

Completed acquisition by Tiancheng (Germany) Pharmaceutical Holdings AG of Biotest AG

Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 31 January 2018

We refer to your emails dated 1 February 2018 and 2 February 2018 requesting that the CMA consents to derogations to the Initial Enforcement Order of 31 January 2018 (the 'Initial Order'). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, Tiancheng (Germany) Pharmaceutical Holdings AG (**Tiancheng**) and Bio Products Laboratory Holdings Limited (**Bio Products**) are required to hold separate the Bio Products business from the Biotest business and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference. After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, Tiancheng, Bio Products and Biotest AG (**Biotest**) may carry out the following actions, in respect of the specific paragraphs:

1. Paragraphs 5(I) of the Initial Order

Pursuant to paragraph 5(I) of the Initial Order, Tiancheng and Bio Products are required at all times during the specified period to procure that 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 Bio Products business or the Biotest business 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).

To ensure fulfilment of statutory obligations under German law, the CMA consents to an employee of Creat Group Co., Ltd. (an affiliate of Tiancheng and Bio Products) sitting on the supervisory board of Biotest and receiving confidential information

related to Biotest subject to the employee signing a non-disclosure agreement in the form approved by the CMA.

The CMA notes, as set out in paragraphs 3.6 to 3.14 of its [guidance on initial enforcement orders and derogations in merger investigations](#), that the passing of confidential or proprietary information from the target to the acquirer is not prohibited 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) [...]'*. The CMA therefore encourages merging parties and their advisers to 'self-assess' whether the passing of confidential or proprietary information requires a derogation from the IEO prior to submitting any request to the CMA.

Raul Nieto
Assistant Director
2 February 2018