

ACQUISITION BY TIANCHENG (GERMANY) PHARMACEUTICAL HOLDINGS AG OF BIOTEST AG

Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

Whereas:

- (a) the Competition and Markets Authority (CMA) has reasonable grounds for suspecting that it is or may be the case that Tiancheng (Germany) Pharmaceutical Holdings AG (Tiancheng) and its associated company Bio Products Laboratory Holdings Limited and Biotest AG (Biotest) have ceased to be distinct;
- (b) the CMA is considering, pursuant to section 22 of the Act, whether it is or may be the case that a relevant merger situation has been created and whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition in any market or markets in the United Kingdom (UK);
- (c) the CMA wishes to ensure that no action is taken pending final determination of any reference under section 22 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference; and
- (d) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to Tiancheng and Bio Products Laboratory Holdings Limited (Bio Products) (Order).

Commencement, application and scope

1. This Order commences on the commencement date: 31 January 2018.
2. This Order applies to Tiancheng and Bio Products.

3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige Tiancheng or Bio Products to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

Management of the Biotest and Bio Products businesses until determination of proceedings

4. Except with the prior written consent of the CMA, Tiancheng and Bio Products shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
 - (a) lead to the integration of the Biotest business with the Bio Products business;
 - (b) transfer the ownership or control of the Biotest business or the Bio Products business or any of their subsidiaries; or
 - (c) otherwise impair the ability of the Biotest business or the Bio Products business to compete independently in any of the markets affected by the transaction.
5. Further and without prejudice to the generality of paragraph 4 and subject to paragraph 3, Tiancheng and Bio Products shall at all times during the specified period procure that, except with the prior written consent of the CMA:
 - (a) the Biotest business is carried on separately from the Bio Products business and the Biotest business's separate sales or brand identity is maintained;
 - (b) the Biotest business and the Bio Products business are maintained as a going concern and sufficient resources are made available for the development of the Bioest business and the Bio Products business, on the basis of their respective pre-merger business plans;
 - (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Biotest business or the Bio Products business;
 - (d) the nature, description, range and quality of goods and/or services supplied in the UK by each of the two businesses are maintained and preserved;

- (e) except in the ordinary course of business for the separate operation of the two businesses:
- (i) all of the assets of the Biotest business and the Bio Products business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Biotest business or the Bio Products business are disposed of; and
 - (iii) no interest in the assets of the Biotest business or the Bio Products business is created or disposed of;
- (f) there is no integration of the information technology of the Biotest or Bio Products businesses, and the software and hardware platforms of the Biotest business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Biotest business will be carried out by the Biotest business alone and for the avoidance of doubt the Bio Products business will not negotiate on behalf of the Biotest business (and vice versa) or enter into any joint agreements with the Biotest business (and vice versa);
- (h) all existing contracts of the Biotest business and the Bio Products business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff of the Biotest business or Bio Products business;
- (j) no key staff are transferred between the Biotest business and the Bio Products business;
- (k) all reasonable steps are taken to encourage all key staff to remain with the Biotest business and the Bio Products business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the Biotest business (or any of its employees, directors, agents or affiliates) to the Bio Products business (or any of its employees, directors, agents or affiliates), or vice versa, except where

strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory and/or accounting obligations or for due diligence, integration planning or the completion of any merger control proceedings relating to the transaction) and on the basis that, should the transaction be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

Compliance

6. Tiancheng and Bio Products shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
7. Tiancheng and Bio Products shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by Tiancheng and Bio Products and their subsidiaries with this Order. In particular, on 14 February 2018 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of Tiancheng and Bio Products or other persons of Tiancheng and Bio Products as agreed with the CMA shall, on behalf of Tiancheng and Bio Products, provide statements to the CMA in the forms set out in the Annex to this Order confirming compliance with this Order.
8. At all times, Tiancheng and Bio Products shall, or shall procure that Biotest shall, actively keep the CMA informed of any material developments relating to the Biotest business or the Bio Products business, which includes but is not limited to:
 - (a) details of key staff who leave or join the Biotest business or the Bio Products business;
 - (b) any interruption of the Biotest or Bio Products business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
 - (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the Biotest or Bio Products business including any substantial changes in customers' demand; and
 - (d) substantial changes in the Biotest or Bio Products business's contractual arrangements or relationships with key suppliers.

9. If Tiancheng or Bio Products has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that Tiancheng and/or Bio Products may be directed to appoint under paragraph 10.
10. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
11. Tiancheng and Bio Products shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

Interpretation

12. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
13. For the purposes of this Order:

'the Act' means the Enterprise Act 2002;

'an affiliate' of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

'Biotest' means Biotest AG;

'the Biotest business' means the business of Biotest and its subsidiaries carried on as at the commencement date;

'Bio Products' means Bio Products Laboratory Holdings Limited of Dagger Lane, Elstree, Hertfordshire, WD6 3BX, with company number 04564631.

'the Biotest business' means the business of Bio Products and its subsidiaries carried on as at the commencement date

'business' has the meaning given by section 129(1) and (3) of the Act;

'commencement date' means 31 January 2018;

'control' includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

'Tiancheng' means Tiancheng (Germany) Pharmaceutical Holdings AG;

'the decisions' means the decisions of the CMA on the questions which it is required to answer by virtue of section 35 of the Act;

'key staff' means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

'the ordinary course of business' means matters connected to the day-to-day supply of goods and/or services by Tiancheng or Bio Products and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of Tiancheng/Bio Products;

'specified period' means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act;

'subsidiary', unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

'the transaction' means the transaction by which Bio Products and Tiancheng have ceased to be distinct within the meaning of section 23 of the Act;

'the two businesses' means the Biotest business and the Bio Products business;

unless the context requires otherwise, the singular shall include the plural and vice versa.

Raúl Nieto, Assistant Director, Mergers

Compliance statement for Tiancheng

I [insert name] confirm on behalf of Tiancheng that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) Tiancheng has complied with the Order made by the CMA in relation to the transaction on [insert date of this Order] (the Order).
 - (b) Tiancheng's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by Tiancheng that might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the Biotest business with the Bio Products business;
 - (ii) transfer the ownership or control of the Biotest business or the Bio Products business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the Biotest business or the Bio Products business to compete independently in any of the markets affected by the transaction.
 - (b) The Biotest business has been carried on separately from the Bio Products business and the Biotest business's separate sales or brand identity has been maintained.
 - (c) The Biotest business has been maintained as a going concern and sufficient resources have been made available for the development of the Biotest business on the basis of its pre-merger business plans.
 - (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Biotest business except in the ordinary course of business.

- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the Biotest business has been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the Biotest business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the Biotest business have been disposed of; and
 - (iii) no interest in the assets of the Biotest business has been created or disposed of.
- (g) There has been no integration of the information technology of the Biotest or Bio Products businesses, and the software and hardware platforms of the Biotest business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Biotest business have been carried out by the Biotest business alone and, for the avoidance of doubt, the Bio Products business has not negotiated on behalf of the Biotest business (and vice versa) or entered into any joint agreements with the Biotest business (and vice versa).
- (i) All existing contracts of the Biotest business and the Bio Products business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Biotest business.
- (k) No key staff have been transferred between the Biotest business and the Bio Products business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Biotest business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other

information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Biotest business (or any of its employees, directors, agents or affiliates) to the Bio Products business (or any of its employees, directors, agents or affiliates), or vice versa.

(n) Except as listed in paragraph (o) below, there have been no:

- (i) key staff that have left or joined the Biotest business;
- (ii) interruptions of the Biotest business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
- (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Biotest business; or
- (iv) substantial changes in the Biotest business's contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. Tiancheng and its subsidiaries remain in full compliance with the Order and will, or will procure that Biotest, continue actively to keep the CMA informed of any material developments relating to the Biotest business in accordance with paragraph 8 of the Order.

Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

FOR AND ON BEHALF OF TIANCHENG

Signature

Name

Title

Date

Compliance statement for Bio Products

I [insert name] confirm on behalf of Bio Products that:

Compliance in the Relevant Period

5. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) Bio Products has complied with the Order made by the CMA in relation to the transaction on [insert date of this Order] (the Order).
 - (b) Bio Products' subsidiaries have also complied with this Order.
6. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by Bio Products that might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the Bio Products business with the Biotest business;
 - (ii) transfer the ownership or control of the Bio Products business or the Biotest business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the Bio Products business or the Biotest business to compete independently in any of the markets affected by the transaction.
 - (b) The Bio Products business has been carried on separately from the Biotest business and the Bio Products business's separate sales or brand identity has been maintained.
 - (c) The Bio Products business has been maintained as a going concern and sufficient resources have been made available for the development of the Bio Products business on the basis of its respective pre-merger business plans.
 - (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Bio Products business except in the ordinary course of business.

- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the Bio Products business has been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the Bio Products business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the Bio Products business have been disposed of; and
 - (iii) no interest in the assets of the Bio Products business has been created or disposed of.
- (g) There has been no integration of the information technology of the Biotest or Bio Products businesses, and the software and hardware platforms of the Bio Products business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Bio Products business have been carried out by the Bio Products business alone and, for the avoidance of doubt, the Biotest business has not negotiated on behalf of the Bio Products business (and vice versa) or entered into any joint agreements with the Bio Products business (and vice versa).
- (i) All existing contracts of the Biotest business and the Bio Products business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Bio Products business.
- (k) No key staff have been transferred between the Biotest business and the Bio Products business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Bio Products business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other

information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Bio Products business (or any of its employees, directors, agents or affiliates) to the Biotest business (or any of its employees, directors, agents or affiliates), or vice versa.

(n) Except as listed in paragraph (o) below, there have been no:

(v) key staff that have left or joined the Bio Products business;

(vi) interruptions of the Bio Products business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;

(vii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Bio Products business; or

(viii) substantial changes in the Bio Products business's contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

7. Bio Products and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Bio Products business in accordance with paragraph 8 of the Order.

Interpretation

8. Terms defined in the Order have the same meaning in this compliance statement.

FOR AND ON BEHALF OF BIO PRODUCTS

Signature

Name

Title

Date