



# AUSTRALIAN FOOD SOVEREIGNTY ALLIANCE

## Australian Food Sovereignty Alliance Submission – ACCC Statement of Issues

30 September 2021

### JBS – proposed acquisition of Rivalea

We thank the ACCC for inviting submissions from interested parties in response to the Statement of Issues regarding JBS' proposed acquisition of Rivalea (the **proposed acquisition**) on 16 September 2021.

The Submission from the Australian Food Sovereignty Alliance (AFSA) is **attached**.

### Introduction

The first section of this submission presents an overview of this submission to the ACCC's Statement of Issues.

The second section responds to the ACCC's preliminary views on the proposed acquisition from its Statement of Issues. Our responses correspond to the ACCC's categorisation of the issues, being 'issues that may raise concerns' and 'issues unlikely to raise concerns'.

The third section responds to each of the delineated issues at point 6, page 3 of the ACCC's Statement of Issues.

The last section concludes our analysis of the ACCC's Statement of Issues.

### Overview of AFSA's Submission

AFSA submits the effects of the proposed acquisition are anticompetitive. This is because the proposed acquisition has the effect, or is likely to have the effect, of substantially lessening competition in the market. When applying the legal test set out in s 50 *Competition and Consumer Act 2010* (the **CCA**), AFSA understands the breadth of interested and affected parties and the complexity involved in applying this test. The scale and scope of the proposed acquisition therefore warrant the substantial scrutiny currently being undertaken by the ACCC.

The proposed acquisition has particular salience for AFSA members who are small-scale pig farmers, working in regenerative and agroecological practices, and who utilise Rivalea's Diamond Valley Pork (DVP) abattoir. This is because the frustration or foreclosure of access to third party service kills at DVP would render inoperable—either totally or for a not insubstantial period of time—AFSA members' pig production. Under the proposed acquisition, the likelihood of frustration or foreclosure of access to third party service kills would increase because of JBS' interest in consolidation of its share in the Australian pig processing market.

As a preliminary point, there is great difficulty in formulating this submission because of paradigmatic differences in JBS' business model of increasing market control and AFSA's stated aims of achieving food sovereignty. Food sovereignty asserts individual and collective autonomy over creating, managing and choosing food systems that are ethical and ecologically sound. As such, JBS' purchase of Rivalea, and its resultant increase in JBS' consolidation of pig processing, are the extant market from which AFSA aims to divest. JBS, more so than Rivalea, is incentivised to increase production, consolidate their business, and make exclusive their processes through vertical integration. JBS' encroachment on competition renders in itself not anticompetitive, but in confluence, anticompetitive. This has occurred to the extent that the territorial market for small-scale farmers in Victoria necessitates a near-prescription to using large-scale abattoirs upon pig farming. For us, the way AFSA members engage with Rivalea and export-focused abattoirs is an unfortunate but necessary concession in a territorial market that preferences high-throughput and consolidation of market power over animal welfare, farmers' business efficacy and environmental priorities. **Under the proposed acquisition, JBS' increasing control of supply chains is anticompetitive in a market that already lacks competition.**

### **Response to ACCC's preliminary views:**

We understand the ACCC divides its preliminary views into three tiers, being:

1. Issues of concern;
2. Issues that may raise concerns; and
3. Issues unlikely to raise concerns.

There are two issues raised in the ACCC Statement of Issues that the ACCC considers second and third tier issues. Our submission deals with these in turn.

### **'Issues that may raise concerns':**

#### **Frustration or foreclosure of access to third party service kills at DVP**

Based on JBS' previous record of frustration and foreclosure, including at Cargill in the USA, and Devonport and King Island in Tasmania, AFSA argues the risk of frustration is probable, and the risk of foreclosure of access to AFSA members' service kills is likely. We therefore submit the ACCC should recategorised this issue as an 'issue of concern'.

As the ACCC has stated, ‘there are few suitable alternatives’ for pig producers in proximity to DVP. In our previous submission to this inquiry, we outlined that there are currently three abattoirs that service pig slaughtering for small-scale farmers in Victoria. Outside of DVP, the other options are C A Sinclair in Benalla, and Castle Estate in Koallah. The scope of competition is therefore small Victoria-wide, with limited choice around transport, animal welfare standards and costs.

AFSA mapped our members who said they use, or plan to use, DVP. The table below shows travel times to the nearest alternative suppliers. For small-scale farmers, these travel times mean increased associated costs (such as for couriers and petrol).

Apart from AFSA members’ transportation time and associated costs and ethical production, in being forced to access service kills at an abattoir that is export-accredited, large-scale with high throughput. This has the cumulative effect of decreasing competition in the market, particularly for small-scale operators who are rendered inoperable (by position JBS takes to frustrate or foreclose).

AFSA Member name:	Farm	Distance to current processing facility	Distance to alternative processing facility	
			C A Sinclair – Benalla, VIC	Castle Estate – Koallah, VIC
		<b>Diamond Valley Pork – Laverton North, VIC</b>		
Tammi and Stuart Jonas	Jonai Farms	1hour 15mins	2hours 45mins	2hours 5mins
Verne Glenwright	Glenaleece Farms	1hour 25mins	2hours 15mins	2hours 30mins
Nadine Verboon	Wattlebank Park Farm	2hour 25mins	3hours 55mins	3hours 50mins
David Markham	Walwa Park	1hour	2hours	3hours 30mins
Natalie Hardy	Brooklands Free Range	1hour 25mins	2hours 50mins	1hour 55mins
Amy Pagett and Michelle ‘Buck’ Buckingham	Ethical Swine	1hour 30mins	3hours 30mins	1hour 30mins
Bodhan Evans	Catherine Farm	1hour 20mins	2hours 40mins	2hours 30mins
William Bennett	Pig and Earth Farm	1hour 30mins	2hours 55mins	1hour 55mins
Mara Ripani	Orto Farm	1hour 30mins	2hours 50mins	2hours

The ACCC has stated that it is 'concerned that JBS, due to its downstream businesses, may have a greater incentive (than the current majority owner, Rivalea), to frustrate or foreclose access to third party service kills at DVP.' AFSA notes the impacts of these realities on small-scale farmers and territorial markets in the below examples from Tasmania.

### **Tasmania**

JBS acquired the Tasman Group for \$150million in 2008, financed through issuing stock. This included 3 plants within Tasmania – Longford, Devonport and King Island. Over the next 10 years, JBS closed two of the three plants within Tasmania in a strategy to increase throughput and profitability at the expense of kill availability, local producer profitability, local jobs and economies.

#### ***King Island***

In 2012 the King Island abattoir was closed overnight in a 'rationalisation' move by JBS. This drastically increased farmer transport costs, reducing profitability and hurt the local economy. The effects include:

- Local producers having to pay for live sea freight cost, which was assessed as \$112 per head.
- 80 staff lost their jobs, with about \$3.5M in wages lost to local economy, most of which left the island along with their families.

JBS' market power against that of the Government was underscored by Tasmania's Acting Premier, Bryan Green. The Acting Premier said he was deeply disappointed by the decision of JBS to close its King Island abattoir, stating "the Government has done everything possible to help keep the operation going and the closure is undoubtedly a blow to the community.' The ACCC considered investigating why JBS refused to sell or lease the King Island decommissioned plant but stated, "The act does not apply to a company that merely holds an asset and takes no action in relation to that asset"

- <https://www.beefcentral.com/processing/jbs-shuts-king-island-plant-in-southern-rationalisation-move/>
- <https://www.abc.net.au/news/2019-11-15/king-island-cattle-farmers-pin-hopes-on-abattoir/11700712>
- <https://australianabattoirs.com/wp-content/uploads/2013/06/kiafsg-final-report-17-jun.pdf>

#### ***Devonport***

In 2018, more than 100 people working near Devonport lost their jobs when JBS Australia announced that the service kill facility that processed beef, pigs and sheep was 'no longer commercially viable'. The announcement left the State Government scrambling to maintain viable on-island meat processing capacity as well as the local jobs, two years after the Government had made a grant of \$800,000 to keep the plant afloat.

The plant was not offered up for sale, but after consultation was agreed to be leased for two years to Tasmanian Quality Meats (TQM) limited to only processing pigs. TQM managing director Bryan Oliver

said he wanted to take on the facility not to turn a profit, but to help keep Tasmania's pork industry afloat. "It has never been a viable proposition operating the pig floor only. We'll be switching everything on to run a third of the product."

JBS now takes Tasmanian lamb and sheep previously processed in Devonport to Victoria for slaughtering before sending the meat back to Tasmania. As Tasmanian Nationals Senator Steve Martin stated, this 'cost hundreds of Tasmanian jobs, added about \$1.30 a kilo to the price of lamb for the Tasmanian consumer and cost farmers \$20 per head.' He also stated, 'JBS shut the Devonport City Abattoir at a cost of 120 direct jobs with a huge effect on the local economy. JBS has also closed the meatworks on King Island, the sheep and lamb export floor at Longford and now they closed Devonport. TAS Quality Meats has re-opened the pig line and wants to do more but JBS refuses to lease the whole facility because it does not want competition against its own sheep and lamb operations.'

- <https://www.stevemartin.com.au/news/2019/3/8/tas-government-must-buy-devonport-meatworks-to-save-local-jobs>
- <https://www.abc.net.au/news/2018-11-15/jbs-abattoir-takeover-by-tasmanian-quality-meats/10500720>

The key difference between Rivalea and JBS is the maintenance of service kills, and the extent to which this may impact service kill customers who supply pork to JBS' downstream rivals. The JBS-owned Primo has a free-range line, which would cause AFSA members' small-scale pastured pig farming operations that are ethical and ecologically-sound to be perceived as direct market competition. As the Tasmanian examples elucidated, JBS will likely lock-out small-scale farmers, or decrease access to service kills.

Further, AFSA notes JBS' incentive to foreclose is increased if it follows through on its stated intentions to increase its use of domestic pork. JBS is commonly engaged in contract farming in the United States, and there is no reason to believe it won't be replicated in Australia. In contract farming models, retail value is realized by JBS – not farmers- which is very different for small-scale operators reliant on facilities owned by the likes of JBS.

### **Frustration or foreclosure of access to fresh pork for smallgoods producers and / or pork wholesalers**

JBS is the largest smallgoods producer in Australia (through Primo), a wholesaler of fresh pork. As the ACCC has outlined, 'post-acquisition, JBS would control three of the seven export accredited abattoirs in Australia (and three out of four in south-eastern Australia) along with a significant proportion of pork processing capacity'.

We share the ACCC's concern that JBS may have the incentive to leverage its increased upstream presence (particularly through its increased ownership of export accredited abattoirs) to either **directly or indirectly raise the costs** of its **downstream smallgoods or wholesaling rivals** by frustrating or foreclosing their access to a key input (fresh pork). AFSA argues the incentives for JBS to vertically integrate risks the ultimate exclusion of downstream small-goods or wholesaling rivals.

### **'Issues unlikely to raise concerns':**

#### **Lessening of competition due to direct overlap**

The ACCC considered the direct overlap between JBS and Rivalea, including the extent to which they compete in the acquisition of slaughter weight pigs, supply of service kills, supply of pork processing and the supply of fresh pork.

'The ACCC's preliminary view is that JBS (Brooklyn\*\*) and Rivalea (Corowa, Laverton North) *do not compete* to a significant extent in the acquisition of

- slaughter weight pigs;
- supply of service kills; and,
- supply of pork processing.

due to the location of their respective abattoirs'

As stated, there are already few options, risk in JBS further consolidating its stronghold. While no direct overlap, AFSA is concerned with how JBS extends its stronghold as it vertically integrates via the acquisition of Rivalea.

#### **Bundling of other meats / meat products**

'As JBS does not supply any "must have" products which do not have close alternatives, the ACCC considers that JBS is unlikely to have sufficient bargaining power to demand customers acquire products in bundles post-acquisition.'

### **Issues outlined**

The ACCC outlined the particular issues to which it invited submissions from interest parties. The relevant issues for AFSA are dealt with below.

#### **The extent to which the cost of service kills and processing influences the region where a customer acquires their pigs from**

For AFSA members, the cost of service kills and processing are fundamental to the efficacy of our businesses. Transporting long distances to DVP (see table) for service kills, while not cost prohibitive, is a financial and ethical strain to small-scale, pigs on pasture operations. The fiscal strain would increase were JBS to foreclose or frustrate service kills to the extent small-scale farming operations would be inoperable totally or for not an insignificant period of time. These financial risks have increased with the diminishing of locally-owned abattoirs as they are bought by the likes of JBS and other multinationals that are export-oriented with business structures favouring vertical integration and export.

With such little competition already in the market, the choice is already limited for small-scale regenerative pig farmers accessing abattoirs for pig processing. In response, AFSA and a farmer member Jonai Farms have begun planning for a small-scale, community-owned abattoir.

- Eight farmers are undertaking meat inspectors licences in the central highlands region of Victoria to work towards qualifications needed for processing of their own pigs, with planning and design underway for a small-scale abattoir to be built at Jonai Farms in Eganstown.
- Several farmers in the Murray Valley have secured a number of government grants to progress plans to build a cooperatively-owned abattoir outside of Barham, NSW.
- AFSA is [campaigning for small-scale abattoir exemption](#) to Vic Agriculture Minister similar to UK

The proposed acquisition has hastened this process, COVID-19 and the climate crisis having compounded pre-existing concerns of insecure access to service kills, and consolidation of the market by a multinational with [known corrupt practices](#), an aversion to environmental concerns, [poor animal welfare practices](#) and evidenced susceptibility to [cyber-hacking](#).

### **The distribution and transportation processes for pig carcasses and boned pork, including the distance transported**

See above

### **The main factors smallgoods producers consider when acquiring fresh pork and the extent to which imported pork is substitutable with fresh pork**

AFSA members produce our own smallgoods from own pork. We object to imported pork's substitution with fresh pork. We reject the treatment of animals as a non-sentient commodity, and the eschewing of one's ethical obligations for market-oriented practices.

### **About AFSA**

The Australian Food Sovereignty Alliance (AFSA) is a farmer-led civil society organisation made up of organisations and individuals working together towards a food system in which people can create, manage, and choose their food and agriculture systems. AFSA is an independent organisation not aligned with any political party. We have around 700 farmer, individual, and organisational members.

AFSA provides a balanced voice to represent farmers. We connect small- and medium-scale Australian farmers for farmer-to-farmer knowledge sharing, work with all levels of government for scale-appropriate and consistent regulations and standards for agriculture, and advocate for fair pricing for those selling to the domestic market.

We are part of a robust global network of civil society organisations involved in food sovereignty and food security policy development and advocacy. We are members of the International Planning Committee for Food Sovereignty (IPC), La Via Campesina – the global movement of peasant farmers, and Urgenci: the International Network for Community-Supported Agriculture, and work regularly with Slow

Food International and many of its Australian chapters. We also support the Australasian representative on the Civil Society Mechanism (CSM), which relates to the UN Committee on World Food Security (CFS).

Our vision is to enable regenerative and agroecological farming businesses to thrive. Australians care now more than ever about the way their food is produced, including its social and environmental impacts. Food produced on small- and medium-scale regenerative farms is increasingly in demand, and the government is bound to heed changing community expectations and facilitate and encourage the growth and viability of regenerative agriculture, thereby protecting the environment and human and animal health.

As a key stakeholder and representative body of small- and medium-scale producers Australia-wide, AFSA is appreciative of the opportunity to submit on the proposed acquisition of Rivalea and Oxdale by JBS.

## **Conclusion**

In 2015, the ACCC approved JBS' purchase of Primo for AUS\$1.45 billion. At that time ACCC Chairperson Rod Sims said the ACCC was 'wary of the potential impact of further consolidation of abattoirs' and assured continued monitoring of the industry, including additional scrutiny of further acquisitions.<sup>1</sup> Since then, COVID-19 impacts, mounting environmental issues and animal welfare concerns has meant that the proposed acquisition would lead to the consolidation of JBS' market control of abattoirs, lessening competition, and further entrenching negative impacts on small-scale farmers and sustainable and ethical food systems. Importantly for AFSA, the consequence is that they decrease Australians' ability to choose nutritious food that is produced and distributed in ethical and ecologically sound ways.

We argue that small-scale agrarian futures are a common sense alternative to the current industrialised food system. That the growth trajectory is not in fact an ineluctable facet of a market economy, but is a continuation of irresponsible practices knowing the environmentally and socially damaging effects of JBS. We argue for a divestment from multinationals and re-investment in ethical consumption. This builds community resilience through food systems knowledge, and empowers people while respecting and creating opportunities for increased nutrition and nourishment.

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<sup>1</sup> <https://www.accc.gov.au/media-release/accc-will-not-oppose-jbss-proposed-acquisition-of-primo>