



**EUROPEAN COMMISSION  
COMPETITION DG**

**Markets and cases II: Information, Communication and Media  
Antitrust: IT, Internet and Consumer electronics**

Brussels, 23/08/2019

COMP/C3/LD/et

*By registered letter with acknowledgment of receipt*

Alexander Fanta  
Netzpolitik.org  
Rue de la Loi 155  
1000 Brussels  
Belgium

*Advance copy by email:*

a.fanta.yd3s2wcmep@fragdenstaat.de

Dear Mr Fanta,

**Subject: Your application for access to documents – Ref GestDem No 2019/3988**

We refer to your e-mail dated 9 July 2019 in which you make a request for access to documents, registered on the same date under the reference number GestDem 2019/3988, and to your e-mail of 15 July 2019 in which you clarify the temporal scope of that request.

For expediency, this response is addressed to you in English. Should you require a translation of this document in German, please contact DG Competition by e-mail at COMP-ACCESS-TO-DOCUMENTS@ec.europa.eu.

Your request is for access to documents related to lobbying meetings held by DG Competition with Facebook or intermediaries representing its interests since November 2014 to date. Specifically, you requested:

- List of lobby meetings your Directorate-General held with Facebook or its intermediaries. The list should include: date, individuals attending and organisational affiliation, the issues discussed,
- Minutes and other reports of these meetings
- All correspondence including attachments (i.e. any emails, correspondence or telephone call notes) between your DG (including the Commissioner and the Cabinet) and Facebook or any intermediaries representing its interests.
- All documents prepared for the meetings and exchanged in the course of the meetings between both parties.

As regards the list of lobbying meetings, we would like to inform you that the list of meetings held with organisations by Commissioner Vestager and members of her Cabinet are published under the section Transparency on the following site:

[https://ec.europa.eu/commission/commissioners/2014-2019/vestager\\_en#transparency](https://ec.europa.eu/commission/commissioners/2014-2019/vestager_en#transparency)

We have identified the following documents as falling within the scope of your request: two e-mail exchanges between Facebook or its representatives and members of Commissioner Vestager's Cabinet and a briefing note prepared by DG Competition services in view of a meeting between Facebook and members of Commissioner Vestager's Cabinet.

These documents contain personal data (names, e-mail addresses, telephone numbers). Therefore we enclose a copy of the documents requested, with the personal data expunged.

Pursuant to Article 4(1) (b) of Regulation (EC) No 1049/2001, access to a document (or sections of it) has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with European Union legislation regarding the protection of personal data. The applicable legislation in this field is Regulation (EC) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC ('Regulation 2018/1725')<sup>1</sup>.

Indeed, Article 3(1) of Regulation 2018/1725 provides that personal data 'means any information relating to an identified or identifiable natural person [...]'. The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data<sup>2</sup>. Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data<sup>3</sup>.

In its judgment in Case C-28/08 P (*Bavarian Lager*)<sup>4</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable<sup>5</sup>.

Pursuant to Article 9(1)(b) of Regulation 2018/1725, 'personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if '[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests'.

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<sup>1</sup> OJ L 205 of 21.11.2018, p. 39.

<sup>2</sup> Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, ECLI:EU:C:2017:994.

<sup>3</sup> Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, paragraphs 43-44, ECLI:EU:T:2018:560.

<sup>4</sup> Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, paragraph 59.

<sup>5</sup> Whereas this judgment specifically related to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your request, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation 1049/2001, access cannot be granted to the personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

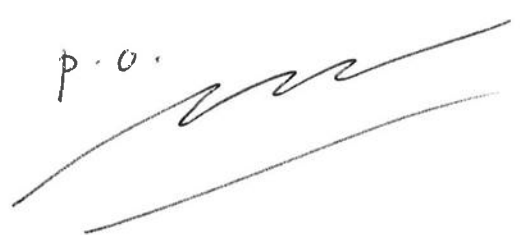
In case you would disagree with the assessment that the expunged data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission  
Secretary-General  
Unit C.1 - Transparency, Document Management and Access to Documents  
BERL 7/076  
B-1049 Bruxelles

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours faithfully,

A handwritten signature in black ink, appearing to read 'P.O.' followed by a stylized signature.

Nicholas BANASEVIC  
Head of Unit

Attachments:

- 1) E-mail exchange dated December 2014
- 2) E-mail exchange dated December 2015
- 3) Briefing Note

(CAB-VESTAGER)

**From:** [redacted]@fb.com>  
**Sent:** 15 December 2014 16:16  
**To:** [redacted] (CAB-VESTAGER); [redacted] (CAB-VESTAGER); [redacted] (GROW); [redacted] (CAB-VESTAGER)  
**Cc:** CAB VESTAGER ARCHIVES; [redacted] (CAB-VESTAGER)  
**Subject:** Re: meeting in Davos

Dear [redacted]—thank you for responding so quickly. Since we are approaching the end of year, I like to wish you all a wonderful Christmastime and an enjoyable and fruitful New Year.

Kind regards,  
[redacted]

[redacted]  
Facebook  
Managing Director, Head of Office  
11 Rond Point Schuman  
1040 Brussels  
[redacted]

**From:** [redacted]@ec.europa.eu" [redacted]@ec.europa.eu"  
**Date:** Monday, December 15, 2014 at 4:06 PM  
**To:** [redacted]@fb.com>, [redacted]@ec.europa.eu" [redacted]@ec.europa.eu", [redacted]@ec.europa.eu" [redacted]@ec.europa.eu", [redacted]@ec.europa.eu"  
**Cc:** "CAB-VESTAGER-ARCHIVES@ec.europa.eu" <CAB-VESTAGER-ARCHIVES@ec.europa.eu>, [redacted]@ec.europa.eu" <[redacted]@ec.europa.eu>  
**Subject:** RE: meeting in Davos

Dear [redacted]

Thank you for your email and your suggestion for a meeting. Commissioner Vestager will not be participating in Davos 2015 and so another opportunity would have to be found for a possible meeting.

Kind regards,  
[redacted]

[redacted]  
Head of Cabinet of Commissioner Margrethe Vestager  
Competition, European Commission

[redacted]  
Office: Berlaymont BERL 10/113  
Rue de la Loi 200  
B-1049 Brussels, Belgium  
[redacted]

[REDACTED]

This message is intended solely for the person to whom it is addressed. It may contain privileged and confidential information. If you are not the intended recipient you must not read, copy, distribute or discuss or take any action in reliance on it. If you have received this message in error, please notify me or my assistant as soon as possible on the above telephone numbers. Any views expressed are exclusively those of the author and may not in any circumstances be regarded as stating an official position of the European Commission.

From: [REDACTED]@fb.com]  
Sent: Monday, December 15, 2014 4:03 PM  
To: [REDACTED] (CAB-VESTAGER); [REDACTED] (CAB-VESTAGER); [REDACTED] (CAB-VESTAGER); [REDACTED] (CAB-VESTAGER)  
Subject: meeting in Davos

Dear Commissioner -

Dear [REDACTED]  
Dear Team -

Allow me to ask whether Commissioner Vestager is planning to attend the WEF Davos meeting in January 2015. If yes, I like to recommend to arrange a meeting with [REDACTED] (COO) and [REDACTED] (VP Global Public Policy) from Facebook.

Kind regards,  
[REDACTED]

[REDACTED]  
Facebook  
Managing Director, Head of Office  
11 Rond Point Schuman  
1040 Brussels  
[REDACTED]

[REDACTED] (CAB-VESTAGER)

Subject:

FW: Meeting request (Facebook)

From: [REDACTED] (mailto:[REDACTED]@gibsondunn.com)  
Sent: Friday, December 18, 2015 11:15 AM  
To: [REDACTED] (CAB-VESTAGER)  
Cc: [REDACTED]  
Subject: RE: Meeting request (Facebook)

Dear [REDACTED]

Thank you.

We confirm 11 am on January 27<sup>th</sup>. We will be happy to send you the personal details for the security checks. Stay in touch and best,

[REDACTED]  
[REDACTED]  
Gibson, Dunn & Crutcher LLP  
Avenue Louise 480, Brussels, 1050  
[REDACTED]  
www.gibsondunn.com

From: [REDACTED]@ec.europa.eu (mailto:[REDACTED]@ec.europa.eu)  
Sent: viernes, 18 de diciembre de 2015 11:11  
To: [REDACTED]  
Cc: [REDACTED]  
Subject: RE: Meeting request (Facebook)

Dear [REDACTED]

Would 11am on the 27<sup>th</sup> January suit you to have this meeting?

I look forward to receiving the following details from all participants in the meeting to ensure smooth access to the Berlaymont: name, nationality, ID Card/passport number and date of birth.

Kind regards,

[REDACTED]  
From: [REDACTED] (mailto:[REDACTED]@gibsondunn.com)  
Sent: Friday, December 18, 2015 11:07 AM  
To: [REDACTED] (CAB-VESTAGER)  
Cc: [REDACTED]  
Subject: FW: Meeting request (Facebook)

Dear [REDACTED]

Good morning. I refer to the email exchange below. I copy in my colleague [REDACTED] who can give you a ring at your convenience for any further details.

Many thanks and Merry Christmas,  
[REDACTED]

[REDACTED]  
Gibson, Dunn & Crutcher LLP  
Avenue Louise 480, Brussels, 1050

[REDACTED] www.gibsondunn.com

From: [REDACTED]@ec.europa.eu [mailto:[REDACTED]@ec.europa.eu]  
Sent: viernes, 18 de diciembre de 2015 8:32  
To: [REDACTED]  
Cc: [REDACTED]@ec.europa.eu; [REDACTED]@ec.europa.eu  
Subject: RE: Meeting request

Dear [REDACTED]

I'd be happy to meet. We'll be in touch to fix a time. Best wishes,

[REDACTED]

From: [REDACTED] (mailto:[REDACTED]@gibsondunn.com)  
Sent: Tuesday, December 15, 2015 5:47 PM  
To: [REDACTED] (CAB-VESTAGER)  
Subject: Meeting request

Confidential

Dear [REDACTED]

I hope this email finds you well.

I act as external counsel for Facebook. My client would appreciate the opportunity to meet you.

May I inform you that Facebook has confirmed a meeting with DG COMP (Director [REDACTED] and his team) on January 26<sup>th</sup>. Facebook considers that it would be valuable to first have a rather technical discussion with DG COMP on specific Digital Single Market competitive factors including certain market developments before meeting you. In addition, the meeting with you would be an opportunity to inform Commissioner Vestager's Cabinet of a number of significant considerations for a successful and more competitive EU Digital Single Market outcome. These considerations are part of a complex inter-institutional interaction where EU competition may have an important say.

Facebook's representatives, who would attend the meeting with you, are:

[REDACTED], Facebook's Director of Policy in Europe;  
[REDACTED], Vice President & Deputy General Counsel;  
[REDACTED], Head of Data Protection and Privacy Facebook Ireland Limited;  
[REDACTED], Managing Director EU Affairs, Head of Office;  
[REDACTED], Associate General Counsel;  
[REDACTED], Gibson Dunn & Crutcher, Partner.



I kindly suggest January 27<sup>th</sup>, 2016, preferably in the morning, for the meeting.

I remain fully available for any further clarification.

Best regards,

[REDACTED]

[REDACTED]

[REDACTED]

Gibson, Dunn & Crutcher LLP  
Avenue Louise 480, Brussels, 1050

[REDACTED] [www.gibsondunn.com](http://www.gibsondunn.com)

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.



**BRIEFING FOR LINSEY MCCALLUM AND WENZEL BULST**  
**Meeting with Facebook**  
**27 January 2016**

**ONE PAGE SUMMARY**

- The meeting is with representatives of Facebook.
- Attendants are:
  - [REDACTED], Facebook's Director of Policy in Europe;
  - [REDACTED], Vice President & Deputy General Counsel;
  - [REDACTED], Head of Data Protection and Privacy Facebook Ireland Limited;
  - [REDACTED], Managing Director EU Affairs, Head of Office;
  - [REDACTED], Associate General Counsel;
  - [REDACTED], Gibson Dunn&Crutcher, Partner.
- The meeting was requested by Facebook.
- Location of meeting: CAB meeting room
- Facebook will before the meeting have a technical meeting DG COMP on Digital Single Market issues. Facebook then wishes to meet you to inform you of a number of significant considerations in this regard, including the role of competition policy.
- Facebook's objective will probably be to express concerns about a potential regulation of online platforms and to enquire to what extent Facebook is concerned by the e-commerce sector inquiry.
- The key Commission objective as regards platforms is to stress that the platform consultation is an open, unbiased exercise and that no final conclusions have been drawn. Caution could be expressed at the need for horizontal legislation.
- As regards the sector inquiry into e-commerce, as the answer of the company shows, the core business of Facebook is not in the focus.

BRIEFING FOR LINSEY MCCALLUM AND WENZEL BULST  
Meeting with Facebook  
27 January 2016

**ONLINE PLATFORMS**

**KEY MESSAGE**

- The behaviour of platforms – like the behaviour of any firm – is subject to EU competition law. The Commission has investigated behaviour by platforms in the past (e.g. *Microsoft Media Player* and *Internet Explorer* and *Amazon eBooks*) and continues to do so (e.g. *Google Search* and *Android*).
- Platforms bring many benefits to European consumers and businesses. Nevertheless, in light of the increasing importance of platforms for the European economy, the Commission has launched a public consultation on online platforms and the collaborative economy end of September 2015.
- This will be an open-minded fact-finding exercise. It seeks a better understanding of (i) what platforms are, (ii) whether they have common features, (iii) which benefits they bring and (iv) whether there are problems, if any, that need to be addressed and, if so, whether existing tools, such as competition law, are not sufficient.

**NECESSARY FACTS AND FIGURES**

- **Importance of platforms.** Online platforms play an increasingly central role in social and economic life and are an important part of a thriving internet-enabled economy. They bring many benefits to both consumers and suppliers by allowing market participants to exploit the advantages of digitisation and e-commerce. They enable consumers to find online information and businesses to exploit the advantages of e-commerce. In 2015 public platform companies worldwide have a market capitalization of \$3 trillion. There is hardly an area of economic – arguably social – interaction which is untouched by platforms in some way.
- Platforms are a key driver of growth and their importance is increasing steadily. Very few large websites (only 1%) present in several member states account for 45% of all internet traffic and this concentration is steadily increasing.
- **The public consultation on online platforms.** As part of the DSM strategy, the Commission has launched a public consultation end September 2015 on the role of platforms. DG CNCT is currently analysing the responses. It seems advisable to stress that it will be an open-minded fact-finding exercise, which seeks to gather a greater understanding of what platforms are, whether they have common features, and that also seeks to look at the benefits that they bring (as well as any perceived problems).
- Several Member States (France and Germany in particular) and a number of MEPs have suggested a regulation of "essential" digital platforms. The most cited example of such "essential" digital platforms is Google's search engine. According to a joint letter from the relevant French and German State Secretaries sent to Vice-President Ansip on 26 November 2014, such regulation should in particular envisage a revision of the EU competition rules to ensure access to "essential" platforms by other companies and by users. The issues and concepts are often not defined with precision, but rather on the basis of general presumptions. The core message is

**BRIEFING FOR LINSEY MCCALLUM AND WENZEL BULST**

**Meeting with Facebook**

**27 January 2016**

therefore that the issues first need to be defined properly, and if appropriate, an analysis should follow of what tools should deal with any issues.

Contact: [REDACTED] [REDACTED]

BRIEFING FOR LINSEY MCCALLUM AND WENZEL BULST

Meeting with Facebook

27 January 2016

THE E-COMMERCE SECTOR INQUIRY

KEY MESSAGE

- The core business of Facebook is not the focus of the e-commerce sector inquiry. The sector inquiry focuses on trade of goods and digital content online. According to the answer of Facebook to our questionnaire, the company does not (yet) offer traditional audiovisual content).
- The purpose of the sector inquiry is to identify potential competition concerns hampering cross-border e-commerce in the EU. Its purpose is to gather the necessary facts and data to allow the Commission to make informed decisions.
- The sector inquiry is not targeted against any specific company. Depending on the outcome of the inquiry and where necessary, case-specific enforcement may follow. In addition, the results of the inquiry provide input for regulatory actions under the Digital Single Market Strategy, such as the copyright reform or the initiative aimed at abolishing unjustified geo-blocking of goods.

BACKGROUND INFORMATION

- We are focusing on those sectors where e-commerce is most widespread: digital content (28%), clothing shoes and accessories (27%) consumer electronics and electrical household appliances (21%).
- Facebook does not offer digital content as a core business activity to its users, neither by licensing and retailing them (such as Amazon) nor by merely hosting them (such as Google). This applies to all of its operations, including Instagram and WhatsApp. Most of the media content circulating on its network is user-made and shared, although a growing proportion of it comes in the form of content offered by companies on their Facebook page. These activities however cannot be considered as hosting in the sense of our questionnaire.
- Undertakings covered by the sector inquiry include manufacturers and merchants of goods sold online, market places or price comparison websites, and providers of online media such as sports and films.
- It is a huge exercise: we sent the first round of requests for information to more than 2000 stakeholders. We focused on providers of online media, merchants of goods sold online and marketplaces) in all 28 EU Member States.
- The Preliminary Report presenting the results will be available by mid-2016, followed by a public consultation. We plan to publish the Final Report in the first quarter of 2017.

Contact: [REDACTED]



BRIEFING FOR LINSEY MCCALLUM AND WENZEL BULST  
Meeting with Facebook  
27 January 2016

[REDACTED]

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