



EUROPEAN COMMISSION

DG Competition

The Director General

Brussels, 08/11/2022

COMP/A5/NR/kr

Samuel Stolton

Politico

Rue de La Loi 62

Brussels

[sstolton@politico.eu](mailto:sstolton@politico.eu)

By e-mail

**Subject: GESTDEM 2022/5867 – Your request of 13 October 2022 for access to documents pursuant to Regulation (EC) No. 1049/2001 relating to EVP Vestager's meeting with US Federal Trade Commission Chair Lina Khan and the Assistant Attorney General for Antitrust of the US Department of Justice Jonathan Kanter on Thursday 13 October 2022.**

Dear Sir,

Thank you for your application of 13 October 2022 concerning European Commission Executive Vice President (“EVP”) Margrethe Vestager's meeting with US Federal Trade Commission Chair Lina Khan and the Assistant Attorney General for Antitrust of the US Department of Justice Jonathan Kanter on 13 October 2022, in which you request access to documents in the Commission's file for this meeting, 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 which compose the administrative file of the Directorate General for Competition on EVP Vestager's meeting with US Federal Trade Commission Chair Lina Khan and the Assistant Attorney General for Antitrust of the US Department of Justice Jonathan Kanter on 13 October 2022:

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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

*“All documentation (including but not limited to: general communications of any nature, written material of any kind, email correspondences, attendance lists, agendas, background papers, briefing papers, transcriptions of meetings, readouts of meetings, summaries of meetings, briefings for meetings, etc).”*

Please note that the press release of the meeting on 13 October (i.e. Second EU-US Joint Technology Competition Policy Dialogue (“TCPD”)) is publicly available<sup>2</sup>.

With regards to other documentation, I have come to the conclusion that the documents you have requested access to, fall under the exception of Article 4(1)(a), third indent of Regulation 1049/2001. Therefore, access to these documents has to be refused with the exception provided in Section 3 (*Partial Access*) hereunder. Please find below the detailed assessment as regards the application of the exception of Article 4(1)(a), third indent of Regulation 1049/2001.

## **2. APPLICABLE EXCEPTION**

*Article 4(1)(a), third indent, protection of the public interest as regards international relations*

Pursuant to Article 4(1)(a), third indent of Regulation 1049/2001, the Commission shall refuse access to a document where its disclosure would undermine the protection of the public interest as regards international relations.

In assessing whether disclosure to the public of a document would undermine the interests protected by that provision the Commission has a wide discretion<sup>3</sup>.

The documents that fall under the scope of your request relate to the second high-level meeting of the EU-US Joint Technology Competition Policy Dialogue among the heads of the three competition authorities (the European Commission, the US Department of Justice, and the US Federal Trade Commission). The meeting of 13 October followed the launch of the TCPD in December 2021 with the aim to take stock on the progress made by the European and US competition authorities’ cooperation efforts to ensure and promote fair competition in the digital sector.

In particular, the briefings prepared for this event contain information about ongoing competition law enforcement cases. They also formulate directions that the Commission plans to pursue in the enforcement of competition rules in the technology sector and in the TCPD. In addition, disclosing any reports from the meeting would negatively affect the mutual trust between the EU and the US enforcement agencies and would risk undermining the international relations between the EU and the US. The mutual trust between the EU and the US in the field of competition enforcement has been built in

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<sup>2</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_6167](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6167).

<sup>3</sup> Judgment of the Court of Justice of 3 July 2014 in Case C-350/12 P Council v In 't Veld, EU:C:2014:2039, paragraph 63, and judgment of the General Court of 25 November 2020 in case T-166/19 Bronckers v European Commission, EU:T:2020:557, paragraph 62.

more than 30 years of cooperation, and the Joint Dialogue aims to deepen that trustful cooperation.

It shall be noted that the way in which the authorities of a third country perceive the decisions taken by the European Union is an important component of the relations established with that third country. The quality of our relations with third countries depend on that perception.

Having the above in mind, I consider that public disclosure of the requested documents would negatively affect both the ability of the European Commission to pursue efficient and trust-based relations with the United States in the context of the EU-US Joint Technology Competition Policy Dialogue, and to effectively promote the interests and priorities of the EU in the context of the ongoing cooperation on competition enforcement in technology sector. I consider that risk as reasonably foreseeable and non-hypothetical, as by publicly disclosing the approaches and strategies as regards the future enforcement of the competition rules in the technology sector on both sides of the Atlantic would weaken the ability of the authorities to efficiently enforce those rules.

In view of the foregoing, the requested documents, with the exception of provided in Section 3 (Partial Access), are covered by the exception related to the protection of the public interest as regards international relations, set out in Article 4(1)(a), third indent of Regulation 1049/2001.

### **3. PARTIAL ACCESS**

Having carefully examined the requested documents, I note that partial access may be granted.

You have requested access to the agenda and the attendance list for the meeting. We are able to grant you partial access for these documents comprising a list of the participants to the meeting from Director level upwards as well as the agenda of the meeting.

You will find copies of these documents in the annex to this letter.

### **4. 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