

FOURSQUARE

50 West 23rd Street, 8th Floor, New York, NY 10010

The Norwegian Consumer Council
Box 463 Sentrum
0105 Oslo
Norway
Case Officer: Ailo Krogh Ravna
Case No. 20/6987-5

June 2, 2020

Re: Response to NCC letter Concerning Placed collection of data through the app MyDays.

Dear Case Officer Ravna,

We are in receipt of your letter sent on behalf of the Norwegian Consumer Council, dated May 12th, 2020, addressed to Placed/Foursquare.

Placed, LLC ("**Placed**") is a subsidiary of Foursquare Labs, Inc ("**Foursquare**"). As the letter primarily deals with Placed's processing of data from the app MyDays, our response is from the perspective of Placed.

Placed takes privacy seriously. We strive to be transparent about our data practices and constantly work to enhance our privacy measures. Therefore, we welcome your letter and the report, "Out of control". However, we would like to provide some comments and feedback regarding your letter and report.

1. Application of the GDPR

The letter and report rely on the assumption that Placed is subject to the Norwegian Personal Data Act, incorporating the GDPR. In our view, this assumption is based on a misinterpretation of the facts and/or the law.

Placed is a company established in the US. It is apparent that Article 3(1) of the GDPR does not apply.

In section 8 of the report, it is argued that since the technical testing was done in Norway, the GDPR applies to all processing of personal data described in the report. We disagree with this view. No provision of the GDPR indicates that the location of technical testing is decisive for determining the geographical application of the GDPR.

In section 8.1 of the report, with reference to Article 3(2) of the GDPR, it is argued that since the apps that were tested offer their services to data subjects in the EU/EEA, third parties that receive data from these apps fall within the scope of the GDPR. We disagree. Although MyDays is subject to the GDPR, the issue of whether third party controllers that receive data from MyDays



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fall within the scope of the GDPR must be assessed independently. Christian Mueller is responsible for ensuring that the processing of personal data relating to MyDays, including the act of transferring such data to third parties, complies with the GDPR. Placed, on the other hand, does not offer goods or services to Norwegian data subjects. Nor does Placed monitor the behavior of Norwegian data subjects. For your information, the Placed Panel app is not available in Norwegian app stores. Accordingly, Placed's processing of data addressed in your letter does not fall within the territorial scope of the GDPR.

2. The relationship with MyDays

Placed offers enterprise services, including an SDK, to a number of partners, one of which is MyDays. We note that MyDays in the report is described as one of the ten most popular apps. From our data, MyDays only has about approximately 150 daily active users in Norway. We are surprised that this makes MyDays amongst the most popular apps in Norway.

For your information, we are in the process of terminating the partnership with MyDays. We are also in the process of phasing out the Placed SDK. These decisions are based on reasons other than the report, such as post-closing actions following Foursquare's acquisition of Placed. As part of this process, we will delete all data, and will no longer collect any further data, concerning Norwegian data subjects collected through the MyDays app.

3. The data received from MyDays

MyDays is responsible for ensuring compliance with its data processing operations, including its transfer of personal data to third party controllers. In the event our processing of data generated from MyDay's use of our SDK would be subject to the GDPR, we are of the view that we may rely on legitimate interest and/or consent.

When it comes to the legitimate interest and the balancing test under GDPR article 6(1)(f), note that the data received from MyDays does not concern demographics or psychographics, and does not include data concerning behavior, with the exception of location. Second, the data is pseudonymized. Although we recognize that pseudonymized data according to the GDPR is considered personal data, note that we generally do not perform any processing operations for the purpose of identifying the data subjects without their consent. When it comes to Android Advertising ID, it follows from the Google terms that such ID must not be connected to personally-identifiable information without the explicit consent of the data subject. The likelihood of data subjects' interests or fundamental rights and freedoms being interfered is reduced when the data is pseudonymized. As explained by the Article 29 Working Party in its Opinion WP217, pseudonymisation could play a role in tipping the balance in favor of the controller.

4. Concluding remarks

As mentioned, we are in the process of terminating the partnership with MyDays, as well as terminating the Placed SDK. We will continue to review our data practice and to take steps to enhance legal compliance where required. To the extent relevant for the future business of Placed and Foursquare, we will consider the comments presented in your letter and report.



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Yours sincerely,



Marc Ellenbogen (Jun 2, 2020 16:39 EDT)

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