

Data Protection Commission Reference: IN-18-08-3

In the matter of LinkedIn Ireland Unlimited Company

Summary of Draft Decision of the Data Protection Commission

The Decision concerns an Inquiry by the Data Protection Commission (the ‘**DPC**’) into LinkedIn Ireland Unlimited Company (‘**LinkedIn**’), a data controller with its main establishment in Ireland. The Decision relates to a complaint-based inquiry, which was commenced on 20 August 2018, following a complaint made by the French non-profit organisation, La Quadrature Du Net (‘the **Complaint**’).

The Complaint was initially made to the French Data Protection Authority, on behalf of affected data subjects pursuant to Article 80(1) GDPR, and later transmitted to the DPC as lead supervisory authority for LinkedIn. The Complaint asserted that LinkedIn had processed certain personal data relating to the data subjects, for the purposes of behavioural analysis and targeted advertising (‘**BA & TA**’), without a valid legal basis and in an unfair and non-transparent manner.

The DPC commenced a statutory inquiry (‘the **Inquiry**’), on 20 August 2018, to examine LinkedIn’s compliance with Articles 5(1)(a), 6(1), 13(1)(c), 13(1)(d), 14(1)(c) and 14(2)(b) of the GDPR. The inquiry was commenced pursuant to Section 110 of the Data Protection Act 2018 (‘the **2018 Act**’).

Material and Temporal Scope of the Decision

Background

The subject matter of the Decision concerns LinkedIn’s processing of the personal data of members of the LinkedIn platform for the purposes of BA & TA. Behavioural analysis, in this context, is the entire process whereby information provided by, inferred from or observed about an individual is used to inform the advertisements that are targeted to that individual, or is aggregated with other information for the purpose of conducting targeted advertising. Targeted advertising, in turn, is the process by which specific advertisements are targeted to an individual, based on information which is held about the individual (whether directly provided by them or inferred and/or observed about them) or targeting criteria which have been developed based on such information. Broadly speaking, LinkedIn conducted BA and TA based on (i) data submitted by members or created as a result of their use of the LinkedIn platform (‘**first party data**’); and (ii) data that was provided to LinkedIn by its enterprise customers (‘**third party data**’). Additional details on those data sources are set out below.

Third party data

Third party data, in this context, is data that was obtained by LinkedIn by way of its LinkedIn Marketing Solutions ('LMS') customers' use of the 'LinkedIn Insight tag' on their websites. The LinkedIn Insight Tag is a piece of code that sends a signal, via a HTTP call, to LinkedIn when a user visits the website of a LinkedIn LMS customer that has an Insight Tag placed on it. The signal received via the Insight Tag also provides LinkedIn with access to LinkedIn cookies, if any, present on a member's browser.

If LinkedIn could subsequently match the data received to a LinkedIn member, and if the member had provided consent for the use of third party data for ad targeting, this allowed LinkedIn to place members into a targeting group for that third party LMS customer so that they may be re-targeted with ads, both on and off the LinkedIn platform. Alternatively, if there was a match, and if the member did not provide consent for the use of third party data for ad targeting, LinkedIn used this information to provide its LMS customers with aggregated analytics reports. Those reports then allowed those third parties to further refine their advertising campaigns and more effectively target LinkedIn members based on their first party data.

The overall purpose of analytics carried out using the Insight Tag was to allow LinkedIn's customers to conduct BA & TA based on third party data. Behavioural analysis includes both analysis of specific individuals' behaviour and aggregating information about more than one individual to conduct targeted advertising. On this basis, the DPC concluded that the analytics carried out by LinkedIn using the Insight Tag, and provided to its customers to target members based on first-party data, also fell under the heading of BA & TA as defined above and, accordingly, within the scope of the Inquiry.

First party data

The first-party data processed by LinkedIn consisted of:

- Data that LinkedIn members provided directly to LinkedIn in their profiles; and
- Inferences that LinkedIn drew from the information members provided on their profiles (e.g. gender or age), their actions taken on LinkedIn, and actions by similar members.

LinkedIn placed members into segments based on this data. For example, a member with a listed field of study as law would be placed in the law segment under the fields of study category.

In addition to the above, between March 2019 and March 2023 LinkedIn placed a set of members into interest categories based on interest categories that they had been placed into by Bing through their use of the search engine. LinkedIn obtained that interest category data and mapped it to LinkedIn’s own interest categories (LinkedIn did not receive any specific data based on searches from Bing). While LinkedIn sought to classify this data as first party data, and based its processing on the lawful basis relied on for such processing (as detailed below), the DPC did not accept that LinkedIn had accurately classified this data as first party data.

Temporal Scope

The temporal scope of the Decision considered LinkedIn’s processing of data as it existed at two points - 28 May 2018 and 14 September 2020. The first point in time is the date on which the complaint was made. The second point in time is the date of the DPC’s first correspondence to LinkedIn after its cessation of reliance on the contractual necessity lawful basis under Article 6(1)(b) GDPR, as a lawful basis for processing first party personal data, as detailed below.

Lawful bases relied upon by LinkedIn

The following table sets out the lawful bases relied upon by LinkedIn for processing which fell within the scope of this Inquiry and Decision:

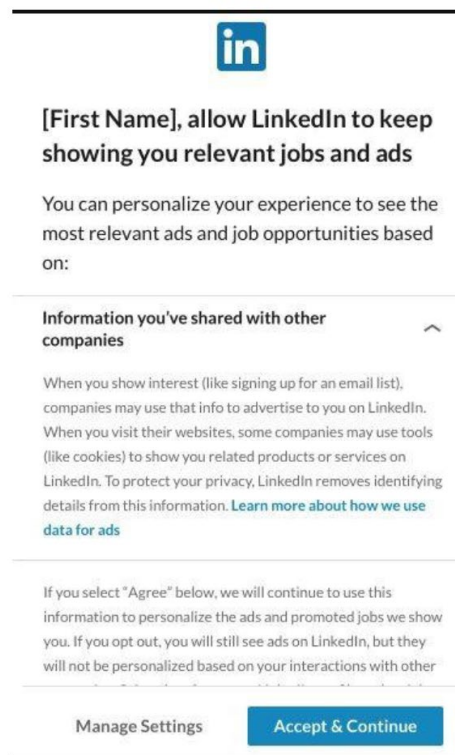
Processing operation and purpose	Lawful basis relied on as of 28 May 2018	Lawful basis relied on as of 14 September 2020
Processing of first party personal data of members for behavioural analysis and targeted advertising (excluding analytics)	Contractual necessity (Article 6(1)(b) GDPR) Legitimate interests (Article 6(1)(f) GDPR)	Legitimate interests (Article 6(1)(f) GDPR)
Processing of third party personal data of members for behavioural analysis and targeted advertising (excluding analytics)	Consent (Article 6(1)(a) GDPR)	Consent (Article 6(1)(a) GDPR)
Processing of third party personal data of members for analytics	Legitimate interests (Article 6(1)(f) GDPR)	Legitimate interests (Article 6(1)(f) GDPR)

Having regard to the background above, the following sections contain an overview of the infringements found in the Decision, under the relevant headings of lawfulness, fairness, and transparency.

Lawfulness

(i) Consent

LinkedIn members in the EU were by default opted-out of the use of third party data for ad targeting by 25 May 2018. They were thereafter presented with an in-product notification (shown below), giving them the option to consent to the use of third party data for ad targeting or to remain opted-out.



[Figure 1 – LinkedIn in-product notification]

In order for consent to be valid under the GDPR it must be: (1) freely given, (2) specific, (3) unambiguous, (4) as easy to give as to withdraw, and (5) informed. The DPC conducted a detailed examination of the consent obtained with reference to each of those criteria and concluded that the consent obtained by LinkedIn was not freely given, specific, informed or unambiguous.

With regard to the freely given nature of the consent, the DPC concluded that the perception of detriment created by LinkedIn's consent tool led to an element of inappropriate pressure and influence on data

subjects to consent by clicking on the “Accept & Continue” button. In particular, the wording used in the consent tool implied that if they did not provide consent in the manner sought, this would negatively impact their ability to see relevant jobs on the platform beyond simply not seeing paid-for advertisements relating to jobs.

With regard to the informed and specific nature of the consent, the DPC found that the information accompanying the consent mechanism relied upon by LinkedIn did not sufficiently enable data subjects to “*determine easily the consequences of any consent*” they were being requested to give, as is required for valid consent in line with CJEU case law. In particular, an insufficient level of detail was provided regarding the advertising technologies used by LinkedIn and in relation to the roles of the various third party advertising partners and publishers that it worked with. In addition, the DPC concluded that the distinction between the manner in which members would receive targeted advertising (i.e., on or off the LinkedIn platform), in terms of the processing operations, technologies and data used, and partners involved, was imprecise. The relevant information was also not provided in a sufficiently granular manner with the result that it may have been misleading to data subjects. The finding of the DPC was further supported by LinkedIn’s reliance on multiple lawful basis for the processing of third party data for BA & TA. In this regard, members were not informed when providing consent, that if they did not provide such consent, LinkedIn would still process this data in order to provide analytics reports to its enterprise customers on the basis of an asserted legitimate interest. As a result of those flaws, it could not be considered that the consent obtained by way of the consent seeking mechanism was sufficiently informed or specific within the meaning of the GDPR.

With regard to the unambiguous nature of the consent, it is imperative that controllers develop consent mechanisms that are clear to data subjects, avoid ambiguity, and ensure that the action by which consent is given can be distinguished from other actions. The DPC concluded that that standard was not met in this case. While active behaviour was required on the part of data subjects, the articulation of the options presented to users – “*Accept & Continue*” v “*Manage Settings*” – introduced ambiguity and nudged data subjects into accepting in order to continue. In addition to the ambiguity of the composite phrase “*Accept & Continue*”, as set out above, while placed side-by-side, both options were not given equal prominence from a visual perspective. While the buttons appeared to be equal in size, the “*Accept & Continue*” button was blue and prominent against the white background of the user engagement flow. Conversely the “*Manage Settings*” button was the same colour as the background of the in-product notification and more difficult to distinguish by comparison

(ii) Legitimate interests

Article 6(1)(f) GDPR provides that processing shall be lawful to the extent that processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject, which require protection of personal data, in particular where the data subject is a child.

According to the case-law of the CJEU, three conditions must be satisfied in order for a controller to be able to rely on legitimate interests as a lawful basis for the processing of personal data: (a) the pursuit of a legitimate interest by the controller or by a third party; (b) the need to process personal data for the purposes of the legitimate interests pursued; and (c) whether the interests or fundamental rights and freedoms of the data subject override the legitimate interest pursued.

The DPC agreed with LinkedIn that the establishment, conduct and provision of LinkedIn's business and services, which enabled and assisted LinkedIn's members, guests, other subjects and customers to access and provide services, assemble and associate, express themselves and access educational and business opportunities, were legitimate interests. In this context, the BA & TA carried out by LinkedIn helped its customers to target individuals, which in turn generated an income by helping to ensure that the advertisements on its services reached the most appropriate audience. Both LinkedIn's interests and Members' and third party interests thus met the first stage of the test, i.e. they met the definition of legitimate interests for the purposes of the GDPR. Additionally, regarding the second stage of the test, the DPC accepted that LinkedIn had demonstrated that, at the time of the Inquiry, there were no less restrictive means of achieving the interests in question that could equally effectively achieve the aim pursued.

Turning to the third part of the test, which requires a case-by-case balancing of the opposing rights and interests concerned, while taking account of the significance of the data subject's rights arising from Articles 7 and 8 of the Charter, the DPC concluded that LinkedIn had not struck the appropriate balance. The DPC acknowledged that the LinkedIn platform contributed to a number of positive public interests, such as allowing employees and job seekers to advertise their skills to a large employer audience, providing opportunities for up-skilling and re-skilling, and matching job seekers to job opportunities that best fit their interests and reducing search costs (including time). The DPC therefore afforded some weight to those benefits.

However, the DPC identified a range of negative impacts on data subjects, including: (i) the likelihood that a data subject would be incorrectly segmented on the basis of erroneously inferred data and would then be presented with advertising that is of no relevance as a result of extensive processing of potentially inaccurate personal data; (ii) the large number of segments and large number of inferences that may be drawn about users; (iii) the extensive use of inferred categories of data and the particularly concerning possibility that, in a professional context, a data subject could be targeted, or perhaps more problematically, excluded, from job advertisements based on inferred data which would be inappropriate factors to consider in a professional context (such as gender or age); (iv) and the use of interest categories derived from members' activities on Bing, which was particularly intrusive.

In addition, the DPC concluded that the processing conducted by LinkedIn was not in the reasonable expectations of users. The DPC acknowledged that most data subjects using a social media platform would

expect some form of targeted ads. However, this did not extend to the use of certain inferred data categories in a professional context (such as gender or age), the use of Bing data, or the use of analytics reports (which were based on third party data, including in circumstances where data subjects had declined to provide consent for the use of their third party data for BA & TA) to better target users based on first party data. While the DPC acknowledged that the disclosures made in LinkedIn's Privacy Policy were relevant to the assessment of whether particular processing activities were within the reasonable expectations of users, in line with EDPB Guidelines, the disclosures made by LinkedIn in its Privacy Policy could not be determinative of whether the processing of inferred age and gender-related data for the purposes of BA & TA was within the reasonable expectations of users. In addition, the references to Bing data - contained only in users advertising settings - and general references to data obtained from Microsoft in the Privacy Policy, were not sufficient to bring the processing of Bing data within the reasonable expectations of users.

Considering the factors identified above, and all of the processing in the round, the DPC did not consider that the provisional balance favoured LinkedIn's processing of personal data for LinkedIn's interests or Members' and third party's interests. While the DPC agreed that the LinkedIn platform contributed to certain positive public interests, these interests were outweighed by the impact on data subjects. The processing had an impact on the rights and freedoms of data subjects, was intrusive in nature, and given the volume of information collected about individuals, which went beyond data solely relating to an individual's professional life, such as inferred age and gender, was not within the reasonable expectations of data subjects within a professional context.

The DPC took note of a number of additional measures and safeguards provided by LinkedIn. This included: pseudonymisation measures employed in relation to third-party data LinkedIn received from LMS customers' insight tags and restrictions on micro-targeting; policies to restrict discriminatory practices in advertising; and enabling unconditional opt outs. However, while the disclosures made by LinkedIn, the opt-outs, the security measures and advertising policies, must be factored in when considering the final balance, given the weaknesses and caveats identified, the DPC did not consider that these measures were sufficient to tip the balance in favour of LinkedIn's reliance on the legitimate interests legal basis. As a result, the DPC concluded that the interests and fundamental rights and freedoms of the data subject outweighed the legitimate interests of LinkedIn and that LinkedIn did not validly rely on Article 6(1)(f) GDPR.

(iii) Contractual necessity

Article 6(1)(b) provides for a lawful basis for processing to the extent that processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract.

In January 2020, LinkedIn ceased its reliance on Article 6(1)(b) as a lawful basis for processing first party personal data for targeted advertising. From that point, LinkedIn relied exclusively on Article 6(1)(f) as a lawful basis for such processing. Notwithstanding such cessation, the DPC considered whether, as at the date of the Complaint, on 28 May 2018, LinkedIn was validly relying on Article 6(1)(b) as the legal basis for processing first party personal data of members for the purposes of conducting BA & TA.

In this regard, and in line with EDPB guidance, the DPC considered whether LinkedIn's processing of the data of its members for the purposes of BA & TA was objectively necessary for the performance of the User Agreement in place between it and its members and formed part of the "core bargain" struck between LinkedIn and its members. According to the previous EDPB guidance (Guidelines 02/2019), the "*necessary for the performance of a contract*" ground must be interpreted strictly and does not cover situations where the processing is not genuinely necessary for the performance of a contract, but rather unilaterally imposed on the data subject by the controller. In this respect, the EDPB has previously concluded that in assessing necessity, "*it is important to determine the exact rationale of the contract, i.e. its substance and fundamental objective, as it is against this that it will be tested whether the data processing is necessary for its performance*". Guidelines 02/2019 thus set out a restrictive view on when processing should be deemed to be necessary for the performance of a contract, and explicitly refers to personalised advertising as an example of processing that will usually not be necessary. This is, however, a general rule, and not an absolute rule.

Consistent with this guidance, the CJEU has also previously held that the fact that such processing may be referred to in the contract or may be merely useful for the performance of the contract is, in itself, irrelevant in that regard (see Case C-252/21 *Bundeskartellamt*). The decisive factor for the purposes of applying the justification is rather that the processing of personal data by the controller must be essential for the proper performance of the contract concluded between the controller and the data subject and, therefore, that there are no workable, less intrusive alternatives. With regard to the justification based on personalised content, the CJEU concluded that "*although such a personalisation is useful to the user, in so far as it enables the user, inter alia, to view content corresponding to a large extent to his or her interests, the fact remains that, subject to verification by the referring court, personalised content does not appear to be necessary in order to offer that user the services of the online social network*".

In the present circumstances, and in light of this guidance and case law, the DPC, having carefully considered the terms of both the User Agreement and the Privacy Policy, concluded that, BA & TA could not be considered to form part of the core bargain between LinkedIn and its members. In particular, it was open to members to opt out of all of the relevant processing and continue to use the service. In the DPC's view, this was a recognition by LinkedIn that the core purposes of the contract could be fulfilled without processing personal data for BA & TA. While targeted advertising was mentioned in section 2.4 of LinkedIn's Privacy Policy, there was no indication that this was fundamental to the provision of services by LinkedIn to its members. Indeed, LinkedIn's services could be provided to members in the form of an equivalent alternative which did not involve ad personalisation, as occurs when members opt out of

receiving personalised ads. Accordingly, the DPC considered that there was a “*workable, less intrusive alternative*” to processing personal data for the purpose of BA and TA, within the meaning of the CJEU *Bundeskartellamt* judgment.

With regard to the concept of necessity, the DPC equally did not consider that processing of first party data for BA & TA could be considered necessary for the performance of the User Agreement. In this regard, the DPC noted that the Privacy Policy described processing for the purposes of ads and personalisation in terms that fell far short of necessity and made clear that any processing of personal data for the purposes of BA & TA was subject to a member’s personal settings. Accordingly, the DPC found that the processing of first party data for BA & TA was not the least intrusive way that LinkedIn could have provided services to its members. That processing was not necessary in order to provide the specific service in question to LinkedIn’s members.

As a result, as of the time of the Complaint, LinkedIn could not validly rely on Article 6(1)(b) as a lawful basis for the processing of first party data for the purposes of BA and TA.

Transparency

Articles 13(1)(c) and 14(1)(c)

Article 13(1)(c) states, inter alia, that:

Where personal data relating to a data subject are collected from the data subject, the controller shall, at the time when personal data are obtained, provide the data subject with all of the following information:

[...]

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

Article 14(1)(c) GDPR states as follows:

Where personal data have not been obtained from the data subject, the controller shall provide the data subject with the following information:

[...]

(c) the purposes of the processing for which the personal data are intended as well as the legal basis for the processing.

Articles 13(1)(c) and 14(1)(c) therefore provide for the provision of the same information concerning data obtained directly from data subjects and data obtained from third parties. Article 12(1) GDPR sets out the manner in which a controller must provide information referred to in Articles 13 and 14 i.e. “*in a concise, transparent, intelligible and easily accessible form, using clear and plain language*”. In the present circumstances, the DPC concluded that Article 13(1)(c) related to data provided by members or created

as a result of their use of the LinkedIn platform. On the other hand, the personal data under consideration in respect of Article 14(1)(c) comprised what LinkedIn defined as third party data (i.e. data provided to LinkedIn by its enterprise customers) as well as data obtained from Bing.

In order to comply with Articles 13(1)(c) and 14(1)(c), a data controller must provide the following information, and in the following way: (a) the purpose(s) of the specified processing operation/set of processing operations for which the specified category/specified categories of personal data are intended, and (b) the lawful basis being relied upon to support the processing operation/set of operations. This information should be provided in such a way that there is a clear link from: (a) a specified category/specified categories of personal data, to (b) the purpose(s) of the specified processing operation/set of operations, and to (c) the lawful basis being relied upon to support that processing operation/set of operations.

In light of this, and with regard to LinkedIn's privacy policy and other disclosures regarding the relevant processing activities, the DPC examined each lawful basis relied on by LinkedIn individually to assess whether the information provided to users met the requirements of Articles 13(1)(c) and 14(1)(c). In each instance, the DPC found that the required standard was not met. The reasons for those findings are briefly summarised below.

With regard to the consent lawful basis, the DPC noted that only generalised reference to consent-based processing were contained in LinkedIn's privacy policy, informing data subjects that LinkedIn would rely on this lawful basis and that they may withdraw or decline to give consent. The DPC acknowledged that a layered approach to privacy disclosures was appropriate and had further regard to information provided by LinkedIn by way of its consent mechanism, its help centre, and settings pages. However, as detailed further above, the DPC concluded that the descriptions of LinkedIn's partners in the relevant disclosures, from whom it obtains personal data, was vague and did not give meaningful information as to the role played by advertising technologies or the specific partners involved. Furthermore, the language used was not language which would be readily accessible to or easily understood by laypersons. The DPC also did not consider that LinkedIn set out to users sufficiently clearly the processing activities in respect of which it relied on the consent lawful basis, as distinct from the processing activities in respect of which it relied on the legitimate interests lawful basis, such that data subjects were not enabled to easily determine the consequences of the consent they were being asked to give. Accordingly, LinkedIn did not set out the required information in a way that displayed a clear link between the categories of personal data being processed, the purpose of the processing operations and the lawful basis being relied on.

With regard to the contractual necessity lawful basis, the DPC again noted that LinkedIn only made generalised references to this lawful basis in its user disclosures. LinkedIn's privacy policy simply referred to reliance on this lawful basis, and noted that it would process first party data for targeted advertising, while its user agreement stated that it would *"use the information and data that you provide and that we have about Members to make recommendations for connections, content and features that may be useful*

to you”. The DPC considered that this information manifestly did not seek to establish a clear link between the categories of data processed for specific purposes on the basis of this lawful basis. As a result, data subjects were unable, as a very first step, to link the categories of personal data processed and the purposes for which they were processed to the relevant lawful basis of contractual necessity.

With regard to the legitimate interest lawful basis, LinkedIn’s privacy policy once more referred to reliance on this lawful basis in a general sense and contained separate reference to the use of first party data for ad targeting. A hyperlink was also provided which set out the legitimate interests that LinkedIn may rely on for processing. The DPC additionally considered information contained in the settings for first-party advertising and processing for analytics as well as a hyperlinked webpage. However, as with the lawful basis of consent and contractual necessity, LinkedIn did not sufficiently clearly set out all of the categories of personal data which LinkedIn processed on the basis of its legitimate interests, the purposes of those processing operations and the lawful basis being relied upon. The DPC also found that there was not a sufficient link between these elements was shown. In addition, a generalised reference to the use of data obtained by “*affiliates, including Microsoft*” was not sufficient to inform users that it processed data obtained from users’ use of Bing and the information about which personal data was processed on the basis of legitimate interests versus consent was not made clear.

Articles 13(1)(d) and 14(2)(b)

Article 13(1)(d) provides that, where data is collected from data subjects, and the processing is based on point (f) of Article 6(1) GDPR, data controllers must provide information on “*the legitimate interests pursued by the controller or by a third party.*” Article 14(2)(b) repeats the requirement of Article 13(1)(d) in the context where information is received from third parties. The primary requirement in Articles 13(1)(d) and 14(2)(b) GDPR is to outline the legitimate interests pursued and the DPC concluded that LinkedIn outlined in its Privacy Policy the interests upon which it sought to base its processing. In particular, a hyperlink was provided in the privacy policy, which set out the interests upon which LinkedIn would base its processing. The DPC therefore did not find any infringement of Articles 13(1)(d) or 14(2)(b) GDPR.

Fairness

Article 5(1)(a) GDPR requires that personal data be “*processed lawfully, fairly and in a transparent manner in relation to the data subject (‘lawfulness, fairness and transparency’)*”. As has been noted by the EDPB (Guidelines 4/2019), fairness is a broad principle, which requires that any processing of personal data must be fair towards the individual whose personal data are concerned, and avoid being unduly detrimental, unexpected, misleading, or deceptive.

Following a detailed examination of the processing, the DPC concluded:

- Data subjects were not in a position to fully understand the uses that would be made of their personal data if they did or did not consent to its processing and were consequently were not in a position to determine the uses that would be made of their data, depending on whether they provided consent. They would thus not be aware, for example, which data was processed subject to consent or legitimate interests, and would consequently not know whether the right to object or to withdraw consent was exercisable in respect of that data.
- The combination of the words “*continue*” and “*accept*” in the consent mechanism would reasonably be considered to nudge a data subject into accepting in order to continue and the information which LinkedIn provided in the consent interstitial was framed in such a manner as to imply that users would not see “*relevant jobs*” if they did not consent, and did so in a way that went beyond what its actual impact was in respect of users being shown relevant jobs. Additionally, the exclusive references to ads “*on LinkedIn*” on the first layer of the consent interstitial may have deceived data subjects as to the scope of the processing carried out on the basis of their consent.
- Data subjects would not have expected that third party data or inferred data and Bing data was processed on the basis of legitimate interests for the purposes of BA & TA.
- The wording in LinkedIn’s consent mechanism was misleading to data subjects about the processing carried out in reliance on consent. In particular, it was insufficiently clear regarding the processing purposes to which data subjects could be considered to have consented to if they clicked “*Accept & Continue*”, having regard to the closeness between the various purposes for which LinkedIn processed first and third party data and the consequent lack of clarity in the consent mechanism relied on by LinkedIn.

As a result of the above factors, the DPC concluded that the processing conducted by LinkedIn was not conducted in a fair manner and infringed the principle of fairness in Article 5(1)(a).

Summary of Findings

The Decision concluded that:

- LinkedIn could not validly rely on Article 6(1)(a) GDPR to process third party data of its members for the purpose of BA & TA, excluding analytics, on the basis that the consent obtained by LinkedIn was not freely given, sufficiently informed or specific, or unambiguous.
- LinkedIn could not validly rely on Article 6(1)(f) GDPR for its processing of first-party data personal data of its members for BA and TA or third party data for analytics.
- LinkedIn could not validly rely on Article 6(1)(b) GDPR to process first party data of its members for the purpose of BA & TA.

- LinkedIn infringed Article 13(1)(c) and 14(1)(c) in respect of the information it provided to data subjects regarding its reliance on Article 6(1)(a), Article 6(1)(b) and Article 6(1)(f) as lawful bases.
- LinkedIn infringed the principle of fairness in Article 5(1)(a) GDPR.

Corrective Measures

Under Section 113(4)(a) of the 2018 Act, where the DPC adopts a decision (in accordance with Section 113(2)(b)), it must, in addition, make a decision as to whether a corrective power should be exercised in respect of the controller or processor concerned and, if so, the corrective power to be exercised. Article 58(2) GDPR sets out the corrective powers that supervisory authorities may exercise in respect of non-compliance by a controller or processor.

Having carefully considered the infringements identified in the Decision, the DPC decided to exercise certain corrective powers in accordance with Section 115 of the 2018 Act and Article 58(2) GDPR. The corrective powers that the DPC decided were appropriate to address the infringements in the particular circumstances were:

- Issuing a reprimand to LinkedIn in respect of its infringements of the GDPR identified in the Decision (i.e. Articles 5(1)(a), 6(1), 13(1)(c) and 14(1)(c) GDPR).
- Imposing an order to LinkedIn to bring its processing into compliance with the GDPR. This order requires:
 - firstly, that LinkedIn to bring its Privacy Policy into compliance with Articles 13(1)(c) and 14(1)(c) GDPR as regards information provided on data processed pursuant to Articles 6(1)(a), 6(1)(b) and 6(1)(f) GDPR, if those legal bases continue to be relied upon by LinkedIn for the purposes of BA & TA and analytics;
 - secondly, that LinkedIn to take the necessary action to bring its processing of personal data for the purpose of BA & TA into compliance with Article 6(1) GDPR, in particular, to take the necessary action to address the findings in the Decision that LinkedIn did not validly rely in Articles 6(1)(a), 6(1)(b) and 6(1)(f) GDPR to carry out the identified processing.
- Imposing three administrative fines totalling €310 million, which were effective, proportionate and dissuasive, as follows:
 - With regard to LinkedIn's reliance on the lawful basis in Article 6(1)(a) GDPR, and in respect of LinkedIn's infringements of Articles 5(1)(a) and 6(1) GDPR for the processing of third party data of its members for BA & TA without a valid lawful basis, a fine of €105 million.
 - With regard to LinkedIn's reliance on the lawful bases in Articles 6(1)(b) and 6(1)(f) GDPR, and in respect of LinkedIn's infringements of Articles 5(1)(a) and 6(1) GDPR for the processing of first party data of its members for BA & TA and third party data for analytics without a valid lawful basis, a fine of €110 million.

- In respect of LinkedIn's infringements of Article 13(1)(c) GDPR and 14(1)(c) GDPR, a fine of €95 million.

The DPC did not impose a separate fine for the infringement of the Article 5(1)(a) GDPR principle of fairness in circumstances where the infringement was based on conduct that the DPC had already fully taken into account in imposing separate administrative fines.

Prior to its adoption, the DPC submitted a draft of its decision to the Concerned Supervisory Authorities in July 2024, as required under Article 60(3) of the GDPR. The Concerned Supervisory Authorities did not raise any objections (for the purpose of Article 60(4) GDPR) to the draft decision.