

MEMO

Date: 22 March 2006

To: Andrea Kavanagh, Director
Pure Salmon Campaign
National Environmental Trust

From: Bartlett Naylor
Capital Strategies Consulting, Inc.

Subject: Recent Pan Fish Transactions and Related Competition Issues

You asked about regulatory issues that might affect the recent announcements by Pan Fish that it would acquire Marine Harvest, and raise its stake in Fjord. Transactions between such industry leaders pose antitrust questions.

What follows is a discussion that:

- Reviews Pan Fish's declarations of how the transaction would transform market share;
- Considers that Pan Fish's latest figures on market share are notably lower than those it and other firms have stated before

This information provided:

- Raises the issue of whether such understatement is intentional and designed to reduce the inevitable regulatory questions about market dominance

This issue invites scrutiny of evidence that Pan Fish and its controlling shareholder may attempt to exercise market influence adverse to the goals/policies that regulatory authorities are obliged to protect.

Given the scale of this transaction, the evidence of market control motives and the curious declarations of market share, it may be possible that regulatory authorities accord special diligence before approval.

Primary regulatory authority resides in Norway, home of Pan Fish, and the largest portion of farmed Atlantic salmon production. Other relevant authorities include Scotland (UK), Canada, Chile, and the Faeroe Islands.

Background

Broadly, world farmed Atlantic salmon prices peaked in 2000 and fell precipitously thereafter, reflecting that supply had outpaced demand at these higher prices. Because entry to Atlantic salmon farming is relatively inexpensive, it has been difficult to reduce supply. Many companies have struggled financially, and equity prices have fallen. Pan Fish, for example, was effectively taken over by its main creditor and ceased expansion until a year ago when a private investor purchased the controlling equity held by the creditor. Virtually all farmed Atlantic salmon industry analyst reports dwell primarily on the problem of prices.

The axiom of commodity entrepreneurship is to institute pricing discipline and to raise prices through increased market share.

Transaction History

On 7 June 2005, Geveran Trading Ltd. (controlled by Norwegian billionaire, John Fredriksen) paid about \$131million for half (48%, 588 m shares at \$0.21) of Pan Fish, when Pan was trading about 1.36NOK per share. Then on 23 June 2005, Geveran Trading Ltd. paid about \$66 m for 25% of Fjord (88 m shares at 5NOK.).

Subsequently, Geveran sold its Fjord stock to Pan Fish, in exchange for more Pan Fish stock. This raised Geveran's stake in Pan Fish to 56 percent.

In March 2006, Geveran paid about \$1.3 billion for Marine Harvest. Immediately, Pan Fish issued new stock raising this amount in cash, and paid Fredriksen \$1.3 billion for his Marine Harvest stock. The new Pan Fish stock diluted Geveran's holdings from about 56 percent to 31 percent of Pan Fish.

However, the value of Pan Fish stock has risen from 1.5NOK (when Fredriksen made his major investment) to 5.5NOK. That makes Fredriksen's total holding of approximately 900 million shares of Pan Fish stock worth about \$742 million. In other words, on his roughly \$200 million investment in Pan Fish and Fjord of one year ago, Fredriksen has a paper gain of about \$540 million.

These transactions, including the ability to make real these paper gains, must obtain regulatory approval, both for the Pan Fish-Marine Harvest transaction, and the Pan Fish-Fjord transaction.

Market Share

On 6 March 2006, the Norwegian company Pan Fish announced plans to acquire the world's largest Atlantic salmon producer, Dutch-owned Marine Harvest. Marine Harvest

has been a joint venture, in which Dutch-based Nutreco held 75%, and Norway's Stolt-Nielsen held 25%. (Stolt-Nielsen is chartered in Luxembourg).

Before this March 2006 transaction, Pan Fish's largest shareholder was Geveran Trading Ltd., understood to be controlled by Norwegian citizen John Fredriksen. The same day as Pan Fish announced its Marine Harvest transaction, Pan Fish also announced its purchase from Geveran Trading Ltd. of the 25.7 percent Geveran held in fourth largest Atlantic salmon producer, namely Fjord Seafood. In consideration for Geveran's Fjord shares, Geveran was given additional shares in Pan Fish. Pan Fish stated that Geveran now controlled 56 percent of Pan Fish.

On 16 March 2006, Pan Fish announced that it purchased additional shares of Fjord. This brought Pan Fish's holdings in Fjord to 40 percent. Concomitant with this transaction, Pan Fish essentially doubled the number of shares of outstanding stock. Geveran purchased a small number (11 million), but largely cashed out of its investment in Marine Harvest. Given the dilution of new Pan Fish shares, most of which are held by non-Geveran shareholders, Geveran controlled approximately 31 percent of Pan Fish stock following this issue.

On 7 March 2006, Pan Fish released a comprehensive presentation of its proposed acquisition of Marine Harvest¹. The following statements provided by Pan Fish in this report demonstrates substantial market share:

- “Creation of the undisputed leader in the aquaculture industry with 346,000 tonnes of harvest volume.”
- “The new company is uniquely positioned to take the lowest cost producer position.”

In this report, Pan Fish claims it will control at least **20 percent of the global salmon** (or 346,000 tonnes harvest volume) and that it will attain “undisputed global leadership within aquaculture.” Fjord Seafood, of which Pan Fish now owns 40 percent, controls another 5 percent of market share according to Pan Fish's estimates.

Pan Fish also states that “Pan Fish Marine Harvest” will be the “largest producer in all regions” in terms of market share. Estimates of market share are²:

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

¹ Pan Fish 7 March 2006 report can be downloaded at: <http://hugin.info/209/R/1037987/168337.pdf>

² Estimates are provided in graph form, thus percentages listed here are estimates based on this graph.

Discrepancies in Market Share Figures

There is reason to consider, however, 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.

In Norway, on 20 March 2006, Pan fish formally applied to the Norwegian Ministry of Fisheries for permission to own up to “25 percent of the national licensed biomass for farmed salmon and trout.”³

By biomass, Pan Fish reported that the Pan Fish-Marine Harvest combination represents **19.2 percent in Norway**. This includes 106 licenses currently held by Marine Harvest, and 57 at Pan Fish⁴. Fjord controls 54 licenses⁵. However, by number of licenses, this trio would control **26 percent of Norwegian licenses**.

In its 7 March 2006 report, Pan Fish demonstrates that with Marine Harvest it 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**. Meanwhile, Cermaq’s EWOS Group controls 14 sites, so together newly formed Pan Fish Marine Harvest and Cermaq companies would control **66 percent** of production by license.⁶ (Fjord doesn’t operate in Canada.)

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 would be **22 percent**⁷. And, again on 16 December 2005, during its IPO, Marine Harvest reported a **22 percent market share** (around 280,000 metric tons)^{8,9}. Yet, after announcing it’s intention to purchase Marine

³ IntraFish Media. “Pan Fish seeks higher salmon license cap.” 21 March 2006.

⁴ IntraFish Media. “Pan Fish seeks higher salmon license cap.” 21 March 2006.

⁵ Fjord Seafood. Annual Report, page 33. 2004.

⁶ http://www.agf.gov.bc.ca/fisheries/licences/MFF_Sites_Current.htm

⁷ <http://www.marineharvest.com/news-2004/nutreco-seeks-shareholder-approval-for-joint-venture-with-stolt-nielsen-s.a..html>

⁸ http://www.companywebcast.nl/webcast/player/v1_0/player.asp?id=454

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 market¹⁰.

In a 6 March 2006 press release, Pan Fish stated that it produced “67,000 tonnes of salmon in 2005”¹¹. 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”¹². 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 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 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.¹³

Note that the aforementioned estimates of market share by Pan Fish (and Pan Fish Marine Harvest) do not include its 40 percent ownership of Fjord Seafood, which was also purchased this month.

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 MT¹⁴. 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

⁹ 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.”

¹⁰ Pan Fish 7 March 2006 report, Slide 2. <http://hugin.info/209/R/1037987/168337.pdf>

¹¹ http://www.panfish.com/newsread/news.asp?WCE=news&D=4&N=5040&COMP_ID=1&L=2&SORT=102

¹² http://www.panfish.com/newsread/news.asp?WCE=news&D=4&N=5040&COMP_ID=1&L=2&SORT=102

¹³ Case No. Comp/M 3722, page 8. Website address:

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

¹⁴ http://www.aksjonaerforeningen.no/storaksje05/Oslo_3_Peter_Williams_SAK_2005.pdf

report, covering 2004 results, they include both 2004 harvest and “theoretical capacity¹⁵.” 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 may be as much as 100 percent greater than what Pan Fish stated** its press release of 6 March 2006 and in its presentation of 7 March 2006.

Market Control

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.

Intrafish reported on 28 June 2005 that following purchases of Fjord and Pan Fish, the acquirers met to discuss strategy. “Troim said Mr. Fredriksen and the team would meet this week to discuss the structure of the salmon sector and a strategy for moving forward.”

Prices

The Friday before the Monday announcement of the Pan fish-Marine Harvest transaction, the media reported comments by the Pan Fish CEO predicting a rise in farmed salmon prices. “CEO Atle Eide predicted salmon prices could reach NOK 40 per kilogram... It’s the first time since the fall of 2003 that any CEO was quoted as saying prices could reach NOK 40”¹⁶. This can be explained as an expression of hope. Yet Mr. Eide would have been party to the transaction, then in the final hours before announcement, and therefore in a position to understand that increased market share control could, in fact, lead to such a price rise.

In its presentation of 7 March 2006, Pan Fish shows that it will reduce and/or terminate certain production, such as in eastern Canada.¹⁷ Reducing supply can raise prices.

Rising equity share prices support the argument that Pan Fish will be able to raise margins on farmed salmon. As noted earlier, Gevevan Trading Ltd. purchased Pan Fish

¹⁵ Berge, Aslak. *Intrafish Media*. “The World’s 30 Largest Salmon Production Companies.” 28 July 2005.

¹⁶ Berge, Aslak. *Intrafish Media*. “Pan Fish shares surge on CEO’s salmon price prediction.” 3 March 2006. [The article erroneously puts the date of the previous prediction at 2005]

¹⁷ <http://hugin.info/209/R/1037987/168337.pdf>

stock for 1.3NOK. It now trades at more than 5NOK. Essentially, this entire price rise came in the last few weeks simultaneously with the news of the transaction.¹⁸

A stock price theoretically reflects the present value of future earnings. If those earnings prospects are unchanged for Marine Harvest, then its ownership should be largely irrelevant to its value. The seller's and buyer's share values should also be unchanged if Marine Harvest were perfectly priced when transferred from Nutreco/Stolt to Pan Fish. If imperfectly priced, that is, one side of the transaction is getting a "better deal," then this imperfection should be reflected in matching changes in corresponding share prices. Nutreco should go up/down by the same value that Pan Fish goes down/up. Not the case here: Nutreco lost \$241 million in market value, while Pan Fish gained \$1.7 billion.¹⁹ In total value, Pan Fish's market capitalization rose from about \$425 million before the Marine Harvest and Fjord acquisitions, to about \$2.9 billion after. In simplest terms, Pan Fish's stock was worth about 2NOK before the mergers, and about 6NOK after.

Fjord stock has also risen, by almost double from the beginning of the year, and from about 6NOK immediately before the Pan Fish purchase of 40% of Fjord to 8NOK after.²⁰

A look at the changes in share price suggests that investors believe that the Marine Harvest-Pan Fish-Fjord combination is worth far more than Marine Harvest v. Pan Fish v. Fjord. It is difficult to find a more compelling reason for this new market valuation than the firm's ability to advantage market share to raise prices.

Employment loss

When Geveran Trading Ltd. first announced its investments in Fjord and Pan Fish, Geveran official Olav Troim declared that a reduction in sales force was obvious. "It is meaningless to have 10 salmon sellers in Norway competing over two supermarkets in Hong Kong," said Troim, "but we don't have a hard and fast agenda on this yet."²¹

¹⁸ That is, the price rose following the Geveran purchase in June 2005, signaling the end of Pan Fish's financial problems. And it rose following encouraging quarterly results. But these were insignificant compared with the price rise following announcement of the Marine Harvest merger.

¹⁹ In this case, Nutreco stock fell from a 52-week high of Euro 52, to Euro 46. With 33.5 million outstanding shares, that's a market valuation decline of Euro 201 million, or \$241 million. However, Pan Fish's stock rose from roughly 2NOK to 5.5NOK. At the same time, Pan Fish issued 1.2 billion shares of new stock. Before the acquisition of Marine Harvest, Pan Fish's market capitalization was 1.3 billion shares multiplied 2.5NOK/share, or \$500 million. Stolt, holder of 25 percent of the Marine Harvest venture, experienced essentially no measurable change in market capitalization following the sale to Pan Fish. Following the acquisition, its market capitalization is \$2.2 billion (14.5 billion NOK). In other words, Pan Fish gained \$1.7 billion.

²⁰

http://www.oslobors.no/ob/aksje_kursutvikling?p_instrid=ticker.ose.FJO&menu2show=1.1.2.1.&p_period=YTD

²¹ Berge, Aslak and Drew Cherry. *Intrafish Media*. "Fredriksen begins crafting salmon strategy. 28 June 2005.

Already, Pan Fish produces farmed salmon with fewer full time employees (FTEs) per kilogram than Marine Harvest. Marine Harvest produced 270,000 MT. with 5,300 employees, or 51 MT/employee. In Norway, for example, Pan Fish produced 31,000 MT with 205 employees, or 151 MT per employee.²² (One speculates that Mr. Fredriksen chose to make Pan Fish its farmed salmon management company because of this lean operation.)

According to the *Scottish Sunday Herald*, "I am extremely concerned that a major resource for employment in the Highlands and Islands is now in the hands of one company," said Highland Council vice-convenor Michael Foxley:²³

According to the *West Highland Free Press* (10 March 2006):

"Angus Campbell, vice-convenor 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."²⁴

In the same article, the *West Highland Free Press* wrote: "Pan Fish have a history of 'rationalization 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'. These cuts were specifically criticized by the sheriff at a Fatal Accident Inquiry into the death of a Pan Fish employee at work off the coast of Skye in January 2003. Without reducing production levels on the farm, the company had cut staffing levels by a third. In October 2003, Pan Fish managing director Atle Eide, justified the cuts by arguing that a reduction in the number of employees in Norway often meant there were more jobs for people in other countries."²⁵

Fair competition

Pan Fish's stated strategy is to be the "lowest cost producer." This strategy is repeated in the CEO's statements to shareholders; it is the one declaration on the company's 2004

²² <http://www.panfish.com/static/2004eng/HTML1/016.htm>, p. 16

²³ <http://www.sundayherald.com/54485>

²⁴ <http://www.whfp.com/1767/top1.html>

²⁵ <http://www.whfp.com/1767/top1.html>

annual report. This raises the issue of winning sales through low pricing, which can frustrate less well financed and/or smaller competitors. Norwegian companies have long sparked criticism from rivals for “dumping”, notably in Scotland, leading to penalties on Norwegian farmed salmon exports.

According to *The Sunday Herald* (12 March 2006): "Hugh Currie, managing director of Lithgows, owner of Ormsary-based Landcatch said: ‘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 organizations like that.’”²⁶

According to *The Scotsman*, some observers may be critical of the transaction: “An industry insider said: ‘This is a terrifying prospect for the Scottish industry, which has relied on diversification for its survival up till now. This will give the one company control of most of the mainland and the Western Isles. There are now just over 20 small independent companies left, including smolt producers’” And, “Michael Foxley, a member of Highland Council, said: ‘This latest move will place 90 to 95 per cent of all Scottish salmon production in the hands of one owner, and that has major implications for the future.’”²⁷

According to the *West Highland Free Press* (10 March 2006): “Dr Foxley added: ‘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 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. That is what we are seeing here in Sunart. I reckon that what is going to happen is that they will get to the stage where they are so undermanned that there will be a disease outbreak they cannot control and the industry will collapse.’”²⁸

Additional Evidence of Control

The relationship of Geveran Trading Ltd. and its key managers to Pan Fish decisions is of no small importance given Geveran’s substantial equity control. Geveran’s controlling shareholder is Mr. John Fredriksen. A look at other enterprises related to Mr. Fredriksen reveals examples of control mechanisms. Of note, when Mr. Fredriksen’s associate, Olav Troim, was interviewed by Intrafish shortly after the acquisition of Pan Fish and Fjord shares, Mr. Troim pointed to Frontline management as a model. “Troim said one of the keys to reaping values at Frontline has been the company’s size, service, and ‘significantly lower costs.’”²⁹

²⁶ <http://www.sundayherald.com/54485>

²⁷ <http://news.scotsman.com/topics.cfm?tid=1080&id=360042006>

²⁸ <http://www.whfp.com/1767/top1.html>

²⁹ Berge, Aslak and Drew Cherry. *Intrafish Media*. “Fredriksen begins crafting salmon strategy. 28 June 2005.

Frontline is another Fredriksen enterprise that operates the world's largest oil tanker fleet. This company is listed on the New York Stock Exchange and invites public subscription to its stock. By nature, public ownership is meant to empower individual shareholders to hold management accountable. In Frontline's case, the majority of stock is held by one key manager, namely, Mr. Fredriksen.³⁰

NYSE's governance policy calls for a board independent of management. In this way, shareholders can elect representatives that impartially represent their interests. At Frontline, however, the board is largely composed of individuals who report in the daily life to Frontline's senior managers. Specifically, there are four directors. Only one of these is not a Frontline employee. Frontline advantages an exception to NYSE guidelines by incorporating in Bermuda.³¹

Similarly, best corporate governance practices call for the chair of the board to be independent of management. In this way, shareholder representatives are better insulated from management influence of the board charged with overseeing management. At Frontline, the chair and CEO are the same person.

Frontline's incorporation in Bermuda shields it from certain other common lines of accountability, which it is required to disclose in its SEC-required documents.

Frontline's fleets of oil tankers are largely registered in countries that critics label as "flags of convenience." These are considered to reduce intrusion into management decisions about maintenance, etc. That is, the maximize control of the ship with management.

Frontline's business is to carry oil on the high seas. While the company reports a highly competitive industry, it reports operating margin of 52 percent, and gross profit of 40 percent. This operating margin far exceeds the industry average (36 percent). Frontline is the largest firm in this business.³²

Regulatory review

Norway

In conversations with Norwegian authorities, we learned that Pan Fish must receive approval from both the Norwegian Competition Authority and Norway's Ministry of Fisheries before finalizing this merger. We understand that the Norwegian Competition Authority will investigate market share and market control by Pan Fish (and majority

³⁰ See "Major Shareholders." Available at: http://sec.gov/Archives/edgar/data/913290/000091957405002240/d583224_20-f.txt

³¹ <http://www.frontline.bm/IR/management.shtml>

³² <http://finance.yahoo.com/q/co?s=FRO>

shareholder, John Fredriksen) to determine if this concentration is in violation of Norwegian competition laws.

Given the 15 percent cap on ownership of salmon farming licenses in Norway, we know that Pan Fish must also apply to the Ministry of Fisheries for additional farming licenses (up to 25 percent) before it can solidify this merger. We understand that this will be the first incidence of a salmon producer applying for more than 15 percent of Norwegian salmon farming licenses and that there is no standard procedure for determining to grant additional licenses. Mr. Magnor Nerheim, Director General of Ministry of Fisheries' Department of Aquaculture, Seafood, and Markets did suggest that the determination would be based on whether this merger improves both the competitiveness of Norwegian salmon farming industry and the well being of the Norwegian society. It is our understanding that there are few bright lines that will determine whether or not the regulators will approve or requirement amendments to the transaction. Mr. Nerheim reports that his agency expects to develop an approach for assessing this application by the end of March.³³

It is possible that qualitative, political considerations may enter into Norwegian regulatory decisions. Norway can rightly claim to be the home to farmed salmon. It has and currently produces more of these products than any other country. Until Nutreco purchased Marine Harvest, all of the largest companies, including those operating in Chile, Canada, Scotland and elsewhere, were controlled by Norwegian-based firms. It may be viewed that Pan Fish's acquisition of Marine Harvest will bring this firm "back home."

The largest shareholder of these firms will be known to be controlled by Norwegian national John Fredriksen. Fredriksen is said to be Norway's richest man, who rose from relative modesty, and of whom the nation may be rightly proud. But others may contend that Mr. Fredriksen has largely separated his business concerns from Norway. His primary business – Frontline, Ltd – is based in Bermuda. Only a few of his vessels fly the Norwegian flag, known to uphold the highest standards of seaborne safety. These include some of his double-hulled vessels. The majority of his ships fly so-called flags of convenience, such as the flags of Liberia, Cyprus, and Panama.³⁴ Many of these are single-hulled vessels. Frontline explains that its 24 non-double hull tankers will eventually be prohibited. Norwegian labor may view that such practices are not in harmony with the goals that Norwegian regulators will decide to pursue in weighing the Pan Fish-Marine Harvest-Fjord combination.

We are also aware that the relevant authorities may determine that the European Commission will review the merger of Pan Fish and Marine Harvest, and therefore the Norwegian Competition Authority may not be responsible for reviewing this merger.

³³ Via email correspondence to Rachel Hopkins, 21 March 2006.

³⁴ Frontline, 20-F, page 26. 2004.

United Kingdom (primarily Scotland)

The transaction may be subject to review by the United Kingdom Office of Fair Trading. According to news reports, its purview relates to companies with more than \$122 million in sales, or who supply 25 percent or more of goods in a particular sector. The combination of Pan Fish and Marine Harvest reportedly reaches 80,000 MT out of the 120,000 MT currently produced there. According to Pan Fish's own figures, it expects a production market share of 48 percent in the United Kingdom, presumably triggering that 25 percent threshold. At least once before, the UK Office of Fair Trading has intervened in a merger, when Marine Harvest sought operations from Norske Hydro in 2000.³⁵

It is possible that antitrust issues will also be considered outside the UK Office of Fair trading, as explained by the OFT. "If the merger falls for investigation in the UK, we will issue an invitation to comment asking interested third parties for their views. The OFT has an administrative timetable of 40 working days for informal submissions. ... This merger can complete. The OFT has the power to investigate completed mergers under the Enterprise Act 2002 (EA02). If the 48% share is created as a result of the merger, then it is sufficient to trigger an investigation under the EA02. At this stage, it is not possible to assess whether there might be any substantial lessening of competition (SLC). If the merger is found to have an SLC, possible outcomes are reference to the Competition Commission for further investigation or undertakings in lieu of a reference which might involve divestment of certain assets."³⁶

In another communication from the OFT: "it may be worth noting that given that the merging parties are active in a number of EU countries, the merger may in fact fall within the jurisdiction of the European Commission rather than the OFT. Therefore, the answers and procedures set out below would only apply in the event that the OFT was found to have jurisdiction. At the time of writing, we do not have enough information to determine which competition authority should deal with this case"³⁷

Canada

The Competition Bureau may review the transaction. According to Section 92(1), the bureau will attempt to prevent a merger that "prevents or lessens, or is likely to prevent or less competition substantially." The primary concerns are "price and output," according to the Bureau. "A unilateral exercise of market power can arise when a merger enables the merged entity to profitably sustain higher prices than would otherwise exist in the absence of the merger without relying on an accommodating response from its competitors."³⁸ The "Bureau has established thresholds to identify mergers that are

³⁵ http://www.competition-commission.org.uk/press_rel/archive/2000_earlier/html/50-00.htm

³⁶ email from Duncan Porter, Office of Fair Trading, March 22, 2006

³⁷ Ainslee Wilton, Principal Case Officer, Mergers Branch,

³⁸ <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1710&lg=e#part2>

unlikely to have anti-competitive consequences from those that require a more detailed analysis. This includes mergers where market share is less than 35 percent, or when the largest four firms control less than 65 percent.³⁹ As noted, the Pan Fish transaction may alone represent 57 percent of the licenses; two firms, namely Pan Fish and Cermaq may represent more than 60 percent of licenses.⁴⁰ There is also evidence that the combination may pose concentration issues for sablefish farming.

³⁹ (<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1717&lg=e>)

⁴⁰ http://www.agf.gov.bc.ca/fisheries/licences/MFF_Sites_Current.htm