



## PRESS INFORMATION

DATE: 30th August 2017

FOR IMMEDIATE RELEASE

**UPL has won a ground breaking case against UK toll formulators regarding illegal plant protection products in the EU.**

**This High Court judgment marks a ground breaking win for UPL and others in the agrochemicals industry in the on-going fight against illegal PPPs. In particular, toll formulators can no longer turn a blind eye to whether or not their customers have authorisations for the PPPs they are formulating, and the intended markets for those PPPs.**

**UPL takes strong action against counterfeiters of their products and this judgement is the result of 5 years of successive legal action in Germany and latterly the UK.**

UPL Europe Ltd and UPL Deutschland GmbH (UPL) have succeeded in their claims against UK manufacturers of agrochemicals who were placing, and assisting others to place, unauthorised copies of UPL's plant protection products (PPPs) on the market in Germany.

The legal proceedings, issued in May 2015, concerned claims against AgChemAccess and Nicholas Gooch for their illegal parallel-trade of unauthorised copies of UPL's metamidron-based PPP called Metafol. Metafol (also known as Bettix) is UPL's authorised herbicide which contains 700 grams per litre of the active substance metamidron used for the treatment of sugar beet in major EU markets.

The illegal PPPs were manufactured by toll formulators in the UK and sold by AgChemAccess under parallel trade permits in countries including Germany, Poland and the Czech Republic.

UPL also brought claims against the toll formulators, Grosvenor Chemicals, Whyte Chemicals and Melvyn Whyte.

In a High Court judgment dated 25 July 2017, the toll formulators were held liable to UPL for illegally placing unauthorised PPPs on the market and for breaching of German unfair competition law. The toll formulators were held to have 'blind eye knowledge' of the illegality of supplying unauthorised PPPs for sale to Germany. UPL has been granted an injunction whereby the toll formulators must not:

- place unauthorised copies of UPL's PPPs on the German market, or
- knowingly (including by way of blind eye knowledge) assist any other party to place unauthorised copies of UPL's PPPs on the German market.

The injunction is binding on all third parties who have notice of it. The toll formulators are also liable to pay UPL financial damages and legal costs, which will be determined in subsequent legal proceedings.

The High Court judgment marks a ground breaking win for UPL and others in the agrochemicals industry in the on-going fight against illegal PPPs. In particular, toll formulators can no longer turn a blind eye to whether or not their customers have authorisations for the PPPs they are formulating, and the intended markets for those PPPs.



## Background

UPL issued proceedings in May 2015 against AgChemAccess and its owner, Mr Nicholas Gooch, and obtained without-notice search orders and worldwide freezing injunctions against them.

Pursuant to the search orders, UPL obtained copies of the business records of AgChemAccess which contained evidence of its illegal trade in unauthorised PPPs under parallel trade permits. UPL is using this evidence to take legal action against other parties found to be dealing with AgChemAccess and trading in illegal PPPs, and further legal action is anticipated in the near future.

The illegal PPPs in question were sold by AgChemAccess in markets including Germany, Poland and the Czech Republic under the brand names Gisela and Wuffinga in 2011-2012, Glo Meta 2 and Metamite in 2012-2013, Metamite and Megatron 700 in 2013-2014, and Betamitron 700 in 2014-2015.

UPL settled the proceedings against AgChemAccess and Mr Gooch in April 2017 on the terms which included:

- Payment to UPL of a settlement sum of £1,700,000 plus interest;
- AgChemAccess admitting liability for breaches of Regulation 1107/2009 in illegally placing unauthorised PPPs on the market, and Mr Nicholas Gooch admitting liability for procuring those breaches;
- AgChemAccess admitting liability for trade mark infringement in respect of its use of UPL's trademarks Metafol and Bettix, and Mr Nicholas Gooch admitting liability for procuring the trade mark infringement; and
- AgChemAccess and Mr Nicholas Gooch (including all of their connected person and entities) undertaking not to deal in unauthorised versions of UPL's products anywhere in the world.

UPL's claims against the UK toll formulators proceeded to trial in the High Court, London, in May 2017.

## The Law

On 14 June 2011 Regulation (EC) No 1107/2009 came into force and the law is clear that products sold under a parallel trade permit issued since that time must be (i) **authorised** in the Member State of origin and (ii) share **common origin** with a PPP already authorised in the Member State of introduction.

The abuse of the parallel trade system to bring illegal PPPs to market is of major concern to UPL, other industry participants and regulatory authorities across the EU. Unauthorised and counterfeit PPPs pose a serious risk to safety (environment, human and crop) and it is a criminal offence in most EU Member States to import and place illegal PPPs on the market.

UPL has taken a series of measures to fight against illegal and counterfeit PPPs, including using marker technology in its products to identify counterfeit PPPs with greater ease. UPL is committed to working with the regulatory authorities across the EU and pursuing legal action where appropriate to prevent the trade in illegal and counterfeit PPPs.



**Notes to editors:**

- UPL Europe Ltd is a leading producer of crop protection products, speciality chemicals and other industrial chemicals.
- UPL Europe Ltd is planning on further growth, through innovation and value added solutions to match customers' needs.
- Developing new AIs/formulations complementary to its existing portfolio to offer full program per crop.
- Focusing on fast growth in cereal/OSR & selective growth in Sugar Beet/Potato where it already has a leadership position.

**For further information, please contact:**

**UK**

Mr Andrew Speed, UK & Ireland Country Manager

email - [andrew.speed@uniphos.com](mailto:andrew.speed@uniphos.com)

**Mainland Europe**

Jean-Philippe Pollet, EU/CIS Marketing Director

email - [jppollet@uniphos.com](mailto:jppollet@uniphos.com)