



THE CHAIRMAN

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

November 25, 2008

Mr. Hanspeter Thür
Office of the Federal Data Protection
and Information Commissioner FDPIC
Feldeggweg 1
3003 Bern
Switzerland

Dear Mr. Thür:

The U.S. Department of Commerce (DOC) has advised us that it has developed with Switzerland a mechanism that would enable Swiss firms to transfer personal information to U.S. firms in accordance with Swiss law. We understand that Switzerland and the U.S. Department of Commerce have developed the U.S.-Swiss Safe Harbor Framework, (modeled on the U.S.-EU Safe Harbor Framework) for this purpose.

The FTC's role in the U.S.-EU Safe Harbor Framework is well documented in the Safe Harbor materials located on the Safe Harbor web site maintained by the Department of Commerce located at <http://www.export.gov/safeharbor/>.¹ Generally, the Safe Harbor contemplates that Safe Harbor enforcement will be conducted primarily through dispute resolution conducted by private sector dispute resolution bodies or by EU Member State Data Protection Authorities (DPAs). If a matter is not resolved through these means, the Safe Harbor Framework then provides for a referral process whereby the unresolved matter is referred by the private sector dispute resolution body or the DPA to the FTC or the Department of Transportation, depending on which agency has jurisdiction over the specific Safe Harbor Company.

We understand that pursuant to the U.S.-Swiss Safe Harbor Framework, Switzerland will recognize companies that certify to the U.S.-Swiss Safe Harbor Framework as meeting the *adequacy standard* as required by Swiss data protection law, thereby permitting the transfer of personal information from Switzerland to the United States to those participating companies. The FTC's enforcement authority relating to Safe Harbor violations in connection with personal information transferred from Switzerland to the United States is equivalent to its current authority relating to Safe Harbor violations in connection with personal information transferred from the EU to the United States. Accordingly, with regard to alleged violations of the Safe Harbor relating to information transferred from Switzerland to the United States, the FTC will give priority to referrals of non-compliance from the Swiss Data Protection Authority. Also, the

¹ See also Letter from Chairman Robert Pitofsky, Federal Trade Commission, to Director John Mogg, European Commission (July 14, 2000), available at http://www.export.gov/static/SH_FTC_Letter.pdf (hereinafter, "FTC Letter").

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FTC will give priority to referrals of non-compliance with self-regulatory guidelines received from self-regulatory organizations that engage in Safe Harbor-related dispute resolution.

Referrals will be considered based on the facts presented in each case. The FTC's authority to challenge violations of the Safe Harbor stems from Section 5 of the FTC Act,² which prohibits "unfair or deceptive acts or practices in or affecting commerce."³

I hope this information is useful, and if you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "William E. Kovacic". The signature is written in a cursive style with a large, sweeping flourish at the end.

William E. Kovacic

² 15 U.S.C. § 45.

³ See the FTC Letter for a detailed discussion of the FTC's authority in the consumer privacy area.