

Setting up a REACH consortium (case study – use of ATC & Fatty Acid Consortia as a model)

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The Story So Far...

- ATC – Additives Technical Committee for petroleum additives
- Existing technical association
- Representing all the main players in the industry
- REACH Working Group formed years ago
 - ❖ Information and Lobbying
- ‘Converted’ to a Consortium in late 2007
 - ❖ 1-2 active participants from each member
 - ❖ Meet regularly (every 2 months)
 - ❖ Multi-national :
 - ❖ 3 members have EU HQ’s
 - ❖ 4 members have US HQ’s
 - ❖ 1 member has a Swiss HQ

Lesson 1

- Keep the group small
- You need to get things done
- You need to move quickly
- Meetings and decisions are easier
- But you need most of the key players
- Don't spend too much time with the unwilling
- Unless they are critical, leave them out
- The unwilling don't like the sweat !
- Choose partners who are prepared to sweat
- Money is not a substitute for sweat !



Lesson 2

- Get independent help early !
- Remember, many of you are competitors
 - ❖ Natural suspicion
 - ❖ Huge concerns on confidentiality
- Need to share information very early
 - ❖ Even just to decide the scope of the consortium
 - ❖ Which substances will you tackle ?
 - ❖ Can they be grouped together ?
- Almost inevitable that you will need help
 - ❖ Third party data handling



Lesson 3

- The pros and cons of the legal template
 - ❖ Use legal principles / headings
 - ❖ But don't start with a detailed template !
- You'll spend too much time working on legacies
- Templates don't deal with the hard decisions !
- Start with the basic principles
 - ❖ Keep the lawyers at distance at this stage
 - ❖ Work out the key commercial issues
- Find a lawyer who will take the lead
 - ❖ Or farm it out and share costs
 - ❖ (But remember, you have no agreement to share costs yet!)



Lesson 4

- Deal with Competition Law early on
 - ❖ Competition law needs to be observed, but should not be an issue
 - ❖ Don't let people make it a bigger issue than it is – they are probably just using it as an excuse!
- Deal with Legal Representation early on
 - ❖ Some companies will want legal representation
 - ❖ You may need to humour them
 - ❖ Use conference calls if at all possible
 - ❖ After 2-3 sessions, the lawyers will get bored and leave of their own accord
- Make it easy for people to work without legal
 - ❖ Agendas and minutes
 - ❖ Look out for each other

Lesson 5



- THE BIG ISSUE
- DATA VALUATION & COST SHARING
 - ❖ No real guidance in the REACH legal text
 - ❖ Current advice (e.g. CEFIC) doesn't tackle the issue at all
- Tackle these issues right now
- Data Valuation
 - ❖ How do you agree a value for an existing study?
 - ❖ What do you do if there is more than one valid study?
- Cost Sharing
 - ❖ How is the value of the data shared between participants?
 - ❖ For what purposes can the data be used?

DATA VALUATION – ATC Model

- Assuming only one key study is available
- Study validity
 - ❖ Klimisch 1,2 fully valid
 - ❖ Klimisch 3 valid, but will not be liable for compensation
 - ❖ Klimisch 4 – not valid
- Study is valued at current (replacement cost)
 - ❖ But discounted for age
- Study Monitoring & Administration
 - ❖ Small premium allowed, based on sliding scale
- Risk Premium
 - ❖ Allowed, but limited to 10%.

Data Sharing (2)

- What if more than one valid study is available?
- If they are not of equal quality
 - ❖ Higher Klimisch code is the key study
 - ❖ If the other is still valid (Klimisch 1,2)
 - Owner has access to the key study free of charge
 - Owner does not receive any compensation for their study
- If they are of equal validity
 - ❖ Consider them as a single study
 - ❖ Owners share the compensation

Cost Sharing – ATC Model

- REACH demands data sharing for REACH purposes
 - ❖ Says nothing about the rest of the world
- REACH indicates equal shares
 - ❖ How can this be reasonable unless access to the study is global ?
 - ❖ Unfair on smaller (EU only) enterprises
- ATC Model has two levels of decision :
 - ❖ Does the study owner wish to share for REACH only, or unlimited purposes ?
 - ❖ If the owner wants to share only for REACH purposes, then the recipient has no option
 - ❖ If the owner agrees to share for any purposes, then the recipient can decide to buy for REACH purposes only, or for unlimited purposes
 - ❖ If access is for REACH only, the compensation is 35% of a share

Cost Sharing – ATC Model (2)

- Cost determined by :
 - ❖ Number of participants sharing
 - ❖ Agreed level of access
- Example
 - ❖ Six participants
 - ❖ Company A has a study of Klimisch 1
 - ❖ Company B has a study of Klimisch 2
 - ❖ Study Valuation of Company A is agreed at €120,000

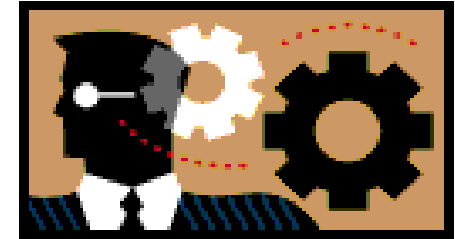


Cost Sharing Example (1)

- Key Study Valuation is €120,000
- Company B are excluded from the process
 - ❖ But still have access to the Study
- Company A agrees that the study can be shared for any purposes
- Companies C & D want access for REACH only
- Companies E & F want unlimited access
- Basic share is $€120,000 / 6 = € 20,000$
 - ❖ Company B pays nothing, receives nothing
 - ❖ Companies E & F pay €20,000 each
 - ❖ Companies C & D pay €7,000 each ($€20,000 \times 35\%$)
 - ❖ Company A receives €54,000

Lesson 6

- Structure, Leadership & Support
- Steering Committee
- Secretariat
- Task Forces
 - ❖ These are the people who will do the real work
 - ❖ One Task Force per group of substances
- Third Party Support
- Share the workload around
- Think about succession planning
 - ❖ This could be around until 2018



Lesson 7

- How are you going to move money around ?
 - ❖ Exchange cash for studies
 - ❖ Commission new studies jointly
 - ❖ Buy studies from other third parties
 - ❖ Pay for support services
- ATC Solution
 - ❖ Separate third party company set up
 - ❖ Equity held by third party
 - ❖ Ring fenced system
 - ❖ Manages money transfer
 - ❖ Creates monthly statement of balances to each member
 - ❖ Provides a single face to third parties
- Set up a payment system now !



Lesson 8

- Be fair to new members
 - ❖ If someone is willing to pay and (more importantly) to sweat then you will want them as new members!
- BUT
 - ❖ Freeloaders will destroy the process and.....
 - ❖ Over-restrictive entry requirements will breach competition law
- Our View
 - ❖ Recharging a share of costs incurred is reasonable
 - ❖ Share of all studies which new member requires
 - ❖ Full share of all consortium admin costs to date
 - ❖ But, although our agreement allows us to charge a share of membership sweat to new members, we have left this optional.

Lesson 9

- Know your signatories and their limits
- All companies have financial controls
 - ❖ US-based companies should have extensive SOX processes
- Who is going to sign the agreement ?
- Are they approved to sign such an agreement?
- Get them into the loop early
- Make sure the right legal people are involved
 - ❖ Later delays will be very costly
 - ❖ And hugely frustrating!



Lesson 10

- Share the work around
- Make everyone sweat ; don't kill the few
- Task Force leadership – involve everyone as leaders of at least one task force
- But, the world is run by those that turn up
 - ❖ Be intolerant of those that underperform
 - ❖ Set clear deadlines for performance
 - ❖ Exclude them if they hold the process back
- There is no time to spare in this process
- High volume dossiers must be finished in 18 months

Lesson 11

- Engage with others!
- ATC (Petroleum Additives) engaged with :
 - ❖ ATIEL (Lubricants)
 - ❖ ACEA (Car Manufacturers)
 - ❖ CONCAWE (Fuel Manufacturers)
- Potential overlaps in substances
- Or potential co-operation
 - ❖ E.g. exposure scenarios

Fatty Acid Consortium

- Fatty Acids Consortium
- Evolved from CEFIC working groups
- Only just established despite 2010 registration need
- Kick off meeting 5/6 October
- Plan to use same model as ATC
- Holding company – FATAC Ltd
- 5 task forces established
- Caleb consortium managers and OR representing 3 clients
- Dr Knoell Consult technical consultants
- Likely to be 20 members