

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

<b>Case</b>	A-020-2015
<b>Appellant</b>	Lysoform Dr. Hans Rosemann GmbH, Germany Bode Chemie GmbH, Germany B. Braun Melsungen AG, Germany Diversey Europa Operations BV, The Netherlands Ecolab Deutschland GmbH, Germany Schülke & Mayr GmbH, Germany
<b>Appeal received on</b>	28 August 2015
<b>Subject matter</b>	A decision taken by the European Chemicals Agency (hereinafter the 'Agency') including a company on the list of suppliers of relevant substances and products as per Article 95(1) of the Biocidal Products Regulation 528/2012 (hereinafter 'the BPR')
<b>Keywords</b>	<i>Biocidal Products — Active substance — Article 95 list — Admissibility</i>
<b>Contested Decision</b>	ACC-D-1128588-38-00/F
<b>Language of the case</b>	English

### Remedy sought by the Appellant

The Appellants request the Board of Appeal to declare the appeal admissible and well-founded, annul the Contested Decision and order the Agency to pay the costs of the proceedings.

### Pleas in law and main arguments

The Contested Decision was adopted on 16 July 2015 pursuant to Article 95(1) of the BPR. The Contested Decision included a competitor company to the Appellants (hereinafter 'the other company') to a list of suppliers of active substances and biocidal products that the Agency publishes on its website in accordance with Article 95 of the BPR (hereinafter 'the Article 95 List').

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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 Appellants challenge the Contested Decision on, amongst others, the following grounds.

The Appellants submit that by including the other company on the Article 95 List, the Agency has failed to apply the data sharing rules laid down in Articles 62 and 63 of the BPR. The Appellants consider that these articles required the other company to negotiate access to vertebrate animal data owned by the Appellants. The Appellants submit that the other company has not paid a proportionate fee for that data and that the Agency has therefore failed to address a situation in which the other company was placed in the same position as the Appellants without the other company having made a similar investment in terms of the man-management, effort and costs attributable to the generation of the data.

The Appellants submit further that the Agency has incorrectly applied Article 95(1) of the BPR as the other company submitted a dossier that the Appellants consider to be incomplete for the purpose of fulfilling the information requirements of the BPR. The Appellants also submit that the Agency has treated companies in a similar situation differently because the other company, contrary to the Appellants, did not have to submit the same information and therefore different conditions were imposed on the other company and the Appellants.

#### **Other information**

Article 77(1) of the BPR states that Article 93 of the REACH Regulation applies to appeal procedures lodged under the BPR.

The appeal was dismissed as manifestly inadmissible by a decision of the Chairman of the Board of Appeal of 25 September 2015 taken pursuant to Article 93(2) of the REACH Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals.

#### **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/web/guest/regulations/appeals>