

Dear Matthew and Alexis,

Further to our conversation, we are interested in obtaining legal advice with regard to the case *Whatsapp v. NSO Group Technologies Ltd*, Case No. 19-cv-07123-JSC. A copy of the complaint and of the docket sheet is attached. ~~There are several questions which arise presently:~~

Our understanding is that the complaint ~~has been~~was served on NSO three- weeks ago through DHL and yesterday through the Israeli Central Authority (Directorate of Courts), ~~although we have not yet received copies.~~ The Israeli Central Authority transmitted the complaint to an agent who served NSO, pursuant to article 5(1)(b) of the 1965 Hague Service Convention. However, we do not know whether a confirmation of service has been sent to the plaintiffs.

~~We are particularly interested in this case due to the possible implications with respect to the State of Israel and its interests. We are specifically concerned that sensitive or confidential information that is held by NSO that relates to the State of Israel would be revealed in discovery proceedings. There are several questions which arise right now. Therefore, we would appreciate your opinion on the following initial questions that we have identified:~~

#### Service

1. Is it your understanding that the complaint has been properly served under US law?
2. Would there still be any effect for the State of Israel to lodge an Article 13 objection under the 1965 Hague Service Convention, and if so, what is the time frame for lodging such a request?, ~~and~~ What would be the advantages and disadvantages of doing so?
3. If Israel raises an objection, to what extent can the plaintiffs bypass such an objection by serving NSO through other means? Is there a deadline for the submission of ~~the an~~ objection in order for it to be effective?

#### Procedure

4. Can you explain the procedure of the case in terms of deadlines and next steps? According to what we understand from the docket, the next step is a submission on case management ~~in on~~ 23 January, to be followed by a hearing on 30 January.
5. When do you expect that the issue of discovery will first ~~come up~~arise?

#### Strategic steps

1. Please provide your initial analysis of the case, the plaintiffs' motives and interests in the litigation, and the possibilities of the parties to reach a settlement or of the defendants to dismiss the case.
- ~~1-2.~~ 2. Please explain all the possibilities available to the US Government to intervene in these proceedings in order to dismiss the case or stop the proceedings before the discovery phase, including arguments that the case pertains to state secrets, defense, foreign relations of the US or of other foreign states.

**[Comment SW1]** : ורד/איתי/סדריק – האם זה נכון? דוד שאל אם יש לנו העתקים של התכתובות.

**[Comment SW2]** : ורד/איתי/סדריק: דוד הוסיף את השאלה הזאת, אבל נראה לי שהיא רחבה מעט. אולי ניתן לצמצם את ההיקף? אולי:

1. Please provide an initial analysis of the chance of success of the legal claims the plaintiffs are asserting?
2. In your view, does this case fit into a broader strategy of the plaintiffs?
3. What do you think is the likelihood that the parties will reach a settlement [prior to discovery]?

2-3. In this regard, please also ~~describe~~~~explain what are~~ the legal tools and/or strategies available to the US Government under US law to (a) protect information that is classified under US law, (b) or otherwise ~~to~~ protect US Government interests, or (c) in order to have the case dismissed~~the case under US law~~?

4. Please also clarify ~~what would be~~ the likelihood that the court would accept a US Amicus asking to dismiss the case.

3-5. Would it be possible for a foreign state to intervene in reliance on any of the strategies described above?

#### **Discovery:**

1. When do you expect that the issue of discovery would first come up? As a procedural matter, could discovery be ordered with respect to any preliminary motions?
2. What are the legal tools and/or strategies available to the State of Israel to protect information that is classified under Israeli law, and/or ~~whose the~~ release of which would harm Israel's national security ~~under US law~~? What is the timing as to filing of ~~these measures~~any related motions?
3. To what extent ~~is would~~ it be possible for NSO to object to the disclosure of information or documents, on the grounds that such disclosure is prohibited under Israeli law or prohibited by an Israeli court order?
4. ~~Is there prior precedent in which US courts have protected~~ and/or compelled discovery of classified information of foreign states? ~~and if so, please provide a summary of these cases. (in which such information was protected and/or when discovery was compelled by the Court)~~

#### **Motion to dismiss and other tools**

- 5-4. Does NSO have grounds for lodging a motion to dismiss? If yes, what would be the legal arguments they ~~would could~~ raise and what is your assessment as to ~~whether the likelihood that~~ the federal district court is likely to would dismiss the case?
- 6-5. Is there any other way to end the case, including, for example, using ADR? ~~(we We~~ noticed this was referenced in the docket – is this a mandatory process either under the rules of the California Northern District or otherwise (e.g., under the Whatsapp user terms)?)<sup>2</sup>
- 7-6. What is the likelihood of a successful derivative immunity argument? If NSO wishes to raise this, would there need to be a statement by the relevant state(s) supporting this claim or could NSO ~~argue raise~~ this claim without referring to any supporting statement by a state? What are the advantages and disadvantages for Israel if ~~they~~ NSO were to raise such an argument?

We would appreciate if you could get back to us with a capped fee and an estimate as to how much time you expect the research to take. We are aware that this case is coming in in the midst of the holiday season and that the deadlines are extremely tight ~~–, but it~~ is important for us to receive your advice as soon as possible. Bearing in mind the current circumstances, please let us know how soon you can ~~get it back~~respond to us.

**[Comment SW3]**  
"US Government as an intervenor"  
או רוצים לדעת האם אפשרי שבית  
המשפט ידחה את התביעה רק  
בהסתמכות על amicus brief?

We [would](#) also appreciate if you could please track the docket and let us know of any developments.