

## Announcement of appeal<sup>1</sup>

<b>Case</b>	A-003-2011
<b>Appellant</b>	BASF SE, Ludwigshafen, Germany
<b>Appeal received on</b>	21/02/2011
<b>Subject matter</b>	A decision taken by ECHA (the Agency) pursuant to Article 30 (3) of the REACH Regulation <i>Data-sharing - permission to refer - “every effort”</i>
<b>Contested decision</b>	DSH-30-3-D-0005-2010
<b>Language of the case</b>	English

### Remedy sought by the appellant

The appellant requests that the Board of Appeal should:

- annul the contested decision or, as an alternative, order the Agency to act to that effect;
- order the Agency to bear the cost of the proceedings; and
- take such other or further measures as justice may require.

### Pleas in law and main arguments

A joint registration dossier was compiled by the appellant as the lead registrant (under Article 11(1) REACH) for Lysmeral (EC Number 201-289-8; hereinafter referred to as the ‘substance’). In the contested decision, the Agency granted the addressee permission to refer to vertebrate animal studies contained in the joint registration dossier; this was because it was the Agency’s view that the appellant had failed to make “every effort” to ensure that costs were shared in a fair, transparent and non-discriminatory way.

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<sup>1</sup> Announcement published in accordance with Article 6(6) of Regulation (EC) No 771/2008 laying down the rules of organisation and procedure of the Board of Appeal of the European Chemicals Agency.

The appellant argues that the Agency's decision to grant this permission is unlawful as the conditions for the application of Art. 30 (3) REACH were not met. The appellant argues that:

1. Three of the studies affected by the contested decision are not in the appellant's ownership but of two other companies; these companies are potential registrants of the substance in the future and had conferred certain rights on the appellant with regard to registration of the substance. Consequently, these studies should not have become part of the contested decision as the study owners did not participate in the data sharing dispute.
2. The appellant did not refuse to provide proof of costs of studies requested by the addressee, nor did the appellant refuse to provide studies as such to the addressee.
3. The appellant made every effort to ensure that costs are shared in a fair, transparent and non-discriminatory way:
  - a) the cost sharing proposed was fair, because the appellant proposed a cost sharing model based on a pricelist which is recommended by the European branch of the International Fragrance Association to their members for cost sharing in the context of REACH;
  - b) the approach taken was transparent, because the information on costs communicated to the addressee included pricing mechanisms, the nature of the offer (estimate or binding), and details of the studies on which the costs were based; and
  - c) it was non-discriminatory, because the appellant will apply the same terms to all participants in the same SIEF.
4. The conclusion drawn by the Agency that the appellant acted unilaterally and therefore bore a specific responsibility to provide justifications for the cost sharing methods was incorrect. According to the appellant, the addressee decided not to become active in the dossier preparation.
5. Certain pieces of evidence cited by the Agency in support of its finding of unilateral conduct by the appellant in fact concerned another substance which is not the subject of this data sharing dispute. The appellant therefore argues that the Agency was wrong in its assessment of the underlying facts in this regard.

### **Further information**

The rules for the appeal procedure and other background information are available on the "Appeals" section of the Agency's website:

[http://echa.europa.eu/appeals/app\\_procedure\\_en.asp](http://echa.europa.eu/appeals/app_procedure_en.asp)