

## **HOLYGRAIL 2.0 – DIGITAL WATERMARKS PROJECT**

### **CHARTER**

#### **Objective.**

The objective of the Digital Watermarks Project HolyGrail 2.0 (the “Initiative”) is to prove the viability of digital watermarking technologies (the “Technology”) for accurate sorting and the business case at large scale.

The digital watermarks project was part of the broader pioneering project HolyGrail 1.0 which, facilitated by the Ellen MacArthur Foundation and bringing together the complete value chain, including brand owners, retailers, recyclers and packaging sorting technology providers, ran from 2016-2019. Within this project, different innovative initiatives in the field of improving post-consumer recycling by using chemical tracers and digital watermarks for better sorting were investigated. Digital watermarks were found to be the most promising technology within HolyGrail 1.0, gathering support among the large majority of stakeholders. The Technology opens new possibilities for sorting that are currently not feasible with existing sorting technologies. It also has the potential to be used in other areas such as consumer engagement and retail through the creation of smart/intelligent packaging. At the end of HolyGrail 1.0, a basic proof-of-concept for digital watermarks on packaging was established and demonstrated on a test sorting line.

In order to pursue this digital innovation to deliver on sustainability goals, the branded goods industry wants to develop a platform to take this initiative to the next stage. This next iteration of the project, HolyGrail 2.0, will take place on a much greater scale and scope (i.e. quasi-industrial) and will therefore need to secure the participation of a larger critical mass of brand owners and retailers in order to test benefits for both sorting efficiencies, consumer engagement and distribution tracking.

In the first step of HolyGrail 2.0, the technology will be validated on industrial scale. Brand owners and retailers that choose to participate in this test project will therefore be required to modify the artwork/emboss packaging with digital watermarks provided by the technology partner(s). The packaging sorting technology partner(s) will be required to adapt a larger sorting facility and to work with brand owners/retailers and the digital watermarks technology partner(s) to validate/calibrate the necessary processes at an appropriate test sorting facility running at industrial scale.

In a subsequent step, packaging from different brand owners and retailers coded with digital watermarks will be introduced in a national test market.

The Initiative performs useful, legitimate and pro-competitive functions. However, since it brings together companies that are actual or potential competitors, EU competition law concerns may arise.

**AIM is facilitating the Initiative on condition that the following principles apply:**

## **1. Access to the Initiative.**

Membership requirements shall comply with the following rules:

- Membership will be voluntary.
- Application for membership shall be open to any interested party in the industry.
- Rules of admission shall be transparent, proportionate, non-discriminatory and based on objective criteria. Any admission fee or participation fees shall not be prohibitive.
- The Initiative will not refuse any company to join for arbitrary reasons, especially if that would put that company at competitive disadvantage.

## **2. Governance structure.**

The governance structure for the Initiative (HolyGrail 2.0) includes the following membership groups:

### **2.1 Initiative Facilitator.**

In the role of *initiative facilitator*, AIM, the European Brands Association, coordinates the set-up, maintenance and promotion of the Initiative. AIM will not engage in any commercial, financial or contractual negotiations or agreements with technology, machine or other service providers.

### **2.2 Initiative Full Members.**

- The *initiative full members* are comprised of branded goods manufacturers and retailers.
- The membership fee covers the operational costs for managing the Initiative, which includes the following:
  - *Technical project manager* coordinating the technical work of the Initiative. Her/his tasks include among others:
    - Drafting a technical test plan
    - Coordinating the different technical working groups
    - Staying in regular contact with the technology suppliers
    - Overseeing the work on the test sorting line
    - Supporting members with technical expertise and in their work with the technology suppliers
  - *Secretariat* functioning as contact point for members and interested parties. Its tasks include among others:
    - Providing information about the Initiative and registration to interested parties
    - Managing membership lists, questions and request for information

- Managing invoices
- Preparing and scheduling meetings and calls
- Preparing meeting summaries
  
- *Legal counsel* to be present at all meetings of the leadership team and the initiative members.
  
- Other appropriate expenses.
  
- The membership fee does not include the costs coverage for the following:
  - Licensing agreements between any stakeholder and technology, machine or other service providers.
  - Supporting services by technology, machine or other service providers for brands and retailers on how to modify their packaging.
  - Any agreements with stakeholders of the value chain in terms of liability for costs.
  
- All *initiative full members* meet on a quarterly basis (virtually and/or physically) to:
  - receive an update from the leadership team on the Initiative and its different working groups;
  - raise questions and comments;
  - review the progress of the Initiative, its next steps and whether the collaboration within the Initiative is still in line with the overall objective;
  - vote on new member nominations for the leadership team, if necessary.
  
- Expectations of *initiative full members*:
  - 1<sup>st</sup> test phase for industrial trials: Brand owners and retailers are welcome to join with 2-3 SKUs coded with digital watermarks.
  - 2<sup>nd</sup> test phase in national market: Brand owners and retailers that are operating in the chosen test market are expected to participate with a minimum of 10 SKUs coded with digital watermarks.

## 2.3 Leadership Team.

### ***General function***

- The *leadership team (LT)* leads, coordinates and manages the activities of the Initiative, ensuring effective use of membership fees and involvement of member companies.
- The *LT* overlooks the progress of the Initiative and decides on the set-up of (technical) working groups that are relevant for progressing the work of the Initiative.

### ***Membership and principles of composition***

- The *LT* represents a blend of knowledgeable and dynamic individuals who are actively engaged in the Initiative, from a cross-section of members and types of companies. This ideally includes a balance of gender, geographical spread, company size/type, sector and experience.

- The *LT* consists of core members representing each of the sectors engaged in the Initiative.

The permanent *LT members* are appointed from the *initiative full members* in the following combination:

- Maximum 4 brand manufacturers – with 4 votes
- Maximum 4 retailers – with 4 votes
- Maximum 2 representatives of *initiative facilitator* as observers

For the complete value chain representation, the following stakeholders from the *initiative associate members* will be appointed as permanent *LT members*:

- Maximum 2 multi re-use facilities (MRFs) – with 1 vote
- Maximum 2 converters – with 1 vote
- Maximum 2 extended producer responsibility organisations – with 1 vote
- Maximum 2 recyclers – with 1 vote

Based on the expertise and information needed for *LT* meetings in order to take specific decisions or next steps, the *LT* will also invite additional representatives from *initiative full members and initiative associate members* (including technology and machine suppliers, other brands manufacturers or retailers, etc.) to join *LT* meetings to provide their input and expertise.

- The *LT* position is for a term of 2 years. *LT members* are able to step down from their role if they wish as job changes or company priorities dictate. Opportunity will be given to new members to join on the criteria outlined below. *LT members* can also exceed the mandate if agreed within the *LT*, and if they intend to continue playing an active role.
- When seats on the *LT* become available, the Secretariat notifies all initiative members for expression of interest.
- Companies that have joined the Initiative need to communicate to the *initiative facilitator* in writing their interest in joining the *LT*. All nominations are presented to the *initiative full members* that elect the different *LT members* by majority vote. For choosing the *LT members*, the following criteria need to be considered: experience in packaging technologies, desire/ability to contribute, contribution to the Initiative, company support and availability to join calls/meetings.
- The *LT* elects a *Chair* for a term of 2 years, whose role is to chair the *LT* meetings. Interested individuals of the *LT* need to communicate to the *initiative facilitator* in writing their interest in becoming the *LT Chair*. All nominations are presented to the *LT members* that elect the *Chair* by majority vote.

### **Mode of operations**

- *LT members* are expected to be more active than *non-LT members* and attend *LT* meetings (virtually and/or physically) on a monthly (to bi-monthly) basis, plus other meetings around the main member meetings or as specific projects/opportunities require. They are also

expected to provide input on short notice regarding urgent questions or decisions that have to be taken.

- Decisions by the *LT* are taken preferably by consensus. If consensus cannot be reached the majority opinion will prevail. If no clear majority opinion emerges, the *LT Chair* will make the decision on behalf of the *LT*.

#### **2.4 Initiative Associate Members.**

- *Initiative associate members* are stakeholders from the complete supply chain that are interested in the Initiative, want to stay updated and are dedicated to promote it.
- *Initiative associate members* will contribute to the Initiative by paying a sponsorship fee.
- *Initiative associate members* receive regular updates of the work and progress of the Initiative. They are encouraged to promote the Initiative across the value chain.
- Depending on their expertise, individual companies within the *initiative associate members* can be approached by the technical project manager and the (technical) working groups (under the *LT*) to support and provide their input on specific activities.

#### **3. Transparency at all stages.**

The process should provide interested parties with reports on the technologies under discussion, on progress of the Initiative, and on ways for third parties to make their views known.

#### **4. Participation in the Initiative and the use of any of the technology solutions proposed in the framework of the Initiative shall be non-binding and non-exclusive.**

- Members will remain free to develop, cooperate in the development of, or adopt alternative watermarking and/or waste sortation solutions.
- At any stage during or after Project HolyGrail 2.0, members are free not to proceed with the further development or implementation of the Proposed Technology.

#### **5. FRAND terms.**

The participants in the Initiative recognise that the proposed watermarking and sortation solutions may, by virtue of broad industry adoption, result in the emergence of a *de facto* industry standard.

With this in mind, it is recognised by all parties that any patents reading on such *de facto* standard, technology, software and/or hardware essential to the implementation of such *de facto* standard, shall be made available at fair, reasonable and non-discriminatory (FRAND) terms. All technology providers participating in the Initiative will commit in writing to these principles.

In this context, all parties agree to comply with all applicable antitrust and competition laws, including Articles 101 and 102 of the Treaty on the Functioning of the European Union.

## **6. Avoidance of raising barriers for competing technologies.**

The Initiative will not raise any technological or contractual barriers that would prohibit competing technologies to be deployed by participating businesses, including in recycling facilities.

## **7. Procedure for meetings.**

- At the beginning of each meeting, [*Leadership Team, Project Manager, etc.*] will make sure that all participants are aware of the antitrust compliance statement, which will be countersigned by each participant (in the terms set in [Annex 1](#)).
- Written agendas for each meeting must be drafted and circulated prior to the meeting, after having been approved and cleared by legal counsel.
- Comprehensive minutes of each meeting will be drafted and will be submitted to legal review prior to circulation to all meeting participants.
- A list of attendance will be circulated during each meeting and signed by all participants. The list will be annexed to the meeting minutes.
- If during the course of a meeting anyone suspects that an anti-competitive discussion is taking place and objects to it, this will be noted in the minutes and the discussion will be terminated immediately.
- Legal counsel shall be present at all meetings.

## **8. Exchange of information.**

Members shall limit their exchanges of information to what is strictly necessary under the Initiative. Members shall not exchange any sensitive information in relation to their business or company. It is the responsibility of each participant to avoid raising improper topics for discussion. Members must not discuss topics such as:

- Prices, and related subjects such as discounts, rebates, profit margins, price increases, or any other sales condition;
- Costs, and related subjects such as production or distribution expenses, formulas for cost accounting, methods for cost calculation;
- Information relating to sales and company's production, especially production volumes, sales profits, operating capabilities, level of stocks or supplies;
- Any of a company's upcoming and confidential projects, including those relating to sales and marketing strategy and innovation projects;

- Information relating to the relationship with customers/suppliers (including terms and conditions).

If, for any reasons, commercially sensitive information does need to be provided, e.g. to assess the viability of the Initiative, such information will be provided and handled by an independent third party for aggregation, under the supervision of external legal counsel.

### **ANNEX 1 – ANTITRUST STATEMENT**

*Being a member of an industry initiative, as well as being part of any formal or informal meetings, where other competitors are present, may involve risks, especially regarding the type of information likely to be shared around the table.*

*As a general rule, participants shall not exchange any sensitive information in relation to their business or company nor reach any understanding, expressed or implied, with the object or effect of restricting competition. Participants may only discuss the issues at hand in the agenda of the meeting. Therefore, it is the responsibility of each participant to avoid raising improper topics for discussion. If the discussions turn to improper subjects during a meeting, the concerned participants will be required to put an end to the discussion and to leave the meeting immediately.*

*Participants to the meeting must not discuss topics such as:*

- *Prices, including any subject relating to prices or its components such as discounts, rebates, surcharges, price changes, price differentiation, profit margins, price increases, credit, or any other sales condition;*
- *Costs, including any component relating to costs such as production or distribution expenses, formulas for cost accounting, methods for cost calculation;*
- *Information relating to sales and company's production, especially production volumes, sales profits, operating capabilities, level of stocks or supplies;*
- *On-going non-public litigations;*
- *Any of a company's upcoming and confidential projects, including those relating to sales and to marketing strategy, along with production and technology, wage policy, R&D programs;*
- *Information relating to the relationship with customers/suppliers (including terms and conditions).*

*This applies not only to discussions in formal meetings but also to informal discussions before, during and after meetings.*