

Notice of intention to accept commitments offered by Meta on its use of data obtained through digital display advertising

Case number AT 51013

26 May 2023



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1. Introduction

- 1.1 On 3 June 2021, the Competition and Markets Authority (the **CMA**) opened an investigation under the Competition Act 1998 (the **Act**) into the conduct of the undertaking comprising Meta Platforms, Inc.¹ and its group companies, including Meta Platforms Ireland Ltd and Facebook UK Ltd (together, **Meta**) following the CMA's market study into online platforms and digital advertising.²
- 1.2 Specifically, the CMA is concerned that from at least January 2015, Meta has engaged in conduct which abused, and continues to abuse, its dominant position in the market for digital display advertising services³ (**DDA**) or, alternatively, in a narrower relevant product market, such as digital display advertising services on social media (**DDASM**). The CMA's concerns relate to:
- (a) the terms and conditions governing the provision of DDA and business tool services in the United Kingdom⁴ which Meta generally requires its DDA customers to sign up to, and which enable Meta to use data it receives or otherwise has by virtue of providing DDA and business tool services for purposes beyond the provision of DDA, including in the development and improvement of Meta products; and
 - (b) evidence that indicates Meta has actually used such data from competitors of Facebook Marketplace which, based on its investigation to date, the CMA suspects was used in the development, improvement and operation of Facebook Marketplace in ways which it would not otherwise have been able to do.
- 1.3 On 19 May 2023, Meta offered commitments (the **Proposed Commitments**) for the purposes of addressing the competition concerns the CMA has identified in this investigation. The text of the Proposed Commitments is set out in full in the Annex to this Notice and summarised in chapter 5 below.
- 1.4 In summary, the main elements of the Proposed Commitments are:
- (a) **Facebook Marketplace technical solution:** Meta has offered to implement technical systems to prevent the use of certain competitor advertising data in the operation of Facebook Marketplace and the development and/or improvement of the product design, layout and/or

¹ Meta Platforms, Inc. was known as Facebook, Inc. until 28 October 2021.

² [CMA Online Platforms and Digital Advertising Market Study final report](#), 1 July 2020.

³ This includes services in respect of DDA on and off Meta's platforms.

⁴ This includes advertising which is displayed to individual end-users based in the United Kingdom and DDA provided to advertising customers based in the United Kingdom.

functionality of Facebook Marketplace. This technical solution will apply for advertisers who have voluntarily opted out of their advertising data being used, or who have been proactively opted out by Meta (and who have not objected to this).⁵

- (b) **Commitments to address the CMA’s concerns regarding unfair trading conditions in Meta’s terms and conditions:** Given the potential for further use of advertiser customers’ data for purposes beyond the provision of DDA by virtue of Meta’s terms and conditions, Meta has offered to use all reasonable endeavours to ensure that employees working on product development refrain from using data it receives or otherwise has by virtue of providing DDA and business tool services to develop or improve Meta’s products in competition with specific products or services offered by advertisers.⁶ Meta has offered to include a clear public statement in its Code of Conduct, which contains public-facing compliance guidance for all Meta employees, that such data derived from advertisers should not be used in the development and improvement of its products in competition with those advertisers.
- (c) In respect of both elements set out above, Meta has offered to undertake compliance measures for relevant employees, including mandatory annual training and the signature of personal acknowledgments and agreements to the restrictions on the use of data.⁷

1.5 The CMA’s provisional view is that the Proposed Commitments, if implemented, would address the competition concerns it has identified, by Meta publicly committing to, and using, all reasonable endeavours to ensure that certain advertising data is not used to develop or improve a Meta product in competition with specific products or services offered by advertisers and setting technical controls to prevent competitor advertising data from being used in data assets⁸ managed by Facebook Marketplace employees, as more fully detailed below in chapters 5 and 6.

1.6 Under section 31A of the Act, read with paragraph 2 of Schedule 6A to the Act, the CMA hereby gives notice that it proposes to accept the Proposed Commitments (the **Notice**) and invites representations from persons likely to be affected by this proposed course of action. The CMA will take any representations into account before making its final decision on whether to accept the Proposed Commitments. Details on how to make representations

⁵ See paragraphs 5.3 to 5.5 below, and clauses 2.1, 3.1(a) and 3.2 of the Proposed Commitments.

⁶ See paragraph 5.7 below, and clause 4.1 of the Proposed Commitments.

⁷ See paragraphs 5.12 below, and clause 4.1(b) of the Proposed Commitments.

⁸ Data assets are individual items, such as code modules, or data objects including features to machine learning models, that are involved in acquiring, processing, storing and/or accessing data.

are provided at the end of this Notice. The closing date for representations is **5pm on 26 June 2023**.

- 1.7 The CMA does not intend to publish the responses to the consultation. However, the information contained in the representations may be used or summarised on an anonymous basis, including in any commitments decision or notice of intention to accept any modified commitments.
- 1.8 Formal acceptance of the Proposed Commitments by the CMA would result in the termination of its investigation, with no decision made on whether or not the Act has been infringed. The commitments would take effect from the date of such acceptance.
- 1.9 The CMA expects to obtain powers to regulate certain firms' conduct in relation to various digital activities under the proposed new regime for digital markets set out in the recently introduced Digital Markets, Competition and Consumers Bill. Under the new regime, the CMA may introduce requirements governing digital activities carried out by an undertaking if the undertaking is designated as having Strategic Market Status. If Meta's Proposed Commitments are accepted by the CMA, and if the CMA decides to designate Meta as having Strategic Market Status, requirements under the new regime may apply alongside the commitments, or – where they overlap and render the commitments unnecessary in whole or part – may result in the commitments being varied or falling away in whole or in part.
- 1.10 The remainder of this Notice is structured as follows:
 - (a) Chapter 2 provides information on the CMA's investigation, the commitments regime, relevant information on the commitments offer and relevant market context;
 - (b) Chapter 3 sets out the relevant market(s), key aspects of competition in the relevant market(s), Meta's position in the relevant market(s) and the terms and conditions on which Meta provides the Services;
 - (c) Chapter 4 sets out the CMA's competition concerns regarding Meta's conduct;
 - (d) Chapter 5 summarises the Proposed Commitments offered by Meta;
 - (e) Chapter 6 sets out why the CMA provisionally considers that the Proposed Commitments address the competition concerns it has identified;

(f) Chapter 7 provides details of how to comment on the Proposed Commitments.

1.11 Unless otherwise indicated, capitalized defined terms have the meaning assigned to them in the Proposed Commitments annexed to this Notice.

2. The CMA's investigation

The investigation

- 2.1 Following the CMA's market study into online platforms and digital advertising, the CMA opened a formal investigation into Meta's conduct under section 25 of the Act on 3 June 2021.⁹ The CMA and the Office of Communications (**Ofcom**) have concurrent jurisdiction to exercise functions under Part 1 of the Act in respect of this case. It was agreed (pursuant to regulation 4 of the Competition Act 1998 (Concurrency) Regulations 2014¹⁰) that the CMA would exercise those functions in relation to this investigation.¹¹
- 2.2 Meta provides various online products and services to UK users as more particularly described below. Those online products and services include popular platforms such as Facebook (**Facebook Blue**), Instagram, and WhatsApp. Facebook Blue offers individual end-users multiple ways to engage via a variety of features available on Facebook Blue such as Feed, Reels, Stories, Groups, Facebook Marketplace, Facebook Dating and more.¹²
- 2.3 Meta provides DDA, either on its own social media platforms (DDA is currently provided on Facebook Blue (including Messenger and features available on Facebook Blue) and Instagram) or on third-parties' platforms via Meta Audience Network (as set out in more detail in paragraphs 2.19 and 2.20 below); and business tool services which include application programming interface services (DDA and business tool services are together referred to as the **Services**).
- 2.4 The CMA's investigation under the Act into the conduct of Meta focused on the following concerns:
- (i) the terms and conditions governing the provision of DDA in the United Kingdom which enable Meta to use data which it receives or

⁹ By means of case initiation letter and a Notice to Meta seeking information under s.26 of the Act.

¹⁰ Section 54 of the Act combined with sector-specific legislation provides that in a number of industries, the application and enforcement of Part 1 of the Act may be carried out by certain sectoral regulators concurrently with the CMA. Ofcom's concurrent competition powers to enforce Part 1 of the Act are provided for in Chapter 1 of Part 5 of the Communications Act 2003. [The Competition Act 1998 \(Concurrency\) Regulations 2014](#) make provision for the CMA and sectoral regulators with concurrent competition powers to co-ordinate the performance of those functions.

¹¹ This was agreed in accordance with the Concurrency Regulations, the Guidance on concurrent application of competition law to regulated industries ([CMA10](#)) and the procedure set out in paragraphs 32-37 of the memorandum of understanding between the CMA and Ofcom on concurrent competition powers, dated 2 February 2016 ([CMA_Ofcom_MOU](#)).

¹² Meta Platforms, Inc. Annual Report 2022 ([10K](#)), page 7 (8 of the PDF).

otherwise has by virtue of providing DDA, for purposes beyond the provision of those services; and

- (ii) Meta's use of such data from competitors of Facebook Marketplace in the development, improvement and operation of Facebook Marketplace, which is a feature in the Facebook app and on desktops and tablets that allows users to post or browse classified ads items for sale.¹³

2.5 Having regard to the information gathered during this investigation, the CMA has reasonable grounds for suspecting that Meta has infringed and is infringing the Chapter II prohibition set out in section 18 of the Act.

2.6 Specifically, the CMA has reasonable grounds for suspecting that from at least January 2015:

- (a) Meta has held a dominant position within the UK in the market for DDA or, alternatively, in DDASM; and

- (b) Meta has engaged in conduct which abused, and continues to abuse, its dominant position by:

- (i) Imposing unfair trading conditions on Meta's DDA customers (**Advertising Customers**) in respect of the Services, including Advertising Customers which compete, either at present or in the future, with Meta in markets other than DDA, DDASM or social media (**Adjacent Markets**). These unfair trading conditions are in the terms and conditions that govern Meta's collection and use of data it has by virtue of providing the Services. This data comprises:

- (A) data shared by, or otherwise obtained from, Advertising Customers when using the Services, such as event data (defined in certain of Meta's terms and conditions, and as set out in footnote 14 below, **Event Data**);¹⁴

¹³ The CMA's initial investigation also focused on any such data use in Facebook Dating. However after conducting limited evidence gathering in respect of Facebook Dating, further evidence gathering in respect of Facebook Dating was paused on administrative priority grounds.

¹⁴ Meta Business Tools Terms, which govern the use of data obtained through Advertising Customers' use of Meta's Business Tools, define 'Event Data' as follows: '*Event Data is other information that you share about people and the actions that they take on your websites and apps or in your shops, such as visits to your sites, installations of your apps, and purchases of your products. While Event Data does include information collected and transferred when people access a website or app with Facebook Login or Social Plugins (e.g. the Like button), it does not include information created when an individual interacts with our platform via Facebook Login, Social Plugins, or otherwise (e.g. by logging in, or liking or sharing an article or song). Information created when an individual interacts with our platform via Facebook Login, Social Plugins, or otherwise is governed by the*

(B) data relating to or derived from Advertising Customers' use of the Services, including interactions of Meta's individual end-users (**Users**) with its social media services displaying advertisements; and

(C) data otherwise pertaining to Advertising Customers which is generated in the course of providing the Services,

(all such data together being **Advertising Data**).

The terms and conditions enable Meta, with few limitations or restrictions, to use Advertising Data in any features, apps, technologies, software or services offered by Meta, including in the development and improvement of such existing and new Meta products or services in Adjacent Markets.¹⁵ These terms go beyond what is necessary to provide DDA; and/or

(ii) Using Advertising Data in a way that is capable of affording Meta a competitive advantage in respect of Facebook Marketplace (being a product in an Adjacent Market) which would not have arisen from competition on the merits; and

(c) This conduct may affect trade within the UK.

2.7 During its investigation to date, the CMA has undertaken a number of steps to gather evidence from Meta and from third parties. These steps include sending formal notices requiring the production of documents and the provision of information under section 26 of the Act as well as obtaining further information through meetings and other correspondence.

The commitments regime

2.8 Section 31A of the Act provides that for the purposes of addressing the competition concerns it has identified, the CMA may accept from such person (or persons) as it considers appropriate, commitments to take such action (or refrain from taking such action) as it considers appropriate. The CMA's *Guidance on the CMA's investigation procedures in Competition Act 1998 cases: CMA8 (the Procedural Guidance)*¹⁶ describes the circumstances in

Platform Terms. 'Meta Business Tools Terms' (which can be accessed via the Facebook Help Centre (<https://www.facebook.com/help>) last accessed 04/05/2023).

¹⁵ The CMA's investigation in the present case has focused on the use of data outside Meta's current core social media platforms on which it provides DDA, including on features available on these platforms such as Facebook Marketplace.

¹⁶ Pursuant to section 31D(8) of the Act, the CMA must have regard to the Procedural Guidance when exercising its discretion to accept commitments under section 31A of the Act.

which it may be appropriate to accept binding commitments and the process by which parties to an investigation may offer commitments to the CMA.¹⁷

- 2.9 In accordance with paragraph 10.21 of the Procedural Guidance, a business under investigation may offer commitments at any time during the investigation until a decision on infringement is made. In this case, no decision on infringement has been made.
- 2.10 Formal acceptance of the Proposed Commitments by the CMA would result in the termination of its investigation, with no decision made on whether or not the Act has been infringed.
- 2.11 However, acceptance of the Proposed Commitments by the CMA would not prevent the CMA from taking any action in relation to competition concerns which are not addressed by the Proposed Commitments.¹⁸ Moreover, acceptance of the Proposed Commitments would not prevent the CMA from continuing the investigation, making an infringement decision, or giving a direction in circumstances where the CMA had reasonable grounds for:
- (a) believing that there had been a material change of circumstances since the commitments were accepted;
 - (b) suspecting that a person had failed to adhere to one or more of the terms of the commitments; or
 - (c) suspecting that information which led the CMA to accept the commitments was incomplete, false or misleading in a material particular.¹⁹
- 2.12 Further, where a person from whom the CMA has accepted commitments fails without reasonable excuse to adhere to the commitments, the CMA may apply to the court for an order requiring the default to be made good.²⁰
- 2.13 Following correspondence with the CMA, Meta indicated an intention to offer commitments under section 31A of the Act to address the CMA's competition concerns. Accordingly, and in line with paragraph 10.22 of the Procedural Guidance, the CMA proceeded to discuss with Meta the scope of any commitments which the CMA considered would be appropriate to address the competition concerns it had identified.
- 2.14 On 19 May 2023 Meta offered the Proposed Commitments set out in the Annex to this Notice for the purposes of addressing the CMA's competition

¹⁷ Procedural Guidance, paragraphs 10.15-10.25.

¹⁸ Section 31B(3) of the Act.

¹⁹ Section 31B(4) of the Act.

²⁰ Section 31E of the Act.

concerns. The offering of commitments does not constitute an admission by Meta of an infringement of the Chapter II prohibition.

- 2.15 Having considered the Proposed Commitments, and having had regard to paragraphs 10.17 to 10.20 of the Procedural Guidance, it is the CMA's provisional view that, for the reasons set out in this Notice, the Proposed Commitments will address the competition concerns it has identified and it is appropriate for the CMA to exercise its discretion to close its investigation by way of a formal decision to accept commitments.

The relevant party and products and services

- 2.16 The relevant party is Meta, a multi-entity undertaking comprising Meta Platforms, Inc. and its group companies, including Meta Platforms Ireland Ltd and Facebook UK Ltd.

- (a) Meta Platforms, Inc. is a listed company²¹ incorporated under the laws of the State of Delaware, United States, and headquartered in California. Meta Platforms, Inc. is the ultimate parent company of the Meta group of companies and operates on a global basis, including in the UK. With effect from 25 April 2023, Meta Platforms, Inc. took over the role of provider of Meta Products to UK Users (as set out in the Terms of Service).²² Meta Platforms, Inc. also became the data controller in respect of personal data of UK Users of Meta Products.²³ Meta Platforms, Inc. also processes personal data of UK Users that Advertising Customers in the UK share with it eg via Meta's Business Tools such as Pixel.
- (b) Meta Platforms Ireland Ltd is a subsidiary of Meta Platforms, Inc. and is incorporated in the Republic of Ireland. Within the UK, Meta Platforms Ireland Ltd provides certain Services to UK-based Advertising Customers.

²¹ On the Nasdaq Stock Exchange Market LLC ([Meta Platforms, Inc. Class A Common Stock](#), last accessed 12/05/2023).

²² [Meta's Terms of Services](#) state: "Meta Platforms, Inc. is now providing Facebook in the UK. We've updated our Terms of Service and Privacy Policy to reflect this change on 25 April 2023. [...] These Terms govern your use of Facebook, Messenger and the other products, features, apps, services, technologies and software that we offer (the Meta Products or Products), except where we expressly state that separate terms (and not these) apply. These Products are provided to you by Meta Platforms, Inc.". As set out in the link within the Terms of Service, "Meta Products include: "Facebook (including the Facebook mobile app and in-app browser); Meta View; Messenger; Instagram (including apps such as Boomerang); Meta Portal-branded devices; Meta Platforms Technologies Products, such as Meta Horizon Worlds or Meta Quest (when using a Facebook or Meta account); Shops; Meta Spark; Meta Audience Network; NPE Team apps; Meta Business Tools; Any other features, apps, technologies, software or services offered by Meta Platforms, Inc. or Meta Platforms Ireland Limited under our Privacy Policy." (see [What are the Meta Products? | Facebook Help Centre](#)) (last accessed 04/05/2023).

²³ See [Meta Privacy Policy – How Meta collects and uses user data | Privacy Centre | Manage your privacy on Facebook, Instagram and Messenger | Facebook Privacy](#) (last accessed 04/05/2023).

- (c) Facebook UK Ltd is a subsidiary of Meta Platforms, Inc. and is incorporated in the UK.²⁴ Facebook UK Ltd is also a provider of certain Services to UK-based Advertising Customers.²⁵ Facebook UK Ltd provides support services (such as marketing, sales) to Meta Platforms Ireland Ltd and Meta Platforms, Inc. including in respect of UK Users and processes certain data on behalf of both.
- (d) The global infrastructure necessary to provide Meta's services may be owned, operated or controlled by Meta Platforms, Inc., Meta Platforms Ireland Ltd or its affiliates.²⁶

- 2.17 Meta offers various online products and services to UK Users, which are generally provided for no direct monetary cost. As set out above, those online products and services include popular platforms such as Facebook Blue, Instagram, Messenger and WhatsApp, which broadly enable Users to connect and communicate with other Users, including family and friends, interest groups and businesses. Facebook Blue offers Users multiple ways to engage via a variety of features available on Facebook Blue such as Feed, Reels, Stories, Facebook Marketplace, Facebook Dating and more.²⁷
- 2.18 Facebook Marketplace is an online classified advertising service (**OCA**) that was launched in the UK in October 2016.²⁸ With no upfront monetary charges, it allows sellers to place adverts for items for sale and buyers to contact sellers. It is accessed through the Facebook Blue app or website.²⁹ Users of Facebook Marketplace can communicate with each other through Messenger.
- 2.19 In addition, Meta also provides DDA, a form of digital advertising where advertisers pay online companies such as social media platforms to display advertising on the latter's web pages or mobile apps. Meta offers DDA in various forms, including video and non-video advertising. With respect to on-Meta advertising, this is currently displayed to Users on social media platforms only, namely Facebook Blue (including Messenger) and Instagram,

²⁴ [Companies House](#) (last accessed 28/04/2023).

²⁵ The DDA which Facebook UK Ltd resells to UK-based Advertising Customers includes self-serve advertising. See [Meta's Self-serve Ad Terms](#) (last accessed on 03/05/2023) read together with [Meta's Country-specific Ads Terms](#), Section 21 on the UK (last accessed on 03/05/2023).

²⁶ Meta's Terms of Service state: "Ensuring access to our services: To operate our global services and enable you to connect with people around the world, we need to transfer, store and distribute content and data to our data centres, partners, service providers, vendors and systems around the world, including outside your country of residence. The use of this global infrastructure is necessary and essential to provide our services. This infrastructure may be owned, operated or controlled by Meta Platforms, Inc., Meta Platforms Ireland Limited or its affiliates." See <https://m.facebook.com/legal/terms> (last accessed 10/05/2023).

²⁷ Meta Platforms, Inc. Annual Report 2022 (10-K), page 7 (8 of the PDF).

²⁸ <https://about.fb.com/news/2016/10/introducing-marketplace-buy-and-sell-with-your-local-community/> (last accessed 03/05/2023).

²⁹ <https://www.facebook.com/marketplace/learn-more/> (last accessed 03/05/2023).

including on features available on these such as Facebook Marketplace, Reels, Stories.³⁰

- 2.20 Meta has the ability to display advertising to Users who are most likely to find the advertising relevant to them,³¹ by using data to target specific groups of Users or broader audiences. Its advertising offering is therefore different to other means of advertising that do not target specific audiences and is distinguishable from traditional advertising media. Meta also offers additional tools to businesses, including to enhance the targeting and delivery of their advertising, eg tools which target groups of Users who have previously engaged with the business (including Website Custom Audiences, Mobile App Custom Audiences and Offline Custom Audiences (as defined in Meta's Business Tools Terms)), Users forming a particular audience based on specific criteria (**Core Audience**) or Users with similar interests to existing customers (**Lookalike Audience**).
- 2.21 Advertising revenue accounted for approximately 97% of Meta's worldwide revenue in 2022.³²

³⁰ All of these products can be accessed via desktop computers or smartphone apps. Meta does not currently offer DDA on its WhatsApp platform.

³¹ See Meta's description of its ad targeting services on its website: <https://en-gb.facebook.com/business/ads/ad-targeting> (last accessed 03/05/2023).

³² Meta Platforms, Inc. Annual Report 2022 (10-K), page 70 (71 of the PDF).

3. Background

- 3.1 This chapter sets out the CMA's preliminary view on:
- (a) key aspects of competition in the markets relevant to the CMA's investigation;
 - (b) the relevant market(s);
 - (c) Meta's position in the relevant market for DDA and narrower markets within DDA in the UK; and
 - (d) the terms and conditions on which Meta provides the Services.
- 3.2 The purpose of this chapter is to provide context to chapter 4 of this Notice, which describes the CMA's competition concerns.

Key aspects of competition in the markets relevant to the CMA's investigation

Meta's services as two-sided platforms

- 3.3 As set out above, Meta owns and operates Facebook Blue, Instagram and Messenger, among other services. These products are two-sided platforms; they serve users, including users of social media, on one side, and they sell DDA on social media platforms to advertisers on the other side. Users are attracted by the ability to connect and interact with each other and to access social media content. Advertisers are attracted by the access to a large audience and/or the ability to target specific user audiences.
- 3.4 The social media and digital display advertising sides are intrinsically linked and exhibit strong network effects. On the social media side, there are direct network effects, where, as the number of users increases, the platform becomes more attractive for other users. It also exhibits indirect network effects, in that, as the number of users increases, the other side of the platform becomes more attractive for advertisers. Therefore, Meta's position in digital display advertising is largely driven by its position as owner of popular social media platforms.³³

³³ In 2020, the CMA found that Meta's social media platforms made up by far the highest share of user time spent on social media in the UK (73% in February 2020), and that other platforms tend to be accessed in addition to the Meta platforms, rather than as an alternative to them. See [CMA Online Platforms and Digital Advertising Market Study final report](#), 1 July 2020, paragraph 3.171, and Figure 3.9, and paragraph 3.173, pages 121 – 123.

Online classified advertising in the UK

- 3.5 OCA platforms are marketplaces that seek to connect buyers and sellers, primarily in their local communities. Sellers include both individuals and local (likely small) businesses. OCA platforms fall within a broader category of ecommerce platforms. There are differences between types of ecommerce platforms in how they generate revenues, in the services they offer for buyers and sellers and consequently in their target users. One important distinction appears to be that OCA platforms typically do not offer services to facilitate transactions, such as payment processing, whereas other ecommerce platforms (often referred to as marketplaces) also offer further services, such as payment gateway and service fulfilment.
- 3.6 Facebook Marketplace competes with providers such as eBay, Etsy and Gumtree. Since launch, it has grown very strongly in the UK, both in terms of the number of monthly active Users and on a revenue basis. In 2020, Facebook Marketplace had [20-30] million monthly active Users in the UK, and a UK revenue of £[50-70] million.

The relevant market(s)

- 3.7 On the basis of its investigation to date, the CMA's preliminary view is that the relevant market for the purposes of this investigation is no broader than the provision of DDA in the UK. The CMA has seen some evidence suggesting that the relevant product market may be narrower than DDA. However, the CMA does not consider it necessary to reach a definitive conclusion on the exact relevant product market for present purposes, as the CMA suspects that Meta holds a dominant position in the market for DDA in the UK or, alternatively in a narrower relevant product market, such as DDASM in the UK, as described in paragraphs 3.14 to 3.19 below.
- 3.8 As set out above, DDA are services where advertisers pay to place advertisements on websites or apps in a variety of formats, including banner-style advertisements, 'native' advertisements,³⁴ sponsored content, and video advertisements.
- 3.9 In line with the CMA's previous investigations, the CMA's preliminary view is that digital advertising markets (including DDA) are distinct from traditional advertising media markets (ie non-digital and offline advertising) due to the high cost of traditional advertising and its inability to target specific audiences.

³⁴ 'Native' advertising is a form of paid advertising in which the advertising matches the form and function of the media format upon which it appears in order to fit on it seamlessly.

- 3.10 There are different types of digital advertising, including search advertising and display advertising. Search advertising is primarily intent-based advertising designed to provide immediate answers to consumers who have already shown interest in buying the product or service but have not yet bought it, whereas DDA is typically used for raising brand awareness and reaching new audiences that are not yet aware of the product or service. The CMA considers that there is limited demand-side substitutability between these two types of digital advertising as each has a distinct purpose. In line with the CMA's previous investigations, the CMA's preliminary view is that DDA are in a distinct product market to that of search advertising.
- 3.11 DDA encompass different types of display advertising reflecting, for example, different advertising formats (eg video vs static/non-video advertising) or different forms of hosting, which include owned-and-operated display (typically social media platforms which sell advertising inventory themselves) and open display (which uses a chain of intermediaries to sell advertising inventory). Owned-and-operated services may also be further narrowed by type of platform, for example DDASM.³⁵
- 3.12 The CMA has received some evidence that the relevant product market may be as narrow as DDASM. With respect to on-Meta advertising, Meta currently displays advertising on social media platforms only. However, as noted above, the CMA does not consider it necessary to reach a definitive conclusion on relevant product market definition for present purposes, noting that it has reasonable grounds to suspect that Meta has a dominant market position whether the relevant product market is DDA or narrower, such as DDASM, as set out in paragraphs 3.14 to 3.19 below.
- 3.13 In line with the CMA's previous investigations, the CMA's preliminary view is that the appropriate scope of the geographic market for DDA (or a narrower relevant product market such as DDASM) is UK-wide due to advertisers' targeting customers of a particular country or region.³⁶

Meta's position in the market for DDA and narrower markets within DDA in the UK

- 3.14 Meta is by far the largest DDA supplier in the UK. In the calendar year 2020, it earned £[3-4] billion from UK advertising on Facebook Blue and £[1-2] billion from UK advertising on Instagram, and a total of £[4-5] billion in 2021.

³⁵ There may also be segments for specific uses of display advertising such as 're-targeting' services, that is, advertising to customers who have previously visited the advertiser's website.

³⁶ See [Facebook/Giphy, final report on the case remitted to the CMA](#), page 135, paragraphs 5.191–5.192.

- 3.15 Meta has held a persistently high market share in DDA in the UK. Based on DDA revenues, Meta's market share in DDA in the UK in recent years was [40-50]% in 2020, [50-60]% in 2021 and [40-50]% in the first half of 2022.³⁷
- 3.16 During this period, ie between 2020 and the first half of 2022, Meta's market share in terms of all DDA revenue in the UK was also much larger than that of the next largest DDA supplier in the UK, which remained stable at around [5-10]%.³⁸ Furthermore, notwithstanding the recent growth of certain other social media platforms, they are still significantly smaller in terms of DDA revenues than Meta's platforms and do not have the broad User reach and capabilities of Meta.
- 3.17 This is consistent with Meta being viewed as an important advertising channel by advertisers contacted by the CMA, because of its significant reach and capabilities, including its extensive and granular source of data on Users.
- 3.18 Based on the above, the CMA suspects that Meta is dominant in the market for DDA in the UK.
- 3.19 The CMA also suspects that Meta would be dominant in a narrower relevant product market, such as DDASM, in the UK, and notes in this regard that in respect of the narrower channel of owned-and-operated display (which in turn includes DDASM), Meta's market shares are significantly higher than in DDA, reaching [70-80]% in 2020 and [60-70]% in the first half of 2022.³⁹

The terms and conditions on which Meta provides the Services

- 3.20 Generally, businesses wishing to use the Services are required to sign up to a suite of standard terms and conditions. These include Meta's Terms of Service, which refer to Meta's Privacy Policy, and Commercial Terms, as well as other terms and policies relevant to providing DDA such as the Product Catalogue Terms, Platform Terms, Audience Network Terms, Customer List Custom Audiences Terms and Business Tools Terms.
- 3.21 With some limited exceptions, the terms and conditions applicable to the Services, together with Meta's Privacy Policy which applies broadly across Meta's customers and Users, give Meta wide rights and permissions to use Advertising Data, including to develop and improve its existing and new

³⁷ See [Facebook/Giphy, final report on the case remitted to the CMA](#), pages 136-137, Tables 5 and 5A. In 2020, 2021 and H1 2022, Facebook (Blue) had [30-40]% market share in the market for DDA in the UK and Instagram had a market share of [10-20]%.

³⁸ See [Facebook/Giphy, final report on the case remitted to the CMA](#), pages 136-137, Tables 5 and 5A. In 2020, 2021, and H1 2022 YouTube had market share in the market for DDA in the UK of [5-10%].

³⁹ See [Facebook/Giphy, final report on the case remitted to the CMA](#), page 136, paragraph 5.197 and page 137, paragraph 5.199.

products and services. Such products and services are broadly described and extend beyond the provision of DDA.

- 3.22 For example, Meta's current Business Tools Terms state that Event Data may be used by Meta:

'for research and development purposes and to maintain the integrity of and to provide and improve the Meta Products'.⁴⁰

- 3.23 Another example can be seen in Meta's current Commercial Terms, which apply to all business users and stipulate that:

'[...] We retain commercial content as necessary to provide our services to users, for internal record keeping and for product improvement and safety purposes'.⁴¹

- 3.24 Meta's current Privacy Policy, which is referred to in its Terms of Service, sets out the broad ways information, including Advertising Data, may be used, including:

'We use information we collect to: See if a product is working correctly, Troubleshoot and fix it when it's not; Try out new products and features to see if they work; Get feedback on our ideas for products or features; Conduct surveys and other research about what you like about our products and brands and what we can do better'.⁴²

⁴⁰ [Meta Business Tools Terms](#), as effective at 25 April 2023, clause 2.a.v.3. Note: This wording reflects the current version of Meta's Business Tools Terms but broadly equivalent wording was contained in previous iterations. The same applies to all other terms quoted in this document.

Meta Products are defined to include: *'Facebook (including the Facebook mobile app and in-app browser); Meta View; Messenger; Instagram (including apps such as Boomerang); Meta Portal-branded devices; Meta Platforms Technologies Products, such as Meta Horizon Worlds or Meta Quest (when using a Facebook or Meta account); Shops; Meta Spark; Meta Audience Network; NPE Team apps; Meta Business Tools; and Any other features, apps, technologies, software or services offered by Meta platforms, Inc. or Meta Platforms Ireland Ltd under our Privacy Policy'* on [What are the Meta Products? | Facebook Help Centre](#). ([Meta Business Tools Terms](#) and [What are the Meta Products? | Facebook Help Centre](#), last accessed 03/05/2023).

⁴¹ [Meta Commercial Terms](#), as effective at 4 January 2022, clause 7.h. Commercial content is defined at clause 7.g.as *'your advertising content and Facebook Page posts'*. ([Meta Commercial Terms](#), last accessed 03/05/2023).

⁴² [Meta Privacy Policy](#), as effective at 25 April 2023. 'Products' is defined to include: *'Facebook, Messenger, Instagram (including apps such as Boomerang), Facebook Portal products, Meta Platforms Technologies Products, such as Meta Horizon Worlds or Meta Quest (when using a Facebook or Meta account), Shops, Marketplace, Spark AR, Meta Business Tools, Meta Audience Network, NPE Team apps, Facebook View.'* ([Meta Privacy Policy](#), last accessed 04/05/2023).

4. The CMA's competition concerns

4.1 In this chapter, the CMA sets out its competition concerns regarding Meta's conduct.

Unfair trading conditions

4.2 Based on its investigation to date, and for the reasons set out in paragraphs 3.20 to 3.24, the CMA is concerned that, given Meta's suspected dominant position described in paragraphs 3.14 to 3.19 above:

- (a) generally, (i) Meta requires Advertising Customers wishing to use the Services, to agree to Meta's standard terms and conditions applicable to the provision of the Services, and (ii) such Advertising Customers have little choice in practice but to agree to them;
- (b) those standard terms and conditions allow Meta to collect and use Advertising Data that the CMA considers could be commercially valuable, which is often not publicly available, and which it receives or otherwise has by virtue of providing DDA, for purposes beyond what is necessary to provide DDA, including in the development and improvement of other existing and new Meta products and services in Adjacent Markets⁴³; and
- (c) this is the imposition of an unfair trading condition, unfairly exploiting Meta's dominant position as outlined in (a) and (b) above.

4.3 The CMA is concerned that this conduct is capable of affording Meta an unfair competitive advantage that it would not otherwise have obtained purely by competing on the merits and/or otherwise disadvantaging Advertising Customers which, either at present or in the future, compete with Meta in Adjacent Markets.

4.4 The CMA's view of the terms and conditions allowing Meta to collect and use data in the way set out in paragraph 4.2(b) above is supported by the instances that the CMA has identified, and which are discussed below, where Meta has actually used Advertising Data in Facebook Marketplace.

4.5 The CMA's preliminary view is that Meta's existing internal policies and measures on how Meta and its employees may use Advertising Data provide

⁴³ The CMA's investigation in the present case has focused on the use of data outside Meta's current core social media platforms on which it provides DDA, including on features available on these platforms such as Facebook Marketplace.

insufficient restriction or reassurance to Advertising Customers and are therefore insufficient on their own to address the CMA's competition concerns.

Use of Advertising Data in Facebook Marketplace

- 4.6 Based on its investigation to date, the CMA has concerns that Meta has the ability and incentive to use – and the CMA has evidence that Meta has actually used – Advertising Data from Advertising Customers to advantage its position in an Adjacent Market, namely Meta's Facebook Marketplace product. Based on its investigation to date, the CMA suspects that Meta has used Advertising Data from Facebook Marketplace competitors for the strategic planning, product development and launch of Facebook Marketplace, as well as for the operation and improvement of Facebook Marketplace.
- 4.7 The CMA has concerns that this conduct is capable of affording (and capable of having afforded) Meta, in respect of its Facebook Marketplace product, an unfair competitive advantage that it would not have obtained purely by competing on the merits.
- 4.8 The CMA has identified several instances where it appears that Meta has used Advertising Data from some OCA providers who were DDA customers (**OCA Customers**) for purposes other than providing DDA. The types of Advertising Data it appears Meta has used include Event Data, product catalogue data and ad click data (data derived from Users' engagement with advertising by clicking on dynamic product ads).
- 4.9 On the basis of the CMA's investigation to date, the CMA suspects that Meta has used OCA Customers' Advertising Data in the operation of Facebook Marketplace and that such conduct is capable of giving rise to a competitive advantage falling outside the scope of competition on the merits, and/or otherwise disadvantaging Advertising Customers which compete with Facebook Marketplace, and is capable of distorting competition in the OCA market.

Conclusion on competition concerns

- 4.10 For the reasons set out in this Notice, the CMA has competition concerns with respect to:
- (a) the trading conditions on which Meta provides the Services, which in most cases Advertising Customers wishing to use the Services have little choice in practice but to agree to. The trading conditions give Meta the

ability to use Advertising Data in the development and improvement of existing and new Meta products or services in Adjacent Markets; and

- (b) Meta's actual use of Advertising Data from competitors of Facebook Marketplace which the CMA suspects was used to develop, improve and operate Facebook Marketplace in ways which it would not otherwise have been able to do.

4.11 The CMA is concerned such conduct is capable of affording Meta an unfair competitive advantage that it would not otherwise have obtained purely by competing on the merits, and/or otherwise disadvantaging Advertising Customers, as described above.

5. The Proposed Commitments

- 5.1 In order to address the CMA's competition concerns described in chapter 4, Meta has offered the Proposed Commitments to the CMA. The Proposed Commitments are set out in the Annex to this Notice and summarised in this chapter. Further detail on the Proposed Commitments is set out in chapter 6.
- 5.2 For the purposes of the Proposed Commitments and this Notice, '**Advertisers**' means a current or former user of the Meta advertising services that are made available on the Facebook Service (including Messenger), Instagram, and on any future ad-supported social media services developed or provided by Meta, and via Meta Audience Network.

The Proposed Commitments

Proposed Commitments to address use of Advertising Data in Facebook Marketplace

- 5.3 Meta has offered commitments that it will implement and maintain systems and technical controls in respect of Advertisers who have opted out of permitting use of their advertising data by Meta within Facebook Marketplace or who have been proactively opted out by Meta via inclusion on the list at Appendix 1 to the Proposed Commitments (and who have not informed Meta that they wish to permit Meta to use data relating to them):
- (a) for the operation of Facebook Marketplace – to identify and remove certain advertising data⁴⁴ in the operation of Facebook Marketplace (including by retraining certain machine learning models), where that data is detected within the collection of data assets internally owned and managed by Marketplace Employees⁴⁵ that are used to determine which Facebook Marketplace listings are surfaced;⁴⁶ and
 - (b) for Marketplace Analytics⁴⁷ – to prevent Facebook Marketplace employees involved in the development and/or improvement of the product design, layout and/or functionality of Facebook Marketplace⁴⁸

⁴⁴ Data defined as 'Specified Relevant Data' in the Proposed Commitments at clause 1.1(jj).

⁴⁵ Data assets defined as 'Marketplace Data Assets' in the Proposed Commitments at clause 1.1(m).

⁴⁶ See clause 2 of the Proposed Commitments.

⁴⁷ Marketplace Analytics means the interrogation and use of Specified Relevant Data in Meta's systems to develop and/or improve the product design, layout and/or functionality of the Facebook Marketplace Feature.

⁴⁸ Employees defined as 'Marketplace Analytics Employees' in the Proposed Commitments at clause 1.1(l).

from using certain advertising data⁴⁹ which explicitly identifies the Advertiser.⁵⁰

- 5.4 The categories of advertising data restricted from use under this commitment (referred to as '**Relevant Data**') includes the following categories of data (set out in more detail in paragraph 6.20 below):
- (a) data that Advertisers share with Meta for the purposes of advertising, including ad creative data and data from Facebook Login or Social Plugins;
 - (b) data derived from Users' engagement with ads, such as ad clicks and ad impressions; and
 - (c) data derived from product catalogue data.
- 5.5 This commitment is referred to in this Notice as the '**Marketplace Technical Solution**'. It is to be implemented within twelve months of the acceptance of commitments by the CMA or by 30 June 2024, whichever is the later (the '**Marketplace Implementation Period**').⁵¹
- 5.6 In addition, Meta has also offered to commit to undertake compliance measures for relevant employees, including mandatory annual training and the signature of personal acknowledgments and agreements to the restrictions on the use of Advertisers' data for Marketplace Analytics explained to them in the training (pursuant to the Proposed Commitments).

Proposed Commitments to address unfair trading conditions concern

- 5.7 Meta has offered commitments that it will use all reasonable endeavours to ensure that Meta employees and contractors working on product development⁵² refrain from using and interrogating certain advertising data which explicitly identifies Advertisers⁵³ to develop or improve existing and new

⁴⁹ Data defined as 'Specified Relevant Data' in the Proposed Commitments at clause 1.1(jj).

⁵⁰ See clause 3.1(b) of the Proposed Commitments.

⁵¹ Implementation period defined as 'Marketplace Implementation Period' in the Proposed Commitments at clause 1.1(p).

⁵² Employees defined as 'Product Development Analytics Employees' in the Proposed Commitments at clause 1.1(cc).

⁵³ Defined as 'Identifiable Relevant Data' in the Proposed Commitments at clause 1.1(i).

Meta products and services available in the UK⁵⁴ in competition with specific products or services offered by Advertisers.⁵⁵

- 5.8 The categories of advertising data restricted from use are the same as described at paragraph 5.4 above.
- 5.9 This commitment is to be implemented within six months of any acceptance of commitments by the CMA or by 31 December 2023, whichever is the later (the **Product Development Implementation Period**).
- 5.10 To implement this, Meta has offered to commit to amend its publicly available Code of Conduct⁵⁶ by inserting the following new provision:

'Meta personnel should not use non-public data or information directly or indirectly derived from advertisers' use of Meta's advertising services to develop products in competition with those advertisers unless approved in advance by Legal.'

- 5.11 This proposed provision in the Code of Conduct reflects the principle that Meta employees should not use Relevant Data which explicitly identifies individual Advertisers to develop Meta Products made available to users in the UK in competition with those Advertisers (this principle being set out in the Proposed Commitments and referred to as the **'Product Development Principle'**,⁵⁷ that term having the same meaning in this Notice).
- 5.12 In addition, Meta has also offered to commit to undertake compliance measures for relevant employees, including mandatory annual training and the signature of personal acknowledgments and agreements to the restrictions on the use of Advertisers' data for product development explained to them in the training (pursuant to the Proposed Commitments).

⁵⁴ See the definition of 'Meta Products' at clause 1.1(u) read together with the definition of 'Product Development' at clause 1.1(aa): this covers all products (or features or functionalities thereof) including all features, apps, technologies, software or services offered or launched by Meta in the UK during the period of the Proposed Commitments.

⁵⁵ See clause 4.1 of the Proposed Commitments.

⁵⁶ Meta's Code of Conduct, currently available online at: <https://about.meta.com/en/code-of-conduct/>, includes several principles that set out Meta's expectations for how Meta employees should act and make decisions, explains some of the legal rules that Meta must abide by, and makes clear the standards to which Meta holds itself to. All Meta employees are required to abide by, and uphold, the Code of Conduct. As set out in the document (page 9), potential violations of the code of conduct will trigger an internal investigation and, if Meta determines that a violation has occurred, action will be taken, including disciplinary action up to termination.

⁵⁷ See clause 1.1(ee) of the Proposed Commitments.

Permitted data use

- 5.13 Meta is not prohibited from using data for certain specified purposes set out in clause 5.1 of the Proposed Commitments, which includes the use of data to:
- (a) ensure the safety, security and integrity of Meta’s services as well as essential system and infrastructure functionality;
 - (b) support the delivery of tools and functionalities to facilitate Users’ navigation of the Facebook Service, which is intended to carve out organisational and navigational tools such as bookmarks, notifications and dynamic tabs, as well as quick promotions which operate through Meta’s ad auction process⁵⁸; and
 - (c) develop advertising services and monetisation products (tools which allow creators to monetise their content such as branded content and subtraction tools).

Duration and variation

- 5.14 The Proposed Commitments will apply from the date Meta receives formal notification of a decision by the CMA to accept commitments. Subject to any earlier variation or release pursuant to sections 31A(3) and 31A(4) of the Act or in accordance with clause 7 of the Proposed Commitments (discussed below), for the proposed solution to address unfair trading concerns they will remain in effect for five years from the expiry of the Product Development Implementation Period; and for the Marketplace Technical Solution they will remain in effect for a period of the shorter of five years from expiry of the Marketplace Implementation Period or for as long as Meta offers the Facebook Marketplace feature to Users in the UK.
- 5.15 The Proposed Commitments, in clause 6.2, allow the CMA to extend the periods for implementation by a maximum of four calendar months in response to a reasonable request from Meta, or at the CMA’s own initiative.
- 5.16 On 25 April 2023, the UK Government introduced to Parliament the Digital Markets, Competition and Consumers Bill,⁵⁹ which, if adopted, will confer powers on the CMA to regulate firms designated as having Strategic Market Status (**SMS**) in respect of specific digital activities. These powers will include the ability to impose legally binding obligations on such firms, such as conduct requirements and pro-competition interventions.

⁵⁸ The ad auction process is explained on Meta’s website as follows: <https://www.facebook.com/business/ads/ad-auction>

⁵⁹ <https://publications.parliament.uk/pa/bills/cbill/58-03/0294/220294.pdf>

5.17 The CMA has not decided whether, if it acquires such powers, it would seek to designate Meta as having SMS in relation to any given digital activity (or activities). However, if it does, then it is possible the CMA may impose obligations under those new regulatory powers that cover (in whole or part), or are relevant to, the competition concerns addressed by the Proposed Commitments. The Proposed Commitments therefore include a provision in clause 7.2 that the commitments will cease (in whole or in part) if and to the extent that the CMA imposes any obligations on Meta pursuant to new regulatory powers proposed under the Digital Markets, Competition and Consumers Bill that the CMA considers would address, whether by the same or different means, some or all of the competition concerns addressed by the Proposed Commitments, where the CMA has specified to Meta in writing that it considers this to be the case.

Reporting and compliance

5.18 Meta has offered to appoint an independent monitoring trustee to monitor Meta's compliance with the Proposed Commitments from the date Meta receives formal notification of any decision to accept the Proposed Commitments until the termination date of the Proposed Commitments (the **Monitoring Trustee**). The Monitoring Trustee shall also appoint a technical expert (the **Technical Expert**), and, if necessary, other advisers.⁶⁰ The CMA must approve the appointment of the Monitoring Trustee, Technical Expert and any other appointed adviser.

5.19 The Proposed Commitments provide that Meta shall provide a detailed explanation of the technical means for implementing the Marketplace Technical Solution, for approval by the CMA in consultation with the Monitoring Trustee. This detailed explanation must be submitted to the CMA no later than a month from the date the Proposed Commitments come into effect and to the Monitoring Trustee on their appointment.

5.20 The Monitoring Trustee must monitor Meta's compliance with the Proposed Commitments including by:⁶¹

- (a) approving the training material (which shall be updated regularly as necessary) and monitoring completion of the training;
- (b) providing the CMA with written reports on Meta's compliance with the Proposed Commitments every three calendar months starting from the

⁶⁰ See Appendix 5 to the Proposed Commitments.

⁶¹ See clause 8.1(a) of, and Appendix 5 to, the Proposed Commitments.

date the commitments come into effect until the expiry of the Marketplace Implementation Period, and every six months thereafter;

- (c) proposing to Meta or, where appropriate to the CMA, necessary measures to ensure Meta's compliance with the Proposed Commitments;
and
- (d) promptly reporting to the CMA any failure by Meta to comply with the Proposed Commitments.

6. The CMA's assessment of the appropriateness of commitments in this case

- 6.1 For the reasons set out below, the CMA has reached the provisional view that acceptance of the Proposed Commitments would be an appropriate way to address its competition concerns.

The CMA's guidance

- 6.2 Pursuant to section 31A of the Act, for the purposes of addressing the competition concerns it has identified, the CMA may accept from such person (or persons) concerned as it considers appropriate, commitments to take such action (or refrain from taking such action) as it considers appropriate.
- 6.3 In order to accept commitments, the CMA must consider that the commitments offered will address the competition concerns the CMA has identified and the CMA must consider, in the exercise of its discretion, that it is appropriate to accept commitments in the case in question.⁶²
- 6.4 The Procedural Guidance states that the CMA is likely to consider it appropriate to accept binding commitments only in cases where: (a) the competition concerns are readily identifiable; (b) the competition concerns will be addressed by the commitments offered; and (c) the proposed commitments can be implemented effectively and, if necessary, within a short period of time.⁶³
- 6.5 The Procedural Guidance further states that the CMA will not, however, accept commitments where compliance with them and their effectiveness would be difficult to discern and/or where the CMA considers that not to complete the relevant aspect of its investigation and make a decision would undermine deterrence.⁶⁴

The CMA's assessment of the Proposed Commitments

- 6.6 In the following section the CMA describes the main elements of the Proposed Commitments and sets out the CMA's preliminary conclusions on how the Proposed Commitments would address the CMA's competition concerns. The CMA's approach to assessing the Proposed Commitments (including their appropriateness) has involved an assessment in the round based on its investigation to date which, as noted above, has focused on the

⁶² See paragraphs 10.15 to 10.20 of the Procedural Guidance.

⁶³ Paragraph 10.18 of the Procedural Guidance.

⁶⁴ Paragraph 10.20 of the Procedural Guidance.

use of advertising data in Facebook Marketplace⁶⁵ and (at a more principled level) in relation to Meta's terms and conditions, in so far as they relate to Meta's advertising customers.

6.7 The CMA has carefully considered the Proposed Commitments, as set out in the Annex to this Notice, by reference to the criteria set out in paragraphs 6.4 and 6.5 above.

6.8 In accordance with the CMA's Procedural Guidance, the remainder of this chapter is structured as follows:

- (a) Assessment of whether the competition concerns are readily identifiable;
- (b) Assessment of whether the Proposed Commitments address the CMA's competition concerns;
- (c) Assessment of whether the Proposed Commitments are capable of being implemented effectively and, if necessary, within a short period of time;
- (d) Assessment of whether compliance with and the effectiveness of the Proposed Commitments would be difficult to discern; and
- (e) Assessment of whether acceptance of the Proposed Commitments would undermine deterrence.

Assessment of whether the competition concerns are readily identifiable

6.9 The CMA provisionally considers that the competition concerns in respect of Meta's conduct are readily identifiable, having set those out in chapter 4 of this Notice.

Assessment of whether the Proposed Commitments address the competition concerns that the CMA has identified

6.10 In the following paragraphs, the CMA sets out its assessment of each main element of the Proposed Commitments for the purposes of assessing whether they address the CMA's competition concerns in relation to (a) use of

⁶⁵ As set out in paragraph 2.4 above, the CMA initially looked at the potential use of advertising data in the development, improvement and operation of Facebook Dating as well as Facebook Marketplace, but after the initial stages of the investigation a decision was made on administrative priority grounds to focus the investigation of actual data use on Facebook Marketplace, in respect of which the CMA saw instances of data use including those set out in paragraphs 4.8 to 4.9 and to pause further evidence gathering in respect of Facebook Dating. However, the CMA notes that Meta's offer to use all reasonable endeavours to refrain from using certain advertising data which explicitly identifies Advertisers to develop or improve Meta products available in the UK in competition with those Advertisers, would apply to Facebook Dating.

Advertising Data in relation to Facebook Marketplace and (b) unfair trading conditions.

Proposed Commitments to address use of Advertising Data in Facebook Marketplace from Advertisers that compete with Facebook Marketplace

- 6.11 Meta's proposals allow Advertisers who consider that they compete with Meta's Facebook Marketplace a choice about whether their advertising data is used by Meta for Facebook Marketplace, giving Advertisers the opportunity to 'opt-out' of their advertising data being used. Those Advertisers who choose to opt-out will not be able to advertise on Facebook Marketplace (but will still be able to advertise on Meta's other advertising surfaces).
- 6.12 Meta proposes to identify proactively those Advertisers it considers to be competitors in the provision of online classified ads and also not to use the advertising data of those Advertisers, unless they confirm in writing they are content for their data to be used to improve Facebook Marketplace in exchange for being permitted to advertise on Facebook Marketplace.⁶⁶ As there are consequences to the Advertiser of being 'opted out' from their advertising data being used (ie not being able to advertise on Facebook Marketplace), Advertisers identified will be notified in advance so they can specify if they prefer not to be opted out.
- 6.13 Meta has offered to implement technical controls to restrict the use of data of 'opted out' Advertisers in respect of (a) the operation of Facebook Marketplace, and (b) the use of data to develop or improve Facebook Marketplace (Marketplace Analytics).
- 6.14 These systems and technical controls are also supported by a package of compliance measures, including mandatory training for relevant employees who will also sign personal acknowledgments and agreements.

Provisions governing the opt-out of data use in Facebook Marketplace

- 6.15 The Proposed Commitments provide that Meta will inform Advertisers, in a prominent manner to be agreed with the CMA following consultation with the Monitoring Trustee, of the ability for Meta Advertisers to opt-out of the use of their advertising data within Facebook Marketplace or to be excluded from the list of Advertisers Meta has identified (which will be included at Appendix 1 to the Proposed Commitments).⁶⁷

⁶⁶ Appendix 1 to the Proposed Commitments will contain a list of competing Advertisers in relation to whom Meta will proactively take steps to ensure that data will not be used.

⁶⁷ Clause 3.1(a) of the Proposed Commitments.

- 6.16 Where an Advertiser considers itself to be a competitor to Facebook Marketplace and chooses to opt-out of its data being used in Facebook Marketplace, or where Meta has identified that Advertiser as a competitor to Marketplace (having first notified the Advertiser to that effect, and only where the Advertiser has not elected to permit the use of their advertising data in Facebook Marketplace), Meta commits to identifying and excluding certain advertising data of that Advertiser so that the data is not incorporated within Facebook Marketplace systems (by way of a technical solution set out below in paragraphs 6.19 to 6.26) or used by employees who interrogate and use data to develop or improve Facebook Marketplace (by way of technical restrictions and supporting compliance measures set out in paragraphs 6.28 to 6.32 below).⁶⁸
- 6.17 Meta has proposed that any 'opted out' Advertiser will be excluded from placing advertising on Facebook Marketplace, on the basis that it considers there is an expected value exchange in that Advertisers contribute their advertising data to improve the advertising system available on Meta's platforms for everyone, such that Meta considers it reasonable that an Advertiser who does not want to be part of this value exchange in respect of Facebook Marketplace will not be able to advertise on the Facebook Marketplace surface. There will, however, be no restriction on advertising elsewhere on Meta's ad-supported surfaces such that Advertisers will nevertheless be able to benefit from Meta's wide audience reach.
- 6.18 The CMA considers that this offers Meta Advertisers who compete with Facebook Marketplace a genuine and effective choice as to whether their advertising data is used in Facebook Marketplace, but is interested to hear views on this from advertisers who provide services in competition with Facebook Marketplace and particularly online classified ad services. Additionally, the CMA would be keen to be informed if any Advertiser would expect to be included in the list of Advertisers that Meta identifies as competitors to Facebook Marketplace that will be attached to the Proposed Commitments at Appendix 1.

Technical controls for Marketplace operations

- 6.19 Meta has proposed that it will implement and maintain systems and technical controls designed to identify and exclude from within the '**Data Control Boundary**' of Facebook Marketplace any Relevant Data that contributes to the operation of Facebook Marketplace from an Advertiser that has either:

⁶⁸ See clauses 2 and 3 of the Proposed Commitments, and Appendix 1 to the Proposed Commitments.

- (a) been identified by Meta as a competitor to Facebook Marketplace and has been notified by Meta; or
- (b) notified Meta in writing that it considers itself to be a competitor to Facebook Marketplace and that its data should not be incorporated within Meta's systems.

6.20 Relevant Data⁶⁹ for the purposes of the Proposed Commitments means the following types of advertising data:

- (a) data shared by Advertisers with Meta for the purposes of Meta's advertising services that are made available by Meta through all of its existing Business Tool services including its Ads Manager interface,⁷⁰ the Meta Business Suite,⁷¹ Pixel,⁷² SDKs,⁷³ the Conversions API,⁷⁴ Offline Conversions,⁷⁵ Facebook Login,⁷⁶ Social Plugins,⁷⁷ and any future equivalents;
- (b) data derived by Meta from Product Catalog Data⁷⁸ provided by Advertisers for the purpose of advertising;
- (c) ad creative data⁷⁹ shared by Advertisers with Meta; and
- (d) data generated by or derived from impressions⁸⁰ and clicks on advertising delivered on Facebook Service, Instagram and any future ad-supported social media services developed or provided by Meta.

⁶⁹ See the definition of 'Relevant Data' at clause 1.1(ff) of the Proposed Commitments.

⁷⁰ **Ads Manager** means the variety of ad management tools through which Advertisers can buy ad inventory.

⁷¹ The **Meta Business Suite** is a facility where Meta's Advertising Customers can manage their business activity. See: <https://www.facebook.com/business/tools/meta-business-suite>.

⁷² **Pixel** means the piece of Meta code which can be installed by an Advertiser on its website to enable it to measure, optimise, and build audiences for its advertising campaigns on Meta.

⁷³ **SDKs** means the Meta software components which an Advertiser can include in its mobile app to understand how users use its app, run optimised advertising campaigns and enable Facebook Login and social sharing.

⁷⁴ **Conversions API** means the Meta application programming interface which can be used by an Advertiser to connect its marketing data to Meta to support ad personalisation, optimisation and measurement on Meta.

⁷⁵ **Offline Conversions** means the Meta conversion tracking tool which can be used by an Advertiser to attribute its offline data to ads on Meta Ad Supported Surfaces.

⁷⁶ **Facebook Login** means the Meta tool which can be used by an Advertiser to provide its users with the option of using their Facebook account to log in to an Advertiser's website or mobile app.

⁷⁷ **Social Plugins** means the Meta plugins which can be incorporated in an Advertiser's website or mobile app to enable it to provide Meta social experiences (eg like and share buttons).

⁷⁸ **Product Catalog Data** means the product information which an Advertiser can provide to Meta through Meta's product catalog feature (such as product identifier, title, link, description, type, condition, brand, size, colour and image link). The terms of the product catalog feature are set out in the [Product Catalogue Terms](#).

⁷⁹ This refers to the data that is necessary to render and display the advert.

⁸⁰ 'Ad impressions' means the number of times an ad is shown to Users.

- 6.21 It does not include data generated by, or derived from, boosted listings from individual sellers on Facebook Marketplace.
- 6.22 In order to constitute data that falls within the Data Control Boundary, it must either meet both of the conditions in paragraphs (a) and (b) below, or in the alternative, be data that falls under paragraph (a) which contributes directly to the type of data described in paragraph (b) below:
- (a) a data asset, meaning individual items, such as code modules, or data objects including features to machine learning models, that are involved in acquiring processing, storing and/or accessing data;
 - (b) a Marketplace data asset, meaning data that is internally owned and managed by Marketplace Employees, meaning all employees or contractors with direct responsibility for the management of Marketplace data assets which are used to:
 - (i) determine which Marketplace listings are surfaced to a User of the Marketplace Feature⁸¹ on the Marketplace feed; and
 - (ii) determine which Marketplace listings are surfaced to a User following the User entering a search query into the search bar within the Marketplace Feature.
- 6.23 Under the Proposed Commitments, data contributes to the operation of Facebook Marketplace where it constitutes a Marketplace data asset, as described in paragraph 6.22(b) and is used in the operation of Facebook Marketplace.
- 6.24 Meta’s proposals cover the entire user-facing Marketplace experience from the point at which a User has entered the Marketplace surface (ie Marketplace Feed and Search surfaces where Users discover relevant products). This includes any Marketplace machine learning models which are used for feed and search for UK Users (contributing respectively to determining which items to display to a User in the Marketplace Feed and which items to display in response to a User’s search on Marketplace) and the vast majority of models which are used in all Marketplace systems for UK Users.⁸²

⁸¹ This means the “Facebook Marketplace” surface on the Facebook Service on which Users of the Facebook Services can connect with one another to buy and sell items.

⁸² Meta has confirmed that the limited number of models used in all Marketplace systems for UK Users that are out of scope are used for integrity purposes, such as identifying bad actors on Marketplace or listings breaching the Meta Commerce Policy (eg sale of weapons or alcohol).

- 6.25 Any Marketplace models not currently within the scope of the Proposed Commitments (because they are not used for UK Users) would still be subject to Meta's proposed technical controls to the extent they contribute to any data assets that are in scope of the Proposed Commitments (ie data assets used in Marketplace and operated by Marketplace). Specifically, where data generated by those out of scope Marketplace models is then directly consumed by other data assets which are within the scope of the Proposed Commitments, such data will be subject to Meta's proposed technical controls (just like any other Marketplace data assets). Should any of those Marketplace models later be introduced to UK Users, these would be included within the scope of the Proposed Commitments.
- 6.26 Meta has explained that the infrastructure build to implement these technical controls will include not only all Marketplace data assets sitting within Marketplace, but will go beyond this by also including data assets internally owned and managed by non-Marketplace teams in Meta which directly feed into Marketplace data assets.
- 6.27 The technical means by which these controls would be implemented within Meta's systems would be agreed by the CMA in consultation with the Monitoring Trustee in accordance with clause 3.2 of the Proposed Commitments. Meta has indicated that this will involve the development of a data flow control system to accurately identify and control the data used in Facebook Marketplace. This would be based on a combination of technical infrastructure and engineer review and investigation to identify and control the use of Relevant Data of opted out Advertisers in the UK.

Technical controls for Marketplace Analytics

- 6.28 In addition to the technical controls for Marketplace operations set out in paragraphs 6.19 to 6.26 above, Meta has also offered commitments that it will implement and maintain systems and technical controls within Meta's systems that prevent relevant employees or contractors using Relevant Data (as listed in paragraph 6.20 above) from (a) Meta Advertisers who consider themselves competitors of Facebook Marketplace and have opted out of their advertising data being used or (b) Advertisers that Meta considers competitors of Facebook Marketplace, where it can specifically identify them⁸³ for Marketplace Analytics (ie to develop and/or improve the product design, layout and/or functionality of the Marketplace Feature).
- 6.29 Meta has offered technical controls for Relevant Data which explicitly identifies an Advertiser for Marketplace Analytics, on the basis that it would

⁸³ Identifiable Relevant Data means Relevant Data which explicitly identifies individual Advertisers, as defined in clause 1.1(i) of the Proposed Commitments.

only be in these circumstances that Meta would be able to conduct targeted searches for, and identify, data relating to specific competitors (or groups of competitors). Meta has explained that this would cover any known means of identifying an individual Advertiser attached to the Relevant Data, such as the name of the Advertiser, account number or the ID that is attached to the data by Meta when the data first enters its systems.

- 6.30 The technical means by which these controls would be implemented within Meta's systems would be agreed by the CMA in consultation with the Monitoring Trustee in accordance with clause 3.2 of the Proposed Commitments. Meta has indicated to the CMA that this would be by the creation of access controls to automatically block any query which does not meet minimum specified conditions, whereby relevant employees seeking access to datasets that may include Relevant Data that explicitly identifies an opted out Advertiser would be automatically required to specify why they are seeking such access on a case by case basis and would be required to confirm that such Relevant Data would be excluded. These relevant employees would have received training regarding the use of data in Marketplace Analytics and have agreed in writing to act in accordance with the training they received which explained to them the Proposed Commitments. The technical controls would also include detection mechanisms to identify and remediate any inadvertent use of such Relevant Data for Marketplace Analytics.
- 6.31 Relevant employees in this context includes all employees or contractors that have a relevant or decision-making role in relation to the interrogation and use of Relevant Data of opted out Advertisers in Meta's systems to develop and/or improve the product design, layout and/or functionality of Marketplace.⁸⁴

Further compliance measures

- 6.32 In addition, Meta has offered to implement the following compliance measures for all such relevant employees:⁸⁵
- (a) **Compliance training:** All relevant employees will be required to complete mandatory annual training in relation to the operation and purpose of the technical controls for the purposes of Marketplace Analytics. The training material, which will be updated regularly as necessary, will be approved and monitored by a Monitoring Trustee to ensure that it accurately reflects the restrictions on data use set out in the Proposed Commitments.

⁸⁴ 'Marketplace Analytics Employees' in the Proposed Commitments at clause 1.1(l).

⁸⁵ See clause 3.1(c) of the Proposed Commitments.

- (b) **Acknowledgments and agreements:** On completion of the first annual training, all relevant employees will be required to acknowledge in writing (in the form attached to the Proposed Commitments at Appendix 2) that they agree to abide by the data use limitations in Marketplace Analytics set forth in the training (pursuant to the Proposed Commitments), and report any knowledge of data use contrary to this to a member of Meta's legal or compliance teams. All relevant employees will also acknowledge that these requirements are part of Meta's Code of Conduct and that any breaches may result in disciplinary action, up to and including termination of employment.

CMA's provisional views on Marketplace Technical Solution

- 6.33 On the basis of the information available to date, the CMA's provisional view is that the Marketplace Technical Solution proposed by Meta addresses the CMA's competition concerns because the commitments ensure that where competitors so chose:
- (a) their advertising data, in so far as it would otherwise have been included within data assets internally owned and operated by Marketplace Employees, will be removed and therefore not be used within the operation of Marketplace; and
 - (b) where employees have access to Marketplace competitor advertising data for interrogation or use to develop and/or improve Marketplace (be it the product design, layout and/or functionality), they will be restricted from using such data where it identifies the competitor or a group of competitors. This is also supported by mandatory compliance training for relevant employees, who will also be required to sign a personal acknowledgment and agreement.
- 6.34 In so doing, the commitments package addresses the two key means by which competitor advertising data may be used by Meta in Facebook Marketplace, namely within the Marketplace day-to-day operations and when considering developments and improvements to Marketplace.
- 6.35 Unlike with respect to other Meta products covered by the Proposed Commitments addressing unfair trading concerns (where the Product Development Principle applies), the commitments with respect to Facebook Marketplace also include a technical solution for the analytics, increasing the robustness of the commitment, given the identification of actual uses of data in Marketplace. As an additional guarantee, this is further supported and underpinned by compliance training and an acknowledgement with clear consequences for relevant individuals if breached.

- 6.36 The CMA's provisional view is that the Marketplace Technical Solution covers the types of data where the CMA identified concerns over past use of Advertising Data in Facebook Marketplace, namely Event Data, ad click data and product catalogue data. It also covers all data supplied by Advertisers through relevant tools such as the Ads Manager interface and Business Tools including via the Meta Business Suite.
- 6.37 As noted above, Meta's proposals in relation to identifying and removing Relevant Data from opted out Advertisers from use in Marketplace operations covers the entire user-facing Marketplace experience from the point at which a User has entered the Marketplace surface. More specifically, the proposals focus on the data assets internally owned and managed by Marketplace Employees which are used in Marketplace Feed and Search surfaces, including to determine which Marketplace listings are surfaced to Users. The CMA considers the data used to show listings to be key to how OCA competitors compete, as this enables relevant and targeted content to be surfaced to Users.
- 6.38 The Proposed Commitments do set out some exceptions where use of Relevant Data is not restricted. The CMA is of the preliminary view that the permitted data uses listed in clause 5.1 are reasonable and do not undermine the overall effectiveness of the Proposed Commitments, as they are to allow Meta to:
- (a) ensure the safety, security and integrity of Meta's services and guarantee essential system functionality as well as support the delivery of tools to facilitate navigation of Facebook;
 - (b) fulfil its legal or regulatory obligations and protect user content or privacy;
 - (c) fulfil contractual obligations to Advertisers as well as develop Meta's Advertising Service to their benefit, for example in developing tools which allow creators to monetize their content; or
 - (d) use such data where specific consent is provided either by the CMA and the Monitoring Trustee or by competitors (for example such as in beta agreements where Advertisers may agree to test a product before the final launch to uncover issues with it and to share their advertising data as part of that).
- 6.39 The Proposed Commitments also include (in clause 8.2) a specific commitment that Meta will not circumvent or attempt to circumvent the Proposed Commitments. This would prevent, for example, the deliberate aggregation or anonymisation of Relevant Data that explicitly identifies an Advertiser (the use of which would otherwise be restricted), which would be

treated as an attempt to circumvent the Proposed Commitment. Meta has also explained that underlying policy and training materials (which will be approved by the Monitoring Trustee) would include detail to ensure that staff did not seek to deliberately circumvent the Proposed Commitments.

- 6.40 In addition to this, Meta has also confirmed that it would be prepared to put in place technical safeguards designed to ensure that no Relevant Data that might be used in integrity and security models could be directly used within the Data Control Boundary of Facebook Marketplace such that the CMA is satisfied that use for these purposes would not undermine the restrictions on data use in the Proposed Commitments. Similarly, in relation to analytics, Meta has explained that if the system automatically determines that a query is within scope and includes Relevant Data of opted-out Advertisers, the tool would automatically block the query from being run, regardless of whether that Relevant Data is otherwise used in Meta's security and integrity models.
- 6.41 In terms of relevant employees whose access to advertising data will be restricted (and who will also complete mandatory training and be required to sign personal acknowledgments and agreements to the restrictions on the use of Advertisers' data for Marketplace Analytics explained to them in the training pursuant to the Proposed Commitments), the CMA's provisional view is that the Proposed Commitments relating to Marketplace Analytics cover the relevant individuals as they include anyone, whether employees or contractors, who have a relevant or decision-making role in relation to Marketplace Analytics. This includes data scientists, engineers, managers or other employees or contractors whose primary responsibilities include conducting and overseeing Marketplace Analytics.
- 6.42 As mentioned above, the CMA is of the provisional view that an opt-out, allowing competitors of Facebook Marketplace to choose whether or not their advertising data is used in the operation and development of Marketplace, is appropriate, but is interested to hear views from advertisers who provide services in competition with Facebook Marketplace (particularly online classified ad services) on whether this offers a genuine and effective choice as to whether their advertising data is used in Facebook Marketplace. The CMA would also be interested to hear if any Advertiser would expect to be included in the list of Advertisers that Meta identifies as competitors to Facebook Marketplace that will be attached to the Proposed Commitments at Appendix 1.
- 6.43 The Marketplace Technical Solution is focused on restrictions on use of competitors' data, rather than data from Advertisers more generally. The CMA's investigation, which followed the Digital Advertising Market Study, focused initially on concerns regarding Meta's ability to use data provided by

or obtained in respect of competitors, of which the CMA then found evidence in respect of Facebook Marketplace. In this context, the CMA is of the provisional view that the Marketplace Technical Solution is sufficient to address the CMA's competition concerns in relation to actual data use in Facebook Marketplace.

Conclusion on whether the Proposed Commitments address the concerns in relation to Facebook Marketplace

- 6.44 For the reasons set out above, the CMA is of the provisional view that the Proposed Commitments address its competition concerns with respect to use of data within Facebook Marketplace.

Proposed Commitments to address unfair trading conditions concerns

- 6.45 The CMA has reached the provisional view that the Proposed Commitments address the CMA's unfair trading conditions concerns because Meta is committing to use all reasonable endeavours to ensure that relevant employees (ie those employees who have access to the data and who have a relevant or decision-making role in the interrogation and use of that data for product development) refrain from using relevant advertising data for the purposes of the development and improvement of Meta products and services that are made available in the UK in competition with specific products or services offered by Advertisers.

The Proposed Commitments cover advertising data where its use for product development in competition with Advertisers would raise concerns

- 6.46 The CMA is of the provisional view that the Proposed Commitments cover:
- (a) the type of advertising data that is currently available to Meta by virtue of providing the Services and which are referred to in Meta's terms and conditions. This includes advertising data which is available to Meta from digital advertising displayed on all advertising surfaces currently offered by Meta (Facebook, Messenger and Instagram, including features available on Facebook Blue such as Facebook Marketplace, Reels or Stories) including via the Meta Business Tools⁸⁶, as well as data which is currently available to Meta from digital advertising displayed on off-Meta surfaces via the Meta Audience Network; and
 - (b) the type of advertising data which, if it were to be used to develop or improve products in competition with the Advertisers, would be capable of

⁸⁶ Meta Business Tools are services which include Pixel, SDKs, the Conversions API, and Offline Conversions. Further detail about Meta Business Tools is available at: <https://www.facebook.com/help/331509497253087>

affording Meta an unfair competitive advantage, or of disadvantaging Advertising Customers. For example, ad click data could provide Meta with knowledge as to whether a User is interested in a particular product such as trainers, which could then in turn feed into a decision to show listings for shoes to that same User when it opens the Facebook Marketplace tab.

- 6.47 The types of advertising data covered by the proposals to address the unfair trading conditions concerns (referred to as 'Relevant Data' in the Proposed Commitments⁸⁷) are the same as set out in relation to the Marketplace Technical Solution at paragraph 6.20 above.
- 6.48 Based on its investigation to date, the CMA has not identified any other type of advertising data that is currently available to Meta by virtue of providing the Services which the CMA considers that, if used to develop and improve products in competition with the Advertisers, would be capable of affording Meta an unfair competitive advantage or of disadvantaging Advertising Customers.
- 6.49 Meta has offered to use all reasonable endeavours to refrain from using such Relevant Data where it explicitly identifies an Advertiser, on the basis that it would only be in these circumstances that Meta would be able to, as part of its product development analytics, conduct targeted searches for, and identify, data relating to specific competitors (or groups of competitors). As noted above in relation to Marketplace Analytics, Meta has explained that this would cover any known means of identifying an individual Advertiser attached to the Relevant Data, such as the name of the Advertiser, account number or the ID that is attached to the data by Meta when the data first enters its systems.
- 6.50 As noted at paragraph 6.39 above, the Proposed Commitments include non-circumvention provisions that would prevent, for example, the deliberate aggregation or anonymisation of Relevant Data that explicitly identifies an Advertiser (the use of which would otherwise be restricted).
- 6.51 The Proposed Commitments also provide that Meta will refrain from using any such Relevant Data that is obtained from any future ad-supported social media services developed or provided by Meta.⁸⁸ The CMA considers this sufficient to address its competition concerns given that, with respect to on-Meta advertising, Meta currently only displays advertising on social media platforms (including on features available on its social media platform Facebook Blue such as Facebook Marketplace). If Meta were to offer, in the future, digital display advertising on any additional surfaces, including for

⁸⁷ See the definition of 'Relevant Data' at clause 1.1(ff) of the Proposed Commitments.

⁸⁸ These provisions also apply in relation to the Marketplace Technical Solution.

example WhatsApp, the CMA would consider at that time whether or not such surface constituted a social media service such that relevant advertising data derived therefrom would fall within the Proposed Commitments. In addition, as set out later in paragraph 6.71, the Proposed Commitments do not preclude the CMA from taking further action (if considered appropriate) in relation to any future ad-supported surfaces not covered by the Proposed Commitments either under the Act or pursuant to new regulatory powers proposed under the Digital Markets, Competition and Consumers Bill.

Product Development Analytics and permitted data uses

- 6.52 Meta proposes that it will use all reasonable endeavours to ensure that relevant employees refrain from using for product development analytics relevant advertising data that explicitly identifies an Advertiser.
- 6.53 Product development analytics in this context means the interrogation and use of such data in Meta's systems to inform material decisions on the development or improvement of Meta products and services (or features or functionalities thereof) in competition with specific products or services offered by Advertisers, from inception to roll out. This covers the end-to end process of product development, including the original inception of an idea, product design, opportunity sizing, beta testing and decisions as to whether to ultimately launch or abandon a specific product or improvement of an existing product or feature.⁸⁹
- 6.54 Relevant employees in this context means employees conducting and overseeing product development through the interrogation and use of data.⁹⁰ It includes anyone, whether employees or contractors, who has a relevant or decision-making role in relation to Product Development Analytics. This includes data scientists, engineers, managers or other employees or contractors whose primary responsibilities include conducting and overseeing Product Development Analytics.
- 6.55 The Proposed Commitments therefore mean that relevant advertising data directly or indirectly derived from Advertisers' use of Meta's advertising services (and which identify an Advertiser) will not be used by Meta in the development or improvement of any of its products made available in the UK in competition with those Advertisers.

⁸⁹ See the definitions of 'Product Development' and 'Product Development Analytics' at clauses 1.1(aa) and (bb) of the Proposed Commitments respectively.

⁹⁰ See the definitions of 'Product Development Analytics Employees' at clause 1.1(cc) of the Proposed Commitments.

- 6.56 The CMA is of the provisional view that the scope of the Proposed Commitments therefore cover use of Advertising Data in the development activities that are referred to in Meta's terms and conditions which, on the basis of its current investigation, the CMA has identified as going beyond what is necessary in providing the Services and that are capable of affording Meta an unfair competitive advantage when developing products in Adjacent Markets that it would not otherwise have obtained purely by competing on the merits and/or otherwise disadvantaging Advertising Customers.
- 6.57 The Proposed Commitments do set out some exceptions where use of data is not restricted. For the reasons set out at paragraph 6.38, the CMA is of the preliminary view that the permitted data uses listed in clause 5.1 are reasonable and do not undermine the overall effectiveness of the Proposed Commitments.

Package of measures relating to the UK to address the CMA's competition concerns in respect of unfair trading conditions

- 6.58 Meta has not offered to amend its standard terms and conditions which, it has explained, apply globally, to address the CMA's concerns. Instead, Meta will commit to the CMA to use all reasonable endeavours not to use certain advertising data in the development of Meta products and services made available in the UK as set out in clause 4.1 of the Proposed Commitments, and there will be a public commitment in Meta's public-facing Code of Conduct, setting out the principles underpinning the UK commitments, as summarised in paragraph 6.61(a).
- 6.59 The CMA's provisional view is that the Proposed Commitments being offered by Meta are sufficient to address its concerns in respect of products and services offered or launched by Meta in the UK during the period of the commitments, in particular given the proposal to make a public commitment in Meta's public-facing Code of Conduct, which the CMA considers will provide Advertisers with clarity and transparency in relation to Meta's use of the data they share for the purposes of advertising.
- 6.60 Any CMA decision to accept the Proposed Commitments will be made public and will therefore alert Meta's Advertising Customers that there are, in effect, UK-specific data use provisions and therefore, despite the wording in its global terms, Meta will conduct itself differently in respect of the UK.
- 6.61 More specifically, the Proposed Commitments provide that Meta will publish in its public-facing Code of Conduct the principles underpinning the UK commitments regarding the use of data in the development and improvement of Meta products and services. These principles are also supported by

compliance training and monitoring through an independent Monitoring Trustee so as to ensure that Meta's relevant employees are clear on what is required of them:

- (a) **Code of Conduct:**⁹¹ The principles underpinning Meta's commitment not to use relevant advertising data that identifies Advertisers for product development and improvement in competition with those Advertisers will be inserted in Meta's public-facing Code of Conduct, in the form attached to the Proposed Commitments at Appendix 3. Meta's Code of Conduct currently includes several other key principles and sets out Meta's expectations for how Meta employees should act and make decisions. In addition, the Code of Conduct explains some of the legal rules that Meta must abide by, and makes clear the standards to which Meta holds itself. Meta has further confirmed that all Meta employees and contractors are required to abide by, and uphold, the Code of Conduct. Potential violations of the Code of Conduct will trigger an internal investigation. In addition, as set out in the Proposed Commitments and in the Code of Conduct, any violations may result in disciplinary action, up to and including termination of employment or assignment. The Code of Conduct makes the restriction on data use subject to the exception that data use may be approved in advance by Meta's in-house legal team. Meta has explained that the exception is necessary to account for the fact that the Code of Conduct applies globally, whereas the focus of the Proposed Commitments is the UK, and to account for the permitted data use cases outlined in clause 5 of the Proposed Commitments, and summarised at paragraphs 5.13 and 6.38 above. Compliance with the commitments will be determined by the CMA, supported by the monitoring and reporting arrangements set out in paragraph 6.67 below.
- (b) **Compliance training:**⁹² All relevant employees will be required to attend mandatory annual compliance training in relation to the Product Development Principle. This will be devised with the input of the Monitoring Trustee who will ensure that the training, which will be updated regularly as necessary, accurately reflects the restrictions on data use set out in the Proposed Commitments, including by approving the training material and monitoring completion of the training by all relevant employees referred to in paragraph 5.11 above.
- (c) **Personal acknowledgments and agreements:**⁹³ On completion of the first annual training, all relevant employees will be required to

⁹¹ Clause 4.1(a) and appendix 3 of the Proposed Commitments. This applies to advertising which is displayed to individual end-users based in the United Kingdom and DDA provided to customers based in the United Kingdom.

⁹² Clause 4.1(b)(i) of the Proposed Commitments.

⁹³ Clause 4.1(b)(ii) and appendix 4 to the Proposed Commitments.

acknowledge in writing (in the form attached to the Proposed Commitments at Appendix 4) that they agree to abide by the data use limitations for product development set out in the training (pursuant to the Proposed Commitments) and report any knowledge of data use contrary to this to a member of Meta's legal or compliance teams. The personal acknowledgments and agreements mirror the obligations placed upon all relevant employees by the Product Development Principle which is reflected in the Code of Conduct. They give additional comfort that Meta employees involved in the development of products offered in the UK will be aware of the restrictions. The acknowledgments and agreements also make clear the severe consequences of breach (which may result in disciplinary action, up to and including termination of employment).

- 6.62 The CMA's preliminary view is that this package of commitments addresses the CMA's identified concerns in respect of Meta's terms and conditions.

Conclusion on whether the Proposed Commitments address the concerns about unfair trading conditions

- 6.63 The CMA's preliminary view is that the Proposed Commitments would address the CMA's concerns that Meta has the ability to use Advertising Data in the development and improvement of existing and new Meta products and services, and that this conduct is capable of affording Meta an unfair competitive advantage that it would not otherwise have obtained purely by competing on the merits; and/or otherwise disadvantaging Advertising Customers which, either at present or in the future, compete with Meta in Adjacent Markets.

The Proposed Commitments are capable of being implemented effectively and, if necessary, within a short period of time

- 6.64 The CMA provisionally considers that the Proposed Commitments would be capable of being implemented effectively and within a reasonable period of time.
- 6.65 Meta has undertaken to act in accordance with the Proposed Commitments from the date the CMA publishes a decision accepting the Proposed Commitments with the following implementation periods:
- (a) **Marketplace Technical Solution** (including informing Advertisers of the ability to opt-out of the use of their advertising data, implementing and maintaining systems and technical controls in relation to Marketplace operations and Marketplace Analytics and requiring relevant staff to attend compliance training and sign personal acknowledgments and agreements on completion of the first annual training) **by the later of 12**

months from notification of any CMA decision to accept commitments or 30 June 2024. For the duration of the commitments, newly employed relevant employees will be required to complete their first annual training and sign a personal acknowledgment and agreement within two months of beginning their role.⁹⁴

- (b) **The commitments to address the unfair trading conditions** (including publication of a provision reflecting the Product Development Principle in Meta’s Code of Conduct and Meta’s commitments to use all reasonable endeavours to ensure that relevant employees refrain from using relevant advertising data for the purposes of the development and improvement of Meta products and services in competition with specific products or services offered by Advertisers that are made available in the UK) **by the later of 6 months from notification of any CMA decision to accept commitments or 31 December 2023.** The first mandatory annual training must be completed within 2 months of this⁹⁵ with personal acknowledgments and agreements signed on completion of the first annual training. For the duration of the commitments, newly employed relevant employees will be required to complete their first annual training and sign a personal acknowledgment and agreement within two months of beginning their role.⁹⁶

6.66 The CMA’s provisional view is that the proposed time periods for implementation are reasonable in the circumstances, noting:

- (a) they include time for the appointment of a Monitoring Trustee (who will then need time to consider and approve the technical means by which the Marketplace Technical Solution is to be implemented, as well as the package of compliance training to be provided);
- (b) reflect the different level of technical input and resource involved in different elements – with a shorter implementation period for the commitments to address concerns in relation to unfair trading conditions than for the more complex Marketplace Technical Solution;

⁹⁴ Where this is not possible in light of an employee’s specific circumstances, a further two-month grace period will be allowed for that employee to complete the training, allowing for long-term absence or leave. See clause 3.1(c) of the Proposed Commitments.

⁹⁵ Where this is not possible in light of an employee’s specific circumstances, a further two-month grace period will be allowed for that employee to complete the training, allowing for long-term absence or leave. See clause 4.1(b)(i) of the Proposed Commitments.

⁹⁶ Where this is not possible in light of an employee’s specific circumstances, a further two-month grace period will be allowed for that employee to complete the training, allowing for long-term absence or leave. See clause 4.1(b)(ii) of the Proposed Commitments.

- (c) in relation to the publication in Meta's Code of Conduct reflecting the Product Development Principle, the implementation period allows time for Meta to prepare a package of staff training (to be approved by the Monitoring Trustee) so that it is ready by the time the Code of Conduct wording is updated, to cover questions which staff may have regarding the new wording and the commitments more generally.
- 6.67 The CMA's provisional view is that the commitments offered are capable of being implemented effectively for the reasons set out below:
- (a) The Proposed Commitments provide for appropriate training as well as the signing of personal acknowledgments and agreements by relevant employees, which identify that any violations may result in disciplinary action, up to and including termination of employment or assignment. Meta's training package will be monitored, including approval of training materials and completion of the training by the relevant individuals.
 - (b) Between the CMA, the Monitoring Trustee, the Technical Expert and any other advisers, there should be sufficient knowledge and expertise to be able to monitor the effective implementation and compliance with the Proposed Commitments.
 - (c) The Proposed Commitments provide for the technical means by which Meta implements the Marketplace Technical Solution to be approved by the CMA in consultation with the Monitoring Trustee. Any material changes will be notified to the Monitoring Trustee and subject to CMA approval (see clause 3.2 of the Proposed Commitments and paragraph 10 of Appendix 5 to the Proposed Commitments).
 - (d) The Proposed Commitments provide for the Monitoring Trustee having access to appropriate data to ensure that Meta's compliance with the commitments can be effectively monitored (see paragraph 9 of Appendix 5 to the Proposed Commitments). Importantly, in clause 8.1(c) of the Proposed Commitments, Meta undertakes to provide the CMA with 'any information and documents' required for the CMA to 'monitor and review the operation of these commitments or for the purposes of their enforcement'. This clause ensures that the CMA will be able to request any data it considers reasonably necessary to monitor and review Meta's compliance with the commitments. The CMA considers that the access to information and documents granted to the Monitoring Trustee, Technical Expert and other potential advisers is sufficient to ensure independent verification and oversight of Meta's compliance with the commitments.

- (e) In addition, the CMA will receive regular reports from the Monitoring Trustee on compliance with the commitments, the first of which will include a detailed work plan setting out how the Monitoring Trustee intends to monitor compliance with the commitments.
- (f) The Proposed Commitments also include an anti-circumvention provision at clause 8.2 to ensure the commitments are effectively implemented.

6.68 In light of the above considerations, the CMA provisionally considers that the Proposed Commitments are capable of being implemented effectively within a reasonable period of time.

Compliance with and the effectiveness of the Proposed Commitments would not be difficult to discern

6.69 The CMA's provisional view is that compliance with the commitments and their effectiveness would not be difficult to discern. In particular, the reporting and compliance provisions in the Proposed Commitments as described at paragraphs 5.18 to 5.20 above will allow the CMA to monitor Meta's implementation of the commitments and its ongoing compliance.

Acceptance of the Proposed Commitments would not undermine deterrence

- 6.70 The CMA provisionally considers that acceptance of the Proposed Commitments would not undermine deterrence. The CMA considers that the fact that it has investigated Meta's conduct and obtained binding commitments to address its competition concerns should help to provide guidance to any undertakings that may be considering similar conduct.
- 6.71 Acceptance of the Proposed Commitments would not preclude the CMA from taking further enforcement action in relation to other suspected breaches of competition law. In particular, any future conduct by Meta or other undertakings would be subject to competition law and may be subject to enforcement action either under the Act or pursuant to new regulatory powers proposed under the Digital Markets, Competition and Consumers Bill, as noted in paragraph 5.17 above.

7. The CMA's intentions and invitation to comment

The CMA's intentions

7.1 For the reasons set out above, the CMA provisionally considers the Proposed Commitments set out in the Annex to this Notice address the competition concerns identified by the CMA. Therefore, subject to consultation responses and views from Ofcom as concurrent regulator,⁹⁷ the CMA proposes to accept the Proposed Commitments pursuant to section 31A of the Act.

Invitation to comment

7.2 The CMA invites representations on the Proposed Commitments and will consider any such representations before making a final decision on whether to accept the Proposed Commitments.⁹⁸

7.3 The consultation period is 1 month from the date of this Notice. Any person wishing to comment on the Proposed Commitments should submit written comments by email to Deborah Wilkie and Maria Rican-Sevitz at 51013-consultation@cma.gov.uk by **5pm on 26 June 2023**. Please quote the case reference 51013 in all correspondence related to this matter.

Confidentiality

7.4 The CMA does not intend to publish the responses to this Notice. However, the information contained in the responses may be used or summarised on an anonymous basis, including in any commitments decision or notice to provisionally accept any modified commitments. If there is particular information in the response which respondents consider to be confidential, they should highlight this in their response with an explanation as to why they consider it confidential.

7.5 In the event that the commitments are not accepted, and the CMA is considering disclosing any information contained in the responses (such as in or with a statement of objections), it will revert to the provider of that information to obtain further representations on confidentiality.

⁹⁷ In accordance with the Guidance on concurrent application of competition law to regulated industries (CMA10), page 25, paragraph 3.49.

⁹⁸ In accordance with paragraph 2 of Schedule 6A of the Act.

7.6 The CMA will consider confidentiality representations with reference to Part 9 of the Enterprise Act 2002 and relevant guidance.⁹⁹

⁹⁹ [CMA6 Transparency and disclosure: Statement of the CMA's policy and approach \(publishing.service.gov.uk\)](https://publishing.service.gov.uk). See, in particular, paragraphs 4.11 to 4.34 of the guidance.

Annex: The Proposed Commitments offered by Meta

See separate document.