

Anticipated acquisition by United Fish Industries (UK) Limited of Rossyew Limited

ME/5527/12

The OFT's decision on reference under section 33(1) given on 4 September 2012. Full text of decision published 11 September 2012.

Please note that the square brackets indicate 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.

PARTIES

1. **United Fish Industries (UK) Limited (UFI)** is a wholly owned subsidiary of Welcon Invest AS, a Norwegian company established in 2009 as a 50/50 joint venture between the Irish public company, Origin Enterprises plc, and the Norwegian public company, Austevoll Seafood ASA. In the UK, Welcon Invest AS is active in the production and supply of fishmeal and fish oil through UFI and its subsidiaries.
2. **Rossyew Limited (Rossyew)** is a wholly owned subsidiary of A.P. Jess Limited. Rossyew is active in the production and supply of salmon oil, salmon protein hydrolysate (FPH) (a protein concentrate produced by using enzymes to break fish proteins down into their component amino acids), and salmon relish in the UK. Rossyew's UK turnover in its 2011/2012 financial year was approximately £[] million.

TRANSACTION

3. UFI proposes to acquire the entire issued share capital of Rossyew from A.P. Jess Limited [] (**Transaction**).

4. The Transaction was notified to the Office of Fair Trading (**OFT**) on 28 June 2012 and the administrative deadline is 4 September 2012.

JURISDICTION

5. As a result of this transaction UFI and Rossyew will cease to be distinct. As Rossyew's UK turnover in its 2011/2012 financial year does not exceed £70 million, the turnover test set out in section 23 of the Enterprise Act 2002 (the Act) is not met. The parties overlap in the supply of fish oil in the UK for use as a lipid input in monogastric animal feed where together they account for [40 – 50] per cent (as estimated by the parties). The share of supply test in section 23 of the Act is therefore met.
6. The OFT 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.

FRAME OF REFERENCE

7. Fish oil has many uses. It is used as a lipid input in aquafeed and monogastric (that is, non-ruminant) animal feed, as a dietary supplement for human consumption (for example, cod liver oil capsules) and for technical purposes (for example, in leather production). UFI produces fish oil and related products for use as a lipid input in aquafeed and monogastric animal feed. Rossyew produces fish oil (salmon only) and related products for use only as a lipid input in monogastric animal feed.
8. The parties overlap in the supply of fish oil as a lipid input for use in monogastric animal feed and the purchase of fish by-products.

Product scope

Supply of fish oil for use as a lipid input in monogastric animal feed

9. The OFT considered whether a distinction should be drawn between the supply of fish oil derived from different types of fish. EU regulation¹ prevents fish oil derived from the by-products of salmon from being used

¹ Commission Regulation (EU) No 142/2011.

as inputs in any feed for salmonoid species. Fish oil suppliers that sell into the aquafeed industry therefore primarily process commercially fished pelagic species including herring and mackerel, and whitefish (for example, cod and haddock). The parties do not overlap in the supply of fish oil for aquafeed and therefore the OFT has not considered it further.

10. On the supply-side, fish oil suppliers confirmed that they are reluctant to mix different species in the production of fish oil because the higher value aquafeed would become unusable if mixed with salmon products (due to EU legislation).
11. Some third parties, particularly customers of the fish oil derived from salmon, argued that it is important that the oil is derived from salmon because it has a higher polyunsaturated fatty acid (PUFA) content.
12. As no substantial competition concerns arise on any reasonable frame of reference affected or potentially affected by the Transaction, it was not necessary for the OFT to reach a conclusion on the exact scope of the frame of reference in this respect. The OFT has assessed the Transaction on the basis of the supply of fish oil for use in monogastric animal feed.

Purchase of fish by-products

13. Firms including fish oil suppliers primarily obtain raw material (fish by-products) from the processing of fish for human consumption. The OFT considered whether a distinction should be drawn between the purchase of fish by-products of different types of fish (that is, pelagic fish and salmon). Rosseyew only purchases salmon by-products and so the parties do not overlap in the purchase of pelagic fish by-products. The purchase of pelagic fish by-products will therefore not be considered further.
14. The OFT also considered whether a distinction should be drawn between by-products derived at different stages of processing (that is, primary and secondary by-products). Raw fish is processed in two distinct stages: (a) primary processing, whereby the fish are gutted; and (b) secondary processing, whereby the gutted fish are filleted. Both stages of processing result in by-products. At the primary processing stage, the resultant by-product is viscera. At the secondary processing stage, the resultant by-product is fish trimmings. These by-products can then be processed further to produce fish oil.

15. The parties informed the OFT that the process used by a fish oil supplier will determine whether it purchases primary or secondary by-products. For example, primary by-products cannot be stored for a long time and are therefore suited to fish oil suppliers that are able to store the by-product in tanks in which it is macerated and mixed with formic acid. The use of acid preserves the by-product and eliminates odour.
16. On the demand-side, fish oil suppliers told the OFT that they cannot switch easily between purchasing pelagic and salmon by-products because they either focus on producing a salmon-based product for use in monogastric animal feed or a pelagic-based product for use in aquafeed.
17. The parties submitted that fish by-products are also purchased by a range of other firms, including in the production of food products for human consumption, pharmaceutical inputs, fishing bait and biochemicals. Some firms also freeze by-products for export to Denmark for use in mink farms as feed inputs. Although fish processors confirmed that they sell fish by-products to firms for use other than in fish oil, the evidence presented to the OFT suggests that some of these firms only purchase certain off cuts (for example fish heads) rather than the entire set of fish by-products.
18. As no substantial competition concerns arise on any reasonable frame of reference affected or potentially affected by the Transaction, it was not necessary for the OFT to reach a conclusion on the exact scope of the frame of reference in this respect. The OFT has assessed the Transaction on the narrowest reasonable basis, namely the purchase of salmon by-products, irrespective of the processing stage.

Geographic scope

Supply of fish oil for use as a lipid input in monogastric animal feed

19. The parties submitted that imports of fish oil for use in monogastric animal feed account for around half of all such fish oil used in the UK. These imports are largely from Norway. Moreover, some UK production of fish oil for use in monogastric animal feed is exported to Continental Europe (on the information available to the OFT, particularly to the Netherlands). On this basis, the parties consider that the relevant geographic scope in this case is at least Western Europe.

20. Some customers submitted that they were reluctant to purchase imports because it is important to them to be able to advertise their end-product as being derived from Scottish salmon. Some third parties also argued that imports had different specifications (in particular the PUFA content). The evidence presented to the OFT suggests that the price of imported product takes account of the difference in specification.
21. As no substantial competition concerns arise on any reasonable frame of reference affected by the Transaction, it was not necessary for the OFT to reach a conclusion on the exact scope of the geographic frame of reference in this respect. The OFT has taken a cautious approach and assessed the Transaction on the narrowest possible basis of the supply of fish oil for monogastric animal feed in the UK.

Purchase of fish by-products

22. The parties submitted that they, and other firms that purchase salmon by-products, purchase salmon by-products primarily from commercial salmon farms in Scotland. They also submitted that it might be commercially viable for the by-products to be preserved in acid and shipped to locations such as Shetland and Norway. Other purchasers freeze by-products for export to Denmark for use in mink farms as feed inputs.
23. As no substantial competition concerns arise on any reasonable frame of reference affected or potentially affected by the Transaction, it was not necessary for the OFT to reach a conclusion on the exact scope of the frame of reference in this respect. The OFT has assessed the Transaction on the narrowest possible basis of the purchase of salmon by-products in the UK.

HORIZONTAL ISSUES

Supply of fish oil for use in monogastric animal feed

24. The parties estimate that their combined UK share of supply of fish oil for use in monogastric animal feed is [40 – 50] per cent (with an increment of [10 – 20] per cent). The parties combined sales in this market amount to approximately £[] million by value.

25. Although there are relatively few suppliers of fish oil in the UK, the parties argued that they are not close competitors in this market. UFI focuses primarily on supplying fish oil in the UK for use as a lipid input in aquafeed (approximately [70 – 80] per cent of sales by volume), with the major demand for aquafeed in the UK arising in respect of commercially farmed Atlantic salmon. UFI is able to supply its product into the aquafeed industry because it primarily purchases the trimmings of commercially fished pelagic species.
26. In view of the reduced supplies of raw material available from commercial fishing (due to fishing EU quotas), UFI increasingly purchases the trimmings of commercially farmed Atlantic salmon. UFI therefore also supplies a small proportion of fish oil for use in monogastric animal feed.
27. Rosseyew only derives its fish oil from the by-products of commercially farmed Atlantic salmon and, as set out above, is prevented by EU legislation from supplying its products for use as inputs in any feed for salmonoid species. Accordingly, Rosseyew only supplies fish oil as a lipid input for use in monogastric animal feed. Within this area of activity, the parties argue that Rosseyew's product is of higher quality than UFI's product because it consists of pure salmon oil and is dioxin filtered.
28. There is one other producer of fish oil for use in monogastric animal feed based in the UK, Shetland Fish Products (SFP) which supplies fish oil containing almost pure salmon. SFP currently exports the majority of its product to Continental Europe. However, it told the OFT that it would only require a small (less than five to 10 per cent) price rise to divert some of its exported sales into the UK market. It confirmed that it likely has sufficient volumes to supply larger customers. The remaining fish oil for use in monogastric animal feed supplied in the UK is imported (accounting for around 45-50 per cent of total UK use), mostly from Scanbio (based in Norway).
29. A number of third parties initially expressed concerns to the OFT about the Transaction. The merging parties are the main UK producers of fish oil for use in monogastric animal feed. However, some concerned third parties had not heard of one of the two merging parties or not considered them as a suitable alternative. For example, UFI's product has relatively low levels of salmon content and for those customers to whom salmon content is

important, Rosseyew, Scanbio and SFP offer such oils and the Transaction does not alter this.

30. In addition, the parties submitted that their combined share of supply of fish oil for use in monogastric animal feed has reduced significantly in recent years; from over [85 – 95] per cent in 2009 to below [40 – 50] per cent. This, they submitted, has been because of entry and marketing efforts from other UK producers and importers, in particular Scanbio.
31. In conclusion, although there are relatively few suppliers of fish oil for use in monogastric animal feed based in the UK, it appears that the parties are not close competitors and their shares have significantly reduced in recent years due primarily to imports. Some third parties were concerned about the parties' strong position post-merger, but the majority of customers confirmed that the parties were not close competitors.

Purchase of fish by-products

32. The parties overlap in the purchase of fish by-products from fish processors.² One third party submitted that the parties, post-transaction, would have a strong position in the purchase of fish by-products from UK fish processors.
33. As set out above, Rosseyew only purchases salmon by-products, and so the OFT only considered the impact of the transaction on that market. The parties submitted that they compete for salmon by-products in the UK with a range of other firms, including other producers of fish oil, fishmeal and salmon protein hydrolysate (FPH) and with firms active in the production of food products for human consumption, pharmaceutical inputs, fishing bait and biochemicals. Some firms also freeze by-products for export to Denmark for use in mink farms as feed inputs.
34. From the evidence presented to the OFT, there are two or three small competitors that compete for the entire set of salmon by-products and some niche companies that remove only selected off cuts.

² From the evidence provided to the OFT, it appears that the parties purchases in this market amount to less than £[] million by value.

35. The parties also submitted that they do not compete closely for the purchase of by-products, given that UFI primarily purchases secondary by-products of pelagic fish and only purchases small volumes of salmon by-products. Rosseyew primarily purchases primary by-products of salmon. Third parties confirmed that they do not consider the parties to be close competitors in the purchase of fish by-products.
36. Although a few salmon processors have, in the past, discussed the supply of by-products with both of the merging parties, those salmon processors confirmed that there are alternative purchasers in the market. These salmon processors also confirmed that they had no concerns relating to the Transaction.
37. One third party told the OFT that if UFI were to decide to use more primary by-products in its supply of fish oil, it would most likely need to adopt the method of preserving the by-product in acid due to the lower durability of primary by-products. Third parties have confirmed that UFI would be unlikely to consider it worth developing this new method in the UK where it would risk mixing the salmon by-products with existing white fish by-products.
38. The parties also argued that in recent years there has been a reduction in the availability of raw material in the UK, as EU fishing quotas have impacted upon the availability of pelagic fish. There has also been a significant increase in demand for salmon by-products for use in end products for human consumption in recent years (commercially farmed salmon is not subject to EU fishing quotas). The parties argue that they would therefore have no incentive to seek to unjustifiably reduce the prices paid to salmon processors or the quality of service, given that they will simply cease to deal with the parties, resulting in the loss of the input the parties require to operate their businesses. The OFT was unable to identify any processor who had used the presence of the other firm as a negotiating tactic.
39. The OFT received no concerns from fish processors relating to the Transaction.
40. In conclusion, there appear to be several firms that purchase salmon by-products for a range of uses including the production of salmon oil, and the parties are not considered to be close competitors in this market. No

concerns have been raised by fish processors with regard to the parties' post-merger position in the purchase of salmon by-products. The OFT therefore does not believe that the transaction gives rise to a realistic prospect of a substantial lessening of competition in the purchase of salmon by-products.

Barriers to entry and expansion

41. Some evidence was presented to the OFT which suggests that there are fish oil suppliers with spare capacity that are seeking to expand or enter the UK market. Some of these suppliers produce fish oil which is closer in specification to that produced by Rosseyew than that produced by UFI.
42. One of the smaller purchasers of salmon by-products in the UK suggested that it was considering expanding to purchase from larger processors but were unsure how the Transaction would affect these plans. The OFT notes the existence of a large importer with excess capacity in the supply of fish oil which is salmon rich and has announced some investments in expansion.
43. In addition, some suppliers told the OFT that if prices were to rise after the Transaction they would have the capacity and intention of increasing supply to UK customers.
44. The parties have also highlighted the recent entry into this market as evidenced by the reduction in their shares since 2009. Given the competition assessment above, the OFT has not found it necessary to conclude on whether barriers to entry and expansion are high.

Countervailing buyer power

45. The parties argued that buyer power is present in the market for fish oil. They stated that the three largest customers represent around [70 – 80] per cent of fish oil sales. However, the OFT's investigation suggests that if any buyer power is present, it is likely to only be in the wider fish oil market but not in the salmon oil segment (which is used for monogastric animal feed).
46. With regard to the purchase of fish by-products, the parties submit that some fish processors have negotiating strength and suggest that they

could either self supply or export their raw material. The parties submit that []. The OFT has not been able to confirm this claim.

47. Given the competition assessment above, the OFT has not found it necessary to conclude on whether buyer power is present on the market.

THIRD PARTY VIEWS

48. The OFT received some concerns from customers about the merged entity's position, and one concern relating to competition for the purchase of by-products. These concerns have been incorporated where relevant in the decision.

ASSESSMENT

49. The parties overlap in the supply of fish oil for use in monogastric animal feed in the UK and the purchase of fish by-products from UK processors. The OFT has assessed the Transaction on the basis of the supply of fish oil for use in monogastric animal feed and the purchase of salmon by-products in the UK.
50. For the supply of fish oil for use in monogastric animal feed, the evidence available to the OFT shows that the parties are not close competitors. Whereas Rosseyew only provides salmon oil for use as a lipid input in monogastric animal feed, UFI focuses primarily on supplying fish oil for use as a lipid input in aquafeed. Where UFI does supply fish oil for monogastric animal feed, its salmon content (and PUFA levels) are lower than Rosseyew and the main competitors, thereby making it a less attractive choice for many customers.
51. Furthermore, the parties' shares of supply in this market have reduced significantly in recent years, as imports have increased. Some third parties were concerned about the merged entity's strong position, but the majority confirmed that the parties are not close competitors.
52. With regard to the purchase of salmon by-products, one third party was concerned that the parties would have a strong position with regard to purchasing fish by-products from UK processors. However, there appear to be several firms that purchase by-products for uses other than fish oil. The

parties are once again not close competitors in this market because UFI primarily purchases secondary by-products of pelagic fish and Rosseyew primarily purchases primary by-products of salmon.

53. Finally, no concerns have been raised by fish processors with regard to the parties' position in the purchase of salmon by-products. The OFT therefore does not believe that the transaction gives rise to a realistic prospect of a substantial lessening of competition in the purchase of salmon by-products.
54. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

55. This merger will therefore **not be referred** to the Competition Commission under section 33(1) of the Act.