

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of LotaData, Inc.
File No. 182 3194

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an agreement containing a consent order from LotaData, Inc. (“LotaData” or “Respondent”).

The proposed consent order (“proposed order”) has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

This matter concerns alleged false or misleading representations that LotaData made concerning its participation in the Privacy Shield frameworks agreed upon by the U.S. and, respectively, the European Union (“EU”) and the Swiss Federation. The Privacy Shield frameworks allow U.S. companies to receive personal data transferred from the EU and Switzerland without violating EU or Swiss law. The frameworks consist of a set of principles and related requirements that have been deemed by the European Commission and the Swiss authorities as providing “adequate” privacy protection. The principles include notice; choice; accountability for onward transfer; security; data integrity and purpose limitation; access; and recourse, enforcement, and liability. The related requirements include, for example, securing an independent recourse mechanism to handle any disputes about how the company handles information about EU citizens.

To participate in the frameworks, a company must comply with the Privacy Shield principles and self-certify that compliance to the U.S. Department of Commerce (“Commerce”). Commerce reviews companies’ self-certification applications and maintains a public website, <https://www.privacyshield.gov/list>, where it posts the names of companies who have completed the requirements for certification. Companies are required to recertify every year in order to continue benefitting from Privacy Shield.

LotaData provides analysis of mobile users’ location data. According to the Commission’s complaint, LotaData published on its website, <http://www.lotadata.com>, a privacy policy containing statements related to its participation in Privacy Shield.

The Commission’s proposed one-count complaint alleges that Respondent violated Section 5(a) of the Federal Trade Commission Act. Specifically, the proposed complaint alleges that Respondent engaged in a deceptive act or practice by falsely representing that it was a certified participant in the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks.

Part I of the proposed order prohibits the company from making misrepresentations about its membership in any privacy or security program sponsored

by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the EU-U.S. Privacy Shield framework and the Swiss-U.S. Privacy Shield framework.

Parts II through V of the proposed order are reporting and compliance provisions. Part II requires acknowledgement of the order and dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part III ensures notification to the FTC of changes in corporate status and mandates that the company submit an initial compliance report to the FTC. Part IV requires the company to create certain documents relating to its compliance with the order for ten (10) years and to retain those documents for a five-year period. Part V mandates that the company make available to the FTC information or subsequent compliance reports, as requested.

Part VI is a provision “sun-setting” the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order’s terms.