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By email only to: [REDACTED]

12 January 2021

DY/CMQ/DAT001/262

- Re: **1. Schrems v. Data Protection Commission ("DPC")
High Court Record No. 2020 / 707 JR ("the Schrems Proceedings")**
- 2. Facebook Ireland Limited ("FIL") v. Data Protection Commission
High Court Record No. 2020 / 617 JR ("the Facebook Proceedings")**

Dear Colleagues,

Further to our recent exchange of correspondence, and subsequent discussions between counsel, we write to confirm the matters we understand to be agreed between us by way of resolution of all issues arising in the Schrems' Proceedings, save that of costs, as follows:

1. In the event that the Court in its judgment in the Facebook Proceedings permits the DPC to proceed with its own volition inquiry, subject only to the terms of such order(s) as may be made by the Court in connection with the Facebook Proceedings, our client will advance its handling of your client's complaint and the own-volition inquiry from the point at which the Court delivers its judgment. Each process will be progressed thereafter as expeditiously as possible in accordance with our client's obligations under relevant provisions of the GDPR and the 2018 Act.
2. If, however, the Court rules that the own-volition inquiry may not proceed, or if it rules that the own-volition inquiry can indeed proceed but an appeal is brought and any order of the Court is stayed pending such appeal, our client will nonetheless advance its handling of your client's complaint under and by reference to Sections 109 and 113 of the Data Protection Act, 2018.

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3. If the Court rules that the own-volition inquiry may proceed (and the stay to which that inquiry is presently subject is lifted), the DPC will hear from your client in that inquiry on the terms set out in our letter of 4 December 2020. For ease of reference, those terms are reproduced below:
 - i. Your client would be afforded a period of 21 days to make submissions to the DPC.
 - ii. In the first instance, your client's submissions would be framed by reference to the issues identified in the DPC's Preliminary Draft Decision, as issued on 28 August 2020. However, your client would also be invited to set out his views in relation to such submissions as may be made by Facebook in response to the Preliminary Draft Decision, to include any reliance by Facebook on legal bases for its EU-US transfers other than the SCCs.
 - iii. For the avoidance of doubt, such submissions would not be treated by the DPC as being made by your client in any representative capacity or as being representative of the interests of data subjects generally. Likewise, your client's submissions would be made, not as complainant, but as an interested party.
 - iv. For the avoidance of doubt, your client will separately retain his right to make submissions in the process by which his reformulated complaint is being handled and pursuant to which data transfers by FIL to Facebook Inc. relating to his personal data will be examined.
 - v. To preserve the integrity of the own-volition process, your client agrees that material passing between the DPC and your client in connection with the own-volition inquiry, to include but not limited to your client's submissions, will not be disclosed to any third party without the prior agreement in writing of the DPC, it being accepted by the DPC that, once a final decision has been delivered, it will be open to your client to publish his own submissions (and only those submissions) provided that, in so doing, no information confidential to FIL is disclosed.

4.
 - i. Subject only to the issue of confidentiality, to include the confidentiality issue flagged at point 3(v) above, such materials as were exchanged between our client and FIL in the period subsequent to the final order made by the High Court (Hogan J) on 20 October 2016 will be made available to your client as soon as practicable. Please note that the 20 October 2016 date has been identified as a reference point on the basis that it marks the point from which the subject matter of your client's complaint shifted from one focused on the Safe Harbour Decision to one focused on the SCC Decisions. In principle, there is no difficulty in sharing earlier material –to the extent any such material is held by our client and has not previously been made available– in so far as it is relevant to your client's reformulated complaint.

- ii. Likewise subject to the issue of confidentiality, such submissions as may be made by FIL in the own-volition inquiry and in respect of your client's (now reformulated) complaint will be shared with your client.
- iii. For the avoidance of doubt, the timing of the release of such further material as may be received by our client from FIL from this point forward will be a matter for the DPC, subject to the overriding point that all such material will be made available to your client in sufficient time to allow him to address it in such submissions as he may choose to make in the relevant procedure. (This point is made in circumstances where the third bullet point on the final page of your letter of 5 January 2021 suggested that all material received from (or sent to) FIL would be furnished to your client "on an ongoing basis").

- 5. The parties will ask the Court to rule on the issue of costs in relation to the Schrems Proceedings once it has delivered judgment in the Facebook Proceedings.

Finally, and for completeness, we note that the DPC and Mr Schrems reserve their respective rights to make submissions in response such the arguments as may be advanced by FIL at this week's hearing under the heading "simultaneous regulatory investigations", and otherwise.

Yours faithfully,



PHILIP LEE

cc. *Mason Hayes & Curran, solicitors for FIL (By email only to [REDACTED])*

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12 January 2021

DY/CMQ/DAT001/262

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High Court Record No. 2020 / 707 JR ("the Schrems Proceedings")
2. Facebook Ireland Limited ("FIL") v. Data Protection Commission
High Court Record No. 2020 / 617 JR ("the Facebook Proceedings")

Dear [REDACTED],

We refer to the above-referenced sets of proceedings.

In particular, we refer to the Schrems Proceedings, which are listed for hearing before Mr Justice Barniville commencing on tomorrow's date, 13 January 2021.

The purpose of this letter is to inform the Court that all issues, save as to costs, have been resolved as between the DPC and Mr Schrems in relation to the Schrems Proceedings. In that regard, we enclose a copy letter issued on behalf of the DPC to Mr Schrems' solicitors on today's date, setting out the terms agreed between the parties. As a related matter, the Court will recall that, in the course of the Facebook Proceedings, Facebook Ireland Limited ("FIL") identified one particular issue which, whilst raised by FIL in the Facebook Proceedings, would instead be advanced in the Schrems Proceedings. (This point concerns FIL's contention that the it is oppressive to require FIL to deal with two regulatory processes at the same time where both processes concern the same subject matter). It is anticipated that FIL will wish to address this point before the Court tomorrow.

In that regard, the Court will also recall that the Facebook Proceedings were adjourned over on 21 December last to tomorrow's date.

DAT001-0262-5921474-1

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CONSULTANTS: Ita O'Sullivan | Rosemarie MacGuinness | Aoife Gillespie

We trust this is in order and would be obliged if you would bring this letter (and enclosure) to the attention of Mr Justice Barniville at your earliest convenience.

Yours faithfully,



PHILIP LEE

cc. *Mason Hayes & Curran, solicitors for FIL (by email only to: [REDACTED])*
Ahern Rudden Quigley, solicitors for Mr Schrems (by email only to: [REDACTED])