

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

<b>Case</b>	A-001-2016
<b>Appellant</b>	Troy Chemical Company B.V., the Netherlands
<b>Appeal received on</b>	13 January 2016
<b>Subject matter</b>	A decision taken by the European Chemicals Agency (the 'Agency') pursuant to Article 63(3) of the Biocidal Product Regulation (hereinafter 'the BPR')
<b>Keywords</b>	<i>Biocidal products - Data sharing dispute - Permission to refer - Every effort – Article 95</i>
<b>Contested Decision</b>	DSH-63-3-D-0017-2015
<b>Language of the case</b>	English

### Remedy sought by the appellant

The Appellant requests the Board of Appeal to annul the Contested Decision and order the Agency to refund the appeal fee.

### Pleas in law and main arguments

The Contested Decision was adopted by the Agency on 8 January 2016. Pursuant to Article 63(3) of the BPR, the Agency granted a company (hereinafter 'the Prospective Applicant') a permission to refer to the Appellant's studies on 3-iodo-propynylbutylcarbamate for the purpose of Article 95 of the BPR.

The Appellant submits that the Contested Decision does not follow the procedure laid down in Article 63(3) of the BPR as the Agency adopted a data sharing decision even though the Prospective Applicant had not made a payment to the Appellant before initiating the data sharing dispute. The Appellant submits further that, for the same reason, the Agency breached the substantive criterion of Article 63(3) of the BPR as well as the Agency's practical guide on BPR, Special series Data Sharing.

The Appellant also claims that the Agency made an error of assessment in finding that the Prospective Applicant had made every effort to reach a data sharing agreement even though the Prospective Applicant had not made a payment of a proportion of the shared costs nor defined its position as regards a number of open questions.

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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 breached Article 95 of the BPR by stating in the Contested Decision that the amounts received by the Appellant for the same studies pursuant to data sharing agreements concluded under Directive 98/8/EC concerning the placing of biocidal products on the market should be taken into account for a fair and non-discriminatory cost-sharing under the BPR.

#### **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>