Marine harvest is about £110 million.**

Given Pan Fish's upcoming bid to take over of Fjord Seafood, it can be argued that Fjord Seafood operations in Scotland should also be considered as part of this merger. According to the 2006 Annual Report of Fjord Seafood, Scottish salmon production from **Fjord Seafood is 5,000 tonnes**, or around 3% of Scottish salmon farming production volume.

In turn, Pan Fish-Marine Harvest-Fjord Seafood will control between 58,000 tonnes (based on low end Pan Fish estimate) up to 75,000 tonnes (based on Cermaq, Scottish Parliament imputation).

As such, total turn over value for this merger will likely range between £116 million to £150 million.

At least one-quarter of all goods supplied in UK supplied by one entity

On 7 March 2006, Pan Fish released a comprehensive presentation of its proposed acquisition of Marine Harvest.¹⁴ The following statements provided by Pan Fish in this report demonstrate the substantial global market share and market control it will hold:

- "Creation of the undisputed leader in the aquaculture industry with 346,000 tonnes of harvest volume."

¹² Cermaq ASA. 30 September 2005. "Offering and Stock Exchange Listing of Cermaq ASA." Available at: <http://hugin.info/134455/R/1017246/159345.pdf>

¹³ Salmon price available via *IntraFish* (www.intrafish.com)

¹⁴ Pan Fish. 7 March 2006. "Pan Fish-Marine Harvest. The World Leading Aquaculture Company." Available at: <http://hugin.info/209/R/1037987/168337.pdf>

- “The new company is uniquely positioned to take the lowest cost producer position.”

In this report, Pan Fish claims that Pan Fish-Marine Harvest will control approximately 20 percent of the global salmon production. With Fjord Seafood, it would control another 5 percent of market share, or about one-quarter of global production in total.

Pan Fish’s 31 March 2006 notification to the Norwegian Competition Authority also provided similar information regarding market concentration. According to this correspondence, “the combined market shares of Pan Fish-Marine Harvest” are 15% to 25% of market share of all farmed species by value and by quantity.

UK Salmon Market

While the Pan Fish-Marine Harvest entity would control approximately 20 percent of global farmed salmon production, its influence in the United Kingdom is even greater. According to Pan Fish’s 7 March 2006 report, not including Fjord Seafood, Pan Fish-Marine Harvest market share, by region, would be:¹⁵

- Norway ~ 20 %
- **United Kingdom** ~ **48 %**
- Ireland ~ 45 %
- Canada ~ 30 %
- Faeroes Islands ~ 20 %
- Chile ~ 15 %

The issue of market concentration in the United Kingdom market was also addressed by Ms. Rhonda Brankin (Scottish Parliament) on 24 April 2006, in response to parliamentary questions asked by Ms. Eleanor Scott (Highlands and Islands, Green Party).

Brankin stated that estimates suggest that “the new company [Pan Fish and Marine Harvest] will control somewhere in the range of **40 to 50% of salmon production in Scotland.**”

According to a 1 May 2006 article in *Fish Update*, however, “the independent sector said that this was an underestimate and that the correct figure was around 65%.”¹⁶

Vice Convenor of Highland Council, Michael Foxley, puts the figure even higher. “This latest move will place 90 to 95 per cent of all Scottish salmon production in the hands of

¹⁵ Estimates are provided in graph form, thus percentages listed here are estimates based on this graph.

¹⁶ *Fish Update*. 1 May 2006. “Executive under fire for “help” to multinationals.” Available: http://www.fishupdate.com/news/fullstory.php/aid/4416/Executive_under__fire_for__help__to__multinationals.html

one owner, and that has major implications for the future,” he told *The Scotsman* on 10 March 2006.¹⁷

These statistics *do not* include Fjord Seafood’s share of the market. According to the 2006 Annual Report of Fjord Seafood, Scottish salmon production from Fjord Seafood is 5,000 tonnes, or an additional 3% of Scottish salmon farming production.

In addition to dominating the production of farmed salmon in the UK, Pan Fish-Marine Harvest-Fjord Seafood will likely supply most of the farmed salmon *consumed* in the UK market. According to a 23 December 2005 report by Ernst and Young, the “majority of farmed salmon produced in Scotland is consumed in the UK.” In addition, while Norway dominates the EU market for salmon, only 16% of the farmed salmon consumed in the UK is imported from Norway. This report further explains that “UK consumers are favourably disposed towards salmon sourced in Scotland and in cases are prepared to pay a premium for a Scottish product.”¹⁸

Due to the advantage of the Scottish salmon label and because of the size and increasing growth of the UK market for salmon, Ernst and Young explains that multinational companies have been interested in operating in Scotland. In fact, in 2004, more than 85% of Scottish production (by volume) was owned by Norwegian and Dutch companies. Of this 85%, Marine Harvest controlled 32% by volume while Scottish Sea Farms controlled 18%, and PanFish controlled 12% of Scottish production by volume.¹⁹

In response to a question regarding what percentage of Scottish salmon farming production will still be controlled by Scottish-owned companies after the PanFish-Marine Harvest merger, Ms. Brankin responded that **Scottish-owned companies “control around 15% of Scottish salmon farming production.”**²⁰ The 1 May 2006 article in *Fish Update* remarks that those in the independent sector “are concerned that the independent sector, said by the depute minister to control around 15% of production in Scotland, will shrink even further and is in danger of disappearing.”

¹⁷ *The Scotsman*. 10 March 2006. “Inquiry call after Marine Harvest takeover”. Available at: <http://news.scotsman.com/topics.cfm?tid=1080&id=360042006>

¹⁸ Ernst and Young. 23 December 2005. “Review of Current Trends in the Scottish Salmon Farming Industry.”

¹⁹ Ernst and Young. 23 December 2005. “Review of Current Trends in the Scottish Salmon Farming Industry.”

²⁰ The Scottish Parliament. 24 April 2006. Written Answers to questions: 24699 24700 24702 24704 24705.

DISCUSSION OF THE IMPACTS OF THE MERGER IN THE UK

The Pure Salmon Campaign is not alone in its concerns regarding the impacts of this merger on the UK. In the past month, several stakeholders have publicized their concerns regarding this merger and the impacts of this level of control over the Scottish salmon farming industry.

One of these Scottish salmon farmers, Angus MacMillian, owner of Western Isles based West Minch Salmon, expressed serious concern over the merger. He explained: "I don't think that anyone in the Highlands will see it appropriate that the Executive is seeking to support this merger. It is frightening for the rest of the industry that the minister wants to offer help at this time."²¹

The Scottish National Party has called for a public inquiry into the issue of job losses and consolidation. According to *Fish Update* (8 May 2006), Rob Gibson MP said:

We need a public inquiry to establish whether or not a position where one company has an almost completely monopolistic control of Scotland's farmed salmon production is the best way forward. The OFT should have decided long before now that an inquiry into the competition implications of this merger is required. We have to focus on the quality of production and not as the Norwegians are doing, on quantity. The merger has serious implications, because we heard some time ago that there were high transport costs faced by producers in the Western Isles, and I have little confidence that Ross Finnie and Tavish Scott will address these issues. Pan Fish looks as if it is heading for even more consolidation and that will have serious implications for jobs.

Moreover:

The Government must hold a public inquiry to set out the future of the industry. We want salmon production that is sustainable and many of the smaller companies are producing salmon sustainably already and we want to increase the number of companies doing that if possible. It doesn't seem sensible to put most of our production in the hands of a Norwegian company. We want an industry that supports jobs in remote rural areas, not as is happening at the moment, reducing the number of workers in these fragile coastal areas.²²

In an 11 May 2006 letter from Comhairle nan Eilean Siar (Outer Hebrides Council), Vice Convenor Angus Campbell states the authority is "concerned about the potential local

²¹ *Fish Update*. 1 May 2006. "Executive under fire for "help" to multinationals". Available: http://www.fishupdate.com/news/fullstory.php/aid/4416/Executive_under__fire_for__help_to_multinationals.html

²² *Fish Update*. 8 May 2006. "Scotland: MSP calls for public inquiry into proposed merger" http://www.fishupdate.com/news/fullstory.php/aid/4467/Scotland:_MSP_calls_for_public_inquiry_into_proposed_merger.html

impact, both in terms of the direct employment and the consequential effects on the island economy.” Similar to the Pure Salmon Campaigns request, the Outer Hebrides correspondence to OFT requests that this matter be referred to the Competition Commission.

Included below, is a brief discussion of the two most critical impacts of this merger within the UK--employment loss and consumer price increases.

Employment Loss within the Scottish salmon-farming sector

We understand that in Scotland there is increasing concern over job losses on salmon farms and processing plants. Although Scottish farmed salmon production levels have increased significantly over the past 15 years, quadrupling from 40,000 tonnes per annum to 160,000 tonnes per annum between 1992 and 2003, employment levels have actually fallen as per capita output has significantly increased.²³

The latest official figures show that, directly, the Scottish salmon farming industry employs less than 1,500 people in Scotland.²⁴ With the expected job losses from the Pan Fish-Marine Harvest merger, Scottish economic and social benefits will be further reduced.

According to *The Sunday Herald* (12 March 2006): “One industry source said: ‘When Stolt Sea Farms merged with Marine Harvest in April 2005, there were, I think, about 200 job losses. I would suggest we will see at least the same again with the current merger’²⁵,”

Job losses certainly occurred in Scotland, Norway, and Chile following last year’s merger between Marine Harvest and Stolt. According to an Interim Statement issued by Nutreco on 2 August 2005 – after the merger between Marine Harvest and Stolt:

Integration of the two companies in the joint venture is proceeding smoothly. The management team has been appointed, the sales organisations have been integrated in all regions and production planning has been harmonised worldwide. In Scotland, the closure of a processing plant, with the loss of 57 full-time equivalent jobs, has been announced and the number of fish farms will be reduced. In Norway, regional offices are to be closed. In Chile, the number of

²³ Scottish Executive. December 2005. “Scottish Fish Farms Annual Production Survey 2004”. http://www.marlab.ac.uk/Delivery/Information_Resources/information_resources_view_document.aspx?contentid=1864

²⁴ Ernst and Young. 23 December 2005. “Review of Current Trends in the Scottish Salmon Farming Industry.” Available via: www.hie.co.uk/Salmon-farming-trends-Dec05.pdf

²⁵ <http://www.sundayherald.com/54485>

processing plants has been reduced from three to two and as a result of this the workforce has been cut by 250 full-time equivalents.²⁶

Job losses from Marine Harvest and Pan Fish facilities in the Highlands and Islands of Scotland occurred even before last year's merger between Marine Harvest and Stolt. The West Highland Free Press reported in May 2005:

Earlier this year Marine Harvest admitted that it had got rid of around two-thirds of the employees on one of its largest sites in Skye. At the time the company claimed they were unable to say whether this was typical of their operations of a whole. However, Michael Foxley has unearthed figures, which show that the company has cut a similar proportion of workers at some of their sites in his area too. These cuts are over and above the announcement earlier this month of around 140 job cuts following Marine Harvest's takeover of ailing Norwegian fish farm giant Stolt Seafoods. Marine Harvest have been playing the commodity game and in 2003 posted losses of more than £6 million.²⁷

The West Highland Free Press also reported in February 2005:

In the last two years Pan Fish has reduced staff numbers in its Skye and Wester Ross operations from around 70 to a dozen. Its method of choice for cost-cutting has been as follows: it closes down a site; sacks experienced employees with years of service; tells them the site is closed for good; re-opens the same site a few months later; and hires inexperienced staff at a lower rate of pay.

Hugh Currie, managing director of Lithgows, owner of Ormsary-based Landcatch told *The Sunday Herald* on 12 March 2006: "I think that having one company owning 50% of the Scottish industry is unhealthy and will make it extremely difficult for small independent companies that are trying to supply organisations like that."²⁸

Dr. Michael Foxley, vice-convenor of Highland Council, told *The West Highland Free Press* on 10 March 2006:

In the West Highlands and islands, communities still reeling from swingeing cuts implemented by Marine Harvest last year are preparing for further job losses. It was inevitable. It will bring further job losses. Already Marine Harvest are employing only around one-third of the people on the sea farms that they were a few years ago...The ironic thing is that the reverse situation would not be allowed to happen. Companies from the Highlands would not be allowed to go in to Norway and take over control of their natural resources. I think it is very sad that

²⁶ Nutreco. 2 August 2005. "Nutreco's net result increased 72% in first half year 2005". http://www.nutreco.com/index.php?option=com_content&task=view&id=388&Itemid=426&lang=GB

²⁷ *The West Highland Free Press*. 27 May 2005. "Going organic: The way forward for independent salmon-farmers?" Available at: <http://www.whfp.com/1726/top2.html>

²⁸ *The Sunday Herald*. <http://www.sundayherald.com/54485>

we have this monopolistic control over our natural resources by companies from a foreign country. There is just a handful of Scottish independents left now. The big players are pushing for more and more growth and more intensive farming.²⁹

The West Highland Free Press (10 March 2006) also reported:

Angus Campbell, vice-convener of Comhairle nan Eilean Siar, described the news as of great concern as previous cuts had already led to the loss of almost all secondary processing jobs in the area. We have to ask how much this industry is going to contribute to the economy of the Western Isles. I am very disappointed with Marine Harvest and Nutreco who promised us they would keep in contact with us about their future plans, but we found out about this through the press. The comhairle have written to Nutreco, Marine Harvest and Pan Fish asking for assurances on the future of the industry in the Western isles and on future employment levels. Mr Campbell was also concerned at the news that Pan Fish have acquired a 25 per cent stake in Fjord Seafood, as Fjord have a processing plant employing some 70 people in Lewis.

According to *The West Highland Free Press*:

Pan Fish have a history of 'rationalisation of the industry' in Scotland. Last year, a former Pan Fish employee in the West Highlands told the Free Press that, within three years of taking over Highland Fish Farmers in 2002, Pan Fish had reduced the number of employees there from 65 to around a dozen.

Angus Campbell, vice-convener of Comhairle nan Eilean Siar, wrote to the OFT on 20 March 2006 raising the issue of job losses. He wrote:

In recent years market and economic forces have led to consolidation and rationalisation within the global aquaculture industry. The local economic impact of this has been substantial. The takeover of Stolt Seafarm by Marine Harvest in 2005, for example, led to the closure of a state-of-the-art processing facility in Scalpay, Harris, with the loss of over 40 jobs...Based on recent experience of such mergers and acquisitions, Comhairle nan Eilean Siar, the Local Authority for the Outer Hebrides, is concerned about the potential local economic impact, both in terms of direct employment and the consequential effects within the island economy. I believe that the dominant market position that has been achieved by Pan Fish, will have a potentially distortive effect on the operation of the aquaculture market at the international, national and regional levels"³⁰.

²⁹ *The West Highland Free Press*. 10 May 2006. "Dismay over latest fish farm merger". Available at: <http://www.whfp.com/1767/top1.html>

³⁰ Letter dated 20 March 2006 from Angus Campbell, vice-convener of Comhairle nan Eilean Siar. Also reported by: *Intrafish*. 15 May 2006. "Scottish council first to complain over Pan Fish merger". Available at: www.intrafish.com

Angus MacMillan, who owns Western Isles based West Minch Salmon, told Fish Update (1st May 2006): “We have already seen the effect of the previous merger between Marine Harvest and Stolt in the Western Isles. Marine Harvest closed its processing factory in Stornoway in 2003, and a state-of-the-art factory belonging to Stolt in Scalpay was closed last year. That cost over one hundred jobs, but what many people didn’t see was the loss of hundreds of more jobs after that, when people’s attention had moved away.”³¹

Increased UK consumer salmon prices

As we stated in our March 2006 letter to Director of Mergers Simon Pritchard, this merger immediately raises competition issues primarily related to consumer prices. This would not be the first incidence where salmon prices would be considered affected by a merger in this industry, however. In 2000, the Competition Commission found that the merger of salmon farming companies Nutreco and Hydro Seafoods subsidiary of Norwegian company Norsk Hydro), “would reduce competition in the market for salmon feed and lead to increased prices.”

At this time, Competition Minister Dr Kim Howells told the BBC News (23 December 2000):

Although the merger would not increase Nutreco's share of feed supply, the Competition Commission concluded that its already strong position in the market, coupled with an increased share of the customer base, would enhance its position in the market at the expense of competitors and customers. Nutreco's position in the market would enable it to raise prices to salmon producers, and as salmon feed is a major component of the costs of salmon production such price increases could lead to increased prices for end consumers. In particular, the Competition Commission concluded that those customers and end consumers who specifically wanted Scottish salmon could face higher prices.”³²

Given the growing concentration of the salmon farming sector by Pan Fish-Marine Harvest-Fjord Seafood, the Pure Salmon Campaign expects that consumers could face increasingly high salmon prices.

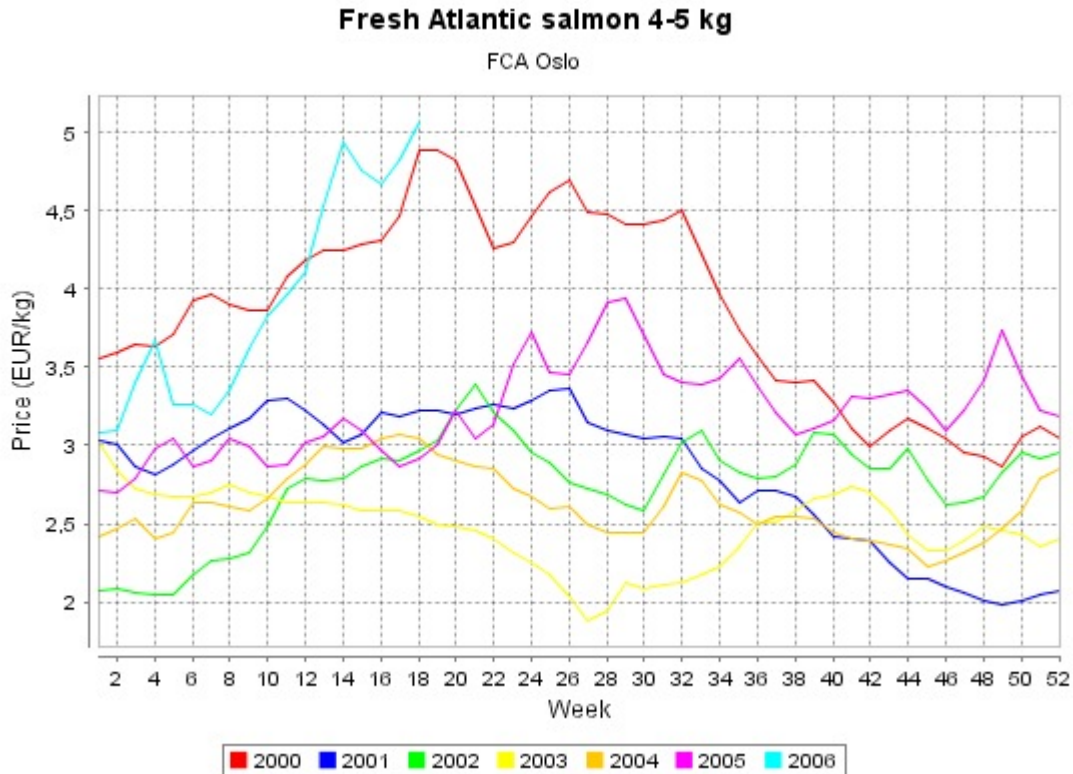
In fact, salmon prices have been rising and, on 19 May 2006, **farmed salmon spot prices have reached the highest level in thirteen years (since 1993)**. Furthermore, *IntraFish Media* reported that these high prices are a result of “lower production from Pan Fish and Mainstream [Cermaq]”³³.

³¹ *Fish Update*. 1 May 2006. “Executive under fire for “help” to multinationals.” Available: http://www.fishupdate.com/news/fullstory.php/aid/4416/Executive_under__fire_for__help__to_multinationals.html

³² *BBC News*. 23 December 2000. “Salmon firm takeover blocked”. Available via: <http://news.bbc.co.uk/1/hi/scotland/1084044.stm>

³³ *IntraFish Media*. 19 May 2006. EU salmon prices hit 13-year high”. Available at: <http://www.intrafish.no/global/news/article106392.ece>

As the graph below demonstrates,³⁴ at the beginning of the year, before the Pan Fish-Marine Harvest merger, salmon sold for a little more than 2 £/kg, below the peak set for this time of the year in 2000. Immediately after announcement of the merger, prices began to rise, and have now peaked at 3.5£/kg. It is traditional for prices to rise during the first half of the year, but this rise is far swifter than in years past.



Source: *IntraFish Media*. <http://www.intrafish.no/global/marketprices/index.jsp>

Additional evidence of price control is that the share price of the newly combine companies have soared, by 300% in one case.

³⁴ Available from *IntraFish Media*. www.intrafish.com.
<http://www.intrafish.no/global/marketprices/index.jsp>

REVIEW OF PAN FISH & MARINE HARVEST CONCERNS

Disclosure of Intentions By Pan Fish

Of tangential interest is an episode of disclosure integrity. This may bear on the credibility of company figures submitted in order to obtain merger approval.

During Pan Fish's move towards consolidating the salmon farming industry, it became clear to the Pure Salmon Campaign that Pan Fish may have intentionally not disclosed its true intentions to take over Fjord Seafood. The Pure Salmon Campaign suspects that Pan Fish made misleading statements to shareholders the day before it bought a controlling stake of Norway-based Fjord shares on the Oslo Stock Exchange, allowing the company to buy those shares at a lower price.

In response to our initial disclosure concerns, Pure Salmon sent a letter to Pan Fish on 21 April 2006 to which we received no written response. The disclosure concerns we addressed were as follows.

On 5 April 2006, Fjord Seafood publicly stated that Pan Fish had communicated its interest in acquiring control of Fjord. Directly after this statement of a pending take over of Fjord, Fjord stock price rose to NOK 8.80.

Pan Fish then issued an announcement on the Oslo Stock Exchange on 6 April 2006, explaining that Fjord may have "misinterpreted its interest" and that Pan Fish was "very comfortable with the ownership position in Fjord Seafood as it is today." Pan Fish also explained that "such a decision has not been made, and there is substantial uncertainty related to whether a bid will be presented at all." After this statement by Pan Fish, Fjord stock price fell back to NOK 8.34 (\$1.33/€1.07).

The next day, on 7 April 2006, Pan Fish purchased another 17.7% of Fjord, at the now-reduced share price. Had Pan Fish not made the 6 April statement that it was happy with its 39% holding of Fjord, it is likely that the share price would not have dropped from NOK 8.80 to NOK 8.34.

The Pure Salmon Campaign believes that the price decline is significant because the purchase boosted Pan Fish's stake in Fjord past 40 percent, which under Norwegian law requires Pan Fish to make a similarly priced offer for all remaining shares of Fjord. Pan Fish announced its plans to take over Fjord Seafood's remaining shares on 26 April 2006.

Of course, the immediate question is: If Pan Fish CEO Atle Eide was truthful in his 6 April 2006 statement that there was "substantial uncertainty" in Pan Fish's next move, could his board of directors really have, in just one day, arrived and acted upon a decision to purchase and additional 17.7% of shares?

Further evidence, however, points to the fact that Pan Fish may have intended to take over Fjord Seafood *prior to* Pan Fish's CEO Eide's claims that Pan Fish was happy with its 39% stake.

In an email correspondence with the Pure Salmon Campaign on 27 April 2006, Marianne Dahl of the Norwegian Competition Authority told Pure Salmon that they had received "notification of the two mergers of Pan Fish and Marine Harvest and Pan Fish and Fjord Seafood [sic] on March 31" from Pan Fish.³⁵ Therefore, Pan Fish had notified the Norwegian Competition Authority of its interest in Fjord Seafood *one week prior* to its public statement that it was comfortable with its 39 percent holding in Fjord. In fact, in its notification to the Norwegian Competition Authority, Pan Fish states that "Pan Fish's acquisition is perceived by Fjord as a hostile action."³⁶

While not directly addressing our question, on 28 April 2006, Pan Fish CEO Atle Eide told *IntraFish* that the company has followed all Norwegian laws. He stated that: "We are strictly following the rules and anything which we have to communicate to the stock exchange or the stock market in general, we are doing it exactly as it should have been done."

The Pure Salmon Campaign raised these disclosure issues at the Fjord Seafood annual general meeting on 5 May 2006, in which shareholders were voting on Pan Fish CEO Atle Eide's nomination as a board member in Fjord Seafood. We attended this meeting as shareholders. As a shareholder, the Pure Salmon Campaign is interested in long-term shareholder value, which is dependent on sustainability and attention to environmental concerns. If a company is found to have issued misleading statements, this can be harmful to long-term value creation.

In response to our concerns, Fjord Seafood CEO Helge Midttun requested that the Pure Salmon Campaign contact the Oslo Stock Exchange regarding Pan Fish disclosure issues. We have attached our letter to the exchange, for your review.

Reporting Discrepancies

As mentioned earlier, Pan Fish claimed in a 7 March 2006 presentation after the Pan Fish-Marine Harvest merger, Pan Fish-Marine Harvest (again, not including Fjord Seafood), will control 20 percent of global market share. But, the Pure Salmon Campaign believes there is reason to consider whether these market share figures understate fact, both in terms of the global figure of 20 percent, and in reference to some of the individual regional figures presented in the 7 March 2006 report.

Some of these discrepancies are highlighted below:

³⁵ Wiersholm Mellbyesbech to Konkurransetilsynet. 31 March 2006. "Standard Merger Notification Regarding Pan Fish-Marine Harvest (possibly Fjord Seafood)."

³⁶ Wiersholm Mellbyesbech to Konkurransetilsynet. 31 March 2006. "Standard Merger Notification Regarding Pan Fish-Marine Harvest (possibly Fjord Seafood)."

Chile Figures

In its 7 March 2006 report, Pan Fish stated that Pan Fish-Marine Harvest will produce an estimated 98,000 tonnes of farmed salmon in Chile in 2006. On page 4 of this report, Pan Fish estimates that Pan Fish-Marine Harvest will have approximately **15% market share** in Chile in 2006.³⁷ Based on Pan Fish's figures, this would suggest that Chilean farmed salmon production in 2006 would have to be around 587,000 tonnes (in order for 98,000 tonnes of production to equate to 15% market share in Chile).

According to Salmon Chile (Chilean-based salmon producer), however, Chilean farmed salmon *and* trout production was 355,000 tonnes in 2004 and 384,000 tonnes in 2005.³⁸ And, first trimester figures for 2006 Chilean farmed salmon production estimate production at around 114,000 tonnes for the first trimester, which is a 3 percent fall in volume³⁹.

At around 98,000 tonnes of salmon production, **Pan Fish-Marine Harvest would actually control closer to 25.5% of the Chilean salmon market** in terms of 2005 production. And, if one extrapolates 2006 Chilean salmon production based on first trimester figures, **Pan Fish-Marine Harvest could control around 29%** of the Chilean salmon market in 2006.

In other words, Pan Fish's market share in Chile will likely be almost double the estimates it has provided publicly. Also, these market share figures do not include the additional Chilean market share of Fjord Seafood (for which Pan Fish has made a bid for all outstanding shares), which would increase Pan Fish's Chilean market share even further.

Canada Figures

In the same 7 March 2006 report, Pan Fish stated that Pan Fish-Marine Harvest will control approximately **30 percent of market share in Canada.**

But, in terms of number of licenses, it appears that Pan Fish-Marine Harvest would control well over half the salmon farming licenses in Canada. Specifically, of the 125 licenses allotted by Canada, Nutreco holds 18, Pan Fish (with Omega) 26, and Stolt 27, or a total of 71. By number of licenses, this is **57 percent.**

Again, Pan Fish's market share in Canada is likely almost double the estimates it has provided publicly.

³⁷ Pan Fish. 7 March 2006. Page 2. "Pan Fish-Marine Harvest. The World Leading Aquaculture Company." Available at: <http://hugin.info/209/R/1037987/168337.pdf>

³⁸ SalmonChile. www.salmonchile.cl. "Exportaciones del sector pesquero. Miles de Toneladas Netas."

³⁹ *Economía y Negocios El Mercurio* newspaper.

Global Figures

There also seem to be internal inconsistencies within Pan Fish's own market share figures. For example, simply averaging the market shares of the various production centers begs the question of how the composite (or global) market share could be just 20 percent. If Pan Fish, as it claims, comprises 20 percent of market share in Norway, close to 50 percent in the UK, 15 percent in Chile, 30 percent in Canada, 20 percent in the Faeroe Islands, and 45 percent in Ireland, how then does it not comprise more than 20 percent of global market share when all but one of these regional market shares are above 20 percent? Chile is the sole region where the figure is below 20 percent, namely at 15 percent. Chile is a large producer, but not weighted so dominantly as to eliminate the effect of the higher market share figures in the UK, Ireland and Canada.

Other reports conflict. When Nutreco announced its plans for a joint venture with Stolt-Nielsen, it asserted that its combined market share (Marine Harvest) would be **22 percent**.⁴⁰ And, again on 16 December 2005, during its IPO, Marine Harvest reported a **22 percent market share** (around 280,000 metric tons).⁴¹ Yet, after announcing its intention to purchase Marine Harvest, on 7 March 2006 Pan Fish stated that Marine Harvest had produced 266,000 tons of salmon and comprised just **16 percent** of the global salmon market.⁴²

In a 6 March 2006 press release, Pan Fish stated that it produced "67,000 tonnes of salmon in 2005."⁴³ If one compares Pan Fish's 2005 production (67,00 tonnes/66,379 tons) to 2005 global farmed Atlantic salmon production of around 1.27 million metric tons, Pan Fish produced approximately **5.3 percent** of global production.

In the same release, Pan Fish estimated that Pan Fish Marine Harvest would produce "approximately **20 percent** of global salmon production."⁴⁴ However, if you add Marine Harvest's market share of 22 percent (document by marine Harvest in December 2005) to Pan Fish's market share (5.3 percent), together Pan Fish/Marine Harvest's market share would be **27.3 percent**, significantly greater than the 20 percent that Pan Fish estimated in its report after announcing its purchase of Marine Harvest.

When the Commission of the European Communities reviewed the proposed joint venture of Marine Harvest and Stolt, they considered European sales market shares of up to 20 percent for Nutreco, and up to 10 percent for Stolt. This same document noted a

⁴⁰ Marine Harvest. Available: <http://www.marineharvest.com/news-2004/nutreco-seeks-shareholder-approval-for-joint-venture-with-stolt-nielsen-s.a..html>

⁴¹ Note: By imputation, this means total world production is 1.27 million metric ton. This conforms with independent figures, such as from Kontali Anaylse, which put 2005 Atlantic salmon production at 1.210 MT. "Global Supply and Competition, by Paul T. Aandahl, Norge."

⁴² Pan Fish 7 March 2006 report, Slide 2. <http://hugin.info/209/R/1037987/168337.pdf>

⁴³ http://www.panfish.com/newsread/news.asp?WCE=news&D=4&N=5040&COMP_ID=1&L=2&SORT=102

⁴⁴ http://www.panfish.com/newsread/news.asp?WCE=news&D=4&N=5040&COMP_ID=1&L=2&SORT=102

sales market share by Pan Fish up to 10 percent. Using the outer numbers, then, the total sales share could be 40 percent for Europe alone.⁴⁵

Note that the aforementioned estimates of market share by Pan Fish (and Pan Fish Marine Harvest) do not include its roughly 67 percent ownership of Fjord Seafood.

Cermaq presented numerous market share figures during its public offering in the fall of 2005. In one of these, Cermaq recited analysis from Kontali that graphical shows the large market share enjoyed by Marine Harvest. This shows Marine Harvest at 275,000 MT, Cermaq at 100,000 MT, Pan Fish at 67,000 MT and Fjord at 78,000 MT⁴⁶. If one combines the production of Marine Harvest and Pan Fish and now Fjord, these three companies had a total production of 420,000 MT--four times the size of Cermaq and **35 percent of global salmon production.**

Furthermore, some of these companies are not currently operating at full capacity. *Intrafish Media* reports annually on the largest farmed salmon producers. In the 2005 report, covering 2004 results, they include both 2004 harvest and “theoretical capacity.”⁴⁷ Adding theoretical capacity of Pan Fish, Marine Harvest, and Fjord yields 494,000 MT or theoretical capacity to comprise **41 percent of the global farmed salmon market.**

In sum, the market share of the Pan Fish-Marine Harvest-Fjord constellation suggests a market share that may be as much as 100 percent greater than what Pan Fish stated in its press release of 6 March 2006 and in its presentation of 7 March 2006.

Such discrepancies in these figures intensifies interest in evidence that market share will be translated into market control. Of concern to regulators, who are charged with promoting fair consumer prices, job growth within the industry and fair competition within the industry, is whether the new firm can and/or intends to frustrate these policies.

Environment, Health & Safety Violations

The Pure Salmon Campaign has already raised various environmental issues with Fjord Seafood in a shareholder resolution presented at their AGM in Oslo on 4th May 2006. The same shareholder resolution will be presented by the Pure Salmon Campaign at Pan Fish’s AGM in Stavanger on 30 May 2006. The shareholder resolution calls on Pan Fish to: “undertake the necessary steps to adopt salmon production techniques so that disease transfer, waste pollution, and escapes are eliminated, and to make sure that fish feed is sourced solely from sustainable fisheries.” (Note: the resolution is available in full via: http://www.puresalmon.org/pdfs/resolution_english_translation.pdf).

⁴⁵ Case No. Comp/M 3722, page 8. Website address:

http://europa.eu.int/comm/competition/mergers/cases/decisions/m3722_20050412_20310_en.pdf)

⁴⁶ http://www.aksjonaerforeningen.no/storaksje05/Oslo_3_Peter_Williams_SAK_2005.pdf

⁴⁷ Berge, Aslak. *Intrafish Media*. 28 July 2005. “The World’s 30 Largest Salmon Production Companies.”

Both Marine Harvest and Pan Fish have a long history of pollution and environmental impacts in Scotland. Below are a few examples of the most recent incidents involving Marine Harvest and Pan Fish operations in Scotland.

In November 2005, *The Sunday Express* named Marine Harvest Scotland as shooting and killing seals at their farm within the Loch Alsh Special Area of Conservation.⁴⁸ According to *The Sunday Express* (27 November 2005):

Horrified marine experts have demanded an inquiry after viewing our shocking images of dead and injured seals. Carcasses have been found washed up on beaches around Skye and tourists on boat trips claim to have watched injured animals die from their wounds. Amsterdam-based Marine Harvest--which is predicting an annual turnover of one billion euros--insists staff have to shoot the animals to stop them attacking their salmon-packed cages at their fish farm.

In July 2005, Marine Harvest Scotland was fined for water pollution. According to the Scottish Environment Protection Agency (28 July 2005), Marine Harvest Scotland Limited were fined £4,000 for allowing fish guts, blood, scum and grease to enter the River Lochy in Fort William. According to SEPA:

This was a serious incident. The discharge was of a highly offensive and polluting nature. Sewage fungus present in the River can smother the bed of a watercourse, and can damage invertebrates and insect life. Secondary problems associated with smell from decaying matter were also reported to SEPA. The outfall to the River Lochy is immediately adjacent to a number of houses and Lochside Primary School.”⁴⁹

In July 2005, safety fears were raised by *The Sunday Times* (17 July 2005) over the dumping by Marine Harvest Scotland of thousands of tonnes of diseased farmed salmon in the Western Isles.⁵⁰ According to *The Sunday Times*:

More than 100,000 fish have been buried, along with fish waste treated with acid, on a beach in North Uist. Residents and campaigners say the dump is a threat to public health and called on the Scottish executive to introduce tougher regulations. The fish were dumped following an outbreak of infectious pancreatic

⁴⁸ *The Sunday Express*. 27 November 2005 “Scottish fish farmers slaughter seals - Marine Harvest insists staff have to shoot the animals to stop them attacking their salmon cages”. http://english.ohmynews.com/articleview/article_view.asp?at_code=295526&no=261068&rel_no=1

⁴⁹ Scottish Environment Protection Agency. 28 July 2005. “Marine Harvest fined - Marine Harvest (Scotland) Limited were fined £4,000 yesterday, Wednesday 27 July, for allowing fish guts, blood, scum and grease to enter the River Lochy in Fort William”. Available at: <http://www.sepa.org.uk/news/releases/view.asp?id=245&y=2005>

⁵⁰ *The Sunday Times*. 17 July 2005. “Fears raised by salmon dump - safety fears have been raised over the dumping of thousands of tonnes of diseased farmed salmon in the Western Isles”. Available via: <http://www.growfish.com.au/content.asp?contentid=4569>

necrosis and a suspected outbreak of infectious salmon anaemia (ISA) at a fish farm run by Marine Harvest, a seafood firm, on the neighbouring island of South Uist.

Susan Rothwell, whose home is less than half a mile from the Kyles Paible dump, told *The Sunday Times*: “The smell is indescribable. The stench of rotting fish day in, day out makes you feel ill. If you go anywhere near the place it is just covered by flies and seagulls. It is a clear health hazard and there is no way that it should be happening right next to the beach where kiddies play.”

A company policy that dictates lowest cost production and job cuts can sadly also cut corners from a health and safety perspective. In fact, Pan Fish’s UK subsidiary Lighthouse of Scotland were fined £8,000 in May 2004 for breaching the Health and Safety At Work Act. The summary of the case by the Health and Safety Executive stated:

Failure to provide and maintain plant and systems of work that were so far as reasonably practicable safe with respect to fish husbandry operations on a fish farm at sea and failure to ensure that life jacket provided was maintained in an efficient state, working order and in good repair and that employees were provided with information, instruction and training re maintaining life jackets. This case did result from the investigation of a fatality.⁵¹

⁵¹ HSE Prosecutions: Lighthouse of Scotland. Available via:
http://www.hse.gov.uk/prosecutions/breach/breach_details.asp?SF=BID&SV=F20000061303