

DOJ Notes on the May 23 Consultation with Justin Sherman Regarding Bulk Thresholds

Notes | 5/23/2024 2:00 PM – 2:30 PM EST

On May 23, 2024, representatives from the Department of Justice (“DOJ”) and the Commerce Department (“Commerce”) consulted with Justin Sherman regarding Justin Sherman’s comments on DOJ’s March 5, 2024 Advanced Notice of Proposed Rulemaking (“ANPRM”) entitled “Provisions Regarding Access to Americans’ Bulk Sensitive Personal Data and Government-Related Data by Countries of Concern.”

The consultation specifically focused on Justin Sherman’s comments on the proposed bulk thresholds set forth in the ANPRM. During the consultation, representatives from DOJ and Commerce asked Justin Sherman questions about the bulk thresholds proposed in the ANPRM and listened to his responses.

The notes that follow are DOJ’s brief summary of the input shared by Justin Sherman.*

- **Participants:** Representatives from the National Security Division of the Department of Justice, representatives from the International Trade Administration of Department of Commerce, and Justin Sherman.
- **Justin Sherman’s concerns:**
 - Justin believes that advertising technology companies, data brokers, and direct-to-consumer genetic testing companies will be the most impacted/concerned by the proposed rule and bulk thresholds specifically.
 - Justin has concerns about the ANPRM treating “encrypted” data and “anonymized” data the same – “anonymized” is not a legal term and can be interpreted very broadly. He notes that anonymized data can be easily re-identifiable in some cases.
- **Other suggestions and feedback:**
 - Most companies that Justin has talked to were alarmed initially, but then realized that the proposed rule doesn't apply to many (if any) of their transactions.
 - Justin does not believe that the bulk thresholds will encourage “bad” security practices for smaller transactions because most smaller companies have security already, and bigger firms doing small transactions will already have the security and resources needed to protect all their data transactions.
 - Justin appreciates that the bulk thresholds were lower than many companies were asking for.
 - Justin believes that technological capabilities exist that can link data points together when you do not have maximum security protections. He supports the restricted data requirements.

*These notes are a summary of the consultation; they are not a transcript. The Department of Justice has not shared these notes with meeting participants to confirm their accuracy.