

In the matter of the General Data Protection Regulation

DPC Complaint Reference: [REDACTED]

IMI Complaint Reference Number: [REDACTED]

In the matter of a complaint, lodged by [REDACTED] with the Spanish Data Protection Authority pursuant to Article 77 of the General Data Protection Regulation, concerning Microsoft Ireland Operations Limited.

Record of Amicable Resolution of the complaint and its consequent withdrawal pursuant to Section 109(3) of the Data Protection Act, 2018

Further to the requirements of Internal EDPB Document 06/2021 on the practical implementation of amicable settlements (adopted on 18 November 2021)

**RECORD OF AMICABLE RESOLUTION FOR THE  
PURPOSE OF INTERNAL EDPB DOCUMENT 06/2021 ON  
THE PRACTICAL IMPLEMENTATION OF AMICABLE  
SETTLEMENTS, ADOPTED 18 NOVEMBER 2021**

Dated the 18<sup>th</sup> day of November 2022



Data Protection Commission  
21 Fitzwilliam Square South  
Dublin 2, Ireland

## Background

1. On 23 May 2020, [REDACTED] (“**the Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Spanish Data Protection Authority (“**the Recipient SA**”) concerning Microsoft Ireland Operations Limited (“**the Respondent**”).
2. In circumstances where the Data Protection Commission (“**the DPC**”) was deemed to be the competent authority for the purpose of Article 56(1) GDPR, the Recipient SA transferred the complaint to the DPC on 28 October 2020.

## The Complaint

3. The details of the complaint were as follows:
  - a. The Data Subject submitted a delisting request to the Respondent in respect of a number of URLs.
  - b. The Data Subject was not satisfied with the Respondent’s response.

## Action taken by the DPC

4. The DPC, pursuant to Section 109(4) of the Data Protection Act, 2018 (“**the 2018 Act**”), is required, as a preliminary matter, to assess the likelihood of the parties to the complaint reaching, within a reasonable time, an amicable resolution of the subject-matter of the complaint. Where the DPC considers that there is a reasonable likelihood of such an amicable resolution being concluded between the parties, it is empowered, by Section 109(2) of the 2018 Act, to take such steps as it considers appropriate to arrange or facilitate such an amicable resolution.
5. Following a preliminary examination of the material referred to it by the Recipient SA, the DPC considered that there was a reasonable likelihood of the parties concerned reaching, within a reasonable time, an amicable resolution of the subject matter of the complaint. The DPC’s experience is that complaints of this nature are particularly suitable for amicable resolution in circumstances where there is an obvious solution to the dispute, if the Respondent is willing to engage in the process. In this regard, the DPC had regard to:
  - a. The relationship between the Data Subject and Respondent being, in this case, an individual consumer and a service provider; and
  - b. The nature of the complaint (in this case, an unsuccessful attempt by the Data Subject to exercise his/her data subject rights).
6. While not relevant to the assessment that the DPC is required to carry out pursuant to Section 109(4) of the 2018 Act, the DPC also had regard to Internal EDPB Document 06/2021 on the practical implementation of amicable settlements, adopted on 18 November 2021 (“**Document 06/2021**”), and considered that:

- a. the possible conclusion of the complaint by way of amicable resolution would not hamper the ability of the supervisory authorities to maintain the high level of protection that the GDPR seeks to create; and that
- b. such a conclusion, in this case, would likely carry advantages for the Data Subject, whose rights under the GDPR would be vindicated swiftly, as well as for the controller, who would be provided the opportunity to bring its behaviour into compliance with the GDPR.

### **Amicable Resolution**

7. The DPC engaged with both the Data Subject (via the Recipient SA) and Respondent in relation to the subject-matter of the complaint. Further to that engagement, it was established that the Respondent had initially declined to delist the requested URLs but that, following further engagement with the DPC, it would now delist the URLs. In the circumstances, the Respondent took the following action:
  - a. The Respondent delisted the requested URLs.
8. On 1 February 2021, the DPC outlined the Data Subject's complaint to the Respondent. The DPC noted that the Data Subject considered that the contents of the URLs were inaccurate. The DPC also outlined that the Data Subject believed that the URLs were having a negative impact on both their private and professional life. On 15 February 2021, the Respondent informed the DPC that, at the time of its initial rejection of the Data Subject's delisting request, it had concluded that the Data Subject was currently involved in active litigation. As such, the Respondent had refused the delisting of the URLs as the information was of public relevance. However, the Respondent stated that it would be willing to re-evaluate its position and delist the requested URLs if the litigation which the Data Subject was involved in was now concluded, and if they submitted a new delisting request. The DPC subsequently wrote to the Recipient SA, outlining the response of the Respondent.
9. The DPC subsequently received correspondence from the Recipient SA on 24 April 2021, stating that, in its view, the Data Subject had already made a valid delisting request, and the Respondent should not require them to submit another request. Furthermore, the Recipient SA could not find any evidence online of the Data Subject being involved in active litigation, nor did the Data Subject inform it at the time of their complaint that they were involved in any litigation. Following further engagement with the Respondent, on 21 July 2021 the DPC received confirmation from it that the complained-of URLs were no longer returning against a search of the Data Subject's name on Bing Spain.
10. On 8 September 2021, the DPC wrote to the Respondent, pointing out that the complained-of URLs were still returning in a Bing search conducted by the DPC, and that the relevant case law on the "right to be forgotten" had concluded that search engine operators are required to remove all the links on all versions of its search engine in the EU, regardless of where the request to delist originates in the EU. Following further engagement with the Respondent, it confirmed to the DPC on 23 September 2021 that it was in the process of delisting the

complained-of URLs. On 4 October 2021, the DPC wrote to the Data Subject via the Recipient SA, outlining the latest response received from the Respondent. The Recipient SA sent the DPC's letter to the Data Subject on 14 October 2021. In the circumstances, the DPC asked the Data Subject to notify it, within two months if he/she was not satisfied with the outcome, so that the DPC could take further action. The DPC did not receive any further communication from the Data Subject and, accordingly, the complaint has been deemed to have been amicably resolved.

11. In circumstances where the subject-matter of the complaint has been amicably resolved, in full, the complaint, by virtue of Section 109(3) of the 2018 Act, is deemed to have been withdrawn by the Data Subject.

#### **Confirmation of Outcome**

12. For the purpose of Document 06/2021, the DPC confirms that:

- a. The complaint, in its entirety, has been amicably resolved between the parties concerned;
- b. The agreed resolution is such that the object of the complaint no longer exists; and
- c. Having consulted with the supervisory authorities concerned on the information set out above, as required by Document 06/2021 the DPC has now closed off its file in this matter.

13. If dissatisfied with the outcome recorded herein, the parties have the right to an effective remedy by way of an application for judicial review, by the Irish High Court, of the process applied by the DPC in the context of the within complaint.

Signed for and on behalf of the DPC:



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Deputy Commissioner

Data Protection Commission