

***Case No COMP/M.6438 - SARIA/ TEEUWISSEN/  
JAGERO II/ QUINTET/ BIOIBERICA***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 10/02/2012

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## EUROPEAN COMMISSION

Brussels, 10.2.2012  
C(2012) 912 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

### To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.6438 – SARIA/ TEEUWISSEN/ JAGERO II/  
QUINTET/ BIOIBERICA  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 6 January 2012, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Saria Bio-Industries AG & Co. KG ("Saria", Germany), belonging to Rethmann AG & Co. KG ("the Rethmann Group", Germany), acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the undertakings Teeuwissen Holding B.V. ("Teeuwissen", the Netherlands), Quintet Beheer B.V. ("Quintet", the Netherlands) and Bioiberica S.A. ("Bioiberica", Spain), and joint control of the undertaking Jagero Holding II, S.L. ("Jagero II", Spain), along with Mr Mohamad Jalal Al-Laham (Mr Laham) and Mr Fernando Ruiz Catena (Mr Fernando Ruiz), by way of purchase of shares.<sup>2</sup>
2. Saria, Mr Laham and Mr Fernando Ruiz are designated hereinafter as the "notifying parties". Teeuwissen, Quintet, Jagero II and Bioiberica are collectively referred to as

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> Publication in the Official Journal of the European Union No C 12, 14.1.2012, p. 19. For the reasons described in Section 2 of this Decision, it is concluded contrary to the view taken by the notifying parties at the time of notification that the proposed transaction will result in the acquisition of joint control over Teeuwissen by Mr Laham and Saria.

the "targets". Saria and the targets are collectively designated hereinafter as the "parties to the proposed transaction".

## **I. THE PARTIES**

3. Saria is active in recycling and management of animal, vegetable and agricultural by-products. Saria manufactures products and ingredients for human consumption, animal nutrition, agricultural and industrial applications, biodiesel and biogas. Saria is part of the privately owned Rethmann Group which also has activities in (i) waste disposal, water management and recycling and (ii) logistics.
4. Teeuwissen is a Dutch holding company active in the commercialisation of meat for human consumption and the purchase and processing of abattoir by-products (ABPs). The ABPs purchased by Teeuwissen are used *inter alia* for (i) the production of casings which are then sold for the production of sausage-related products, (ii) the production of active pharmaceutical ingredients (APIs) and (iii) as ingredients for wet pet food.
5. Jagero II is a Spanish holding company active in the commercialisation of meat for human consumption, the production of casings and the processing of ABPs to be used by various industries including the pharmaceutical and pet food industries.
6. Quintet is a Dutch holding company with interests in companies with very limited activities in the processing of ABPs mainly outside the European Union.
7. Bioiberica is a Spanish company which is active in production and commercialisation of APIs and to a lesser extent finished dose pharmaceutical products.
8. Mr Laham and Mr Fernando Ruiz are entrepreneurs with interests in the targets (excluding Bioiberica). Mr Laham and Mr Fernando Ruiz do not have interests in companies other than the targets (excluding Bioiberica).

## **II. THE OPERATION**

9. The notifying parties submit that the four acquisitions bringing about the proposed transaction will result in Saria exercising either (negative) sole control or joint control along with Mr Laham and Mr Fernando Ruiz of the targets as follows.
  - (a) Acquisition of sole negative control of Teeuwissen by Saria
10. At present, Saria holds 24.99% of the shares in Teeuwissen. The remainder of Teeuwissen's capital is held through the holding company Jagero Holding BV ("Jagero Holding") by a number of natural persons, including Mr Laham, [...].
11. After the proposed transaction, Saria will hold 50% of the capital of Teeuwissen with Jagero Holding controlling the remaining 50%. The notifying parties submit that [...] Mr Laham [...] would not be able post-transaction to determine on a stand-alone basis the voting behaviour of Jagero Holding in Teeuwissen. [...] Therefore, the notifying parties conclude that the only entity which would be able to exercise decisive influence over Teeuwissen post-transaction will be Saria.
12. The Commission does not share the notifying parties' view concerning the control structure of Teeuwissen. [...].

13. Whilst it may be true that there is no formal agreement between the shareholders of Jagero Holding to exercise jointly their voting rights in such a way as to avoid a deadlock situation, it is considered that Jagero Holding's shareholders will always have a very strong incentive to align their position to that of Mr Laham, who is also the president of Teeuwissen, in order to prevent Saria from managing autonomously and independently the activities of Teeuwissen, [...].
14. In this regard, [...].
15. In view of the above, and contrary to the position of the notifying parties, it is therefore concluded that Mr Laham currently enjoys positive *de facto* control over [...] Teeuwissen.
16. In accordance with recital 62 of the Jurisdictional Notice, "*[u]nlike sole control, which confers upon a specific shareholder the power to determine the strategic decisions in an undertaking, joint control is characterized by the possibility of a deadlock situation resulting from the power of two or more parent companies to reject proposed strategic decisions. It follows, therefore, that these shareholders must reach a common understanding in determining the commercial policy of the joint venture and that they are required to cooperate.*"
17. [...] Mr Laham will be able post-transaction to determine a deadlock situation on strategic decisions at Teeuwissen, as will Saria which will hold the remaining 50% of the shares in Teeuwissen.<sup>3</sup>
18. It is therefore concluded that as a result of the proposed transaction Mr Laham and Saria will acquire joint control of Teeuwissen.

(b) Acquisition of sole negative control of Quintet by Saria

19. At present, Quintet is not controlled by any company or individual. Saria holds 24.99% of the shares in Quintet whilst the remainder of Quintet's capital is held by a number of natural persons, including [...].
20. After the proposed transaction, Saria will hold 50% of the capital of Quintet whilst each of the other current shareholders will hold a proportionally lower number of shares which will in aggregate account for the remaining 50% of Quintet's share capital. As a result, Saria will be able to exercise sole (negative) control of Quintet as it alone will be able to block any decision-making in the company. This is in line with recital 58 of the Jurisdictional Notice which states that "*[a] typical situation of negative sole control occurs where one shareholder holds 50 % in an undertaking whilst the remaining 50 % is held by several other shareholders*".

(c) Acquisition of de facto joint control of Jagero II by Saria

21. At present, Saria holds 24.99% of the shares in Jagero II. The remainder of Jagero II's capital is held by a number of natural persons. The shareholding of Jagero II is made up of two classes of share, A and B. [...].

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<sup>3</sup> This conclusion is reinforced by the fact that [...] Saria will have the right to [...]. [A] similar [...] right is enjoyed by Mr Laham [...].

22. Each of Mr Laham and Mr Fernando Ruiz indirectly hold 1 class B share. [...]. Strategic, competitive resolutions at Jagero II (e.g. annual accounts, acquisitions and divestments, nomination director, etc) are taken by its general meeting of shareholders and require a majority of 75% of the votes validly casted.
23. Mr Laham and Mr Fernando Ruiz are currently able to jointly reach the quorum of 75% required to reach decisions within the shareholders meeting of Jagero II. Mr Laham and Mr Fernando Ruiz therefore currently exercise joint control over Jagero II.
24. By means of the proposed transaction, Saria intends to purchase an additional 25.01% of the shares in Jagero II pro rata from the other shareholders. As a result, Saria will hold 50% of the capital of Jagero II but significantly less than 50% of the voting rights due to the existence of the priority shares which will be retained by two of the existing shareholders, namely Mr Laham and Mr Fernando Ruiz.
25. The notifying parties consider however that Mr Laham and Mr Fernando Ruiz will have an incentive to align their voting behaviour to that of Saria with the result that Saria will acquire joint control of Jagero II together with the two individuals on a *de facto* basis.
26. In accordance with recital 62 of the Jurisdictional Notice: "*Joint control exists where two or more undertakings or persons have the possibility of exercising decisive influence over another undertaking. Decisive influence in this sense normally means the power to block actions which determine the strategic commercial behaviour of an undertaking*". Recital 63 of the Jurisdictional Notice further stipulates that "[...] *the acquisition of joint control can also be established on a de jure or de facto basis. There is joint control if the shareholders (the parent companies) must reach agreement on major decisions concerning the controlled undertaking (the joint venture)*."
27. In the present case, it would appear extremely unlikely that Mr Laham and Mr Fernando Ruiz would not take into account Saria when taking strategic decisions in Jagero II. Post-transaction, Mr Laham and Mr Fernando Ruiz will both hold interests in companies in which Saria will be able to autonomously block the decision-making power. Given that [...], it is very unlikely that Mr Laham and/or Mr Fernando Ruiz would exercise their priority rights in Jagero II against Saria.
28. Furthermore, Saria enjoys a financial strength that none of the other minority shareholders in Jagero II possesses. [...].
29. In view of the above, it can be therefore concluded that post-transaction Mr Laham and Mr Fernando Ruiz will have to reach an agreement with Saria on major decisions concerning the controlled undertaking. As a result, Saria will exercise *de facto* joint control over Jagero II together with Mr Laham and Mr Fernando Ruiz.

(d) Acquisition of sole (negative) control of Bioiberica by Saria

30. At present, Bioiberica is owned by two companies that are independent of any of the parties to the transaction. Bioiberica's present owners have entered into an agreement to sell the company to an acquisition vehicle established for the purpose of the transaction ("[X]"), conditional on obtaining clearance for all four interrelated transactions concerned by the notified operation.
31. Upon completion of the transaction, Saria will control 50% of the shares in [X] whilst the remaining shares will be held ultimately by a number of individual persons, namely the

same shareholders holding interests in the remaining targets. As a result, Saria will be able to exercise sole negative control of Bioiberica. This is in line with recital 58 of the Jurisdictional Notice which states that "[a] typical situation of negative sole control occurs where one shareholder holds 50 % in an undertaking whilst the remaining 50 % is held by several other shareholders".

(e) Interdependent transactions

32. In accordance with recitals 38 and 39 of the Jurisdictional Notice: *"Two or more transactions constitute a single concentration for the purposes of Article 3 if they are unitary in nature. [...] In order to determine the unitary nature of the transactions in question, it is necessary, in each individual case, to ascertain whether those transactions are interdependent, in such a way that one transaction would not have been carried out without the other. [...] Recital 20 to the Merger Regulation explains in this respect that it is appropriate to treat as a single concentration transactions that are closely connected in that they are linked by condition."* Furthermore, according to recital 43 of the Jurisdictional Notice, *"[t]he required conditionality implies that none of the transactions would take place without the others and they therefore constitute a single operation. Such conditionality is normally demonstrated if the transactions are linked de jure, i.e. the agreements themselves are linked by mutual conditionality. If de facto conditionality can be satisfactorily demonstrated, it may also suffice for treating the transactions as a single concentration."*
33. According to the notifying parties, the four transactions are mutually interdependent as they are connected from a legal and economic perspective. The respective sale and purchase agreements (SPAs) contain legal conditions which imply that none of the four transactions can take place without the others. Furthermore, the transactions took place within the same time frame and one and the same company, Saria, acquired different qualities of control over the target companies.
34. The transactions are also economically linked since (i) Saria will acquire from the other current shareholders of Teeuwissen, Quintet and Jagero II an additional 25.01% in the shareholding of each of these three companies; and (ii) in turn, [...]. Therefore, the Bioiberica transaction would not have occurred without [...] the other three transactions.
35. In view of the above, it can be concluded that the four transactions are legally and economically linked between each other. As a result, the four transactions shall be assessed as a single concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

### III. EU DIMENSION

36. Although the undertakings concerned have an aggregate worldwide turnover exceeding EUR 5 000 million, the notified transaction does not have an EU dimension pursuant to Article 1(2) of the Merger Regulation as only Saria has a turnover in the European Union exceeding EUR 250 million. The proposed transaction does however meet the alternative thresholds of Article 1(3) of the Merger Regulation.<sup>4</sup>

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<sup>4</sup> [...].

#### IV. COMPETITIVE ASSESSMENT

37. The proposed transaction leads to horizontally affected markets in the supply of ingredients for the wet pet food industry in the United Kingdom and France where Saria and Teeuwissen/Jagero II are active. The proposed transaction also leads to a minor horizontal overlap in the trade of pork meat (and pork meat by-products) to industrial processors and traders but this overlap does not however give rise to an affected market.<sup>5</sup>
38. In addition, the proposed transaction gives rise to a series of vertical relationships resulting from Teeuwissen's and Jagero II's activities in abattoir by-products (ABPs) which are upstream of Bioiberica's activities in the production of active pharmaceutical ingredients (APIs). In particular, these vertical relationships concern: (i) the purchase and processing of cartilage (upstream) and the production of chondroitin sulphate (downstream); (ii) the purchase and processing of hen combs (upstream) and the production of hyaluronic acid (downstream); and (iii) the purchase and processing of pig bowels/extraction of pig intestinal mucosa (upstream) and the production of heparin and certain by-products (downstream).<sup>6</sup>
39. None of the above-mentioned relationships however leads to vertically affected markets as the market shares of the parties to the proposed transaction in all the markets concerned would remain below 25% under all plausible market definitions. In view of the lack of any vertically affected markets arising from the proposed transaction and the absence of any concerns from third parties contacted as part of the market investigation in the present case, these vertical relationships will not be further addressed in this Decision which will instead assess the horizontal overlaps arising in the production and sale of ingredients for wet pet food in the United Kingdom and France.

##### A. Relevant product markets

###### *Production and sale of ingredients for wet pet food*

40. Both Saria and Teeuwissen/Jagero II operate in the production and sale of ingredients for wet pet food.
41. Regulation (EC) No 1069/2009 of the European Parliament and of the Council, of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation),<sup>7</sup> classifies those non-food grade ABPs which cannot be used for further processing into products for human consumption

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<sup>5</sup> The proposed transaction would lead to a combined market share of less than [0-5]% of the total volume of pork meat traded in the EU in 2010.

<sup>6</sup> For completeness it is noted that Bioiberica also uses certain by-products of the transformation of pig intestinal mucosa into heparin, namely fat and liquid hydrolyzed proteins (i.e., peptides and amino acids), for the production of (i) hydrolyzed protein compound used in pig and poultry feed; (ii) plant growth regulators; and (iii) amino acids based insect attractants. To the best of Bioiberica's knowledge, none of its competitors active in the manufacture of heparin also produces these by-products. The quantities produced by Bioiberica of each product are not significant and its position is minimal in each of them. No concerns were raised during the market investigation concerning these products. These by-products of the heparin manufacturing process are therefore not further addressed in this Decision.

<sup>7</sup> OJ L 300, 14.11.2009, articles 7-10.

according to the level of risk they pose to public and animal health into one of three categories of materials: Category 1, Category 2 and Category 3.<sup>8</sup>

42. In previous decisions, the Commission has included within a segment known as “other Category 3 ABPs” a number of products from different livestock that are processed into low value meat meal, fat and water which are in turn used for pet food, compound feed and technical applications.<sup>9</sup> In those instances, the Commission did not reach a final conclusion on the precise scope of the product market.<sup>10</sup>
43. The Category 3 ABPs used as ingredients in wet pet food are sometimes cut and mixed by specialized companies such as Saria and Teeuwissen according to customers’ demands but are always further processed into deep frozen blocks or to chilled quantities (to preserve all properties of the Category 3 ABPs) before their sale to the wet pet food industry.
44. The use of these other Category 3 ABPs for the production of wet pet food is an alternative to their rendering for the production of meals and fats which can be used *inter alia* in the production of dry pet food.<sup>11</sup>
45. The market investigation in the present case has confirmed the appropriateness of the distinction from the demand side perspective between ingredients for wet pet food on the one hand and dry pet food on the other hand. For the purposes of the present Decision, however, the exact product market definition for wet pet food ingredients can be also left open since the proposed transaction would not raise serious doubts under any alternative product market definition.

## **B. Relevant geographic market**

### *Production and sale for ingredients for wet pet food*

46. In previous decisions, the Commission has left open the precise geographic scope of the market for the purchase and processing of other Category 3 ABPs.<sup>12</sup> It has however

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<sup>8</sup> Category 1 materials are mainly animal by-products suspected of being infected by certain residues or diseases (e.g. BSE) as well as certain tissues and by-products that are regarded as high risk material. Category 1 materials should be disposed in category 1 rendering plants or have to be incinerated directly. Category 2 materials such as dead animals which are not infected by dangerous disease are also regarded as risk material and have to undergo a special treatment before their disposal. Category 3 materials are regarded as low risk material and comprise all other ABPs which are not used for human consumption purposes.

<sup>9</sup> See, for example, Case No COMP/M.3337 – *Best Agrifund/Nordfleisch*, para. 149 or Case No COMP/M.3605 – *Sovion /HMG*, para. 152.

<sup>10</sup> See, for example, Case No COMP/M.3605 – *Sovion /HMG*, para. 152 or Case No COMP/M.3337 – *Best Agrifund/Nordfleisch*, para. 150.

<sup>11</sup> Saria is active in rendering activities which in broad terms consist of drying and pressing ABPs to produce fats and proteins to be used for dry pet food, animal feed compounds and fertilisers. Teeuwissen is not present in this sector. Whilst wet pet food is typically sold in cans and pouches, dry pet food is normally sold in bags.

<sup>12</sup> See, as a way of illustration, Case No COMP/M.3135 – *Best Agrifund/Dumeco*, para. 19; Case No COMP/M.3337 – *Best Agrifund/Nordfleisch*, paras. 151 and 152 or Case No COMP/M.3605 – *Sovion/HMG*, para. 152.

indicated that the market could be national due to the significant relevance transport costs play in relation to the value of the products.<sup>13</sup>

47. The notifying parties submit that the assessment of the proposed transaction should be made on the basis of national markets. However, as the proposed transaction does not raise serious doubts even on this basis, the precise geographic scope of the market for wet pet food ingredients can be also left open in the present case.

### C. Competitive assessment

#### *Production and sale of ingredients for wet pet food*

48. The proposed transaction leads to affected markets in the production and sale of ingredients for wet pet food in the United Kingdom and France.
49. In the United Kingdom, as shown in the table below, the proposed transaction leads to a combined market share in volume of [40-50]% ([40-50]% in value) though with a relatively small increment of [0-5]%. Saria's existing market share in the United Kingdom derives from the majority stake it acquired in Prosper de Mulder ('PDM') in 2011. The second largest supplier on the market to the merging parties is the privately owned Leo Group which has 10 operational sites across the United Kingdom. The company has seen its market share increase from [20-30]% in 2008 to approximately [20-30]% in 2010. During the same period, Saria (PDM) has also lost market share to Stafford By-Products which the parties believe has been successful in growing its market share by offering long term supply contracts to small and medium sized producers of wet pet food. In addition, other suppliers including abattoirs have been successful in increasing their combined market shares to more than [20-30]% in 2010.

**Table 1: Production and sale of ingredients for wet pet food in the United Kingdom, 2008-2010**

Company	2008		2009		2010	
	Value (in Million EUR)	Market Share in value (%)	Value (in Million EUR)	Market Share in value (%)	Value (in Million EUR)	Market Share in value (%)
SARIA (PDM)	[...]	[50-60]%	[...]	[40-50]%	[...]	[40-50]%
TEEUWISSEN / JAGERO II	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
<b>COMBINED</b>	[...]	<b>[60-70]%</b>	[...]	<b>[40-50]%</b>	[...]	<b>[40-50]%</b>
LEO GROUP	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
STAFFORD BY-PRODUCTS	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
OTHERS/SLAUGHTERHOUSES	[...]	[10-20]%	[...]	[20-30]%	[...]	[20-30]%
TOTAL	[...]	100%	[...]	100%	[...]	100%

Source: Notifying parties' estimates.

50. The market investigation in the present case has confirmed the parties' submission that the proposed transaction will not have a significant impact on the structure of the market for wet pet food ingredients in the United Kingdom for a number of reasons.

<sup>13</sup> See, for example, Case No COMP/M.3175 – *Best Agrifun/ Dumeco*, para. 26.

51. Firstly, respondents to the Commission's requests for information have indicated that the merging parties (i.e. Saria (PDM) / Teeuwissen) are not each other's closest competitors given the differing focus of their respective businesses. Whilst Saria (PDM) was seen as the market leader in wet pet food ingredients (and also a significant supplier of ingredients for dry pet food), Teeuwissen was perceived as playing a marginal role if any on the market given its focus on casings for the sausage industry.
52. Secondly, a majority of wet pet food manufacturers confirmed that if the merged entity were to increase the price of ABPs after the proposed transaction they would be able to switch to alternative suppliers and/or import material from other EU Member States. As far as switching is concerned, the market investigation demonstrated that supply contracts to wet pet food manufacturers are relatively short term. In addition, the market investigation confirmed that there are no significant barriers to intra-Community trade. Indeed trade also takes place on a wider global basis as products which were used in the EU for wet pet food now find outlets in the human food chain in emerging markets such as China. Moreover, European suppliers sometimes need to import from outside the EU to meet their customers' requirements.
53. Finally, as the merging parties are not vertically integrated upstream into the slaughtering business, they would not be able to hinder the expansion of competitors as they do not have control over inputs (i.e. slaughtered animals).
54. With respect to France, the proposed transaction leads to a combined market share in volume of [10-20]% with an increment of [0-5]%. The closest competitor to the merging parties is Prodia which is the clear market leader with a share of [60-70]%. The third largest competitor is Atlantic Pet Food with a market share of [10-20]%. The proposed transaction thus does not lead to an appreciable modification of the market structure in France. The lack of any significant change to the market structure in France was also confirmed by the majority of responses to the Commission's requests for information addressed to customers and competitors in wet pet food ingredients which expressed no concerns regarding the possible impact of the proposed transaction.
55. In view of the relatively limited increment in market share arising from the proposed transaction, the presence of a number of competitors to the merged entity and the absence of barriers to trade within the EU, it is concluded that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards the production and sale of ingredients for wet pet food in the United Kingdom and France.

## V. CONCLUSION

56. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission  
(Signed)  
Joaquín ALMUNIA  
Vice-President*