

The implementation of REACH: Analysis of the anticompetitive effects

M. Deschamps, (University of Nice - CNRS)
J-T. Ravix (University of Nice- CNRS)
O. Sautel (Microeconomix)

Microeconomix

SAS au capital de 44 100 €

Siren : 443 554 084 R.C.S. Paris

TVA : FR65 443 554 084

5, rue du Quatre Septembre
75002 Paris

Phone : 01 75 57 89 87

Fax : 01 75 57 89 89

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Aims of the paper

- In what extent firms could use REACH for enforce anticompetitive conducts ?
- A decrease of innovation could be another issue of the implementation of REACH, due to competitive distortion as well as new regulatory barrier to entry
- But we focus today on the competitive analysis of the implementation of REACH

Overview

- 1) REACH : a new strategic field
 - Aims of REACH
 - Agenda
 - Principles
- 2) Strategies of “information shortage”
 - The use of cost sharing’s rules
 - The use of consortium
- 3) Strategies of “wealth information”
 - The anticompetitive information exchange
 - The raising rival costs

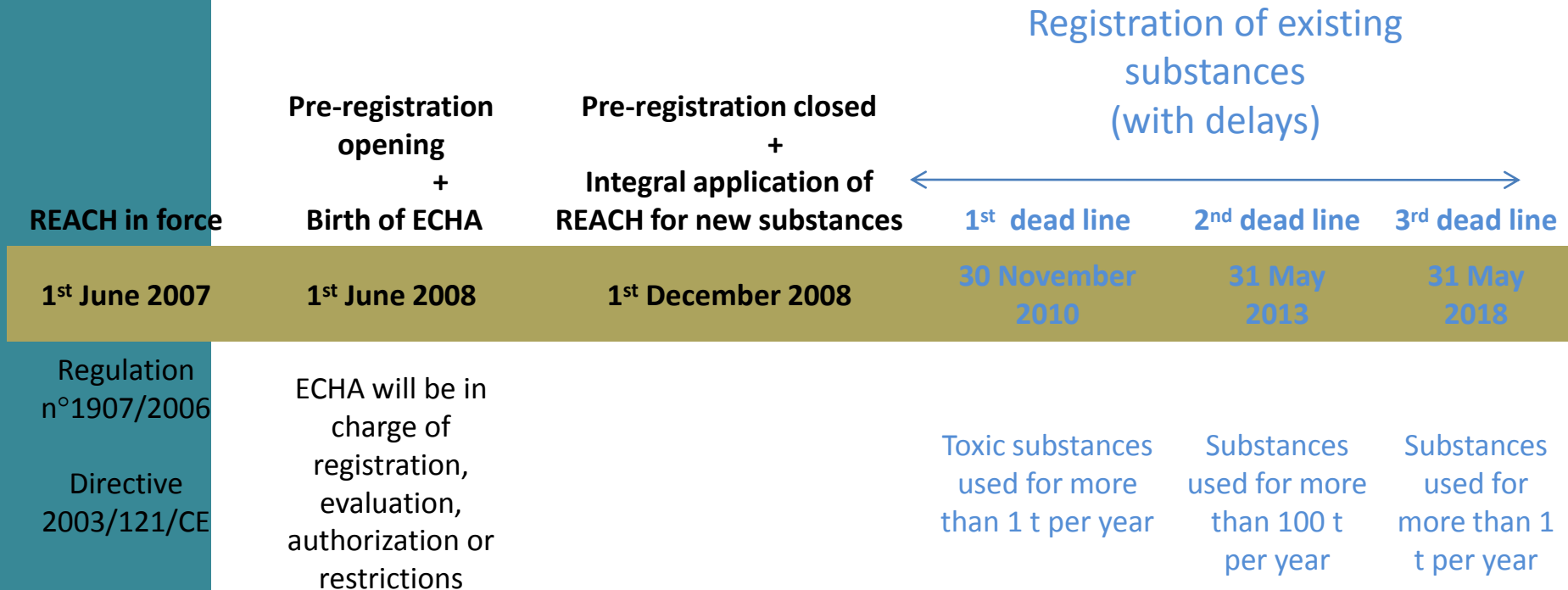
REACH : a new strategic field (1)

Objectives of REACH

- REACH pursues 4 mains objectives
 - Ensure the highest degree of sanitary and environmental safety in the world
 - Increase the public knowledge on chemical substances
 - Reduce the experiments on animals
 - Enforce a unified legal frame on Europe

REACH : a new strategic field (2)

Agenda



REACH : a new strategic field (3)

Main principles

- 5 main principles of REACH
 - The transfer of the burden of proof
 - « No data, no market »
 - A cost-benefit analysis
 - Extension of the legal responsibility to the vertical chain
 - Automatic system of joint registration into « Substance Information Exchange Forum » (SIEF)

REACH : a new strategic field (4)

The information required

- REACH involves an intensive process of production and exchange of information
- This information could be costly to produce and commercially sensitive
- REACH requires that firms share available data (in return of compensation) and the production cost of new data
- Data-sharing and cost-sharing may induce anticompetitive strategies of firms

Strategies of information shortage (1)

The use of cost-sharing rules

- SIEF members have to share their studies and information on the substance, in return for compensation
- The calculus of this compensation could lead to several disagreements between members
- What's the right price for an existing study (quality level, time depreciation, etc...) ?
- How to choose the right cost-sharing formula?
 - Full responsibility theory (eg Shapley value)
 - Partial responsibility theory(eg proportional allocation)

Strategies of information shortage (1)

The use of cost-sharing rules

- Disagreement about the cost-sharing could be used as a pretext by a firm for opt-out of the SIEF
 - According to art 11, a firm may opt-out in case of disproportionate cost, commercial handicap or disagreement with the SIEF relating to the information required

 - « Opt-out » may support two anticompetitive effects
 - A raising rival cost effect (if the firm holds rights on a decisive study)
 - A free-riding strategy (if the firms decide to opt-out after having access to information) which leads to distortion in rival costs

Strategies of information shortage (2)

The use of consortia

- SIEF members can create more limited consortium
- Consortium could be a response to SIEF inefficiencies
 - Better selection of members through rules of admission (better compatibility of incentives)
 - Rules of coordination more precisely defined (decrease of incompleteness of contracts)
 - Limits on the number of members (less inefficiencies due to congestion)
- Consortium can have procompetitive effects

Strategies of information shortage (2)

The use of consortia

- But they also can exclude rivals for the most efficient process of cost sharing
- Condition 1 : the consortia can restrain access to the information, or charge an excessive price
 - The duty of data sharing remains for firms involved in consortia
 - But consortia could limit access to data by unfair cost evaluation or artificial disagreement on the access conditions

Strategies of information shortage (2)

The use of consortia

- Condition 2 : the consortia could not be easily replicated by others SIEF participants
 - The anticompetitive effect of a consortia depends on the members' position on the market

 - What's the excess of costs due to the exclusion of consortia ?
 - What's the excess on costs if excluded firms decide to produce autonomously the data ?
 - What's the excess on costs if excluded firms buy the data at the consortia price ?

Strategies of wealth of information (1)

Anticompetitive information exchange

- Anticompetitive information exchange is the most obvious risk
 - Firms could use the SIEF to facilitate cartels
 - According to REACH, firms have to share sensitive information
- Reach provides advices of “safe” and limited information exchange
- But the socio-economic analysis could not be relevant without the exchange of sensitive information, even without anticompetitive object.

Strategies of wealth of information(2)

Raising rival costs

- A more subtle strategy refers to the choice of an over optimal level of regulation cost by a dominant firm, trough over-optimal level of information production
- Data and cost sharing rules allows her to increasing the cost of all the SIEF members
- According to Rogerson (1984), this generalized increase of costs could maximize the dominant firm's profit
- Note that this strategy could be lead by one firm against other SIEF members, or by all SIEF members against new entrants

Conclusion

- Everybody wants REACH to fulfill these objectives of protection of human health and environment
- However, the implementation of REACH may involve significant competitive pitfalls
- REACH reminds us that a legislation is almost always a constraint that a firm could use for raising rival cost