

Annex 3: Infringements of Article 13

Unless otherwise indicated, this Annex adopts the terms defined in the Penalty Notice.

Article 13(1)(a) - the identity and the contact details of the controller and, where applicable, of the controller's representative

1. The Commissioner has decided, in the light of TikTok's Written Representations, that there was no infringement in respect of Article 13(1)(a).

Article 13(1)(b) - the contact details of the data protection officer, where applicable

(i) The Commissioner's provisional view in the NoI

2. In all of the Privacy Policies (i.e. from August 2018 to 28 July 2020), TikTok infringed Article 13(1)(b) b failing to provide the contact details of TikTok's Data Protection Officer ("**DPO**") applicable to the UK.
3. Article 37(1)(b) provides that a controller or processor shall designate a data protection officer in any case where *'the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects on a large scale'*. TikTok meets these criteria.
4. Article 37(2) provides that *'a group of undertakings may appoint a single data protection officer provided that a data protection officer is easily accessible from each establishment'*.
5. In circumstances where Article 37(1) is engaged, Article 13(1)(b) requires that the contact details of a controller's DPO are provided to data subjects. This was not done in any of the Privacy Policies, as set out at §0 above.

(ii) TikTok's representations

6. TikTok submitted that there is no requirement under Article 13(1)(b) for a DPO to be explicitly named in the privacy policy nor that a personal email is given. TikTok quotes the EDPB's guidance on DPOs as stating "*Article 37(7) does not require that the published contact details should include the name of the DPO*".
7. TikTok submitted that the purpose of Article 13(1)(b) is to help data subjects to effectively exercise their rights under the UK GDPR, and that whilst TikTok did not provide specific contact details for a DPO, the email address provided (privacy@tiktok.com) gave individuals an appropriate point of contact for all data protection and privacy related issues. TikTok submitted that emails sent to the provided address were handled by the individual(s) within TikTok who had responsibility for data protection compliance.
8. Accordingly, TikTok does not accept that it has infringed Article 13(1)(b).

(iii) The Commissioner's final decision

9. The Commissioner's view is not that TikTok has infringed Article 13(1)(b) due to its failure to reference a named individual or personal email in its Privacy Policies. Rather, TikTok has infringed Article 13(1)(b) due to its failure to make clear, at any point in its Privacy Policies, that contact with TikTok via the provided email addresses constituted a data subject's route to a DPO. Indeed, none of the Privacy Policies even referenced a DPO. As consequence, none of the Privacy Policies provided data subjects with information that amounted to "*the contact details of the data protection officer*" as required by Article 13(1)(b).
10. As for the *EDPB's Guidelines on Data Protection Officers ('DPOs')*,¹ as last revised and adopted on 5 April 2017, the relevant paragraphs quoted by TikTok fully state (emphasis added):

*"The contact details of the DPO should include **information allowing data subjects and the supervisory authorities to reach the DPO in an easy***

¹ [wp243_rev_01_en_D8C7A64C-9064-B4B5-543CB5093ACA4937_44100.pdf](#)

way (a postal address, a dedicated telephone number, and/or a dedicated e-mail address). When appropriate, for purposes of communications with the public, other means of communications could also be provided, for example, a dedicated hotline, or a dedicated contact form addressed to the DPO on the organisation's website.

Article 37(7) does not require that the published contact details should include the name of the DPO. Whilst **it may be a good practice to do so**, it is for the controller or the processor and the DPO to decide whether this is necessary or helpful in the particular circumstances."

11. While TikTok explains that emails sent to the provided email addresses would be handled by the individual(s) within TikTok who had responsibility for data protection compliance, it notably does not state that these emails would be handled by a DPO.
12. Having considered TikTok's Representations, the Commissioner maintains his view that TikTok infringed Article 13(1)(b) in all of the Privacy Policies.

Article 13(1)(c) - the purposes of the processing for which the personal data are intended as well as the legal basis for the processing

(i) The Commissioner's provisional view in the NoI

13. In all of the Privacy Policies (i.e. from August 2018 to 28 July 2020), TikTok infringed Article 13(1)(c) by failing to provide sufficient clarity and detail as to the purposes and legal bases for each specified processing operation / set of operations.

The legal requirement

14. Under Article 13(1)(c), a data controller must provide data subjects with the following information:

- a. The purposes of the specified processing operation / set of operations for which the specified category or categories of personal data are intended; and
 - b. The legal basis being relied upon to support the processing operation / set of operations.
15. The aforementioned information should be provided in such a way that there is a clear link from:
- a. A specified category or categories of personal data; to
 - b. The purposes of the specified processing operation / set of operations; and to
 - c. The legal basis being relied upon to support that processing operation / set of operations.
16. The provision of the required information in this way accords with the language of Article 13(1)(c) and matters relevant to the principle of transparency, including:
- a. The definition of “*processing*” set out in Article 4(2), namely “*any operation or set of operations which is performed on personal data or on sets of personal data...*”;
 - b. The Article 13(1)(c) requirement for a data controller to provide information in relation to “*the purposes of the processing for which the personal data are intended...*” (emphasis added);
 - c. The fact that the principle of lawfulness, fairness and transparency (in Article 5(1)(a)) envisages a user-centric approach, i.e. “*personal data shall be...processed lawfully, fairly and in a transparent manner in relation to the data subject*” (emphasis added);

- d. The role of the principle of purpose limitation (in Article 5(1)(b)) and the fact that the assessment required by this principle will determine what personal data will be collected for that/those particular purpose(s);
- e. The accountability principle (in Article 5(2)) which requires transparency of processing operations in order that data controllers are able to demonstrate compliance with their obligations under the UK GDPR; and
- f. The requirement, under that accountability principle, that the controller "*be responsible for, and be able to demonstrate compliance with*" all of the principles set out in Article 5(1), including the principles of lawfulness, fairness and transparency and purpose limitation.

Relevant excerpts from the Privacy Policies

Privacy Policy 1

17. Under the section entitled '*How we use your data*', the following is stated:

'We will use the information we collect about you in the following ways:

In accordance with, and to perform our contract with you, we will use your information to:

- *personalise the content you receive and provide you with tailored content that will be of interest to you; notify you about changes to our service; provide you with user support;*
- *enforce our terms, conditions and policies; to provide you with your profile information to send to anyone you choose and to enable you to participate on the Platform and inter with other users;*
- *to make your information available to other users in accordance with the privacy settings you chose for the respective information;*
- *to enable our messenger service to function (although this information is only processed if you choose to use this function) and you can choose*

to delete any information in this regard on your discretion via the clear cache function within the Platform's settings;

- *to help us detect abuse, fraud and illegal activity on the Platform; receive payments from you and/or make payments to you in accordance with the Diamond and Flame provisions set out in the Supplemental Terms – Virtual Items Policy under the Terms of Service or under a separate Premium Content Creator Agreement, if applicable;*
- *or communicate with you.*

As it is in our legitimate interests to be responsive to you and to ensure the proper functioning of our products and organisation, we will use information to:

- *Improve and develop the Platform and to ensure content from the Platform is presented in the most effective manner for you and your device and conduct product development;*
- *administer the Platform (i.e. to improve our Website and services to you) and for internal operations, including troubleshooting, data analysis, testing, research, statistical and survey purposes (i.e. to guarantee the website's stability and security) and to solicit your feedback;*
- *allow you to participate in interactive features of the Platform, when you choose to do so;*
- *keep the Platform safe and secure;*
- *measure and understand the effectiveness of the advertising we serve to you and others;*
- *to provide you with services based on the country settings you have chosen, such as advertising and other content that is related to the country settings;*
- *to allow other users to identify you via the "Find other friends" function as a user of the Service as well as your phone contacts to find users and to connect you on the Platform and support the socializing function of the Services; to show you advertisements that are relevant to you;*
- *to promote the Services and use information that you give to us, such as User Content and video content that you can choose to broadcast on*

our Platform, as part of our advertising and marketing campaigns to promote the Platform;

- *and to ensure that you are old enough to use our Services (as required by law).'*

18. Under section entitled '*Your Rights*', the following is stated:

'Where processing of your personal data is either based on your consent or necessary for the performance of a contract with you and processing is carried out by automated means, the right to receive the personal data concerning you in a structured, commonly used and machine-readable format or to have your personal data transmitted directly to another company, where technically feasible (data portability); ...'

19. In relation to cookies, the following is stated:

'Unless you opt out of Cookies, we assume you consent to the use of Cookies.'

Privacy Policy 2

20. Under the section entitled '*How we use your personal data*', the following is stated:

'We will use the information we collect about you in the following ways: In accordance with, and to perform our contract with you, we will use your information to:

- *personalise the content you receive and provide you with tailored content that will be of interest to you;*
- *notify you about changes to our service;*
- *provide you with user support;*
- *enforce our terms, conditions and policies;*
- *to provide you with your profile information to send to anyone you choose and to enable you to participate on the Platform and interact with other users;*

- *to make your information available to other users in accordance with the privacy settings you chose for the respective information;*
- *to enable our messenger service to function (although this information is only processed if you choose to use this function) and you can choose to delete any information in this regard on your discretion via the clear cache function within the Platform's settings;*
- *to help us detect abuse, fraud and illegal activity on the Platform;*
- *to receive payments from you and/or make payments to you in accordance with the Diamond and Flame provisions set out in the under the or under a separate Premium Content Creator Agreement, if applicable;*
- *or communicate with you.*

As it is in our legitimate interests to be responsive to you and to ensure the proper functioning of our products and organisation, we will use your information to:

- *Improve and develop the Platform and to ensure content from the Platform is presented in the most effective manner for you and your device and conduct product development;*
- *administer the Platform (i.e. to improve our Website and services to you) and for internal operations, including troubleshooting, data analysis, testing, research, statistical and survey purposes (i.e. to guarantee the website's stability and security) and to solicit your feedback;*
- *allow you to participate in interactive features of the Platform, when you choose to do so;*
- *keep the Platform safe and secure;*
- *to provide you with services based on the country settings you have chosen, such as advertising and other content that is related to the country settings;*
- *to allow other users to identify you via the "Find other friends" function as a user of the Service as well as your phone contacts to find other users and to connect you on the Platform and support the socializing function of the Services;*

- *to promote the Services and use information that you give to us, such as User Content and video content that you can choose to broadcast on our Platform, as part of our advertising and marketing campaigns to promote the Platform;*
- *and to ensure that you are old enough to use our Services (as required by law).*

If you choose to share your precise location with us, we will also use your data to provide you with location based services, such as advertising and other personalised content and where you have chosen to receive personalised adverts from us and/or our partners, our legal basis is consent’.

21. Under section entitled ‘Your Rights’, the following is stated:

‘Where processing of your personal data is either based on your consent or necessary for the performance of a contract with you and processing is carried out by automated means, the right to receive the personal data concerning you in a structured, commonly used and machine-readable format or to have your personal data transmitted directly to another company, where technically feasible (data portability);

Where the processing of your personal data is based on your consent, the right to withdraw your consent at any time without impact to data processing activities that have taken place before such withdrawal or to any other existing legal justification of the processing activity in question’

‘As far as we process your personal data on the basis of our legitimate interests, you can object to processing at any time. You can find a detailed description of our processing activities and the legal basis in the sections above. If you object to such processing, we ask you to state the grounds of your objection in order for us to examine the processing of your personal data and decide whether to adjust the processing accordingly’

22. In relation to cookies, the following is stated:

'We use cookies and other similar technologies (e.g. pixels etc.) ("Cookies") to enhance your experience using the Platform'

Privacy Policy 3

23. Under the section entitled *'How we use your personal data'*, the following is stated:

'We will use the information we collect about you in the following ways: In accordance with, and to perform our contract with you, we will use your information to:

- *notify you about changes to our service;*
- *provide you with user support;*
- *enforce our terms, conditions and policies;*
- *administer the Platform including troubleshooting;*
- *personalise the content you receive and provide you with tailored content that will be of interest to you;*
- *enable you to share User Content and interact with other users;*
- *enable our messenger service to function if you choose to use this function;*
- *enable you to participate in the virtual items program; and communicate with you.*

In order to comply with our legal obligations, we use your data to help us detect abuse, fraud and illegal activity on the Platform.

In accordance with our legitimate interests to provide an effective and dynamic Platform, we will use your information to:

- *ensure your safety and security including reviewing user content, messages and associated metadata for breach of our Community Guidelines and other inappropriate content;*
- *ensure content is presented in the most effective manner for you and your device;*

- *improve, promote and develop the Platform and promote popular topics, hashtags and campaigns on the Platform;*
- *carry out data analysis and test the Platform to ensure its stability and security;*
- *allow you to participate in interactive features of the Platform;*
- *to enable you to socialise on the Platform, for example, by allowing other users to identify you via the "Find other friends" function or through their phone contacts;*
- *to ensure that you are old enough to use our Platform (as required by law).*

With your consent, we will use your information to: provide you with personalised advertising. Please see Information from Third Parties: Advertisers and Advertising Networks for more information.

You can manage 'Personalized Ads' via your App settings, go to 'Privacy and safety' and then go to 'Personalization and data'; and location-based services (where those services are available in your jurisdiction and you choose to share your precise location with us)'.

24. The link provided in relation to '*Third Parties: Advertisers and Advertising Networks for more information*' takes the user to a further section of Privacy Policy 3, which states:

'We use the information collected from you, and your interaction with the Platform and other third-party sites, to infer your likely interests to provide you with more relevant advertising. This information tells us about websites you've visited, apps you've downloaded and purchases you have made so that we can predict what else might interest you in the future and assess how effective the advertising on our Platform is. We collect this information by the use of Cookies and similar technologies on our App and from similar information received from third parties who advertise on our Platform and whose sites you visit'.

25. There then follows a list of the information collected such as: technical information (IP address, browsing history and type of device used to access the platform etc); location data; information from users' contact lists; and records of in-app purchases.
26. In addition to the above, under the section entitled '*Your Rights*', the following is stated:

'You have the following rights:

- *The right to request free of charge (i) confirmation of whether we process your personal data and (ii) access to a copy of the personal data retained;*
- *The right to request proper rectification or removal of your personal data or restriction of the processing of your personal data;*
- *Where processing of your personal data is either based on your consent or necessary for the performance of a contract with you and processing is carried out by automated means, the right to receive the personal data concerning you in a structured, commonly used and machine-readable format or to have your personal data transmitted directly to another company, where technically feasible (data portability);*
- *Where the processing of your personal data is based on your consent, the right to withdraw your consent at any time without impact to data processing activities that have taken place before such withdrawal;*
- *The right not to be subject to any automatic individual decisions, including profiling, which produces legal effects on you or similarly significantly affects you unless we have your consent, this is authorised by Union or Member State law or this is necessary for the performance of a contract;*
- *The right to object to processing if we are processing your personal data on the basis of our legitimate interest unless we can demonstrate compelling legitimate grounds which may override your right. If you object to such processing, we ask you to state the grounds of your objection in order for us to examine the processing of your personal*

data and to balance our legitimate interest in processing and your objection to this processing;

- *The right to object to processing your personal data for direct marketing purposes; and*
- *The right to lodge complaints before the competent data protection regulator.*

Before we can respond to a request to exercise one or more of the rights listed above, you may be required to verify your identity or your account details. Please send an e-mail to us if you would like to exercise any of your rights privacy@tiktok.com'.

27. In relation to cookies, the following is stated:

'We use cookies and other similar technologies (e.g. pixels etc.) ("Cookies") to enhance your experience using the Platform. Cookies are used to collect information, including personal data, from you. Cookies are small files which, when placed on your device, enable us to provide certain features and functionality. To learn more about cookies please see our Cookies Policy.'

The infringements

28. As illustrated by the above excerpts, none of the Privacy Policies articulated, adequately or at all, the legal bases on which TikTok sought to rely for the processing of its users' personal data (in breach of Article 13(1)(c)). In particular:

- a. All of the Privacy Policies made reference to some general categories of processing grounds, namely legitimate interests, necessity for the performance of a contract, and consent. However, the aforementioned categories were not cited in a way that would allow a data subject to recognise them as distinct legal bases, nor in a manner that would allow a data subject to clearly identify the specific processing activities to which each legal basis is said to apply. For example, a data subject could not discern from the information

provided which processing he or she may have consented to, as opposed to processing operations that were not predicated on the basis of consent.

- b. None of the Privacy Policies articulated a legal basis for processing that took place through the use of cookies (although both Privacy Policy 2 and Privacy Policy 3 included a link to a separate 'cookies policy').

(ii) TikTok's representations

- 29. TikTok states that, in paragraph 14 of Annex 3 to the NoI, the Commissioner set out a means by which the requirements of Article 13(1)(c) should be provided. TikTok asserted that while adopting such an approach may be of assistance to some controllers in certain situations, it does not agree that it is a legal requirement that if not followed would result in a breach of Article 13(1)(c). TikTok submitted that the various provisions of the UK GDPR to which the Commissioner referred in paragraph 15 of Annex 3 to the NOI (e.g. Articles 5(1) and 5(2)) do not have the effect of "*rewriting the requirements of Article 13(1)(c)*" into what it submitted is a more rigid approach taken by the Commissioner in paragraph 14 of Annex 3 to the NoI.
- 30. Further, TikTok asserted that the Commissioner's transparency guidance during the Relevant Period did not use the means of presenting information set out in paragraph 14 of Annex 3 to the NoI in order for controllers to comply with Article 13(1)(c).
- 31. TikTok states that it processed personal data in the context of providing a platform to allow users to disseminate their own content which is both broad and highly user-dependent. As a result, TikTok submitted that to cover every possibility in the manner proposed by the Commissioner would have rendered the Privacy Policies unnecessarily lengthy, complex, repetitious and potentially less readable. As such, TikTok submitted that it was constrained by the requirements for brevity and clarity under Article 12. Further, TikTok

submitted that it was entitled to exercise discretion regarding the presentation of the information required by Article 13.

32. TikTok submitted that, in any event, the Privacy Policies complied with the requirement that there be a link between (a) the category of data, (b) the purpose and (c) the legal basis. In particular, TikTok submitted that the excerpts from Privacy Policies 1, 2 and 3 that it sets out in column 1 of Annex 3 to the Representations follow the following structure:
 - a. Category of personal data (including, in most cases, relevant purpose of processing);
 - b. Legal basis (e.g. contractual necessity, legitimate interests, etc.); and
 - c. Processing purposes based on that legal basis.
33. TikTok provides examples of what it considers to be a “*link*” between processing purpose and legal basis, in Section 3 of the Privacy Policies.
34. As one example, TikTok submitted that Section 3 of the Privacy Policies:
 - a. Identified the legal basis of “*to perform our contract with you*” (which TikTok refers to as “*contractual necessity*” expressed in plain English and more user-centric terms) and then listed the purposes it purports to be based on contractual necessity; and
 - b. Identified the legal basis of “*legitimate interests to be responsive to you and to ensure the proper functioning of our products and organisation*” (which TikTok submitted is expressed in plain English and more user-centric terms) and then listed the purposes it purports to be based on “*legitimate interests*”.
35. TikTok submitted that, having specified the legal basis for each purpose in the manner described above, a clear link to the relevant category of personal

data processed was achieved via Section 1 of the Privacy Policies, which for each category of data identified the relevant purpose. For example, TikTok notes that Section 1 included the data category "*messages*" and identified (in that Section) that one of the purposes of processing was "*to prevent potential crimes*". TikTok further notes that similar language was used in the description of purposes in Section 3, "*to help us detect abuse, fraud and illegal activity on the Platform*", which enabled the legal basis to be identified as contractual necessity.

36. As a second example, TikTok notes that Section 1 of the Privacy Policies listed the data categories "*phone contacts*" and "*Facebook contacts*" and identified the purpose as "*finding other users and inviting your friends*". TikTok points out that similar language was then used in Section 3 of the Privacy Policies, "*to allow other users to identify you via the "Find other friends" function as a user of the Service as well as your phone contacts to find users and to connect you on the Platform and support the socializing function of the Services*". TikTok submitted that this enabled the relevant legal basis to be identified as being TikTok's legitimate interest "*to be responsive to you and to ensure the proper functioning of our products and organisation*". TikTok further submitted that it was reasonable for it to assume that a user would be able to make this connection between the category of data, the purpose of its processing and the legal basis on which this was based.
37. TikTok asserted that, with regard to the legal basis of consent, consent was only relevant to processing of location data, to enable personalised advertising and for setting/reading cookies. TikTok submitted that the Privacy Policies were explicit about the reliance on consent for the relevant purpose.
38. TikTok submitted that, structured in accordance with the examples it gives, the Privacy Policies were sufficiently clear regarding what category of data was processed for which purpose and on what legal basis. Further, TikTok submitted that it is not a requirement of Article 13(1)(c) to use the phrase "*legal basis*" as such, nor is it necessary to cite the relevant subsections of Article 6(1) relied upon word-for-word. TikTok submitted that it was entitled

to exercise its discretion regarding the presentation of the information required by Article 13 and, accordingly, rejects the Commissioner's view in paragraph 27 of Annex 3 to the NoI that a user would not recognise the referenced categories of processing grounds as "*distinct lawful bases*".

(iii) The Commissioner's final decision

39. The Commissioner's view is that compliance with the approach set out in paragraph 14 of Annex 3 to the NoI is necessary for compliance with Article 13(1)(c). Rather than "*rewriting the requirements of Article 13(1)(c)*" (as TikTok claims), this approach both accords with the plain language of the Article and is the correct interpretation of the provision taking into account the wider UK GDPR context (including, in particular, the provisions cited in paragraph 2 of Annex 3). Further, this construction of Article 13(1)(c) has been endorsed by the Irish Data Protection Commission in three recent cases.²
40. The fact that the Commissioner's transparency guidance during the Relevant Period did not set out a controller's obligations under Article 13(1)(c) in minute detail has no bearing on the proper interpretation of a clear statutory requirement. Further, as explained in the Penalty Notice, the requirements for brevity and clarity under Article 12 impose obligations on a controller in addition to those imposed by Article 13(1)(c); they do not curtail or qualify those obligations.
41. In light of the above, the Commissioner remains of the view that, in all of the Privacy Policies, TikTok failed to provide the information required by Article 13(1)(c) in such a way that there was a clear link from (i) a specified category or categories of personal data; to (ii) the purposes of the specified processing operation / set of operations; and to (iii) the legal basis being relied upon to support that processing operation / set of operations. In all of the Privacy

² Decisions of the Irish Data Commission in the matters of WhatsApp Ireland Limited, see §§301-303; Meta, see discussion of 'Issue 3'; and Instagram, see discussion of 'Issue 3'.

Policies, TikTok therefore failed to provide concrete and definitive information about its processing activities in accordance with Article 13(1)(c).

42. The Commissioner specifically notes TikTok's second example which TikTok submitted satisfies the above-mentioned approach. In particular, TikTok states that the information it provided on its "*Find other friends*" function would enable the relevant legal basis to be identified as being TikTok's legitimate interest "*to be responsive to you [the data subject] and to ensure the proper functioning of our products and organisation*". The Commissioner disagrees with TikTok's conclusion that it is "*reasonable to assume a user would be able to make [this] connection between the category of data, the purpose of its processing and the legal basis on which this was based*". The Commissioner considers that a data subject (even with some knowledge of data protection legislation) would not understand from the relevant Privacy Policy excerpts cited by TikTok that the legal basis for the identified processing activity was legitimate interests.
43. Having considered TikTok's Representations, the Commissioner maintains his view that TikTok infringed Article 13(1)(c) in all of the Privacy Policies.

Article 13(1)(d) - where the processing is based on point (f) of Article 6(1), the legitimate interests pursued by the controller or by a third party

(i) The Commissioner's provisional view in the NoI

44. In all of the Privacy Policies (i.e. from August 2018 to 28 July 2020), TikTok infringed Article 13(1)(d) by failing to provide sufficient detail as to TikTok's reliance on legitimate interests as a lawful basis of processing under Article 6(1)(f).

Relevant excerpts from the Privacy Policies

45. Relevant excerpts from the Privacy Policies were referenced above:

- a. Privacy Policy 1: at §17, beginning "*As it is in our legitimate interests*";
- b. Privacy Policy 2: at §20, beginning "*As it is in our legitimate interests*"; and
- c. Privacy Policy 3: at §23, beginning "*In accordance with our legitimate interests*".

The infringements

46. As set out above at paragraph 39 in respect of Article 13(1)(c), none of the Privacy Policies clearly identified the purposes and legal bases (the relevant of which, here, is legitimate interests) for each processing operation / set of operations in relation to specified categories of personal data.

(ii) TikTok's representations

47. TikTok does not accept that it has failed to provide sufficient information in relation to legitimate interests, and reiterates the representations it made in respect of Article 13(1)(c).
48. In particular, TikTok submitted that the Privacy Policies complied with Article 13(1)(d) in that they clearly set out the legitimate interest "*to be responsive to you and to ensure the proper functioning of our products and organisation*" with the corresponding purposes listed in bullet points underneath.
49. TikTok notes that the Commissioner's transparency guidance (for which no date or link is provided, and therefore the cited version of which the Commissioner is unaware) recognises that the legitimate interest cited should be a broad statement of a controller's "*intended outcome or purpose*". TikTok states that, in the aforementioned guidance, the Commissioner gives as an example of good practice a statement that "*we have a legitimate interest in marketing our goods to existing customers to increase sales*". TikTok submitted that the description given in the Privacy Policies was in line with the aforementioned guidance as regards the level of detail provided.

50. Accordingly, TikTok does not accept that it has infringed Article 13(1)(d).

(iii) The Commissioner's final decision

51. The Commissioner reiterates his final decision in respect of Article 13(1)(c). TikTok has failed to demonstrate, in its Representations, that it would have been possible for a data subject to determine what categories of personal data would be processed on the basis of TikTok's legitimate interests.

52. Further, the Privacy Policies offered conflicting information concerning which legal basis was being relied upon in relation to the processing of certain categories of data. The below examples are illustrative of TikTok's failure to sufficiently articulate the purposes of the processing for which personal data were intended as well as the legal basis for the processing.

a. First, in the section of its Privacy Policies commencing "*As it is in our legitimate interests*", TikTok included, as one purpose, "*to show you advertisements that are relevant to you*". However, elsewhere in the Privacy Policies, TikTok suggests that processing for the purpose of personalised advertising is based on consent.

b. Secondly, in the section of its Privacy Policies commencing "*As it is in our legitimate interests*", TikTok referenced ensuring that "*you [data subjects] are old enough to use our Services (as required by law)*" (insertions added). However, elsewhere in its Representations, TikTok submitted that it was relying on the basis of contractual necessity in relation to Article 8, despite not referencing such necessity in any of the Privacy Policies.

53. Having considered TikTok's Representations, the Commissioner maintains his view that TikTok infringed Article 13(1)(d) in all of the Privacy Policies.

Article 13(1)(e) - the recipients or categories of recipients of the personal data, if any

(i) The Commissioner's provisional view in the NoI

54. In all of the Privacy Policies (i.e. from August 2018 to 28 July 2020), TikTok infringed Article 13(1)(e) by failing to provide sufficient detail as to (i) the identities of all third-party recipients with whom it shared users' personal data and (ii) which specific categories of users' personal data it shared with each of those third-party recipients.

Relevant excerpts from the Privacy Policies

Privacy Policy 1

55. TikTok's analytics provider (Google INC (US)) and advertising tool in use at the time (Facebook INC (US)) were identified, alongside the addresses of those organisations, as follows:

'We further use "Facebook Pixel" of Facebook Inc., 1 Hacker Way, Menlo Park, CA 94025, USA ("Facebook"). This tool is used for advertising purposes order to reveal if you have seen our advertisement on Facebook. If you do not want Facebook to collect the described information about you, you can opt-out of Facebook's use of cookies and Facebook Pixels here'.

'On our Platform, we use third-party analytics tools to help us measure traffic and usage trends for the Services. Traffic refers to the different data flows surrounding activities of the users on the Services. These tools, for example, collect information sent by your device or our Services, including the pa you visit, add-ons, and other information that assists us in improving the Service. The information will be used to report and evaluate your activities patterns as a user of the Platform to provide services in accordance with these activities.

Our third party analytics tool is Google Analytics provided by Google, Inc (1600 Amphitheatre Parkway Mountain View, CA 94043, USA). Google Ana uses Cookies, small text files containing a string of alphanumeric characters and which are stored on your computer. Google will use this information

including your truncated IP address to assemble statistics on the use of our Service on to provide other related services as described above.

For further information on how Google Analytics collects and processes information about you and information on how to opt out from Google's collection of information from you, please click here. You can also find further information in the Google Analytics Terms of Service & Privacy'.

56. Other third-party recipients of users' data are only identified through the use of high-level descriptors such "business partners":

'We will share your personal data and other information with the following selected third parties:

- our business partners so that we can make you special offers via the Platform;*
- provided you have consented, advertisers and advertising networks that require the data to select and serve adverts to you and others;*
- cloud storage providers to store the information you provide and for disaster recovery services, as well as for the performance of any contract entered into with you;*
- IT service providers who we use to for a range of services including IT support;*
- Analytics and search engine providers that assist us in the optimisation and improvement of the Platform;*
- and our data centre and the servers of our host providers.*

We will also share your information with any member or affiliate of our group, for the purposes set out above, to assist in the improvement and optimisation of the Platform, in order to prevent illegal uses, increase user numbers, development, engineering and analysis of information or for our internal business purposes.

Privacy Policy 2

57. Under the section entitled '*Who do we share your information with?*', the following is stated:

'We share your data with our third-party service providers we rely on to help you provide you with the Platform. These providers include cloud storage providers, and other IT service providers. We also share your information with business partners who would like to offer you promotions, advertisers, and analytics providers. We may also share your information with law enforcement agencies, public authorities or government bodies as required by law.'

58. Under the section entitled '*How we share your information*', the following is stated:

'We will share your personal data and other information with the following selected third parties:

- our business partners so that we can make you special offers via the Platform; advertisers and advertising networks that require the data to select and serve adverts to you and others;*
- cloud storage providers to store the information you provide and for disaster recovery services, as well as for the performance of any contract we enter into with you;*
- IT service providers who we use to for a range of services including IT support;*
- Analytics and search engine providers that assist us in the optimisation and improvement of the Platform; and*
- our data centre and the servers of our host providers.*

We will also share your information with any member, subsidiary, parent or affiliate of our corporate group, only for the purposes set out above, to assist in the improvement and optimisation of the Platform, in order to prevent illegal uses, increase user numbers, development, engineering and analysis of information or for our internal business purpose.'

Privacy Policy 3

59. Under the section entitled '*Who do we share your information with?*', the following is stated:

'We share your data with third party service providers who help us to deliver the Platform including cloud storage providers. We also share your information with business partners, other companies in the same group as TikTok Inc, content moderation services, measurement providers, advertisers and analytics providers. Where required by law, we will share your information with law enforcement agencies or regulators and with third parties pursuant to a legally binding court order. For more information, click here'.

60. The '*click here*' link takes users to a section of Privacy Policy 3 that states:

'We share your data with the following selected third parties: Business Partners. If you choose to register to use the Platform using your social network account details (e.g. Facebook, Twitter, Instagram, Google), you will provide us or allow your social network to provide us with your username and public profile.

We will likewise share certain information with the relevant social network such as your app ID, access token and the referring URL.

Where you opt to share content on social media platforms, the video, username and accompanying text will be shared on that platform or, in the case of sharing via instant messaging platforms such as Whatsapp, a link to the content will be shared.

Payment Providers

If you choose to Buy Coins, we will share data with the relevant payment provider to facilitate this transaction. We share a transaction ID to enable us to identify you and credit your account with the correct value in coins once you have made the payment.

Service Providers

We provide information and content to service providers who support our business, such as cloud service providers and providers of content moderation services to ensure that the Platform is a safe and enjoyable place. Analytics providers We use analytics providers to help us in the optimisation and improvement of the Platform.

Our third party analytics providers also help us serve targeted adverts (if you have chosen to receive personalized advertising from us and/ or our partners). For more information about how our analytics providers collect data from the Platform, please see our Cookies Policy. Advertisers and Advertising Networks We share information with advertisers and third party measurement companies to show how many and which users of the Platform have viewed or clicked on an advertisement. We share your device ID with measurement companies so that we can link your activity on the Platform with your activity on other websites; we then use this information to show you adverts which may be of interest to you.

Our Corporate Group

We may also share your information with other members, subsidiaries, or affiliates of our corporate group, to provide the Platform including improving and optimising the Platform, preventing illegal use and supporting users.

Law Enforcement

We will share your information with law enforcement agencies, public authorities or other organisations if legally required to do so, or based on our legitimate business interests if such use is reasonably necessary to: comply with legal obligation, process or request; enforce our Terms of Service and other agreements, policies, and standards, including investigation of any potential violation thereof; detect, prevent or otherwise address security, fraud or technical issues; or protect the rights, property or safety of us, our users, a third party or the public as required or permitted by law (including exchanging information with other companies and organisations for the purposes of fraud protection and credit risk reduction)'.

The infringements

61. As illustrated by the above excerpts, none of the Privacy Policies provided users with sufficient information about third-party recipients or categories of recipients of their data such as to comply with Article 13(1)€.
- In particular:
- a. Privacy Policy 1 expressly identified TikTok's analytics provider (Google INC (US)) and advertising tool in use at the time (Facebook INC (US)), alongside the addresses of those organisations. However, it also made reference to multiple other unspecified recipients in the form of "*business partners*", "*advertising and advertising networks*", "*cloud storage providers*", "*IT service providers*", "*analytics and search engine providers*", "*our data centre*", "*the servers of our host providers*" and "*any member or affiliate of our group*".
 - b. Privacy Policy 2 failed to make reference to any specific entities. Instead, it made reference to multiple unspecified third-party recipients using all of the same descriptors as under Privacy Policy 1. In addition, Privacy Policy 2 made reference to further unspecified recipients in the form of "*law enforcement agencies, public authorities or government bodies as required by law*" and any "*subsidiary*" or "*parent*" of TikTok's corporate group.
 - c. Privacy Policy 3 also failed to make reference to any specific entities, instead making reference to making unspecified third-party recipients in the same terms as under Privacy Policy 1 and Privacy Policy 2. It also made reference to further unspecified recipients in the form of "*content moderation services*", "*measurement providers*", "*regulators*", "*third parties pursuant to a legally binding court order*" and relevant "*social networks*", "*social media platforms*", "*instant messaging platforms*" and "*payment providers*".

(ii) TikTok's representations

62. TikTok does not agree that it is a legal requirement under the UK GDPR that all the identities of recipients be listed, nor that each specific category of personal data being shared with each and every recipient should be identified. TikTok asserted that it is sufficient to comply with Article 13(1)(e) to list either the "*recipients*" or "*categories of recipients*" of personal data in the Privacy Policy.
63. TikTok asserted that Privacy Policy 1 complied with this requirement in that it included both specific "*recipients*" of personal data (such as Facebook, Inc. and Google, Inc.) and "*categories of recipients*" of personal data (such as TikTok's "*business partners*", "*cloud storage providers*", "*IT services providers*", "*analytics and search engine providers*", "*data centre*", "*law enforcement agencies*", etc.).
64. TikTok asserted that Privacy Policy 2 complied with this requirement in that it included both "*categories of recipients*" of personal data including TikTok's "*business partners*", "*cloud storage providers*", "*IT services providers*", "*analytics and search engine providers*", "*law enforcement agencies*", etc. in the main body of Privacy Policy 2 and specific "*recipients*" of cookie-related data such as Facebook, Inc. and Google, Inc. within the Cookie Policy to which Privacy Policy 2 links.
65. TikTok asserted that Privacy Policy 3 complied with this requirement in that it included both "*categories of recipients*" of personal data including TikTok's "*business partners*", "*payment providers*", "*service providers*", "*analytic providers*", "*law enforcement agencies*", etc. in the main body of Privacy Policy 3 and specific "*recipients*" of personal data such as Facebook, Inc. and Google, Inc. within the Cookie Policy to which Privacy Policy 3 links.
66. TikTok submitted that, contrary to the Commissioner's view expressed at paragraph 105 of the NoI, the above constituted a "*full list of clearly articulated categories*" which were accompanied by the reason that personal data was shared with third parties. TikTok submitted that this enabled a user

to understand both who their data was shared with and why. Further, TikTok asserted that each of the categories listed were sufficiently specific as to enable a user to determine what type of recipients may receive their data. TikTok notes that, like many platform providers, TikTok made use of numerous processors to provide the TikTok service. TikTok does not accept that it is a requirement under Article 13(1)(e) to identify such processors in any more detail than provided in the categories set out above. TikTok asserted that the need to be concise under Article 12 appears to require such unnecessary detail not to be provided.

67. TikTok asserted that the "*stricter requirement*" which it believes the Commissioner is seeking to impose in the NoI (whereby controllers list each recipient of personal data) has several distinct disadvantages, apart from exceeding what is required by Article 13(1)(e). TikTok submitted, as two examples of such disadvantages, that this would:
 - a. render privacy policies unnecessarily lengthy, making them less accessible to users and even less likely to be read; and
 - b. require privacy policies to be continually updated with any changes in, for example, service providers, rendering it "*wholly impractical and very difficult to keep up to date*", which it submitted is not in data subjects' interests.
68. Further, TikTok asserted that there are categories of recipients which may be unknown at the time a privacy policy is written, for example, the "*prospective buyer or seller*" of the business in the case of a merger.
69. In relation to Privacy Policy 1, TikTok submitted that, notwithstanding its assertion that it is not a requirement under Article 13(1)(e) to provide specific categories of data per recipient, it did provide this information where it could. For example, TikTok asserted that Privacy Policy 1 sets out that Google, Inc. receives users' "*truncated IP address*" and Facebook, Inc. is given data on whether users "*have seen [TikTok's] advertisement on Facebook*".

70. In relation to Privacy Policies 1 and 2, TikTok submitted that it was reasonable to expect that a data subject reading the relevant Privacy Policy would be able to ascertain what data would be shared with whom and for what purpose. TikTok asserted that, for example, Privacy Policies 1 and 2 set out that data is shared with "*law enforcement agencies*" to "*detect, prevent and otherwise address security, fraud and technical issues*". Further, TikTok asserted that, taking the example it cites in the Representations under Article 13(1)(c), it is likely that the sort of data that this would involve could include "*messages*" which Section 1 states are scanned "*to prevent potential crimes*".
71. In relation to Privacy Policies 2 and 3, TikTok does not agree with the Commissioner at paragraph 38(b) and (c) of the NoI that it failed to make reference to any specific entities. TikTok asserted that the link in Privacy Policies 2 and 3 directed the user to more detailed information on recipients, including specific entities.
72. In relation to Privacy Policy 3, TikTok asserted that it is reasonable to expect that a data subject reading that Policy would have been able to ascertain what data would be shared with whom and for what purpose. TikTok asserted that, for example, Privacy Policy 3 set out that data such as transaction IDs were shared with payment providers for the purpose "*to identify you and credit your account with the correct value in coins*". TikTok also asserted that the Policy set out that "*device IDs*" were shared with measurement companies for the purpose of linking users' activity on the platform with their activity on other websites so they could be served targeted ads. TikTok submitted that setting out this information in relation to each recipient category enabled the user to understand what data is shared, with who and for what purpose.
73. Accordingly, TikTok does not accept that it has infringed Article 13(1)(e).

(iii) The Commissioner's final decision

74. The Commissioner accepts that in all of the Privacy Policies, TikTok provided a high-level description of the way in which it shared its users' personal data.

The Commissioner also accepts that, in Privacy Policy 1, TikTok's analytics provider (Google, Inc.) and advertising tool in use at the time (Facebook, Inc.) were named and that those same companies were named within the Cookie Policies to which Privacy Policies 2 and 3 linked.

75. However, the Commissioner notes that the table provided in the Annex of the EDPB's Guidelines on Transparency under Regulation 2016/679,³ adopted on 29 November 2017 (and further revised and adopted on 11 April 2018), states in relation to Article 13(1)(e) that (emphasis added):

"...Therefore, other data controllers, joint controllers and processors to whom data is transferred or disclosed are covered by the term "recipient" and information on such recipients should be provided in addition to information on third party recipients.

The actual (named) recipients of the personal data, or the categories of recipients, must be provided. *In accordance with the principle of fairness, controllers must provide information on the recipients that is most meaningful for data subjects.*

In practice, this will generally be the named recipients, so that data subjects know exactly who has their personal data. If controllers opt to provide the categories of recipients, the information should be as specific as possible by indicating the type of recipient (i.e. by reference to the activities it carries out), the industry, sector and sub-sector and the location of the recipients'.

76. The Commissioner's view is that, in the circumstances, TikTok was required to provide either all of the named recipients of users' personal data in order to comply with Article 13(1)(e) or at least sufficient detail on the categories of recipients so that data subjects were able to know exactly who held their personal data.

³ <https://ec.europa.eu/newsroom/article29/items/622227>.

77. Where the Privacy Policies described categories of third parties (e.g. “*business partners*”, “*advertising and advertising networks*” and “*analytics and search engine providers*”), the Commissioner’s view is that these were too broad and not adequately explained, resulting in a lack of transparency as to with whom users’ data had been shared. For example, the term “*business partners*” could encompass a vast range of different recipients, and it is unreasonable to assume that a data subject would have had knowledge of all of the various entities with whom TikTok does business.

78. Further, the Commissioner notes that the table provided in the Annex of the EDPB’s Guidelines on Transparency under Regulation 2016/679 states that the term “*recipient*” (emphasis added):

*“...is defined in Article 4.9 as “a natural or legal person, public authority, agency or another body, to which the personal data are disclosed, **whether a third party or not**”. As such, a recipient does not have to be a third party. **Therefore, other data controllers, joint controllers and processors to whom data is transferred or disclosed are covered by the term “recipient”** and information on such recipients should be provided in addition to information on third party recipients’.”*

79. Article 13(1)(e) therefore also applies to other data controllers, joint controllers and processors which are not third parties. In this respect:

- a. Privacy Policy 1 references “*any member or affiliate of our group*”;
- b. Privacy Policy 2 references “*any member, subsidiary, parent or affiliate of our corporate group*”; and
- c. Privacy Policy 3 references “*other members, subsidiaries, or affiliates of our corporate group*”.

80. The Commissioner considers that these categories of recipients were also not adequately explained, resulting in a lack of transparency as to with whom data had been shared. In particular, it is unreasonable to assume that a data

subject would have understood what types of entities comprised TikTok's global "affiliates".

81. As regards TikTok's contention that the Commissioner's position would require it to continually update its privacy policies in light of changes to a recipient or category of recipients, this is a requirement of Article 13(1)(e) and thereby a statutory obligation on TikTok. The Commissioner notes that the EDPB's Guidelines on Transparency under Regulation 2016/679 state, at paragraph 30, in relation to the timing of the notification of any changes to a privacy notice (emphasis added):

*"..... the data controller must again have regard to the fairness and accountability principles in terms of any reasonable expectations of the data subject, or the potential impact of those changes upon the data subject. If the change to the information is indicative of a **fundamental change to the nature of the processing (e.g. enlargement of the categories of recipients or introduction of transfers to a third country)** or a change which may not be fundamental in terms of the processing operation but which may be relevant to and impact upon the data subject, then that information **should be provided to the data subject well in advance of the change actually taking effect** and the method used to bring the changes to the data subject's attention should be explicit and effective."*

82. Finally, for the reasons explained in the Penalty Notice and above, the Commissioner does not accept TikTok's contention that the requirement under Article 12 to be concise means that the information required under Article 13(1)(e) need not be provided.
83. Having considered TikTok's Representations, the Commissioner maintains his view that TikTok infringed Article 13(1)(e) in all of the Privacy Policies.

Article 13(1)(f) - transfers of personal data to a third country or international organisation

(i) The Commissioner's provisional view in the NoI

84. TikTok infringed Article 13(1)(f) by failing to provide sufficient information, in circumstances where applicable, as to transfers of users' data to third countries or international organisations.

The legal requirement

85. Article 13(1)(f) requires the data controller, "where applicable", to inform the data subject "that the controller intends to transfer personal data to a recipient in a third country or international organisation and the existence or absence of an adequacy decision by the [European] Commission, or in the case of transfers referred to in Article 46 or 47, or the second paragraph of Article 49(1), reference to the appropriate or suitable safeguards and the means to obtain a copy of them or where they have been made available".

Relevant excerpts from the Privacy Policies

Privacy Policy 1

86. In relation to transfers of personal data to a third country or international organisation, the following is stated:

'The personal data that we collect from you may will be transferred to, and stored at, a destination outside of your country and the European Economic Area ("EEA"), specifically to the United States of America, Singapore, Japan or to China. We transfer your information to the servers of our hosting providers in Japan, and in the United States of America'.

Privacy Policy 2

87. In relation to transfers of personal data to a third country or international organisation, the following is stated:

'The personal data that we collect from you may will be transferred to, and stored at, a destination outside of your country and the European Economic

Area ("EEA"). Further information regarding the transfer of data outside of the EEA is available. Please contact us at privacy@tiktok.com if you have any questions.'

Privacy Policy 3

88. In relation to transfers of personal data to a third country or international organisation, the following is stated:

'The personal data that we collect from you will be transferred to, and stored at, a destination outside of the European Economic Area ("EEA").

Where we transfer your personal data to countries outside the EEA, we do so under the Commission's model contracts for the transfer of personal data to third countries (i.e. standard contractual clauses) pursuant to 2004/915/EC or 2010/87/EU (as appropriate). For a copy of these Standard Contractual Clauses, please contact us at privacy@tiktok.com'.

The infringements

89. The evidence demonstrates that TikTok shared users' data with third countries or international organisations. For example:
- a. Privacy Policy 1 and Privacy Policy 2 stated that users' personal data "may will" be transferred, and stored, outside of the EEA. Privacy Policy 3 states that users' personal data "will" be transferred, and stored, outside of the EEA.
 - b. TikTok has publicly stated the view that no UK user data processing is undertaken in China.⁴ However, at the point at which TikTok Inc was the data controller, TikTok advised the Commissioner, by letter dated 27 April 2020, that (emphasis added):

⁴ <https://committees.parliament.uk/oralevidence/906/pdf/>

"TikTok user data is only processed in China for the purpose of providing the TikTok platform. To the extent employees in China are in a function or team supporting or providing services to TikTok Inc, they may have access to data of UK users. The sharing and processing of this data is governed by the Intra-Group Agreement (attached at answer 2). Our personnel in China work alongside their colleagues in other jurisdictions such as the UK, ROI and USA. We are currently working on expanding the teams in these other locations and, as we do so, the volume and amount of UK user data accessed within ByteDance's premises in China will reduce. For example, as we further expand our trust and safety hub in Ireland, the wider user safety function for the EMEA region will transition to being operated from Dublin".

It is also the case that companies incorporated in China are listed in TikTok's 'Intragroup Agreement for transfers of data between Bytedance entities' dated 28 March 2019 and in relation to the processing taking place at that time.

90. However, the Privacy Policies failed to provide sufficient information, in circumstances where required, as to:
- a. In Privacy Policy 1 (i.e. from August to December 2018): (i) the categories of users' data that were transferred to a third country or international organisation, and (ii) the existence or absence of an adequacy decision, and/or the appropriate or suitable safeguards in place for such transfers (and/or the means by which to obtain a copy of this information or where it has been made available).
 - b. In Privacy Policy 2 and Privacy Policy 3 (i.e. from January 2019 to 28 July 2020): (i) the individual third countries or international organisations to which users' data were transferred, (ii) the categories of users' data that were transferred to those countries/organisations, and (iii) the existence or absence of an adequacy decision and/or the appropriate or suitable safeguards in

place for such transfers (and/or the means by which to obtain a copy of this information or where it has been made available).

91. Specification of the categories of data that will be transferred is particularly significant in circumstances where the conditions attaching to the transfer (as recorded in an adequacy decision/safeguard) may specify which categories of personal data may be transferred in reliance on the adequacy decision/safeguard in question.
92. While Privacy Policy 2 states that further information is available, it does not provide sufficient information to make clear what information can be obtained. Further action was therefore required of a data subject when it could easily have been provided within the privacy policy.
93. In contrast to the other privacy policies, Privacy Policy 3 does refer to '*model contracts*' and how to obtain a copy. It is not made clear that the '*model contract*' is a safeguard in respect of the transfer of personal data and therefore important. However, while reference to Standard Contractual Clauses (SCCs) may, to some degree, intimate to users how transfers to countries outside of the UK/EEA are dealt with, a non-privacy professional is unlikely to understand the potential implications of this.
94. Further, TikTok's failure to specify in either Privacy Policy 2 or Privacy Policy 3 which destinations, either within or beyond the EEA, users' personal data would be shared with was despite TikTok providing some limited information in versions of the privacy policies applicable in other territories. For example:

'Where we store your personal data',

'The personal data we collect from you may be stored on a server located in Singapore or the United States, outside of the country where you live. We maintain major servers around the world to bring you our services globally and continuously'.

95. Especially given that TikTok shared information with parts of its corporate structure that are outside of the UK/EEA – including TikTok in the US – and with third party companies that also are outside the UK/EEA, the information that was provided to UK users between January 2019 and 28 July 2020 was insufficient to comply with Article 13(1)(f). It did not allow data subjects to make informed choices about whether to provide their personal data to TikTok for processing.

(ii) TikTok’s representations

96. TikTok asserted that the Commissioner’s statement in paragraph 45 of Annex 3 to the NoI is inconsistent with the Commissioner’s statement in paragraph 107 of the NoI. This noted that: “*Except for Privacy Policy 1, the privacy policies did not clearly specify which jurisdiction, either within or beyond the EEA, personal data would be transferred to*”. TikTok asserted that the Commissioner therefore appears to be indicating that Privacy Policy 1 does in fact comply with Article 13(1)(f) earlier in the NoI.

97. TikTok asserted that, notwithstanding this, it does not accept that the requirement in Article 13(1)(f) extends to listing each category of personal data to be transferred. TikTok submitted that the UK GDPR requirement is to set out “*the fact that the controller intends to transfer personal data to a third country*”.

98. TikTok asserted that its intention to transfer data to a third country is clearly set out in compliance with Article 13(1)(f), by way of the following submissions.

- a. Privacy Policy 1 clearly set out that it could transfer “*the personal data we collect from you*” (which, having provided the data, the user would be aware of) “*outside of your country and the European*

Economic Area ("EEA"), specifically to the United States of America, Singapore, Japan or to China".

- b. Privacy Policy 2 clearly set out that TikTok may transfer *"the personal data we collect from you"* (which, having provided the data, the user would be aware of) *"outside of your country and the European Economic Area ("EEA")"*. Further, TikTok asserted that the data subject was also informed that *"further information regarding the transfer of data outside the EEA is available"*, and was invited to email TikTok on a specified address for further details. TikTok submitted that, therefore, the data subject also had the opportunity to obtain information on (i) the categories of data, (ii) the jurisdictions and (iii) any corresponding safeguards via email.

- c. Privacy Policy 3 clearly set out that *"the personal data that we collect from you will be transferred to, and stored at, a destination outside of the European Economic Area"*.

99. Further, TikTok does not accept that the Privacy Policies failed to provide information on appropriate safeguards and did not give the user an opportunity to obtain a copy of such safeguards. TikTok asserted that the Policies set out that any transfers outside the EEA are done *"under the Commissions' model contracts"* and provided the means to obtain a copy: *"For a copy of these Standard Contractual Clauses, please contact us at privacy@tiktok.com"*. TikTok asserted that the model contracts included a number of contractual safeguards for data transferred abroad and that the data subject could have inspected these by requesting a copy. TikTok asserted that providing further detail on the applicable safeguard was unnecessary in those circumstances, particularly given the obligation under Article 12 to be *"concise"*.

100. Accordingly, TikTok does not accept that it has infringed Article 13(1)(f).

(iii) The Commissioner's final decision

101. For the avoidance of doubt, the Commissioner's statement in paragraph 107 of the NoI did not amount to an indication that Privacy Policy 1 does in fact comply with Article 13(1)(f). Rather, the Commissioner was pointing out the fact that, in contrast to Privacy Policies 2 and 3, Privacy Policy 1 expressly names certain countries. The Commissioner has updated the wording in the Penalty Notice to reflect this.

102. The Commissioner's view is that, in order for the information provided on transfers under Article 13(1)(f) to be meaningful, third countries to which data is transferred should generally be named. This is in order to allow data subjects to make informed choices about whether to provide their data to TikTok for processing. The table provided in the Annex of the EDPB's Guidelines on Transparency under Regulation 2016/679 states that (emphasis added):

*"...In accordance with the principle of fairness, the information provided on transfers to third countries should be as meaningful as possible to data subjects; **this will generally mean that the third countries be named.**"*

103. The Commissioner considers that the naming of third countries was necessary and particularly important on the specific facts of TikTok's situation in relation to Privacy Policies 2 and 3 because TikTok previously put forward a publicly stated view⁵ that intimated that UK user data processing was not taking place in China, despite now having advised the Commissioner to the contrary.

104. The Commissioner does not consider that references to model contracts and standard contractual clauses were sufficient to provide a data subject with the requisite information on the existence or absence of an adequacy decision, and/or appropriate and suitable safeguards in place for such transfers (and/or the means by which to obtain a copy of this information or

⁵ <https://committees.parliament.uk/oralevidence/906/pdf/>.

where it has been made available). I mere reference to model contracts is not easily intelligible as a means of providing such information, and any non-specialist would have been unlikely to understand its potential implications. In particular, from the mere reference to model contracts, the Commissioner considers that users aged 13-17 would not have been in a position to understand the potential consequences of providing personal data to TikTok, which may then be shared with entities in third countries, including China.

105. Finally, the Commissioner does not accept TikTok's contention that the need to be concise under Article 12 requires that some of the information required under Article 13(1)(f) need not be provided. Article 12 imposes obligations on a controller in addition to those imposed by Article 13(1)(c); it does not in any way curtail or qualify those obligations.

106. Having considered TikTok's Representations, the Commissioner maintains his view that TikTok infringed Article 13(1)(f) in all of the Privacy Policies.

Article 13(2)(a) - the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period

(i) The Commissioner's provisional view in the NoI

107. In all of the Privacy Policies (i.e. from August 2018 to 28 July 2020), TikTok infringed Article 13(2)(a) by failing to provide (i) sufficient information about the length of time data will be retained and (ii) clear and meaningful criteria that will be used to determine such a period.

Relevant excerpts from the Privacy Policies

Privacy Policy 1

108. Under the section entitled: '*How long do we keep hold of your information?*', the following is stated:

'We retain your information for as long as it is necessary to fulfil (1) our contractual obligations and rights in relation to the information involved, (2) our legal obligation(s) under applicable law(s) and regulations to retain

data for a certain period of time, taking into account statute of limitations under applicable law(s); (3) our legitimate business purposes; (4) and to conduct a defence in relation to disputes or potential disputes. More information.

109. The 'More information' link takes users to a section entitled 'How long we keep your personal data' which states:

'We use the following criteria to determine the period for which we will keep your personal data:

- our contractual obligations and rights in relation to the information involved;*
- legal obligation(s) under applicable law(s) to retain data for a certain period of time;*
- and disputes or potential disputes.*

After you have terminated your use of our Services, we can store your information in an aggregated and anonymised format. Notwithstanding the foregoing, we can also retain any personal data as reasonably necessary to comply with our legal obligations, allow us to resolve and litigate dispute and to enforce our agreements.'

Privacy Policy 2

110. Under the section entitled: 'How long do we keep hold of your information?', the following is stated:

'We retain your information for as long as it is necessary to fulfil (1) our contractual obligations and rights in relation to the information involved, (2) our legal obligation(s) under applicable law(s) and regulations to retain data for a certain period of time, taking into account statute of limitations under applicable law(s); (3) our legitimate business purposes;(4) and to conduct a defence in relation to disputes or potential disputes.'

111. Under the section entitled: *'How long we keep your personal data'*, the following is further stated:

'We use the following criteria to determine the period for which we will keep your personal data:

- *our contractual obligations and rights in relation to the information involved;*
- *legal obligation(s) under applicable law(s) to retain data for a certain period of time; and*
- *disputes or potential disputes.*

After you have terminated your use of our Services, we can store your information in an aggregated and anonymised format. Notwithstanding the foregoing, we can also retain any personal data as reasonably necessary to comply with our legal obligations, allow us to resolve and litigate disputes, and to enforce our agreements.'

Privacy Policy 3

112. Under the section entitled: *'How long do we keep hold of your information?'*, the following is stated:

'We retain your information for as long as it is necessary to provide you with the service so that we can fulfil our contractual obligations and rights in relation to the information involved. Where we do not need your information in order to provide the service to you, we retain it only as long as we have a legitimate business purpose in keeping such data or where we are subject to a legal obligation to retain the data. We will also retain your data if necessary for the establishment, exercise or defence of legal claims. For more information, [click here](#).'

113. The *'click here'* link takes users to a section entitled *'How long we keep your personal data'* which states:

'We retain your information for as long as it is necessary to provide you with the service so that we can fulfil our contractual obligations and rights in relation to the information involved. Where we do not need your information in order to provide the service to you, we retain it only for so long as we have a legitimate business purpose in keeping such data. However, there are occasions where we are likely to keep this data for longer in accordance with our legal obligations or where it is necessary for the establishment, exercise or defence of legal claims. After you have terminated your use of our Platform, we store your information in an aggregated and anonymised format.'

The infringements

114. As illustrated by the above excerpts, all of the Privacy Policies (which contain essentially the same content in this respect) are in breach of Article 13(2)(a):

- a. None of the Privacy Policies stated the period for which users' personal data will be stored. It is unclear why it was not possible to provide a clear period.
- b. The cited criteria that TikTok used to determine the period are meaningless in terms of enabling a data subject to understand for how long the data will be kept. The language used across the Privacy Policies is broad and general and does not provide sufficient detail to understand, for example, how "*our contractual obligations and rights in relation to the information involved*" impact on retention periods or indeed what those contractual obligations and rights are. The meaning and significance of each criterion is not clear, and there no practical examples are provided as to how each of the above criteria would impact on the period of retention. No explanation is given as to what is meant by an "*aggregated and anonymised format*". Further, the link to another part of the policy which essentially provides the same information is confusing.

(ii) TikTok's representations

115. TikTok notes that the requirements of Article 13(2) apply differently to those of Article 13(1) because the information specified in Article 13(2)(a) to (f) need only be provided where necessary to ensure fair and transparent processing. TikTok quotes a passage from *Data Protection Law and Practice* (fifth edition) on page 646: "*This appears to mean that it is not essential in every case*". TikTok asserted that to interpret the requirements of Article 13(2) otherwise and as applying in every situation would make no sense as there would be no difference between Article 13(1) and (2). TikTok submitted that, as a consequence, it is incumbent on the Commissioner first to establish, for each element of Article 13(2) it relies upon, that such information needs to be provided in the particular circumstances of each Privacy Policy to ensure fair and transparent processing. In light of this, TikTok does not agree with the Commissioner's view that the Privacy Policies were in breach of Article 13(2)(a).
116. TikTok asserted that the requirement to provide "*the period for which personal data will be stored*" in privacy policies is dependent on it being "*possible*" to provide this accurately. TikTok submitted that, in this case, it was not possible to provide a specific retention period as this depended on a number of factors including whether a user had a current account, was active on the platform, whether they were the subject of a legal dispute, etc.. TikTok therefore asserted that it was clearer for the Privacy Policies to provide the criteria used by TikTok to determine the data retention period.
117. Further, TikTok submitted that the Privacy Policies clearly set out the four criteria used to determine the relevant retention period for personal data: (i) contractual obligations, (ii) legal obligations, (iii) legitimate business purposes and (iv) disputes or potential disputes (or "*legal claims*" in Privacy Policy 3). TikTok asserted that, for example, a data subject was able to infer from the first of these criteria that as long as there was an ongoing contractual relationship with TikTok that their data would be retained in order to fulfil that contract.

118. TikTok rejects the Commissioner's view expressed in paragraph 58(b) of Annex 3 to the NoI that the lack of practical examples of how the retention period is applied contributes to an Article 13(2)(a) breach. TikTok assert that there is no requirement in the UK GDPR to provide this level of detail.

119. Accordingly, TikTok does not accept that it has infringed Article 13(2)(a).

(iii) The Commissioner's final decision

120. The Commissioner's view is that provision of the information specified in Article 13(2)(a) was necessary to ensure fair and transparent processing of users' personal data by TikTok, because it would have enabled users to understand the scope of their rights in respect of that data. TikTok was therefore required to provide that information. Recital 60 to the UK GDPR states: "*The controller should provide the data subject with any further information necessary to ensure fair and transparent processing taking into account the specific circumstances and context in the which the personal data are processed*".

121. The Commissioner therefore considers that TikTok was required to provide its users with a clear period for which their personal data would be stored (and notes that TikTok has advanced no good reason as to why it was not able to do so).

122. Further, TikTok's cited criteria used to determine the aforementioned period across the Privacy Policies remain broad, general and not meaningful in terms of enabling a user to understand how long TikTok would hold his or her data. The Commissioner notes that the table provided in the Annex of the EDPB's Guidelines on Transparency under Regulation 2016/679 states that (emphasis added):

"The storage period (or criteria to determine it) may be dictated by factors such as statutory requirements or industry guidelines but should be phrased in a way that allows the data subject to assess, on the basis of his or her own situation, what the retention period will be for specific data/ purposes.

It is not sufficient for the data controller to generically state that personal data will be kept as long as necessary for the legitimate purposes of the processing.

Where relevant, the different storage periods should be stipulated for different categories of personal data and/or different processing purposes, including where appropriate, archiving periods”.

123. The Commissioner notes that TikTok has not provided an explanation as to what is meant by an “aggregated and anonymised format”.

124. Having considered TikTok’s Representations, the Commissioner maintains his view that TikTok infringed Article 13(2)(a) in all of the Privacy Policies.

Article 13(2)(b) - the existence of the right to request from the controller access to and rectification or erasure of personal data or restriction of processing concerning the data subject or to object to processing as well as the right to data portability

(i) The Commissioner’s provisional view in the NoI

125. In all of the Privacy Policies (i.e. from August 2018 to 28 July 2020), TikTok infringed Article 13(2)(b) by failing to provide sufficient detail to allow data subjects to fully and properly exercise their rights.

Relevant excerpts from Privacy Policies

Privacy Policy 1

126. Under the section entitled: ‘*Your Rights*’, the following is stated:

‘In certain circumstances you have the right to access the personal data that we hold about you and to correct, update, or request deletion your personal

data. Prior to the fulfilment of your request concerning your personal data, we will ask you to verify your identity before we can act upon your request.

You have the following rights:

- The right to require free of charge (i) confirmation of whether we process your personal data and (ii) access to a copy of the personal data retained;*
- The right to request proper rectification, removal or restriction of your personal data;*
- Where processing of your personal data is either based on your consent or necessary for the performance of a contract with you and processing is carried out by automated means, the right to receive the personal data concerning you in a structured, commonly used and machine-readable format or to have your personal data transmitted directly to another company, where technically feasible (data portability);*
- Where the processing of your personal data is based on your consent, the right to withdraw your consent at any time without impact to data processing activities that have taken place before such withdrawal or to any other existing legal justification of the processing activity in question*
- The right not to be subject to any automatic individual decisions which produces legal effects on you or similarly significantly affects you; and*
- The right to take legal actions in relation to any breach of your rights regarding the processing of the personal data, as well as to lodge complaints before the competent data protection regulators.*

As far as we process your personal data on the basis of our legitimate interests, you can object to processing at any time. You can find a detailed description of our processing activities and the legal basis in the sections above.

If you object to such processing, we ask you to state the grounds of objection in order for us to examine the processing of your personal data and decide whether to adjust the processing accordingly.

Please note that the processing of your personal data will involve direct marketing activities as described above. If you do not want to have your account on our Platform processed for direct marketing activities, you can object to any data processing free of charge at any time via e-mail privacy@tiktok.com

Please send an e-mail to us if you would like to exercise any of your rights privacy@tiktok.com

Privacy Policy 2

127. Under the section entitled: '*Your Rights*', the following is stated:

'In certain circumstances you have the right to access the personal data that we hold about you and to correct, update, or request deletion your personal data. Prior to the fulfilment of your request concerning your personal data, we will ask you to verify your identity before we can act upon your request.

You have the following rights:

- *The right to require free of charge (i) confirmation of whether we process your personal data and (ii) access to a copy of the personal data retained;*
- *The right to request proper rectification, removal or restriction of your personal data;*
- *Where processing of your personal data is either based on your consent or necessary for the performance of a contract with you and processing is carried out by automated means, the right to receive the personal data concerning you in a structured, commonly used and machine-readable format or to have your personal data transmitted directly to another company, where technically feasible (data portability);*
- *Where the processing of your personal data is based on your consent, the right to withdraw your consent at any time without impact to data processing activities that have taken place before such withdrawal or to*

any other existing legal justification of the processing activity in question;

- *The right not to be subject to any automatic individual decisions which produces legal effects on you or similarly significantly affects you; and*
- *The right to take legal actions in relation to any breach of your rights regarding the processing of the personal data, as well as to lodge complaints before the competent data protection regulators.*

As far as we process your personal data on the basis of our legitimate interests, you can object to processing at any time. You can find a detailed description of our processing activities and the legal basis in the sections above. If you object to such processing, we ask you to state the grounds of your objection in order for us to examine the processing of your personal data and decide whether to adjust the processing accordingly.

Please note that the processing of your personal data will involve direct marketing activities as described above. If you do not want to have your activity on our Platform processed for direct marketing activities, you can object to any data processing free of charge at any time via e-mail privacy@tiktok.com

Please send an e-mail to us if you would like to exercise any of your rights privacy@tiktok.com.

Privacy Policy 3

128. Under the section entitled: '*Your Rights*', the following is stated:

'You have the following rights:

- *The right to request free of charge (i) confirmation of whether we process your personal data and (ii) access to a copy of the personal data retained;*
- *The right to request proper rectification or removal of your personal data or restriction of the processing of your personal data;*

- *Where processing of your personal data is either based on your consent or necessary for the performance of a contract with you and processing is carried out by automated means, the right to receive the personal data concerning you in a structured, commonly used and machine-readable format or to have your personal data transmitted directly to another company, where technically feasible (data portability);*
- *Where the processing of your personal data is based on your consent, the right to withdraw your consent at any time without impact to data processing activities that have taken place before such withdrawal;*
- *The right not to be subject to any automatic individual decisions, including profiling, which produces legal effects on you or similarly significantly affects you unless we have your consent, this is authorised by Union or Member State law or this is necessary for the performance of a contract;*
- *The right to object to processing if we are processing your personal data on the basis of our legitimate interest unless we can demonstrate compelling legitimate grounds which may override your right. If you object to such processing, we ask you to state the grounds of your objection in order for us to examine the processing of your personal data and to balance our legitimate interest in processing and your objection to this processing;*
- *The right to object to processing your personal data for direct marketing purposes; and*
- *The right to lodge complaints before the competent data protection regulator.*

Before we can respond to a request to exercise one or more of the rights listed above, you may be required to verify your identity or your account details. Please send an e-mail to us if you would like to exercise any of your rights privacy@tiktok.com.

The infringements

129. As illustrated by the above excerpts, none of the Privacy Policies provided sufficient detail to allow data subjects to exercise fully and properly their rights (in contravention of Article 13(2)(b)). In particular:

- a. All of the Privacy Policies set out the rights of TikTok's users in general terms. However, there was a lack of sufficient information about the lawful bases on which TikTok sought to rely in respect of each of its specific processing activities, as set out at paragraph 13 above in respect of the contraventions of Article 13(1)(c). This had the effect, in practice, of undermining the data subjects' ability to exercise those rights.
- b. For example, while all of the Privacy Policies referenced the right to withdraw consent at any time, data subjects were not informed of the specific category/categories of personal data that TikTok was processing, or the purposes and legal basis (e.g. consent) for each category and instance of processing. As such, TikTok users could not readily determine where the right to withdraw consent might apply (i.e. in respect of which processing of which data), and thus e.g. what rights they had to object to such processing.

130. Due to the lack of clarity as to which legal basis applied to which aspect of the processing, the Commissioner is of the view that data subjects' rights in this regard were not clearly communicated, in contravention of Article 13(2)(b).

(ii) TikTok's representations

131. TikTok submitted that Section 6 of Privacy Policies 1 and 2 complies with Article 13(2)(b) in that it clearly sets out "*in the data rights set out in that Article*" including:

- a. "*the right to require free of charge [...] access to a copy of the personal data retained*";

- b. *"the right to request proper rectification, removal or restriction of your personal data";*
- c. The right to receive data in *"in a structured, commonly used and machine-readable format";* and
- d. The right to *"object to processing at any time"* both in relation to legitimate interests and in relation to direct marketing.

132. Further, TikTok submitted that Section 6 of Privacy Policy 3 complies with Article 13(2)(b) in that it clearly sets out *"in the data rights set out in that Article"* including:

- a. *"the right to request free of charge [...] access to a copy of the personal data retained";*
- b. *"the right to request proper rectification or removal of your personal data or restriction of the processing of your personal data";*
- c. The right to receive data in *"in a structured, commonly used and machine-readable format";* and
- d. The right to *"object to processing "* both in relation to legitimate interests and in relation to direct marketing.

133. TikTok asserted that Section 6 of Privacy Policy 1 not only communicates the rights set out in Article 13(2)(b) but also explains when these rights are exercisable. TikTok submitted that it is clear the first two rights identified (i.e. the right of access and of rectification) apply irrespective of the legal basis relied upon. Further, TikTok submitted that the right of data portability is described in clear terms as applying when the legal basis relied upon is either consent or contractual necessity. TikTok also submitted that, equally, the right to object is exercisable only where reliance is placed on legitimate interest or there is direct marketing.

134. Further, for the reasons set out in its Representations in relation to Article 13(1)(c), TikTok asserted that the Privacy Policies were sufficiently clear regarding the data processed for each purpose and the legal basis relied upon. TikTok submitted that, accordingly, it is also clear which rights apply in respect of which data.
135. TikTok does not accept the Commissioner's view expressed in paragraph 63(b) of the NoI that data subjects were unable to properly exercise their rights, due to, for example, not being given a distinction between an absolute and a qualified right. TikTok submitted that the Privacy Policies identified qualified rights by specifying when particular processing must be based upon a specific legal basis for the right to apply.
136. Further, TikTok asserted that the fact that "*only an extremely small number of complaints*" were made by data subjects to supervisory authorities during the Relevant Period demonstrates that data subjects could easily find the information about how to exercise their rights to their satisfaction.
137. TikTok does not accept the Commissioner's view expressed in paragraph 63(b) of the NoI that the Privacy Policies did not allow users to determine where the right to withdraw consent may apply and this is a contributing factor to the Article 13(2)(b) breach. TikTok asserted that it does not agree with the premise of this criticism, but also asserted that an assessment of the right to withdraw consent is not relevant to Article 13(2)(b) but instead to 13(2)(c).
138. Accordingly, TikTok does not accept that it has infringed Article 13(2)(b).

(iii) The Commissioner's final decision

139. The Commissioner does not accept that it is clear from Section 6 of the Privacy Policies that the first two rights identified (i.e. the right of access and of rectification) apply irrespective of the legal basis relied upon.

140. In any event, the Commissioner reiterates his final decisions in respect of Article 13(1)(c) and 13(1)(d). The Commissioner does not accept TikTok's assertion that it would have been possible for a data subject to determine which categories of personal data would be processed under which legal basis. TikTok's failure to provide the requisite information had the effect, in practice, of undermining the data subjects' ability to exercise their rights as they could not readily determine where, for example, an absolute (as opposed to a qualified) right to object may apply. Against this backdrop, TikTok's descriptions in Section 6 of the Privacy Policies of (i) the right of data portability applying when the legal basis is either consent or contractual necessity and (ii) the right to object being exercisable where reliance is placed on legitimate interest or direct marketing would have been meaningless to users.

141. Further, the Commissioner considers that it does not follow from TikTok's assertion that "*only an extremely small number of complaints*" were made by data subjects to supervisory authorities during the Relevant Period, that data subjects could easily find the information about how to exercise their rights to their satisfaction. This is a *non sequitur*. Assuming that there were only receive a "*small number of complaints*", this could equally demonstrate that data subjects were unable to find the information about how to exercise their rights.

142. The right to withdraw consent is applicable to Article 13(2)(b), as knowledge of the existence of the right to withdraw consent (and to which processing it relates) is necessary to exercise the right to erasure in the circumstances envisaged by Article 17(1)(b). The is considered further in the context of Article 13(2)(c) below.

143. Having considered TikTok's Representations, the Commissioner maintains his view that TikTok infringed Article 13(2)(b) in all of the Privacy Policies.

Article 13(2)(c) - where the processing is based on point (a) of Article 6(1) or point (a) of Article 9(2), the existence of the right to withdraw

consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal

(i) The Commissioner’s provisional view in the NoI

144. In all of the Privacy Policies (i.e. from August 2018 to 28 July 2020), TikTok infringed Article 13(2)(c) by failing to provide sufficient detail to allow data subjects to fully and properly exercise their rights to withdraw consent at any time.

Relevant excerpts from the Privacy Policies

145. Relevant excerpts from the Privacy Policies are referenced above, with sentences beginning “*where processing of your personal data is based on your consent*”, in:

- a. Privacy Policy 1 at paragraph 60;
- b. Privacy Policy 2 at paragraph 61; and
- c. Privacy Policy 3 at paragraph 62.

The infringements

146. As set out above at paragraph 129 in respect of Article 13(2)(b), none of the Privacy Policies provided sufficient detail to allow data subjects to exercise fully and properly their rights, including the right to withdraw consent at any time.

(ii) TikTok’s representations

147. TikTok asserted that the Commissioner has assumed that TikTok’s “core service” was provided on the legal basis of consent. TikTok submitted that this was clearly not the case.

148. TikTok submitted that the Privacy Policies make clear (as it set out in Annex 3 to its Representations in connection with Article 13(1)(c)) that consent was

only relied upon for three specific and limited aspects of TikTok's processing: location data, the provision of personalised advertising and the use of cookies. TikTok asserted that each of these is clearly identified in Sections 1, 2 and 4 of the Privacy Policies. TikTok submitted that, equally, Section 3 was clear that TikTok's processing of personal data was primarily based on a combination of contractual necessity and legitimate interests, with the particular purposes being individually identified in each case. TikTok submitted that the Commissioner has misidentified when TikTok was relying on consent and asserted that this is not the result of any lack of clarity in the Privacy Policies.

149. TikTok asserted that Privacy Policy 1 was clear in informing users that they had a right to revoke their consent.

- a. First, TikTok submitted that Section 6 of Privacy Policy 1 informed the user of the right to withdraw consent at any time.
- b. Second, TikTok submitted that, in both the cookies section and the location data section, users were reminded of the ability to withdraw their consent. TikTok states that, for example, in relation to the processing of their location data, the user was informed: *"If you do not wish to share your location with us, you can switch off GPS functionality on your mobile device"*.

150. Further, TikTok asserted that Privacy Policy 2 was clear in informing users that they had a right to revoke their consent.

- a. First, TikTok submitted that Section 6 of Privacy Policy 2 informed the user of the right to withdraw consent at any time.
- b. Second, TikTok does not agree that Privacy Policy 2 provided no indication of where consent was relied on. TikTok asserted that, on the contrary, consent was relied on as the legal basis for a very limited set of scenarios including personalised advertising, location settings and cookies.

- c. Third, TikTok submitted that, in both the Cookies Policy and location data section, users were reminded of the ability to withdraw their consent. TikTok states that, for example, in relation to the processing of their location data, the user was informed: *"If you do not wish to share your location with us, you can switch off GPS functionality on your mobile device"*.

151. TikTok also asserted that Privacy Policy 3 was clear in informing users that they had a right to revoke their consent.

- a. First, TikTok submitted that Section 6 of Privacy Policy 2 informed the user of the right to withdraw consent at any time.
- b. Second, TikTok does not agree that Privacy Policy 2 provided no indication of where consent was relied on. TikTok asserted that, on the contrary, consent was relied on as the legal basis for a very limited set of scenarios including personalised advertising and location settings.
- c. Third, TikTok submitted that, in both the Cookies Policy and location data section, users were reminded of the ability to withdraw their consent. TikTok states that, for example, in relation to the processing of their location data, the user was informed: *"If you do not wish to share your location with us, you can switch off GPS functionality on your mobile device"*.

152. Accordingly, TikTok does not accept that it has infringed Article 13(2)(c).

(iii) The Commissioner's final decision

153. For the reasons set out in the Penalty Notice, the Commissioner did not just assume that TikTok was processing its users' data on the basis of consent.

154. While the Privacy Policies referenced the right to withdraw consent at any time, they did not inform data subjects of the specific category/categories of personal data that TikTok was processing, or the purposes and legal basis (e.g. consent) for each category and instance of processing. As such, TikTok users could not readily determine where the right to withdraw consent might apply (i.e. in respect of which processing of which data). Due to this lack of clarity, the Commissioner's view is that data subjects' rights in this regard were not clearly communicated, in contravention of Article 13(2)(c). Further, as noted above regarding Article 13(1)(c), the Privacy Policies provided conflicting information concerning which legal basis was being relied upon in relation to the processing of certain categories of data.

155. Having considered TikTok's Representations, the Commissioner maintains his view that TikTok infringed Article 13(2)(c) in all of the Privacy Policies.