



## Statement of Issues

16 September 2021

### JBS – proposed acquisition of Rivalea

---

#### Purpose

1. JBS Australia Pty Limited (**JBS**) proposes to acquire 100% of the shares in Rivalea Holdings Pty Ltd and 100% of the shares of Oxdale Dairy Enterprise Pty Ltd (together, **Rivalea**) (**proposed acquisition**).
2. This Statement of Issues:
  - gives the Australian Competition and Consumer Commission's (**ACCC**) preliminary views on competition issues arising from the proposed acquisition
  - identifies areas of further inquiry, and
  - invites interested parties to submit comments and information to assist our assessment of the issues.
3. Statements of Issues do not refer to confidential information provided by the parties or other market participants and therefore may not fully articulate the ACCC's preliminary position.

#### Overview of ACCC's preliminary views

4. In considering the proposed acquisition, the ACCC applies the legal test set out in section 50 of the *Competition and Consumer Act 2010* (the **CCA**). In general terms, section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.
5. The ACCC divides its preliminary views into three categories, 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to raise concerns'. In this Statement of Issues there are two "issues that may raise concerns" and two "issues that are unlikely to raise concerns."

## Issues that may raise concerns

- **Frustration or foreclosure of access to third party service kills at Diamond Valley Pork (DVP)**

DVP is an important abattoir that offers third party service kills. Post-acquisition, JBS will be the majority owner of DVP. For pig producers in proximity to DVP, the ACCC understands that there are few suitable alternatives. The ACCC 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. JBS may do this by profitably increasing the price of, or offering less favourable terms, for service kills. The ACCC is considering how JBS' incentives may differ from those of Rivalea and in particular, the extent to which this may impact service kill customers who supply pork to JBS' downstream rivals. JBS' incentives to foreclose may also be increased if it were to increase its use of domestic pork, as is its stated intention, which could make DVP less reliant on third party customers.

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

JBS, through its Primo business, is the largest smallgoods producer in Australia. It is also a wholesaler of fresh pork. 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. The ACCC is concerned 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).

## Issues unlikely to raise concerns

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

The ACCC has 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 and Rivalea 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. In relation to the supply of fresh pork at the wholesale or retail level, the ACCC's preliminary view is that there are a range of other suppliers, so it is unlikely there will be a substantial lessening of competition due to loss of competition between JBS and 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.

## Making a submission

6. The ACCC invites submissions from interested parties, particularly on the following key issues:
  - the extent to which the cost of service kills and processing influences the region where a customer acquires their pigs from
  - the likelihood of new entry/expansion in pig production and/or service kills
  - the distribution and transportation processes for pig carcasses and boned pork, including the distance transported
  - how pork is procured at the wholesale level and the extent to which the abattoir/processor has limited visibility and control over the flow of pork to smallgoods producers and pork wholesalers
  - the main factors smallgoods producers consider when acquiring fresh pork and the extent to which imported pork is substitutable with fresh pork, and
  - the level of competitive constraint from imported pork on the domestic fresh pork supply chain, particularly for smallgoods producers.
7. Interested parties should provide submissions by 5pm on 30 September 2021. Responses may be emailed to [mergers@acc.gov.au](mailto:mergers@acc.gov.au) with the title: Submission re: JBS/Rivalea - attention Janet Li/Annabel Garrard. If you would like to discuss the matter with ACCC staff or have any questions about this Statement of Issues, please contact Janet Li on (02) 9102 4024 or Annabel Garrard (02) 9102 4028.
8. The ACCC anticipates making a final decision on 9 December 2021, however, this timeline can change. To keep up with possible timing changes and to find relevant documents, interested parties should visit the Mergers Register on the ACCC's website at [www.acc.gov.au/publicregisters/mergers-registers/public-informal-merger-reviews](http://www.acc.gov.au/publicregisters/mergers-registers/public-informal-merger-reviews).

### Confidentiality of submissions

9. The ACCC will not publish submissions regarding the proposed acquisition. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the CCA. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, please identify any confidential information that is provided to the ACCC. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

### About ACCC 'Statements of Issues'

10. A Statement of Issues is not a final decision about a proposed acquisition. A Statement of Issues outlines the ACCC's preliminary views and identifies further lines of inquiry.
11. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

## The parties

### JBS

12. JBS is a subsidiary of JBS S.A., a company listed on the Brazilian stock exchange.
13. JBS operates abattoirs, processing (boning and value-adding) facilities and feedlots for a number of species across Australia's eastern seaboard. Relevant to this proposed acquisition, JBS' Seven Point Pork Abattoir in Port Wakefield (SA) supplies service kills, as well as further processing services. JBS also acquires domestic and imported pork.
14. Through its Primo, Primo Retail, Andrews Meats and D.R. Johnston businesses, JBS supplies fresh pork, value-added pork products and pork smallgoods in Australia. Primo is the largest supplier of pork smallgoods in Australia. JBS' fresh pork brands include Seven Point Australian Pork and Byron Bay Berkshire Pork.
15. Other JBS businesses include:
  - Swift & Company Trade Group, an international trade division that source a range of meat proteins and offal products, and a major importer of pork into Australia
  - JBS Imports, a division that markets JBS Australia meat products to retail, foodservice, wholesale and further processor customers across North America
  - JBS Carriers, a transportation division of JBS Australia supporting the transportation of cattle and other products, and
  - Scott Technology Limited (majority shareholder), a company involved in the provision of automated abattoir production and processing machinery.

### Rivalea

16. Rivalea is a subsidiary of Singapore-listed food company, QAF Limited.
17. Rivalea is a vertically integrated pork production company with operations in both VIC and NSW. Its commercial activities include feedstock production, pig production, service kills, processing (boning and value-adding services) and the distribution of fresh and value-added pork products to wholesalers and retailers in Australia.
18. Rivalea owns an abattoir and processing facility located at Corowa (NSW) and holds an 80% shareholding in Diamond Valley Pork Pty Ltd, which owns a pig abattoir and pork processing plant in Laverton, near Melbourne.
19. Rivalea supplies live pigs as well as fresh and value-added pork products (including those processed at DVP and the Corowa facilities). Their key customers include supermarkets, wholesalers and distributors. Rivalea's fresh pork brands include Murray Valley Pork, St Bernard's Free Range, Family Chef and Riverview Farms. Unlike JBS, Rivalea does not manufacture or sell smallgoods.

## Other industry participants

20. A number of competitors have some level of vertical integration in the pork supply chain. Besides JBS and Rivalea, there are three other main vertically integrated players:
  - **SunPork** – is the largest pig producer in Australia and owns an export accredited abattoir and processing facility, Swickers in Kingaroy (QLD). It also has a

shareholding in the export accredited Big River Pork abattoir (SA). SunPork pork brands include SunPork, Seven Mile, Barkers Creek and Koal.

- **Food Investments (George Weston Foods)** – is a food manufacturer that delivers a range of diverse brands and products. It is the second largest smallgoods producer after Primo (via its Don and KR Castlemaine brands). It also has a shareholding in the Big River Pork abattoir (SA).
- **Craig Mostyn & Co.** – operates across WA and TAS in various species, including the production of pork products. It also owns and operates the export accredited Linley Valley Abattoir (WA).

## Industry background

21. Between March 2020 and March 2021, Australia produced 5.4 million pigs for slaughter.<sup>1</sup> All fresh pork consumed in Australia is domestically produced. Strict regulatory controls require any imported pork to be cooked or frozen prior to entry to Australia.

### Pig production

22. Pigs are raised throughout the year in all Australian states, with the majority of production occurring on the eastern seaboard.
23. Market inquiries indicate that pig farms are capital intensive and typically operate at full capacity. Each week, pig producers' key target is to sell market ready pigs as soon as they reach slaughter weight in order to free up farm space and optimise farm output. A delay in slaughter can be detrimental for pig producers as pigs quickly exceed optimum weight. They may only be able to sell at a discounted rate if the weight of the pig is outside the customers' requirements, and the additional cost of feeding pigs can be significant. Further, the short shelf-life of pork (relative to beef or lamb) also means that pigs need to be slaughtered on particular days of the week in order to meet customers' timing demand for peak sale periods.

### Transportation from farm to abattoir

24. Once market weight is achieved, live pigs are transported to abattoirs for slaughter. The optimum slaughter weight varies according to the intended use for the pork. The majority of pigs in Australia are slaughtered as 'porker' pigs for fresh cuts of pork, as it is typically the most profitable size for pig producers. Larger pigs, known as 'baconers' are used in ham and smallgoods. Older breeders are sold as 'cull pigs' or 'backfatters' for use in other smallgoods products.
25. Pigs lose weight and become more stressed the longer they are transported. Stress directly affects meat quality, and weight loss means pigs are less profitable once slaughtered. Transport distance and time are particular concerns for market participants. Market feedback indicates that most service kill customers prefer to transport live pigs no more than 350km (or 4 hours' travel time) from farm to abattoir due to practical reasons including:
  - animal welfare concerns (including for industry accreditation, service kill customer preferences/requirements, and branding reasons)
  - freight costs

---

<sup>1</sup> Australian Bureau of Statistics, "Livestock Products, Australia" March 2021, <<https://www.abs.gov.au/statistics/industry/agriculture/livestock-products-australia/latest-release>>

- customer requirements (including requirements that live pigs not travel more than a particular number of hours to reach an abattoir), and
  - decline in carcass yield and deterioration of meat quality (including loss of weight, bruising and mortality rates).
26. While some pigs may be transported further, it is infrequent and there are generally specific circumstances in which this occurs (e.g. cooler temperatures, or particular transportation technologies).

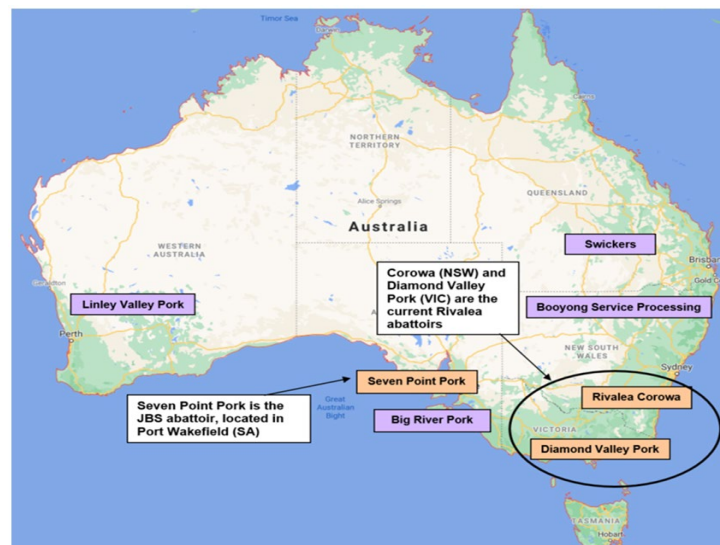
**Service kills**

27. Pig service kills in Australia are typically conducted separately to that of cattle, sheep and other species due to the unique kill-method (gas), certifications (e.g. Halal certifications for red meat prevent pork operations on those sites) and regulatory requirements. Pig abattoirs are therefore generally exclusively dedicated to the slaughter of pigs. Abattoirs dedicated to other species are not substitutable, or easily repurposed, for pig slaughter.
28. The majority of pigs in Australia are killed under arrangements known as ‘service kills’. That is, the abattoir performs the slaughter as a service for a customer and it does not own the pig. Ownership of the pig, and thereby the customer of the abattoir, depends on the arrangements pig producers have with their acquirers (i.e. processor or wholesaler):
- pig producers may retain ownership of the pigs until the point of slaughter, at which point ownership may transfer to the acquirer, or
  - the acquirer of the pork may take ownership of the pig at the farm, and the pig producer sends the pigs for slaughter at the abattoir specified by the acquirer.
29. There are seven export accredited abattoirs in Australia that account for approximately 85% of all pigs slaughtered in Australia. Details of these abattoirs are set out in Table 1 and Figure 1.

Table 1: Overview of export accredited pig abattoirs in Australia

Facility	Ownership	Location
<b>Seven Point Pork</b>	JBS	Port Wakefield, SA
<b>Corowa</b>	Rivalea	Corowa, NSW
<b>Diamond Valley Pork</b>	80% by Rivalea	Laverton, VIC
<b>Big River Pork</b>	Sunpork, Food Investments (GWF), Hurstbridge Abattoirs, Auspork, BE Campbell, Australian Pork Farms Group	Murray Bridge, SA
<b>Swickers</b>	SunPork	Kingaroy, QLD
<b>Linley Valley Pork</b>	Craig Mostyn Group	Wundowie, WA
<b>Booyong</b>	Northern Co-operative Meat Co	Clunes, NSW

Figure 1: Map of export accredited pig abattoirs in Australia



30. There are also a number of non-export accredited abattoirs, particularly along the eastern seaboard (including QLD, NSW, VIC and SA) and in Western Australia.
31. As noted above, 85% of pigs in Australia are slaughtered at the seven export accredited abattoirs in Australia. Market feedback indicates that export accreditation is an indicator of the quality of the service kill. Such accreditation is very important to customers, even those that do not export, for the following reasons:
  - better facilities and higher quality service resulting in higher carcass yield, better meat quality and longer shelf-life
  - higher capacity and ability to process more pigs on preferred days/times, and
  - higher animal welfare standards, including more humane lairage and slaughter.
32. In light of the reasons above, many acquirers of pork require that pigs be slaughtered at an export accredited abattoir, regardless of whether the pork is for export or domestic consumption.

### Pork processing

33. Once slaughtered and chilled, pig carcasses can be:
  - processed at the abattoir to the specifications of customers
  - transported to a third party pork processor for further processing to the specifications of customers, or
  - transported directly to the customers' facilities to process the pork themselves.
34. Market inquiries indicated that most pork is sold into the market through a combined pork processor/wholesaler. There are also a number of independent processors who operate processing facilities (including "boning rooms") where customers (e.g. wholesalers/butchers/smallgoods producers etc.) can take their carcasses for further boning.

35. Processors conduct various processing activities, before on-selling or distributing the pork to customers of various wholesale and retail channels throughout Australia as well as to some export customers. The processing activities include:
- **boning** - which involves breaking down the carcass into portions
  - **value-adding** - which occurs once the pork has been boned and includes making fresh sausages, preparing pork for retail packs (including adding rubs/marinades) and cooking (e.g. for ready-meals), and
  - **smallgoods manufacturing** - which involves further cooking, curing or processing pork to create smallgoods including bacon, ham, salamis, prosciutto and other specialty smallgoods. The majority of smallgoods consumed in Australia are ham and bacon products. A substantial proportion of ham and bacon consumed in Australia is made from imported pork, primarily from the USA, Denmark and Canada. For biosecurity reasons, bone-in leg hams must be Australian pork.

### **Wholesale supply of fresh pork**

36. As noted above, there are a number of mid-sized pork processor/wholesaler operators that process their own pigs before on-selling fresh pork through various wholesale and retail channels. There are also a number of market participants that operate only as a wholesale supplier of fresh pork (without being a pork processor).
37. Customers of wholesale suppliers of fresh pork include:
- major supermarkets
  - retail butcher shops and delis
  - food service (including restaurants, pubs and clubs)
  - smallgoods producers, and
  - export customers.
38. The form of fresh pork supplied to these customers will vary according to the customers' needs (for example, retail-ready cuts and value-added products for supermarkets, and fresh/frozen meat for smallgoods producers).

### **The proposed transaction**

39. JBS proposes to acquire 100% of the shares in Rivalea, for a total value of approximately A\$175 million.
40. Under the proposed transaction, JBS will acquire a number of assets, including pig grower farms; 80% of shares in the Diamond Valley Pork abattoir and processing facilities in VIC; the abattoir, processing facilities and piggery located at Corowa, NSW; and pork brands including St Bernard's Free Range Pork, Riverview Farms, and Baxters Pork.



## Areas of overlap

41. JBS and Rivalea are both vertically integrated companies in the pork industry. Table 2 sets out the functional levels of the pork supply chain that JBS and Rivalea compete in.

Table 2: level of the pork supply chain JBS and Rivalea operate in

Supply chain level	JBS	Rivalea
Feedstock production	x	✓
Pig growing / production	x	✓
Transportation	✓	x
Pork imports	✓	x
Acquisition of pigs	✓	✓
Slaughtering (including service kills)	✓	✓
Pork processing (boning and value-add)	✓	✓
Manufacturing of pork smallgoods	✓	x
Wholesale supply of pork	✓	✓
Pork exports	✓	✓

## Relevant markets

### Product and functional dimensions of the markets

42. In light of the vertical integration and overlap, the ACCC is considering:
- the upstream and downstream effects from the consolidation of the export accredited abattoirs post-acquisition (vertical effects), and
  - the competitive effects at different functional levels where JBS and Rivalea overlap (horizontal effects).
43. Below are the markets that are relevant to the ACCC's consideration of horizontal and vertical competitive effects.

### *Acquisition of slaughter weight pigs*

44. The ACCC considers that the geographic dimension for the acquisition of slaughter weight pigs is similar to service kills for reasons discussed in paragraph 48 below.
45. The ACCC is continuing to investigate and assess the extent to which transportation costs influence the geographic scope of competition for acquisition of slaughter weight pigs and whether the price, quality and/or availability of service kills offered by different abattoirs influence where acquirers of slaughter weight pigs source their pigs from.

### *Service kills*

46. JBS and Rivalea both supply export accredited service kills in south-eastern Australia. Post-acquisition, there would be a consolidation of export accredited abattoir operators from three to two in south-eastern Australia.

47. Strong and consistent market feedback indicates that non-export accredited abattoirs are not close substitutes for export accredited abattoirs because of the lack of features set out in paragraph 31 above. In particular, the superior quality of the kill and higher standard of animal welfare are the key reasons why many market participants only use export accredited abattoirs, even if the pork is only for domestic distribution. The ACCC's preliminary view is that non-export accredited abattoirs do not competitively constrain export accredited abattoirs.
48. As noted above at paragraph 25, the ACCC understands that the preference for pig producers is to have pigs slaughtered at an abattoir within 350km (or 4 hours travel) from the farm due to reasons including animal welfare, quality of meat and freight costs. In relation to the other customers of service kills (i.e. acquirers of pork), the ACCC is continuing to consider whether the price, quality and/or availability of service kills offered by different abattoirs influence where acquirers of pork source their pigs from.

#### *Pork processing*

49. All export accredited abattoirs in Australia have onsite processing facilities. Available information suggests that pork can be transported greater distances than live pigs. The ACCC's understanding is that fresh pork (pig carcasses and boned pork) is capable of being transported for up to three days with appropriate refrigerated transportation.
50. The ACCC is continuing to investigate and assess:
  - whether the non-vertically integrated pork processors (i.e. the operators without a pig abattoir) will be a close constraint on the two export-accredited operators in south-eastern Australia post-acquisition
  - whether the price/quality/availability of pork processing services influence the customers' choice of abattoir and the region they source pigs from, and
  - the extent to which transportation costs influence the geographic scope of competition for pork processing services.

#### *Wholesale supply of fresh pork*

51. As mentioned above, there is potential for fresh pork to be transported greater distances than live pigs and the ACCC is currently considering a national market for the wholesale supply of fresh pork. However, the ACCC is continuing to assess the extent to which transportation costs influence the geographic scope of competition for the wholesale supply of fresh pork. The ACCC is also continuing to assess the extent to which imported pork is a close substitute for the wholesale supply of fresh pork to some customers, particularly smallgoods producers.
52. As mentioned in paragraph 21 above, all imported pork must be frozen or cooked. While imported pork is used for the manufacturing of some smallgoods, the ACCC understands that the imported pork is generally from larger pigs and unlikely to be substitutable for fresh pork as an end product.

#### *Wholesale supply of pork smallgoods*

53. Smallgoods producers in Australia generally distribute their products nationally, suggesting that the geographic market for the supply of smallgoods is national.

The ACCC invites comments from market participants on its preliminary views about the relevant market(s). In particular, market participants may wish to comment on:

### **Supply of pigs by pig producers**

- Do pig producers generally supply to one customer or multiple/different customers?
- Please outline the cost, time and any other requirements associated with increasing pig production at an existing farm. Where applicable, please distinguish between a short-term or long-term increase.

### **Acquisition of slaughter weight pigs**

- Does the price, quality and availability of service kills at different abattoirs and/or transport costs influence which pig producers you choose to acquire pigs from?

### **Supply of service kills to processors and wholesalers**

- For fresh pork retailers, processors and wholesalers, does the price, quality and availability of service kills at different abattoirs influence which pig producers you choose to source pigs from?
- For fresh pork retailers, processors and wholesalers, if the price of service kills from your current provider increased by 5-10 per cent, would you seek to procure pigs from a different region? In your response, please outline the cost, location and any other factors which would influence your choice of service kill provider.
- For service kill providers, if the volume of service kills at your abattoir reduced by 5-10 per cent, how would this impact profitability on the remaining volumes?

### **Supply of pork processing**

- For fresh pork retailers and wholesalers, does the price, quality and availability of onsite pork processing at different abattoirs influence which pig producers you choose to source pigs from?
- For fresh pork retailers and wholesalers, does the price, quality and availability of onsite pork processing at different abattoirs influence which abattoir you choose to slaughter pigs at?
- For smallgoods producers, how close a substitute is imported pork for fresh pork? What factors influence the extent to which you choose imported pork over fresh pork?

### **Transportation of pork carcasses**

- What is the average and maximum distance (in km and hours) a pig carcass can be transported from an abattoir to its next location?
- Please specify the cost of transportation. If you have experienced transporting pork carcasses across various distances, please specify the transportation cost for each distance.

### **Transportation of boned pork**

- What is the average and maximum distance (in km and hours) boned pork can be transported from a processing facility to its next location.
- Please outline the types of packaging used when transporting boned pork, including whether there are different packaging requirements associated with particular cuts and the extent to which different packaging affects the shelf-life of boned pork.
- Please specify the cost of transportation. If you have experienced transporting boned pork at various distances, please specify the transportation cost for different distances.

## Issue that may raise concern: Frustration or foreclosure of access to third party service kills at DVP

54. Pig abattoirs compete for ‘service kill’ customers. ‘Service kill customers’ are typically pig producers or other customers that acquire pigs directly from farms for use in their downstream pork operation (including processors, wholesalers and major supermarkets).
55. DVP is an important abattoir that primarily offers third party service kills. As set out in paragraphs 25 and 26, there are limitations on the time and distance that live pigs can be transported from farm to abattoir for service kills. Most service kill customers prefer to transport live pigs within 350km (or 4 hours’ drive) from farm to abattoir. For pig producers in proximity to DVP, the ACCC understands that there are few suitable alternatives (see discussion below).
56. Given the abattoir’s location, any majority owner of the asset would have the ability to frustrate or foreclose access to third party service kills at DVP. However, available information indicates that Rivalea does not have the commercial incentive to engage in this conduct. The ACCC is investigating the extent to which JBS’ incentives as majority owner may differ from those of Rivalea.
57. Post-acquisition, JBS would be further vertically integrated, having operations at all levels of the pork supply chain including pig production, service kills, processing as well as the supply of various pork products (including raw pork, cooked pork and smallgoods).
58. JBS has publicly stated that the proposed acquisition will enable them to expand into pig production and intends to grow the use of domestic pork in JBS’ Australian operations, particularly within its Primo business<sup>2</sup>. Market participants have raised concerns that post-acquisition, JBS may prioritise the service kills of Rivalea pigs or pigs that are used as inputs for its Primo business and/or wholesale supply of fresh pork. This may have the effect of decreasing DVP’s capacity for third party service kills or the terms of the service kills (e.g. the timing and scheduling of the kills) becoming less favourable.
59. The ACCC is concerned that the proposed acquisition may lessen the supply of service kills by enabling JBS to frustrate access by profitably increasing the price of, offering less favourable terms for, or foreclosing access to third party service kills at DVP. JBS’s significant downstream presence (including the wholesale supply of fresh pork and smallgoods) means that it may have the incentive to operate DVP in a more discriminatory manner relative to how Rivalea currently runs it. This reduction in service kills may, in turn, result in a substantial lessening of competition in related upstream markets.

---

<sup>2</sup> JBS Food Group, “JBS Australia to Acquire Pork Producer Rivalea”, 8 June 2021 <<https://jbsfoodsgroup.com/articles/jbs-australia-to-acquire-pork-producer-rivalea>>; Warwick Long, “Australia’s largest meat processor JBS buys Rivalea piggery in \$175m deal”, *ABC News*, 9 June 2021 <<https://www.abc.net.au/news/2021-06-09/jbs-buying-large-australian-piggery-rivalea-175m/100200606>>; Brad Thompson, “JBS takes aim at pork imports with pledge to raise more pigs”, *Australian Financial Review*, 9 June 2021 <<https://www.afr.com/companies/agriculture/jbs-takes-aim-at-pork-imports-with-pledge-to-raise-more-pigs-20210609-p57zfo>>

**The importance of DVP for service kills**

60. DVP, currently majority owned by Rivalea, is an important abattoir because it satisfies three key factors that customers value when choosing an abattoir:

1. Availability of third party service kills: Pig producers need to access service kills consistently (on a weekly basis and on the days they require the kills to take place). This is due to a combination of factors, including:
  - a. customers will often have very specific carcass weight requirements, which means that pigs need to be slaughtered once they reach optimum slaughter weight
  - b. fresh pork has a short shelf life (relative to beef or lamb), so pigs need to be slaughtered on certain days of the week to meet customer’s timing demands for weekly peak sale periods, and
  - c. customers may only be prepared to pay a significantly discounted rate for pork that does not meet their requirements.
2. Export-accreditation: Export accreditation is an indication of quality because those abattoirs generally have better technology to ensure a better quality service kills while minimising stress to the pigs. These factors contribute to producing better quality pork. Many customers require that pigs are killed at an export accredited abattoir, even if the pork is for local distribution.
3. Accessible for pig producers: Proximity of the abattoir to the pig farm is an important consideration. As discussed in paragraph 25 above, pigs’ weight loss and stress increase the longer they travel. Due to the lack of suitable alternatives (discussed further below) many pigs within 350km (or 4 hours road travel) of DVP, which require export accredited quality service kills are slaughtered at DVP.

**The lack of suitable alternatives for pig producers currently using DVP**

61. The ACCC understands from pig producer customers of DVP that the other export and non-export accredited abattoirs nearest to DVP do not satisfy the three factors above:

<b>Abattoir</b>	<b>Distance to DVP</b>	<b>Why it is not a viable alternative to DVP</b>
Australian Food Group Abattoir at Laverton (VIC)	~2km (3min drive)	<ul style="list-style-type: none"> <li>• Not export accredited</li> <li>• Small scale operation and would not be able to service some pig producers’ volumes</li> </ul>
Sinclair Abattoir at Benalla (VIC)	~200km (2.5 hour drive)	
Rivalea’s abattoir at Corowa (NSW)	~300km (3.5 hour drive)	<ul style="list-style-type: none"> <li>• The abattoir is located within the piggery, and not able to offer third party service kills due to biosecurity controls</li> </ul>
Big River Pork at Murray Bridge (SA)	~600km (7 hour drive)	<ul style="list-style-type: none"> <li>• Too far for pigs to travel, causing animal welfare and pork quality issues</li> <li>• The ACCC understands from the market that it is currently operating at capacity</li> </ul>

### High barriers to entry to service kills

62. Market feedback suggests that there are high barriers to entry for service kills. Building a new export accredited abattoir would require a significant amount of capital investment (possibly upwards of A\$30 million), need to satisfy a range of regulatory requirements (including licensing, planning permission, environmental management plans and export accreditation), location requirements (proximity and accessibility to pig farms), and require 2-3 years to complete. A key impediment identified by market participants is the need for minimum guaranteed throughput. An export accredited abattoir would require economies of scale for the investment and operation to be commercially viable. Even to convert a non-export accredited abattoir would be costly and need to satisfy fairly high regulatory requirements (including those set out above) and guaranteed additional throughput to justify the cost of upgrade.
63. The ACCC understands that there has been limited new entry in the 20 years since Big River Pork was founded. The ACCC's preliminary view is that JBS would not be constrained by the threat of new entry in the foreseeable future.

### ACCC's concerns

64. JBS' majority ownership of DVP and the lack of suitable alternatives for pig producers in proximity to DVP would provide JBS with the ability to either frustrate access by raising prices or offering less favourable terms, or to foreclose access to third party service kills at DVP post-acquisition.
65. The ACCC is considering the extent to which JBS' incentives may differ from those of current owner Rivalea post-acquisition. The ACCC is concerned that JBS' increased vertical integration may provide it with the incentive to engage in the conduct described in paragraph 59 above, especially in relation to DVP customers who would supply JBS' downstream rivals post-acquisition. The ACCC is continuing to investigate JBS' commercial incentives in relation to the provision of service kills post-acquisition, and whether it may provide service kills on less favourable terms to certain customers.

The ACCC invites comments from market participants on its concerns in relation to access to service kills post-acquisition. In particular, market participants may wish to comment on the following:

#### Acquisition of pigs and service kills

- If you are an acquirer of pigs and currently use DVP, what would you do if there was a 10% increase in the price of service kills at DVP? For example, would you switch to acquiring from a pig producer closer to a different abattoir?
- If you are an acquirer of pigs and currently use DVP, do you also use service kills at other abattoirs? If so which ones and what are the volumes slaughtered at each abattoir?

#### Acquisition of pork by butchers and wholesalers

- What are the proportions of fresh and frozen pork that butchers/wholesalers normally acquire? Please provide a breakdown where possible.
- Please explain whether it's possible to acquire fresh and/or frozen pork from interstate (for example, a butcher/wholesaler located in NSW or VIC to acquire fresh pork from QLD). In your response, please also provide the key factors that make interstate acquisition possible or not possible.
- Do wholesalers purchase pork (carcass or boned) from a single source or multiple sources?
- To what extent, if any, do service kill and processing costs influence the wholesale price of pork smallgoods?

### **Building an abattoir**

- What is the minimum throughput (service kills per week) to justify investment in developing/building an export accredited abattoir?
- What would be the cost, time and other requirements needed to convert a non-export accredited abattoir to an export accredited abattoir?
- How easy/difficult is it for service kill customers to build a cooperative abattoir (e.g. like Big River Pork), and how long will that take? Would that be a suitable alternative to DVP? Please provide examples of it having been done previously and if it was successful.

### **Issue that may raise concern: Frustration or foreclosure of access to fresh pork for smallgoods producers and/or pork wholesalers**

66. JBS owns the Seven Point Pork abattoir at Port Wakefield (SA) while Rivalea owns two abattoirs - DVP at Laverton (VIC) and one at Corowa (NSW). Post-acquisition, JBS would own three of the seven export accredited abattoirs in Australia and three out of four in south-eastern Australia (SA, VIC and NSW).
67. JBS, via its Primo business, is currently the largest supplier of smallgoods in Australia with approximately 40% market share. George Weston Foods (Don, KR Castlemaine) is the second largest smallgoods producer in Australia with 10-20% market share, followed by Bertocchi Smallgoods with 5-10%, and D'Orsogna and Tibaldi with less than 5% each.
68. Rivalea is one of the largest pig producers in Australia and currently supplies fresh pork to some smallgoods manufacturers, including those that compete with Primo. Rivalea does not manufacture smallgoods itself.
69. Noting JBS may increase the use of domestic pork within its Primo business (see paragraph 58 above), the ACCC is concerned that JBS may have the incentive to leverage its increased ownership of the number of export accredited abattoirs in Australia (together with its operations in various businesses along the pork supply chain as set out in paragraphs 14 and 15 above) to raise the costs of its downstream smallgoods and/or wholesale rivals, by frustrating or foreclosing their access to fresh pork. The ACCC acknowledges that, if JBS continues to operate a service kill model at Port Wakefield and DVP, JBS would not own most of the pigs being slaughtered at those facilities, so could not necessarily directly increase the cost of wholesale fresh pork. However, it could indirectly raise rivals' costs by increasing service kill costs, or offering service kills on less favourable terms to those customers it knows supply to its rivals downstream. If JBS had the ability and incentive to engage in such conduct post-acquisition, this may substantially lessen competition for the wholesale supply of smallgoods or fresh pork in Australia.

### **Smallgoods producers' input requirements and import competition**

70. The key input for smallgoods is pork, which may be fresh pork and/or frozen pork. While frozen pork can be imported, fresh pork can only be acquired domestically due to biosecurity regulations. Although some smallgoods products can use imported pork (e.g. boneless ham and bacon), others require fresh pork (e.g. bone-in leg ham). As such, some smallgoods (notably ham and bacon) are subject to a level of import competition, while other smallgoods experience less import competition.
71. Domestic pork production has remained constant in Australia over the past 20 years, despite consumption of pork products almost doubling in the same period. The vast majority of this growth in demand has been filled by imports. Some market participants

attributed the increased use of imported pork in smallgoods to insufficient domestic supply. However, others cited the comparatively cheaper price of imported pork relative to domestic fresh pork as the primary reason for Australia's increased use of imported pork in smallgoods.

72. Market feedback indicated that while some Australian smallgoods producers use imported pork, others are unable or unwilling to do so. Some of the cited reasons why imported pork is not a viable substitute for domestic pork included:
- Biosecurity laws prevent the use of imported pork in some smallgoods – for example, 'bone in' leg hams are required by law to contain 100% Australian pork
  - Onerous import licence requirements – market participants noted the costs and auditing requirements associated with acquiring and maintaining an import licence meant they are unable or unlikely to acquire one, particularly for smaller producers that require smaller volumes of pork
  - Branding and consumer preferences require domestic pork – some market participants have noted the importance of 'Australian' pork to their brand.
73. In respect of the acquisition of domestic fresh pork, the ACCC is currently considering a national market for the supply of wholesale pork, however notes that some market participants have indicated a preference to acquire fresh pork from the same state or neighbouring states/territories due to transportation costs and the short shelf-life of pork.
74. The form and types of pork acquired by smallgoods producers appear to vary. While some smallgoods producers may acquire whole carcasses, some only purchase boned pork from wholesalers.

#### **JBS' increased control of export accredited abattoirs**

75. As mentioned above, JBS would own and control three of the seven export accredited abattoirs in Australia (and three out of four in south-eastern Australia) post-acquisition.
76. As explained in paragraphs 31 and 32 above, export accredited abattoirs are critical for some pork acquirers, even for domestic distribution, because the pork produced from those abattoirs is considered to be of a higher quality and have a longer shelf-life than pork produced from a non-export accredited facility.
77. Market participants are concerned that through its increased ownership of export accredited abattoirs in Australia (and south-eastern Australia in particular), JBS may have the ability to indirectly increase its rival smallgoods producers' price of, or foreclose access to, key inputs (fresh pork) by restricting the supply of third party service kills, or providing access on less favourable terms. Consequently:
- the amount of fresh pork available in Australia may diminish, resulting in rival smallgoods producers not being able to source a key input, and/or
  - the price of fresh pork would increase, resulting in increased costs for Primo's smallgoods rivals.
78. Some abattoir customers that have operations downstream have submitted that there is currently an ability to switch to alternative export accredited facilities in the event of a price increase or decrease in quality. However, these options would be decreased post-acquisition, given the significant capacity which would be under JBS' control.



## ACCC's concerns

79. JBS' increased ownership and control of a significant proportion of abattoir capacity in Australia would limit service kill customers' ability to switch to a non-JBS owned abattoir. JBS' ability would be further enhanced if it has visibility over the ultimate end-user of the fresh pork downstream. The proposed acquisition therefore may provide JBS the ability to increase the price of service kills, and in turn increase the price of a key input (fresh pork) for smallgoods producers and/or pork wholesalers.
80. JBS may have the incentive to undertake such a foreclosure strategy to disadvantage its rival smallgoods competitors by indirectly increasing their input costs to gain market share in smallgoods and/or profitably increase prices of smallgoods.
81. Rival smallgoods producers' reduced access to fresh pork and/or increased costs may also impact retail supply. Supermarkets have a complex selection process based on quality, service and price. The increased price or lack of volume to satisfy supermarket customers by Primo's smallgoods rivals could potentially narrow their distribution channels and revenue. This may ultimately increase price and/or decrease choice of brands and smallgoods products for retail customers.
82. The ACCC understands that some pork wholesalers purchase fresh pork in the market to distribute to its customers. For similar reasons to those set out above, the ACCC is also considering the impact the proposed acquisition may have on pork wholesalers' access to fresh pork, and would welcome any comments.
83. The ACCC is continuing to investigate/seeking to better understand:
  - The distance over which fresh pork used in smallgoods production can be distributed. Specifically, any additional costs that smallgoods producers or wholesalers in south-eastern Australia would incur if they acquired fresh pork from Queensland or Western Australia
  - Whether imported pork is a close substitute for fresh pork and whether it would be profitable for JBS to foreclose smallgoods producers and pork wholesalers' access to domestic fresh pork given the comparatively cheaper price of imported pork, and
  - The commercial incentives for JBS to provide service kills against any commercial incentive for JBS to increase the competitiveness of its Primo business through directly or indirectly restricting supply of fresh pork to their smallgoods rivals and/or increasing rivals' costs. In particular, whether JBS would be constrained by other suppliers of fresh pork.

The ACCC invites comments from market participants on its concerns in relation to smallgoods producers' access to fresh pork. In particular, market participants may wish to comment on the following:

### Acquisition of pork inputs by smallgoods producers

- Please identify the types of smallgoods that require fresh pork as an input and explain whether frozen pork or imported pork are substitutable inputs for producing those types of smallgoods.
- Please identify whether smallgoods producers acquire pork carcasses or boned pork.
- Please identify whether it's possible for smallgoods producers to acquire pork inputs (fresh and/or frozen) from interstate (for example, a whether a smallgoods manufacturer located in NSW or VIC would acquire pork from QLD). In your response, please provide details of the packaging in which the pork inputs arrive in and any additional costs of acquiring pork inputs from interstate

- Please provide the average distance (km and hours) in which the pork inputs (fresh and/or frozen) are transported from abattoir/processing facilities to the manufacturing facilities, the method of transportation used and the cost of transportation.
- Please explain the substitutability of domestic fresh, domestic frozen and imported pork in smallgoods production.
- Please explain whether you have observed any changes to the price or supply of imported pork as a result of African Swine Fever in the past three years. In your response, please comment on whether you consider the situation is likely to change, and in what timeframe.
- Please explain whether smallgoods producers know which pig producer their domestic pork comes from when purchasing from a wholesaler.

#### **Pork Wholesalers**

- Do you think frustration or foreclosure of access to fresh pork would be an issue for you post-acquisition? If so, please provide details about your concerns.

### **Issues unlikely to raise concerns: Lessening of competition due to overlap**

84. The ACCC has considered the horizontal competitive effects at different functional levels of the pork supply chain where JBS and Rivalea overlap. Set out below are the specific overlaps that the ACCC considers are unlikely to raise concerns post-acquisition.

#### **Acquisition of slaughter weight pigs**

85. JBS and Rivalea are not significant acquirers of slaughter weight pigs. The largest acquirers of slaughter weight pigs are major retailers like Coles and Woolworths, followed by large wholesalers, including V&V and BE Campbell. Other acquirers of slaughter weight pigs include smaller wholesalers and retailers, butchers, food-service distributors, and food manufacturers.
86. As such, the ACCC is of the view that the overlap in the market for the acquisition of slaughter weight pigs is unlikely to raise competition concerns.

#### **Supply of service kills and/or pork processing service to pig producers**

87. As mentioned, the abattoirs relevant to this proposed acquisition are all export accredited and supply both service kills and pork processing on site.
88. Although it is possible to travel longer distances, many pig producers have indicated that they would prefer to transport live pigs within 350km (or 4 hour drive) from farm to abattoir (discussed in paragraph 25 above). Most market participants cited proximity of the abattoir to farms as the primary factor in selecting an abattoir for service kills.
89. On that basis, the ACCC considers that JBS' Port Wakefield (SA) facility does not compete closely with, and is not a close substitute to, Rivalea's DVP (VIC) facility for pig producers in the provision of service kills and pork processing, as the two facilities are over 800km (or more than 9 hours' drive) apart.
90. While the aggregation of service kills, and separately pork processing, is unlikely to raise concerns for pig producer customers, who are limited in their geographic market by the location of their farms, it is still potentially a concern for other types of customers. The potential impact on competition involving these non-pig producer customers is discussed in detail above under the second issue that may raise concern.

### **Wholesale supply of fresh pork**

91. While both JBS and Rivalea supply fresh pork, there are a number of alternative wholesale and retail suppliers of fresh pork, including BE Campbell, V&V Meats, Somerville Retail Services, Wilmeat and the major supermarkets. Additionally, the potential for fresh pork to be transported greater distances than live pigs suggests a broader geographic market.
92. The ACCC's view is that JBS is likely to be constrained by a number of alternative wholesale and retail suppliers of fresh pork post-acquisition. However, there may be flow on implications for the wholesale supply of fresh pork if access to fresh pork was restricted or the cost was increased at the processing level (vertical effects – see second issue that may raise concern above).

### **Issue unlikely to raise concerns: Bundling of other meats/meat products**

93. The ACCC has considered the potential conglomerate (bundling) effects of the proposed acquisition, given the overlap in JBS and Rivalea's wholesale customers (e.g. supermarkets acquiring smallgoods from JBS and fresh pork from Rivalea).
94. Concerns have been raised that post-acquisition, JBS could leverage its position as the largest domestic smallgoods supplier to increase its wholesale supply of fresh pork products through bundling and thereby foreclose rival fresh pork wholesale suppliers from competing on their merits. For example, JBS could have an advantage in negotiating supply contracts with wholesale customers on the condition that all meat purchases would be conducted through a single sales contract.
95. The ACCC understands that JBS does not supply any "must have" items which do not have close alternatives. Market participants generally consider that they have other options to source products. Additionally, the ACCC understands that the usual practice for wholesale customers is to procure protein and/or smallgoods on an individual product basis and that wholesale customers (especially supermarkets) have considerable bargaining power when negotiating with suppliers. The ACCC's view is that the proposed acquisition would not provide JBS with a substantial increase in bargaining power with its customers. Instead, it is likely that JBS would continue to be constrained by the bargaining power of its customers post-acquisition and therefore unlikely to change the current procurement processes and/or supply in bundles. The ACCC invites any comments or additional information on this issue, in particular from other wholesale suppliers and retailers.

### **ACCC's future steps**

96. As noted above, the ACCC invites submissions from market participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter. Submissions should be emailed to [mergers@acc.gov.au](mailto:mergers@acc.gov.au) by no later than 30 September 2021.
97. The ACCC will finalise its view on this matter after it considers submissions invited by this Statement of Issues.

98. The ACCC intends to publicly announce its final view by 9 December 2021. However the anticipated timeline may change in line with the *Informal Merger Review Process Guidelines*. A Public Competition Assessment explaining the ACCC's final view may be published following the ACCC's public announcement.