

[REDACTED]  
Helsinki, 1 June 2018

*The Claimant*

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Copy to:  
*The Other Party*

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Decision number: [REDACTED]  
Dispute reference number: [REDACTED]  
Name of the substance (the 'Substance'): [REDACTED]  
EC number of the Substance: [REDACTED]

**DECISION ON A DISPUTE RELATED TO ACCESS TO A JOINT SUBMISSION AND THE SHARING OF DATA**

**a. Decision**

**ECHA does not grant you the permission to refer to the information you requested from the Existing Registrant of the Substance.**

This decision is adopted under Articles 27(6) and 11 of Regulation (EC) No 1907/2006 ('REACH Regulation')<sup>1</sup> and Article 5 of the Commission Implementing Regulation (EU) 2016/9 on joint submission of data and data-sharing in accordance with REACH ('Implementing Regulation 2016/9')<sup>2</sup>.

The reasons for this decision are set out in Annex I.

This decision will be published in an anonymised version on ECHA's website<sup>3</sup>.

**b. Recommendation**

Under Articles 27 and 11 of the REACH Regulation and the Implementing Regulation 2016/9,

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<sup>1</sup> Regulation (EC) N° 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, *OJ L 396*, 30.12.2006, p.1, as last amended.

<sup>2</sup> Commission Implementing Regulation (EU) 2016/9 of 5 January 2016 on joint submission of data and data sharing in accordance with Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), *OJ L 3*, 6.1.2016, p.41.

<sup>3</sup> Available at <https://echa.europa.eu/regulations/reach/registration/data-sharing/data-sharing-disputes/echa-decisions-on-data-sharing-disputes-under-reach>.

the parties must still make every effort to reach an agreement on the sharing of the information and costs related to the access to the joint submission. Therefore, the parties should continue to negotiate in order to reach an agreement that will be satisfactory for both parties. If the future negotiations fail again, the Claimant is free to submit another claim, covering the efforts that occurred after the submission date of the dispute claim leading to the present decision (i.e. 22 March 2018).

Advice and further observations are provided in Annex II.

### **c. Appeal**

Either party may appeal this decision to the Board of Appeal of ECHA within three months of its notification. The appeal must set out the grounds for appeal. If an appeal is submitted, this decision will be suspended. Further details, including the appeal fee, are set out at <http://echa.europa.eu/web/guest/regulations/appeals>.

Yours sincerely,

Christel Schilliger-Musset<sup>4</sup>

Director of Registration

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<sup>4</sup> As this is an electronic document, it is not physically signed. This decision has been approved according to the ECHA's internal decision-approval process.

## Annex I: REASONS FOR THE DECISION

### A. Applicable law

1. When a dispute is submitted to ECHA pursuant to Article 27(5) of the REACH Regulation, ECHA performs an assessment of the parties' efforts to reach an agreement (Article 5 of the Implementing Regulation 2016/9). According to Article 27(6) of the REACH Regulation and Article 3(2) of the Implementing Regulation 2016/9, ECHA may grant a permission to refer to the requested studies and access to the joint submission, if the claimant has made every effort to find an agreement on the sharing of the data and the access to the joint submission, and the other party has failed to do so. The permission to refer is subject to the proof that the potential registrant has paid a share of the costs incurred by the previous registrant(s).
2. The obligation to make every effort to find an agreement that is fair, transparent and non-discriminatory is laid down in Articles 27(2) and 27(3) of the REACH Regulation. It is further defined in Articles 2 and 4 of the Commission Implementing Regulation. Under Article 11 of the REACH Regulation and Article 3 of the Commission Implementing Regulation, all registrants of the same substance must be part of the same registration ('joint submission obligation') and share the costs related to the joint submission.
3. Making every effort means that the existing and potential registrants must negotiate as constructively as possible and in good faith. They must make sure that the negotiations move forward in a timely manner, express their arguments and concerns, ask questions and reply to each other's arguments, concerns and questions. They must try to understand the other party's position and consider it in the negotiations. Making every effort also means that the parties need to be consistent in their negotiating strategy. They should raise their concerns in a timely manner and behave in a consistent and predictable manner as reliable negotiators. When they face dissent on an aspect, the parties have to explore alternative routes and make suitable attempts to unblock the negotiations. As the potential and existing registrants themselves bear the obligation to make every effort to find an agreement, they need to exhaust all possible efforts before submitting a dispute to ECHA with the claim that negotiations have failed.

### B. Summary of facts

4. This summary of facts is based on the documentary evidence submitted by the Claimant on 22 March 2018 and by the Other Party on 3 May 2018.
5. On 12 February 2018, the Claimant contacted the Other Party via the email address [REDACTED], thanked them *'for the phone call last week'*, and stated that they would like *'to apply for REACH as a registrant'*.<sup>5</sup> The Claimant asked whether the Other Party is *'prepared to share REACH with [the Claimant] and what are [the Other Party's] conditions'*.<sup>6</sup>
6. On 19 February 2018, The Claimant forwarded their previous message to the generic email address [REDACTED] of the parent company of the Other Party.
7. On 8 March 2018, the Claimant sent again an email to the same email address of the Other Party restating their *'formal request to become the registrant in the scope of REACH'*,<sup>7</sup> and asked the Other Party to reply to their request. They also informed the Other Party that they

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<sup>5</sup> Claimant, 12 February 2018.

<sup>6</sup> Claimant, 12 February 2018.

<sup>7</sup> Claimant, 8 March 2018.

have also contacted Other Party's parent company.

8. On 13 March 2018, the Claimant stated in their email, again to the generic email address of the Other Party, that they expect an answer by 20 March 2018 and reminded the Other Party about their request. They also stated that they had contacted the Other Party via phone on 6 February 2018 and via email on 12 February 2018 and 8 March 2018 and the Other Party's parent company via phone on 18 February 2018 and via email on 19 February 2018.<sup>8</sup>
9. On 22 March 2018<sup>9</sup>, the Other Party's consultant for the Substance stated that the registration was submitted in 2013. They also attached Substance identification profile (SIP) of the Substance and provided LoA costs for tonnage bands [REDACTED] tpa. Furthermore, they explained that the Claimant would now need to verify the substance identity, determine their tonnage band, and review and sign the SIEF Agreement. After payment of an invoice, the Other Party *'will provide token and dossier documentation'*<sup>10</sup>.
10. Later on 22 March 2018<sup>11</sup>, the Claimant submitted a claim under Article 27 of the REACH Regulation concerning the failure to reach an agreement on the access to the joint submission and the sharing of information with the Other Party.
11. On 27 March 2018, ECHA sent an email to the Claimant and requested further information about the Claimant's inquiry submission number. After the Claimant replied they had not done an inquiry, ECHA had a teleconference with the Claimant on 13 April 2018. During the teleconference, the Claimant confirmed that they want ECHA to continue assessing the dispute.

### C. Assessment

12. Following the applicable law explained in section A., ECHA assesses the efforts made by the parties in the negotiations that were outlined in paragraphs 4 to 10 in section B.
13. Under Article 26 of REACH, ECHA shall provide the potential registrant who inquired about the existing registration for the substance, the contact details of the existing registrant, and inform the existing registrant about the inquiry. Therefore, one of the purposes of the inquiry is to ensure that all parties know whom to contact or who will contact them. However, as the Claimant had not submitted the inquiry to ECHA, they had no certainty that the contact details they were using were correct to initiate the data sharing negotiations.
14. ECHA acknowledges that the Claimant had found out on their own that the Other Party is acting as the Lead Registrant of the Substance. They attempted to contact the Other Party by emailing to generic email addresses of the Other Party and the Other Party's parent company as well as by phoning them before filing the dispute. One month and ten days after the Claimant's initial email to the generic email address, the Other Party replied to the Claimant providing both SIP of the substance and the LoA costs for tonnage bands [REDACTED] tpa. In addition, the Other Party explained to the Claimant the next steps in view of follow-up the negotiations that had just begun. Instead of replying to the Other Party with a follow-up, the Claimant submitted a dispute.
15. As there had been no inquiry informing them of the Potential Registrant's intention to register, the Other Party did not show a lack of efforts, when they replied after one month and ten

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<sup>8</sup> Claimant, 13 March 2018.

<sup>9</sup> Sent at 18:20 [REDACTED]).

<sup>10</sup> Other Party, 22 March 2018.

<sup>11</sup> Submitted at 21:53 [REDACTED].

days. ECHA considers that the Claimant submitted the dispute too early, when negotiations had just begun. To make every effort, the Claimant could have followed up on the message of the Other Party and negotiated further.

#### **D. Conclusion**

16. The Claimant did not make every effort to reach an agreement on the access to the joint submission and the sharing of information.
17. Therefore, ECHA does not grant the Claimant access to the joint submission nor permission to refer to the studies.

**Annex II: ADVICE AND FURTHER OBSERVATIONS<sup>12</sup>**

- The Parties should continue the negotiations aiming to reach an agreement on the access to the joint submission and on the sharing of information as only a mutual agreement can be satisfactory for all parties involved.
- ECHA reminds that parties should make every effort to reach a mutual agreement. Making every effort means that the registrants must negotiate constructively and in good faith. When the parties face a dissent on an aspect, the parties have to explore alternative routes and make suitable attempts to unblock the negotiations.
- In order to support existing and potential registrants in their negotiations, the Implementing Regulation 2016/9 introduced several elements that clarify the rights and obligations of the companies in their efforts to reach a fair, transparent and non-discriminatory agreement. In particular, Article 2 of the Commission Implementing Regulation indicates that the potential registrant has a right to receive itemisation and proof of the costs it is being asked to share (related to study and administrative costs) in order to objectively assess and understand the costs.
- More information about how to conduct the negotiations can be found from <https://echa.europa.eu/support/registration/working-together/practical-advice-for-data-sharing-negotiations/dos-and-donts-for-data-sharing-negotiations>

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<sup>12</sup> Please note that this section does not contain elements that ECHA took into consideration in its assessment of the parties' efforts in their negotiations. ECHA's assessment of the dispute is set out only in the section 'C. Assessment' of Annex I. The Annex II 'Advice and Further Observations' aims only at providing further advice and information that can be helpful for the parties in the future of their discussions on data sharing and joint submission obligations.

"ECHA reminds you that following Article 16 of Regulation (EC) No 1049/2001, the documents attached are subject to copyright protection."