



## COMMERCE COMMISSION

### Decision No. 701

Determination pursuant to the Commerce Act 1986 in the matter of an application for clearance of a business acquisition involving:

**SANFORD LIMITED**

**and**

**THE PACIFICA SEAFOODS GROUP OF COMPANIES**

- The Commission:** Mark Berry  
Anita Mazzoleni  
Stephen Gale
- Summary of Application:** The acquisition by Sanford Limited of the Pacifica Seafoods Group of companies.
- Determination:** Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance to the proposed acquisition.
- Date of Determination:** 11 November 2010

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## **THE PROPOSAL**

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 29 September 2010. The Notice sought clearance by Sanford Limited (Sanford or the Applicant) to acquire the Pacifica Seafoods Group of companies.

## **THE DECISION**

2. The Commission considers that the markets relevant to its consideration of this application are the South Island markets for:
  - the farming and processing of king salmon;
  - the farming of Greenshell mussels; and
  - the processing of Greenshell mussels.
3. The Commission considers that competition from existing participants in the affected markets is likely to be sufficient to constrain the combined entity. Accordingly, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in any of the relevant markets.

## **ANALYTICAL FRAMEWORK**

4. The Commission applies a consistent analytical framework to all its clearance decisions. The first step the Commission takes is to determine the relevant market or markets. As acquisitions considered under s 66 are prospective, the Commission uses a forward-looking type of analysis to assess whether a lessening of competition is likely in the defined market(s). Hence, an important subsequent step is to establish the appropriate hypothetical future with and without scenarios, defined as the situations expected:
  - with the acquisition in question (the factual); and
  - in the absence of the acquisition (the counterfactual).
5. The impact of the acquisition on competition is then viewed as the prospective difference in the extent of competition in the market between those two scenarios. The Commission analyses the extent of competition in each relevant market for both the factual and the counterfactual scenarios, in terms of:
  - existing competition;
  - potential competition; and
  - other competition factors, such as the countervailing market power of buyers or suppliers.

## **KEY PARTIES**

### **Sanford Limited**

6. Sanford is a publicly listed fisheries company based in Auckland. Its largest shareholder is Amalgamated Dairies Limited, the private investment vehicle of the Goodfellow family. Otherwise, no shareholder owns more than 10% of Sanford's shares.

7. Sanford, along with its fin fishing operations, is active in the aquaculture industry, particularly the farming, processing and selling of mussels, king salmon and oysters. Sanford's mussel processing plants are in Havelock<sup>1</sup> and in Tauranga.

#### **The Pacifica Seafoods Group of companies**

8. The Pacifica Seafoods Group of five companies (together, Pacifica) are owned by the Skeggs Group Limited (Skeggs). Skeggs is owned by a small number of individuals. Pacifica primarily supplies mussels, although it also has some king salmon and oyster operations. Its processing plant is located in Christchurch.
9. The five companies of Pacifica that would be acquired by Sanford are:
- Pacifica Seafood (Christchurch) Limited;
  - Marlborough Mussel Co Limited;
  - Aqua King Limited;
  - Pacifica Seafoods (Dunedin) Limited; and
  - ITQ Management Limited.

#### **Other Industry Parties**

10. Other than Sanford and Pacifica, there are a number of other suppliers in the aquaculture industry. These include:
- Sealord Group Limited (Sealord) which, in addition to its fin fishing activities, owns a mussel processing plant in Nelson and part-owns a plant in Tauranga;
  - Talley's Group Limited (Talley's) which owns mussel processing plants at Blenheim and Motueka;
  - Aotearoa Seafoods Limited (Aotearoa Seafoods) which owns a mussel processing factory in Blenheim;
  - United Fisheries Limited (United) which is an aquaculture company based in Christchurch; and
  - New Zealand King Salmon Company Limited (NZ King), by far the largest producer of farmed salmon in New Zealand.
11. There are also a number of farmers cultivating mussels who are independent from mussel processors. These independent farmers vary in their size and scale and account for between 40-50% of mussel production in New Zealand.
12. There are a number of parties active in the farming and processing of oysters. This includes Pacific oysters and the highly sought after Bluff oysters. The majority of Pacific oyster aquaculture operations are in the North Island.
13. In addition to NZ King, which is the largest producer of king salmon in New Zealand, there are a number of smaller operators located mainly in the South Island who produce between 20 and 1000 tonnes of salmon per annum<sup>2</sup>.

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<sup>1</sup> In the Marlborough Sounds.

<sup>2</sup> This is in an industry that produces in excess of 10,000 tonnes per annum. See discussion below.

## MARKET DEFINITION

14. Both Sanford and Pacifica are active in the aquaculture industry. In New Zealand, this industry is mainly concerned with the production and supply of three products: mussels; salmon; and oysters.

### Oysters

15. Both Sanford and Pacifica supply oysters, although the Applicant submitted that the level of aggregation is minimal. In addition, the proposed acquisition only concerns Pacifica's Pacific oyster assets rather than its Bluff oyster operations.
16. Pacifica advised that [ ] it only had a minimal presence in the market for the production and supply of Pacific oysters.
17. The Commission considers that the level of aggregation in respect of the supply of oysters is minimal<sup>3</sup> and there are a number of other large suppliers in New Zealand. Accordingly, the Commission will not consider oysters any further.

### Salmon

18. Both Sanford and Pacifica farm and process king salmon.<sup>4</sup> The Commission notes that a number of international jurisdictions have considered the degree of substitutability between the various types of salmon. However, in New Zealand only king salmon is commercially farmed. Accordingly, for the purposes of the present analysis, the Commission considers the relevant product market can be limited to king salmon.
19. The Commission understands that South Island farmers supply mature king salmon to wholesalers and retailers on a national basis. Industry participants advised that salmon farming, rather than salmon processing, is the more complicated stage of the supply chain as there are a number of variables that can affect production. These include the breeding stock and smolt used, the quality of feed, and the intensity of the farming operations. In addition, it can take up to three years for a king salmon to fully mature.
20. The processing required for salmon is relatively minimal compared to some other aquaculture products. Once fully matured, king salmon is typically supplied chilled (rather than frozen) either whole or 'headed and gutted'. No special processing equipment is required at this stage. The king salmon is then supplied nationally either to wholesalers, who may under take some additional processing, or to retailers.
21. Additional processing includes filleting, smoking and freezing of the salmon in both fresh and chilled form. The Commission understands there are a number of additional processors in New Zealand who acquire king salmon from both Sanford and Pacifica. Sanford is fully integrated and carries out a full range of processing activities.
22. Pacifica advised that it is relatively new to the farming and processing of king salmon and began supplying king salmon only a few years ago. This was after a

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<sup>3</sup> According to the Applicant its market share in oyster processing will [ ]].

<sup>4</sup> King salmon is a species of Chinook Pacific salmon that is particularly suitable for aquaculture in New Zealand.

[ ] period of development. Pacifica does not perform ‘additional processing’ to any great extent.

23. All industry participants interviewed advised that the farming and processing of mature king salmon are the key functions in this industry and that both Sanford and Pacifica are prominent in this regard.
24. Industry participants advised the Commission that king salmon can only be grown in a commercially successful manner in the cooler water temperatures of the South Island. At present, there are no king salmon farming operations in the North Island. To this extent, the relevant geographic market for the farming of king salmon is likely to be the South Island.
25. Accordingly, for the purposes of the present application, the Commission considers the relevant market to be the farming and processing of king salmon in the South Island.

### **Mussels**

26. All commercially cultivated mussels in New Zealand are Greenshell mussels which are trademarked as they are native to New Zealand and are not farmed in any other country. The green lip of this mussel is the key factor in its international marketing. Smaller blue mussels tend to grow naturally alongside Greenshell mussels but farmers try to limit this growth and remove them from the mix when harvesting Greenshell mussels.
27. For the purposes of the present application, the Commission considers the relevant product market can be limited to Greenshell mussels.
28. Unlike salmon, Greenshell mussels can be farmed in protected waters throughout New Zealand although the Marlborough Sounds and the Coromandel Peninsula account for 90% of production. However, there is very little transport of mussels across Cook Strait from farm to processing facility.
29. Sanford advised that Pacifica’s mussel operations (and in particular Pacifica’s underutilised processing capacity) are the main rationale for the proposed acquisition. Both Sanford and Pacifica advised that their mussel operations include the following activities:
  - farming of mussels in various coastal locations throughout New Zealand;
  - processing mussels in their own processing factories. Both source raw mussels for their factories from their own farms and also from independent mussel farmers; and
  - wholesaling and retailing processed mussels overseas (and to a limited extent within New Zealand).
30. In this respect, both Pacifica and Sanford are vertically integrated firms. Industry participants advised that most of the main processors in the mussel industry also tend to be vertically integrated although the level of vertical integration tends to vary. While all of the main processors are also involved in farming, there is a substantial farming contingent that does not carry out its own processing. This serves to blur the relevant boundaries of the market although Sanford and Pacifica appear to be most prominent at the processing stage.

31. Processing involves the:
- purchase of raw mussels from independent farmers;
  - processing of purchased and own-farmed mussels; and
  - sale to wholesalers, sales agents and retailers.
32. The Commission understands that the vast majority (in excess of 85%) of mussels cultivated and processed in New Zealand are processed in the frozen half shell format and then exported overseas. Sanford and Pacifica both advised that [ ] both concentrated their production for supply to overseas wholesalers and sales agents.
33. Pacifica advised that it preferred not to supply domestic customers because of the additional transaction costs involved. At present, [ ] Greenshell mussels are sold in New Zealand [ ]. Pacifica noted that it supplies product overseas by the ‘container load’ while domestic sales tend to be small volumes to numerous customers. Essentially, it is much more convenient for Pacifica to make high volume sales to overseas agents. However, [ ] there are no significant impediments to it supplying domestic customers if it so desired.
34. Industry participants advised that, while export sales were predominately in the half shell frozen format, domestic sales were a mix of different types of processed mussels. This suggests that it might be appropriate to delineate the relevant markets based on the extent of processing or between the different purchasers. For example, fresh versus frozen half shell or domestic versus overseas customers.
35. However, existing processors advised the Commission that they all provide, or could relatively easily provide, the different processing stages if they desired. In this respect, the Commission considers that processing of mussels is a relatively homogenous process. The main steps include:
- cleaning the mussel after harvesting;
  - opening the mussel, typically through a heating process; and
  - preparing the mussel for consumption by one or more of “half shelling”, cooking, marinating, smoking or freezing.
36. A distinction based on customer volume does appear to exist. The Applicant submitted that the demand for mussels in New Zealand is relatively small, hence its (and many other producers’) rationale for concentrating on export sales. On the other hand, it is relatively easy for small processors to supply mussels, notably fresh mussels, directly to the main retailers who tend to be local supermarkets or restaurants.
37. However, the Commission considers that existing processors have the ability to perform a range of processing activities on mussels and most currently do so. In addition, it appears that processors can adjust their production facilities relatively easily, for example, from fresh mussel production to half shell frozen production, or from supply to a domestic retailer or to an overseas purchasing agent, if so incentivised.

38. Accordingly, the Commission considers that for the purposes of the present analysis another relevant market is that for the processing of Greenshell mussels.

*Geographic scope of mussel farming and processing markets*

39. Greenshell mussels are cultivated in a number of different regional locations throughout New Zealand. Approximately 70% of total production is in Marlborough and a further 20% is in the Coromandel. The remaining production is based in the following regions: Canterbury; Southland; Tasman/Golden Bay; and Auckland.
40. Industry participants advised that there is essentially no difference in the physical appearance or taste between Greenshell mussels farmed throughout New Zealand. While certain farms may be considered more productive than others, productivity can vary within a region.
41. Industry participants advised that the high cost of freight means that unprocessed mussels are not transported over significant distances between farm and processor. In particular, unprocessed mussels are only infrequently transported between the North and South Islands. In addition to freight costs, time lags before processing can also be an issue.<sup>5</sup>
42. As a result, processors have generally built their factories close to a regular supply of mussels. For example, Sanford has two processing plants: one in Havelock and one in Tauranga (farms in the Marlborough Sounds and Coromandel). Sealord has a similar situation with plants in Tauranga and Nelson (farms in Coromandel and Tasman Bay). Pacifica's sole plant is in Christchurch (farms in the Marlborough Sounds). This would suggest that the processing geographic market is likely to be regional in extent.
43. The Commission also notes that a number of processors regularly transport unprocessed mussels over reasonably large distances within the South Island for processing. United, which has farms located in the Marlborough Sounds, transports all of its mussels from the farms to its Christchurch facility for processing. Pacifica also transports all of its mussels from its various South Island mussel farms to its Christchurch plant. At times Sanford transports mussels from Southland to Havelock.
44. Given that most of the product is destined for overseas, some suppliers have preferred to locate their plants close to the farming source while others have located their plants close to the main exporting port (i.e. Christchurch in the South Island).
45. All parties advised that it was most irregular for processors to regularly source mussels from a different island because of the extra cost of transportation across Cook Strait.
46. Both the farming and processing of Greenshell mussels tend to be regional in scope. Accordingly, given that Pacifica is located only in the South Island, for the purposes of the present analysis, the Commission considers the geographical scope of the relevant markets is limited to the South Island.

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<sup>5</sup> Industry participants advised that when mussels are transported longer distances they can deteriorate and the average yield decreases.



### **Conclusion on Market Definition**

47. The Commission concludes that the following markets are relevant to its consideration of this application:
- the farming and processing of king salmon in the South Island market (The king salmon market);
  - the farming of Greenshell mussels in the South Island market (The South Island mussel farming market); and
  - the processing of Greenshell mussels in the South Island market (The South Island mussel processing market).

### **COUNTERFACTUAL AND FACTUAL**

#### **Factual**

48. Sanford advised that the main rationale for the proposed acquisition is to increase its existing capacity in both the farming and processing of mussels in order to improve its ability to export mussels to overseas clients. At present, Sanford only supplies a minimal amount of mussels to customers located in New Zealand.
49. Sanford's processing plant in Havelock [ ] is now undergoing an upgrade [ ] through the introduction of automatic opening equipment. This is the same technology that Sanford uses in its processing plant in Tauranga.
50. However, while the new equipment will increase the Havelock plant's capacity [ ], Sanford advised that it is always looking for opportunities to enhance its ability to increase supply.
51. Sanford advised that, in its view, there is significant spare processing capacity at Pacifica's plant in Christchurch which, post acquisition, it intends to utilise and that the rationale for the proposed acquisition was to acquire Pacifica's mussel assets. [ ]].
52. [ ]].
53. The Commission considers that, in the factual scenario, Sanford would operate all Pacifica's aquaculture operations.

#### **Counterfactual**

54. Bryan Skeggs, Chief Executive of Pacifica advised that Skeggs had a number of investment opportunities that it would like to pursue. However, to do this it

needs to raise some capital so it has looked at the potential for the sale of Pacifica.

55. [

].

56. At the time of this determination, Pacifica had not reached final settlement with any party. [ ]. He said that its initial sale proposal was for 49% of Pacifica (subsequently amended to the entire Group) which indicates it is still interested in remaining in the aquaculture industry.

57. [

].

58. Accordingly, the Commission considers that the likely counterfactual would be Pacifica continuing to operate in the industry either under the present ownership or under that of an independent third party.

## COMPETITION ASSESSMENT

### The King Salmon Market

59. The Applicant submitted that Pacifica has a minimal presence in the king salmon market such that there would be a negligible amount of aggregation as a result of the proposed acquisition.
60. Table 1 shows the estimated market shares for the king salmon market for the 2009 year.

**Table 1: Estimated Market Shares for the King Salmon Market for 2009**

Parties	Volume (in tonnes processed)	Market Share (%)
Sanford	[ ]	[ ]
Pacifica <sup>6</sup>	[ ]	[ ]
<i>Combined entity</i>	<i>[ ]</i>	<i>[ ]</i>
NZ King	[ ]	[ ]
Mount Cook Alpine Salmon Limited	[ ]	[ ]
Akaroa Salmon New Zealand Limited	[ ]	[ ]
Benmore Salmon Limited	[ ]	[ ]
Others	[ ]	[ ]
<b>Total</b>	<b>[ ]</b>	<b>100</b>

Source: The Applicant

61. Several industry participants advised that salmon farming assets are highly desirable and many expressed a strong interest in acquiring Pacifica's salmon assets if they were to become available. This is because global demand for salmon has been increasing and is expected to continue to grow further.

<sup>6</sup> Pacifica's salmon operations previously traded under the name Island Aquafarms Limited.

62. The Applicant advised that post acquisition there would be a number of competitors that would continue to provide a competitive constraint in the market, in particular NZ King. NZ King is fully vertically integrated and is the leading supplier of king salmon in New Zealand. It has turnover in excess of \$100 million per annum and markets itself as one of the world's leading suppliers of salmon.
63. The Commission understands that the other competitors, while smaller than both Sanford and NZ King, each have an established presence in the market. Pacifica itself is a relatively new participant in the market. It originally started conducting farming trials in 2006 and commenced commercial production in late 2007. This suggests that, if sufficiently incentivised, other participants could replicate Pacifica's entry and expansion.
64. However, many parties advised that the establishment of a greenfields salmon farming operation is complicated and can turn into a lengthy and costly process. This would suggest that in spite of Pacifica's successful entry, the conditions for de novo entry in this market might be relatively difficult. In addition, the Commission did not identify any person currently considering entry within the Commission's standard two year analysis period.
65. Nevertheless, the Commission considers that existing competitors, particularly the market leader NZ King and the mix of smaller competitors, would be likely to provide a sufficient constraint on the combined entity.

*Conclusion on the King Salmon Market*

66. Accordingly, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the king salmon market.

**The South Island Mussel Farming Market**

67. In order to establish a mussel farm, Resource Management Act consent and a fish farmers licence must be obtained. Both Sanford and Pacifica hold a number of mussel farming consents and licences for the South Island. All the other main processors are also vertically integrated and have their own farming consents and licences.
68. In addition, there are numerous independent farmers who hold consents and licences. Typically, most farmers hold a number of consents and licences although the levels of production vary between the small (100 tonnes per annum) to the large (2000 tonnes per annum). The Commission understands that independent farmers account for between 40% and 50% of the market<sup>7</sup>.
69. No parties expressed any concerns that there would be issues post acquisition with the allocation and distribution of mussel licences or their related farming operations. However, some independent farmers expressed concerns about their ability to sell their production to a downstream processor, given the reduction of the number of processors as a result of the acquisition.

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<sup>7</sup> The proportion can vary depending on whether licences or annual production are used to compare farms. A licence is required to farm mussels although some farmers may not choose to fully utilise their allocation.

70. Industry participants advised the Commission that there had been limited new mussel farming acreage established since 2005. This was described as being due to difficulties in obtaining Resource Management Act consents from regional councils. However, the Commission has noted announcements by the Government that it intends to put initiatives in place to facilitate the consenting process for aquaculture industries. The Commission was also informed that the technical requirements for the establishment of a mussel farm are not as high as those for a new salmon farm. This is borne out by the existence of a multiplicity of small to medium mussel farmers.
71. Accordingly, the Commission is satisfied that given the levels of existing competition and the potential for entry, the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the South Island mussel farming market.

### **The South Island Mussel Processing Market**

72. The Applicant advised that, in the factual scenario, there would be a number of different processors that would compete with the combined entity. These include Sealord, Talley's and Aotearoa Seafoods as well as a number of smaller processors.
73. The Applicant also submitted that at present, Sanford and Pacifica acquire only a limited volume of mussels from independent farmers such that the merged entity would not be able to dictate terms to these farmers because there would be alternative processor purchasers.
74. The estimated market shares for the South Island mussel processing market are set out in Table 2 below. The Commission has estimated market shares using Green Weight Tonnes (GWT) of mussels processed.<sup>8</sup>

**Table 2: Estimated Market Shares for the South Island Mussel Processing Market for 2009**

<b>Parties</b>	<b>GWT of mussels processed</b>	<b>Market Share (%)</b>
Sanford	[ ]	[ ]
Pacifica	[ ]	[ ]
<i>Combined Entity</i>	<i>[ ]</i>	<i>[ ]</i>
Talley's	[ ]	[ ]
Sealord	[ ]	[ ]
United	[ ]	[ ]
Aotearoa Seafoods	[ ]	[ ]
Nelson Ranger Farms Limited	[ ]	[ ]
Maclab (NZ) Limited	[ ]	[ ]
Others	[ ]	[ ]
<b>Total</b>	<b>[ ]</b>	<b>100%</b>

Source: The Applicant, industry participants

75. Industry participants advised that should the proposed acquisition go ahead, the combined entity would face competition from a number of parties in the South Island and in particular Talley's, Sealord, Aotearoa Seafoods and United.

<sup>8</sup> GWT refers to the mussel in its most basic, unprocessed form direct from the farm.

*Expansion of Mussel Processing*

76. None of the processors spoken to by the Commission expressed any significant concerns with the proposed acquisition in respect of either the acquisition of raw mussels or the sale to wholesalers or sales agents.
77. All of the processors have their own mussel farms as well as relationships with independent farmers. If the merged entity increased its purchase price to independent farmers, other processors could expand their own farming production. Processors are generally organised to have a much greater proportion of their raw mussel supply from their own farms than from independents, reducing their reliance on any spot price of raw mussels that might exist.
78. This is because there are minimal barriers to expansion and existing supply is driven more by overseas demand rather than any particular structural characteristics of the industry. For example, if overseas demand increased allowing the combined entity to increase its sale prices both overseas and in New Zealand, other processors could and would increase their supply given this price increase incentive. To this extent, the proposed acquisition would have a minimal impact on the market.
79. The Commission investigated how expansion would occur. Some processors noted that short-term, small-scale increases in production could be achieved very quickly through simply running additional hours or shifts in their current facilities. In this respect, no processor [ ] was significantly capacity constrained in its ability to process additional mussels through its plant.
80. However, the key requirement for expansion is obtaining additional mussels for processing. Industry participants advised that it is reasonably easy to achieve. This could occur in a number of ways, namely by:
- seeding in more lines in a companies water space (i.e. increasing self supply);
  - purchasing additional farms or water space outright<sup>9</sup>; or
  - entering into additional supply arrangements with independent farmers.
81. The most common and easiest method would be to acquire additional mussels from independent farmers. This would be an extension of the existing situation as all of the major processing companies already source a proportion of mussels from independent farmers.
82. Mussel farmers spoken to by the Commission indicated that in general there are no long-term contractual relationships between the farmer and the processor. A number of parties (both farmers and processors) indicated that the arrangements are based on informal handshake relationships rather than formalised contractual undertakings<sup>10</sup>.

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<sup>9</sup> For example, parties spoken to by the Commission have said that while the majority of the more ideal farming locations are currently being farmed, there is some consented and licensed water space available.

<sup>10</sup> This is not always the case. For example, [ ] although these appear to be an exception.

83. These informal relationships are easy to enter into and exit and farmers' willingness to switch between processors is predominantly driven by price. However, the ability of farmers to initiate this switching is somewhat limited given that most considered themselves to be price takers.
84. The Commission considers that because of the short-term, relatively informal nature of the supply arrangements between processors and farmers, the homogenous nature of the raw material, and the ability and willingness of processors to ship mussels over relatively long distances within each island, all of the competing processors would be able to increase their acquisition of raw mussels to meet increased demand for processed mussels.

*Relationship between Farmers and Processors*

85. Several independent farmers expressed concerns that the proposed acquisition would reduce the number of mussel buyers (i.e. processors) in the industry, providing one fewer option for sales.
86. In particular, some farmers expressed concern that Sanford is currently considered to be more price sensitive than other processors and as a major purchaser, its behaviour tended to drive down the price received by farmers. If this behaviour were to continue post acquisition, given the merged entity's larger purchase requirement, some farmers might be forced from the industry particularly as many farmers are already struggling to sell their mussels because demand has been relatively low.
87. Accordingly, the Commission considered whether the proposed acquisition would create or exacerbate any power Sanford might have to reduce competition in the processing market, particularly as it would relate to the purchase of mussels from independent mussel farmers.
88. All processors interviewed by the Commission advised that in the factual scenario they would continue to purchase mussels from independent farmers. This suited many because it reduced their capital and operating expenses. To this extent, independent farmers would continue to have a number of processors other than the combined entity for the sale of their mussels.
89. In addition, the merged entity is likely to require additional purchases from independent farmers in order to implement its avowed expansion strategy using the spare capacity in Pacifica's processing plant.

*Other Competition Factors*

90. The Applicant submitted that industry participants co-ordinate through joint marketing arrangements for exporting aquaculture products. The Commission also notes that there are a number of joint venture operations amongst a number of parties within the wider fishing industry and the initial sale proposal for Pacifica concerned a minority shareholding. Together, these circumstances might increase the potential for coordination in this industry.
91. However, the Applicant submitted that due to the relatively low volume of domestic sales compared to export sales, there is no material incentive to engage in co-ordinated behaviour in the domestic market.
92. The Commission considers that there are factors which are likely to prevent the potential for co-ordination in the factual, including:

- a number of medium – large competitors with the ability to expand production relatively quickly; and
  - the relative ease of entry into many of the affected markets.
93. The Commission concludes that in the factual scenario, the scope for co-ordinated market power is unlikely to be increased such as to result in a substantial lessening of competition in this market or any other relevant market.

*Conclusion on the South Island Mussel Processing Market*

94. The Commission notes that the main barrier to an existing processor increasing its production is access to a sufficient supply of raw material. The Commission is of the view that given sufficient incentives, existing competitors would be able to obtain a sufficient supply of raw mussels to increase capacity.
95. The Commission considers that the continued presence of a number of vigorous competitors who have the ability and (given sufficient incentive) the willingness to expand is likely to act as a constraint on the combined entity.
96. Accordingly, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the South Island mussel processing market.

**OVERALL CONCLUSION**

97. The Commission has considered the probable nature and extent of competition that would exist subsequent to the proposed acquisition in the markets for
- the farming and processing of king salmon in the South Island market (The king salmon market);
  - the farming of Greenshell mussels in the South Island market (The South Island mussel farming market); and
  - the processing of Greenshell mussels in the South Island market (The South Island mussel processing market).
98. The Commission considers that competition from existing participants in the affected markets is likely to be sufficient to constrain the combined entity.
99. Accordingly, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in any of the relevant markets.

**DETERMINATION ON NOTICE OF CLEARANCE**

Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance to Sanford Limited to acquire the five companies that, together, constitute the Pacifica Seafoods Group. The five companies are:

- Pacifica Seafood (Christchurch) Limited;
- Marlborough Mussel Co Limited;
- Aqua King Limited;
- Pacifica Seafoods (Dunedin) Limited; and
- ITQ Management Limited.

Dated this 11<sup>th</sup> day of November 2010

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Dr Mark Berry  
Chair