

Agreement on outcome of an investigation of breaches of the Overseas Investment Act 2005

The Chief Executive of Land Information New Zealand

(Regulator)

JBS Australia Pty Limited

(Investor)

Dated: 21 October 2019



Agreement dated 21 October 2019

1 Parties

The Chief Executive of Land Information New Zealand, being the chief executive of the department designated as the regulating department by the Minister of Finance

(Regulator)

JBS Australia Pty Limited, a limited liability company incorporated in Australia, which is a wholly-owned subsidiary of a Brazilian company, JBS S.A..

(Investor)

2 Definitions

2.1 In this Agreement:

- (a) **Act** means the Overseas Investment Act 2005
- (b) **Condition two** means condition two of the Consent
- (c) **Consent** means the consent granted to the Investor under the Overseas Investment Act 2005 on 30 March 2016
- (d) **Disqualifying Relationship** has the same meaning as in the NZX Listing Rules
- (e) **governance or executive position** means a 'director' or 'senior manager' as defined in the Financial Markets Conduct Act 2013.
- (f) **Independent Director** has the same meaning as in the NZX Listing Rules
- (g) **Investor** means JBS Australia Pty Limited (**JBS Australia**)
- (h) **Investment** means the Investor's acquisition of up to 100% of the shares of Scott Technology Limited (**Scott**)
- (i) **JBS Group** includes JBS S.A and every entity in which JBS S.A., directly or indirectly, has a 25% or more ownership or control interest but does not include J&F Investimentos S.A.
- (j) **JBS S.A.** is the global head company of the JBS Group
- (k) **J&F** means J&F Investimentos S.A., which is the pre-dominant holding vehicle by which the Batista family (predominately Joesley and Wesley Batista) own a significant ownership interest in the JBS Group
- (l) **Land** means the land in computer freehold register OT194/145, being 3.1437 ha situated at 630 Kaikorai Valley Road, Dunedin
- (m) **NZX Listing Rules** means the NZX Listing Rules (including the NZX Corporate Governance Code), dated 1 January 2019
- (n) **Overseas Person** has the meaning set out in section 7 of the Act

- (o) **Scott** means Scott Technology Limited
- (p) **Sensitive land** means land as set out in Schedule 1 of the Act.
- 2.2 Unless the context requires otherwise, in this Agreement **Relevant Control** means, in respect of an entity which has a direct or indirect 25% or more ownership or control interest in Scott, the capacity to:
 - (a) determine the outcome of decisions about the entity's financial and operating policies; or
 - (b) influence decisions of that entity whose impact on JBS Australia, Scott or the Investor's investment in Scott is more than minor.
- 2.3 For the purposes of clause 2.2, Relevant Control excludes the benign exercise of control through methods also available to other investors, such as the exercise of voting powers approving the appointment of an auditor for JBS S.A.
- 2.4 For the purposes of clause 2.2, it does not matter whether the Relevant Control, is:
 - (a) direct or indirect;
 - (b) general or specific; or
 - (c) legally enforceable or not.

3 Introduction

- 3.1 On 30 March 2016, consent was granted to the Investor to acquire up to 100% shares of Scott. Consent was granted subject to conditions, including that the individuals with control of the relevant overseas person (including Joesley and Wesley Batista) remain of good character.
- 3.2 The Regulator has carried out an investigation into compliance with the good character condition of the Investor's consent to acquire the Investment.
- 3.3 This Agreement records the findings of the Regulator and the means by which the investigation is to be resolved.
- 3.4 This Agreement may be made public by the Regulator (including on the Regulator's website).

4 Requirements of the Act

- 4.1 A failure to meet a condition of consent can amount to an offence under s 45 of the Act and a person can be liable on conviction by a court for a fine of up to \$100,000, or a civil penalty under s 48 of the Act. Section 47 of the Act also permits a court to order a person to dispose of their investment if that person fails to meet a condition of consent.

5 Summary of the Facts

Background

Scott

- 5.1 Scott is a New Zealand company, headquartered in Dunedin and listed on NZX. It specialises in the design and manufacture of automated production and process machinery.

The Investor

- 5.2 The Investor is a wholly owned subsidiary of JBS S.A. and is the largest Australian meat processor and feedlot operator.

Consent

- 5.3 On 30 March 2016, consent was granted under the Act to the Investor acquiring up to 100% shares of Scott.
- 5.4 OIO consent was required because the investment involved:
- (a) an overseas investment in sensitive land, being the Investor's acquisition of rights or interests in up to 100% of the shares of Scott which owns or controls the Land; and
 - (b) an overseas investment in significant business assets, being the Investor's acquisition of rights or interests in up to 100% of the shares of Scott, the value of Scott and its 25% or more subsidiaries being greater than \$100 million.
- 5.5 The Investor's application for consent required it to satisfy a number of consent criteria, including the investor test which requires the individuals with control of the relevant overseas person to be of good character.
- 5.6 It was determined that the relevant overseas person for the purposes of the application for consent were (collectively) JBS S.A., FB Participações S.A., the Investor, Baybrick Pty Limited and J&F.
- 5.7 It was then determined that the individuals with control of the relevant overseas person were the (then) directors of those companies. This included Joesley and Wesley Batista as directors of JBS S.A., FB Participações S.A. and J&F.
- 5.8 Consent was granted on 30 March 2016 subject to conditions, including that the individuals with control of the relevant overseas person (including Joesley and Wesley Batista) remain of good character.

The Regulator's investigation

Events in Brazil

- 5.9 In May 2017, it was publicly disclosed in Brazil that Joesley and Wesley Batista (amongst other people) had entered into collaboration agreements with the Brazilian authorities where they admitted various bribery and corruption activities in Brazil and agreed to cooperate with Brazilian authorities in their investigations

- 5.10 The collaboration agreements involved Joesley and Wesley Batista and another 5 executives agreeing to pay a fine of R\$225 million.¹
- 5.11 J&F (and its subsidiaries) entered into a leniency agreement to cooperate voluntarily with authorities in their investigations and repair damages and losses arising from actions admitted by executives under the collaboration agreements. The leniency agreement requires J&F to pay a fine of R\$10.3 billion over 25 years.²
- 5.12 In September 2017, Joesley and Wesley Batista were arrested and charged with insider trading. Joesley and Wesley Batista have orders against them, pending the hearing of the charges, prohibiting them from being involved in the management of the JBS Group and J&F.

Good character condition

- 5.13 As a result of the media reports and information reported to us by the Investor's solicitors, the Regulator opened an investigation into whether the Investor was complying with the 'good character' consent condition.

6 The Regulator's findings

- 6.1 The Regulator concluded that:

Joesley and Wesley Batista

- (a) Joesley and Wesley Batista are no longer of good character;
- (b) All of the actions and behaviour of Joesley and Wesley Batista occurred in Brazil and that there is no evidence available to the Regulator (at this time) that the corruption or insider trading issues stemmed further, including to the Investor or to Scott;
- (c) Joesley and Wesley Batista are not exercising any control over the Investor, Scott or the Investor's investment in Scott;

The Investor

- (d) The Investor has breached condition two of the conditions of consent requiring that the individuals with control remain of good character;
- (e) The Investor is currently meeting all its other conditions of consent, including providing Scott with capital and useful connections in order for Scott to realise its diversification strategy and allowing it to strengthen its global reach;
- (f) The Investor has cooperated with the Regulator's investigation;

Scott

- (g) At this time, the Regulator has no evidence that Joesley and Wesley Batista, the Investor or the JBS Group, is exercising poor governance or control over Scott, is unduly influencing Scott's business, or is taking improper advantage of its shareholding in Scott.

¹ Approximately NZD \$87 million in August 2019.

² Approximately NZD \$4.0 billion in August 2019.

- (h) Scott, as a company listed on NZX, has separate corporate governance requirements and policies to those of JBS S.A. or any other part of the JBS Group and to a significant degree, Scott appears to be run as a separate entity and with its own controls and standards; and
- (i) Scott has a significant number of New Zealand investors and employees who have interests that could be adversely affected through any forced sell-down. Consequently, taking enforcement action could disproportionately impact on those committed to ensuring good governance and management at Scott.

7 Terms of settlement

7.1 The Regulator and the Investor have agreed to settle the investigation on the following terms:

- (a) The Investor confirms, to the best of its knowledge that:
 - (i) Joesley and Wesley Batista are not filling any governance or executive position in JBS S.A. or any other part of the JBS group; and
 - (ii) Joesley and Wesley Batista are not exercising any control over the Investor, Scott or the Investor's investment in Scott.
- (b) Subject to clause 7.1(c), the Investor undertakes to take all reasonable steps (including voting its shareholding) to ensure that at least half of the members of Scott's Board, excluding the Managing Director, are Independent Directors. This undertaking would not preclude Scott having occasional vacancies for Independent Directors, provided active steps were being taken to fill such vacant roles.
- (c) The Managing Director must not have a Disqualifying Relationship by virtue of a past or present relationship with the Investor. For the avoidance of doubt, Chris Hopkins will be deemed, for these purposes, as not having a Disqualifying Relationship with the Investor.
- (d) The Investor undertakes to procure that Scott's Chair and Chief Executive are made available to meet and speak freely with the Regulator for the purpose of the Regulator continuing to monitor the Investor's investment in Scott, including in relation to the Board's assessment of the absence of a Disqualifying Relationship for Independent Directors, or the Managing Director by virtue of a past or present relationship with the Investor.
- (e) Unless the parties agree otherwise, the Investor will dispose of its interest in Scott if:
 - (i) Joesley or Wesley Batista assume any governance or executive position in the JBS Group; or
 - (ii) any other person who the Regulator deems to be an 'individual with control' admits, or is formally charged or sanctioned for, insider trading, market manipulation, fraud, bribery or other corrupt offences connected with the 'Operation Car Wash' investigation, or any related investigation, unless that person ceases to be an 'individual with control' within six months of

the Regulator giving notice that it considers them to be subject to this provision; or

- (iii) in any capacity, Joesley or Wesley Batista exert Relevant Control over the Investor, Scott or the Investor's investment in Scott.
- (f) The Investor will report to the Regulator, as soon as reasonably possible after learning of the matters required to be reported:
 - (i) if it becomes aware of either Joesley or Wesley Batista having any governance or executive position in the JBS Group or exercising Relevant Control over any JBS Group entity;
 - (ii) on the outcome of any further inquiries, investigations or enforcement action involving Joesley Batista, Wesley Batista, J&F or the JBS Group arising from the bribery and corruption admissions or investigations in Brazil, including any further action taken in relation to the insider trading allegations (subject to any obligations of confidence imposed by the regulatory agencies involved or by court order);
 - (iii) what changes have been made across the JBS Group (with emphasis on the Investor) to ensure good corporate governance and conduct, particularly to guard against any tolerance for bribery and corruption or market manipulation.
 - (iv) on any other matter that might go to the good character of persons with control of the Investor (recognising that this is an existing condition of its consent); and
 - (v) any changes to the Managing Director on Scott's Board.
- 7.2 The Investor will make a payment of \$20,000 to the Regulator on account of the costs incurred in investigating the Investor's breach of condition two.
- 7.3 The Regulator will immediately end its investigation into the breach of condition two.
- 7.4 The Regulator may resume its investigation into the breach of condition two should any of the conditions in the terms of settlement be breached or if any of the information received under those terms raise concerns for the Regulator. The Regulator would give the Investor written notification of its decision to re-commence its inquiries.
- 7.5 In the event that the JBS Group is subject to significant changes to its structure (for example, an initial public offering in the USA), the Regulator and the Investor will review in good faith the ongoing appropriateness of the terms of this Agreement.
- 7.6 In settling the investigation on the terms set out in this Agreement, the Regulator has had regard to the Overseas Investment Office's enforcement criteria, including the Solicitor-General's Prosecution Guidelines and the Land Information New Zealand's Prosecution policy.

8 Public statements

- 8.1 The Regulator may make public statements in relation to the content of the settlement on or after the closure date, and will publish this Agreement on the Land Information New Zealand website.
- 8.2 Except as required by law, the Investor agrees that it will not make any public statement in relation to this Agreement or the investigation until after the Regulator has notified the Investor that details of the settlement have been published on the Overseas Investment Office website. The Investor will provide a copy of any statement to the Regulator at least 2 hours in advance of making the statement public.
- 8.3 The parties agree that any public statements relating to the investigation will be made in good faith and be consistent with the spirit and intent of this Agreement.

9 Entire Agreement

- 9.1 This Agreement constitutes the entire understanding and agreement between the parties in relation to the investigation, and fully supersedes any and all prior agreements, arrangements, representations or understandings (whether orally or in writing) between the parties pertaining to the investigation.
- 9.2 The parties agree that this Agreement is in full and final settlement of all claims and proceedings that the Regulator has, or may have, in respect of the Investor in relation to the Investment.
- 9.3 The parties represent and agree that they are each voluntarily entering into this Agreement having had the opportunity to receive independent legal advice.

10 Miscellaneous matters

- 10.1 This Agreement will be governed by, and construed in accordance with, the laws of New Zealand.
- 10.2 No amendment to this Agreement will be effective unless it is in writing and signed by all of the parties.
- 10.3 Any delay by the Regulator in acting upon any breach of this Agreement will not operate by way of waiver.
- 10.4 The parties may enter this Agreement by signing any number of counterparts, each of which will be treated as an original. All of the counterparts taken together will constitute a single document. A party may execute this Agreement by one signatory executing one counterpart and another signatory executing a different counterpart. A party's delivery of a signed facsimile or pdf counterpart of this Agreement will have the same legal effect as that party's delivery of a single original counterpart.

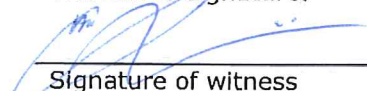
Execution

Signed by Vanessa Horne for and on behalf of **The Chief Executive of Land Information New Zealand** in the presence of:



Vanessa Horne

Witness to signature:



Signature of witness

ANNA KATE CONWAY SINCLAIR

Name of witness


SENIOR SOLICITOR

Occupation

WELLINGTON

City/town of residence

Signed by for and on behalf of **JBS Australia Pty Limited** in the presence of:



Witness to signature:



Signature of witness

JAUNTA DALE

Name of witness

LEGAL PRACTITIONER.

Occupation

IPSWICH, QLD, AUSTRALIA.

City/town of residence

