



EUROPEAN COMMISSION

Competition DG

The Director General

Brussels, 13 September 2022  
COMP/C6/LZ/vvd

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By e-mail and registered mail

**Subject: GESTDEM 2022/4588 and 2022/4590 – Your request of 11 August 2022 for access to documents pursuant to Regulation (EC) No. 1049/2001**

Dear Madam,

Thank you for your messages of 11 August 2022, registered on 12 August 2022 under GESTDEM numbers 2022/4588 and 4590, concerning a meeting held on 22 June 2022 between Apple and Executive Vice President Vestager's cabinet members Kim Jorgensen and Michele Piergiovanni and a meeting held on 28 April 2022 between Meta Platforms Ireland Limited and its various subsidiaries and Executive Vice President Margrethe Vestager, in which you request access to documents in the Commission's possession in accordance with Regulation (EC) No. 1049/2001<sup>1</sup> ("Regulation 1049/2001").

## **1. DOCUMENTS CONCERNED**

In your message you request access to the following documents:

- All documents—including but not limited to correspondence, emails, minutes, notes (hand written or electronic), audio or video recordings, verbatim reports, operational conclusions, lines to take, briefings, and presentations—related to the meeting on 2022-06-22 between Kim Jorgensen and Michele Piergiovanni and Apple Inc..
- All documents—including but not limited to correspondence, emails, minutes, notes (hand written or electronic), audio or video recordings, verbatim reports, operational conclusions, lines to take, briefings, and presentations—related to the meeting on 2022-04-

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<sup>1</sup> Regulation (EC) N° 1049/2001 regarding public access to European Parliament, Council and Commission documents, OJ L145 of 31.5.2001, p. 43

28 between Margrethe Vestager and Meta Platforms Ireland Limited and its various subsidiaries (f/k/a Facebook Ireland Limited).

The documents you request access to related to the meeting with Apple contain discussions on Apple's business operations and customer relationships, in view of the upcoming Digital Markets Act "the DMA".

The documents you request access to related to the meeting with Meta/Facebook consist of an email conversation in order to set up that meeting. There were no submissions and minutes were not drafted.

Having carefully examined your request and the relevant documents in the light of Regulation 1049/2001, I have come to the conclusion that the documents you have requested access to fall under the exceptions of Article 4 of Regulation 1049/2001. As a result, access to the documents related to the meeting with Apple has to be refused, while access to the documents related with the meeting with Meta/Facebook can only be provided partially, after the redaction of personal data. We attach to this letter the corresponding redacted version of these documents (email correspondence).

Please find below the detailed assessment as regards the application of the exceptions of Article 4 of Regulation 1049/2001.

## 2. APPLICABLE EXCEPTIONS

### 2.1. *To the documents related to the meeting with Apple*

#### *Article 4(2), first indent, protection of commercial interests*

Pursuant to Article 4(2), first indent of Regulation 1049/2001, the Commission shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person.

Economic entities have a legitimate commercial interest in preventing third parties from obtaining strategic information on their essential, particularly economic interests and on the operation or development of their business.

The documents requested by you as specified above, relate to the enforcement of the DMA and are commercially sensitive because they consist exclusively of information on an undertaking's business operations, including its commercial strategy, business model, product designs and customer relationships. Such information is not within the public domain and is known only to a limited number of persons. Furthermore, the General Court's judgment in *Mastercard v Commission*<sup>2</sup>, confirms that "*an undertaking's working methods and business relationships may be revealed as a result of the disclosure of the documents requested, thereby undermining its commercial interests, in particular when the documents contain information particular to that undertaking which reveal its expertise.*" (emphasis added).

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<sup>2</sup> See Case T-516/11 *Mastercard v Commission*, ECLI:EU:T:2014:759, paragraph 85.

As such, the documents requested contain commercial and market-sensitive information regarding the activities of the undertaking concerned, whose public disclosure could seriously undermine and bring harm to the company's commercial interests.

In view of the foregoing, the requested documents are covered by the exception set out in Article 4(2), first indent of Regulation 1049/2001.

*Article 4(3) protection of the institution's decision making process*

Pursuant to Article 4(3), access to the documents drawn up by the Commission or received by the Commission shall be refused if the disclosure of the documents would seriously undermine the Commission's decision making process.

In order to enforce the DMA, the Commission has an interest in better understanding the business models, products, services and customer relationships of companies active in the digital sector, which are central to the application of the regulation. Such information, similar to that gathered during merger pre-notification discussions ensures a more efficient administrative procedure once the DMA is in force.

The disclosure of undertakings' information provided in this specific context, thus risks seriously undermining the decision-making process of the Commission. As set out in *Client Earth v Commission*,<sup>3</sup> disclosure is capable of undermining the Commission's decision-making process through the external influences or pressures that the Commission may be subjected to, if it risks "*impeding that institution's capacity to act in a fully independent manner and exclusively in the general interest or seriously to affect, prolong or complicate the proper conduct of that institution's internal discussions and decision-making process.*"

In particular, and as explained above, the information concerned is commercially sensitive, only known to a limited number of persons, and disclosure seriously risks undermining the commercial interests of the undertaking concerned. Disclosure would inevitably discourage companies from providing this information in an open and detailed manner, which risks seriously affecting, prolonging and complicating the ability of the Commission to take into account such information for the upcoming enforcement of the DMA.

In view of the foregoing, the requested documents are covered in their entirety by the exception related to the protection of the Commission's decision-making process, set out in Article 4(3) of Regulation 1049/2001.

**2.2. To the documents related to the meeting with Meta/Facebook**

*Article 4(1)(b) protection of personal data*

With regard to these documents, a complete disclosure thereof is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in

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<sup>3</sup> See case C 57/16 P, *Client Earth v Commission*, ECLI:EU:C:2018:660, paragraph 108.

Article 4(1)(b) of Regulation (EC) No 1049/2001, because they contain personal data such as the following:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;
- the names/initials and contact details of other natural persons;
- other information relating to an identified or identifiable natural person such as their job titles.

Article 9(1)(b) of the Data Protection Regulation does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in the requested documents, 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.

### **3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

As regards the documents concerning the meeting with Apple, it should be noted that, pursuant to Article 4 (2) and (3) of Regulation 1049/2001, the exception to the right of access contained in that Article must be waived if there is an overriding public interest in disclosing the documents requested. In order for an overriding public interest in disclosure to exist, this interest, firstly, has to be public (as opposed to private interests of the applicant) and, secondly, overriding, i.e. in this case it must outweigh the interest protected under Article 4 (2), first and third indent, and 4 (3) of Regulation 1049/2001.

In your application you have not established arguments that would present an overriding public interest to disclose the documents to which access has been hereby denied. Consequently, the prevailing interest in this case lies in protecting the commercial interests of the undertakings concerned and the effectiveness of the Commission's decision-making process.

### **4. PARTIAL ACCESS**

I have also considered the possibility of granting partial access to the documents concerning the meeting with Apple for which access has been denied in accordance with Article 4 (6) of Regulation 1049/2001. However, as explained the documents consist wholly of commercially sensitive information capable of seriously undermining the commercial interests of the undertaking concerned. As such, the reasoning invoked above

which prevents full disclosure of the documents, also applies to partial disclosure for all the documents concerned and, consequently, no partial access can be granted.

## 5. MEANS OF REDRESS

If you want this position to be reviewed you should write to the Commission's Secretary-General at the address below, confirming your initial request. You have fifteen (15) working days in which to do so from receipt of this letter, after which your initial request will be deemed to have been withdrawn.

The Secretary-General will inform you of the result of this review within fifteen (15) working days from the registration of your request, either granting you access to the documents or confirming the refusal. In the latter case, you will be informed of how you can take further action.

All correspondence should be sent to the following address:

European Commission  
Secretariat-General  
Transparency, Document Management & Access to Documents (SG.C.1)  
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,

[e-signed]  
Olivier GUERSENT  
*p.o. Linsey McCALLUM*