

## **COMPLETED ACQUISITION BY FACEBOOK, INC OF GIPHY, INC**

### **Directions issued on 19 June 2020 pursuant to paragraph 10 of the Initial Enforcement Order imposed by the Competition and Markets Authority on 9 June 2020 on: Facebook, Inc, Tabby Acquisition Sub, Inc, Facebook UK Limited and Giphy, Inc.**

On 15 May 2020, Facebook, Inc (**Facebook**), completed the acquisition of Giphy Inc (**Giphy**) through a stock conversion by its wholly-owned subsidiary, Tabby Acquisition Sub, Inc (**Tabby Acquisition**), (the **Transaction**).

On 9 June 2020, the Competition and Markets Authority (**CMA**) made an Initial Enforcement Order (the **Order**) addressed to Facebook, Tabby Acquisition, Facebook UK Limited (**Facebook UK**), and Giphy in accordance with section 72(2) of the Enterprise Act 2002 to prevent pre-emptive action. The Order is still in force.

The CMA now issues written directions under paragraph 10 of the Order that, for the purpose of securing compliance with the Order, Facebook, Tabby Acquisition, Facebook UK and Giphy must appoint a monitoring trustee in accordance with the terms provided for in this Annex and must comply with the obligations set out in the Annex.

Signed,

**Anna Caro**  
Assistant Director, Mergers  
Competition and Markets Authority  
19 June 2020

## Annex

### Directions to appoint a monitoring trustee

#### Interpretation

In these directions:

<b>‘the Act’</b>	means the Enterprise Act 2002;
<b>‘an affiliate’</b>	of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;
<b>‘business’</b>	has the meaning, unless otherwise stated, given by section 129(1) and (3) of the Act;
<b>‘CMA’</b>	means the Competition and Markets Authority;
<b>‘Derogations’</b>	means any derogations granted whether before or after the appointment of the MT by the CMA by which Facebook, Tabby Acquisition, Facebook UK or Giphy may undertake certain actions that derogate from the Order;
<b>‘Facebook’</b>	means Facebook, Inc, a company incorporated in the state of Delaware, United States with principal executive offices at 1601 Willow Road Menlo Park CA 94025 United States;
<b>‘Facebook UK’</b>	means Facebook UK Limited (Company number 06331310);
<b>‘the Facebook business’</b>	means the business of Facebook and its subsidiaries carried on as at the commencement date;
<b>‘Giphy’</b>	means Giphy, Inc, a company incorporated in the state of Delaware, United States;
<b>‘the Giphy business’</b>	means the business of Giphy and its subsidiaries carried on as at the commencement date;
<b>‘MT’</b>	means the monitoring trustee appointed in accordance with this Annex;

<b>‘Order’</b>	means the initial enforcement order made by the CMA on 9 June 2020 and addressed to Facebook, Tabby Acquisition, Facebook UK and Giphy;
<b>‘Tabby Acquisition’</b>	means Tabby Acquisition Sub, Inc., a company incorporated in the state of Delaware, United States;
<b>‘the Transaction’</b>	means the transaction by which Facebook and Giphy have ceased to be distinct within the meaning of section 23 of the Act;
<b>‘subsidiary’</b> ,	has the meaning, unless otherwise stated, given by section 1159 of the Companies Act 2006 (and ‘subsidiaries’ shall be construed accordingly)

Terms and expressions defined in the Order have the same meaning in these directions, unless the context requires otherwise.

### **Appointment**

1. Facebook, Tabby Acquisition, Facebook UK and Giphy must appoint a MT in order to ensure compliance with the Order, in particular to:
  - a. monitor and report to the CMA on compliance by Facebook, Tabby Acquisition, Facebook UK and Giphy with the Order; and
  - b. support the CMA taking any remedial action which may be required to maintain the Facebook business and Giphy business as going concerns.
2. The MT must act on behalf of the CMA and be under an obligation and duty of care to the CMA to carry out his or her functions to the best of his or her abilities.
3. Facebook, Tabby Acquisition, Facebook UK and Giphy must cooperate fully with the MT, in particular as set out below, and must ensure that the terms and conditions of appointment of the MT reflect and give effect to the functions and obligations of the MT and the obligations of Facebook, Tabby Acquisition, Facebook UK and Giphy as set out in these directions.

### **General**

4. The MT must possess appropriate qualifications and experience to carry out his or her functions.
5. The MT must neither have, nor become exposed to, a conflict of interest that impairs his or her objectivity and independence in discharging his or her duties under these directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
6. Facebook, Tabby Acquisition, Facebook UK and Giphy shall remunerate and reimburse the MT for all reasonable costs properly incurred in accordance with

the terms and conditions of the appointment and in such a way so as not to impede the MT's independence or ability to effectively and properly carry out his or her functions.

7. Facebook, Tabby Acquisition, Facebook UK and Giphy must appoint the MT as soon as is reasonably practicable and in any event by **5pm on 26 June 2020** and the MT will continue to act either until the CMA reaches a decision to clear the Transaction or until the CMA directs that the MT is no longer required.
8. The appointment of a MT by Facebook, Tabby Acquisition, Facebook UK and Giphy is subject to the approval of the CMA as to the identity of the MT and the terms and conditions of appointment in their entirety and:
  - a. the name of the proposed MT and a second proposed MT in reserve (should the CMA not approve the first proposed MT) must be notified to the CMA as soon as is reasonably practicable and in any event by **5pm on 23 June 2020**;
  - b. the draft terms and conditions of appointment must be notified to the CMA as soon as is reasonably practicable and in any event by **5pm on 23 June 2020**; and
  - c. once the MT has been approved by the CMA and appointed, Facebook, Tabby Acquisition, Facebook UK and Giphy must provide the CMA with a copy of the agreed terms and conditions of appointment.

## Functions

9. The functions of the MT will be to:
  - a. ascertain and report to the CMA in relation to the current level of compliance by Facebook, Tabby Acquisition, Facebook UK, Giphy and their subsidiaries with the Order;
  - b. assess and report to the CMA in relation to the arrangements made by Facebook, Tabby Acquisition, Facebook UK and Giphy for compliance with the Order and what changes to those arrangements, if any, are necessary to preserve the possibility of the CMA taking any remedial action, if required;
  - c. identify and supervise if necessary the arrangements made by Facebook, Tabby Acquisition, Facebook UK and Giphy for ensuring compliance with the Order;
  - d. monitor compliance by Facebook, Tabby Acquisition, Facebook UK, Giphy and their subsidiaries with the Order;
  - e. assist the CMA with the consideration of any derogation requests made by Facebook, Tabby Acquisition, Facebook UK and Giphy and monitor

compliance by Facebook, Tabby Acquisition, Facebook UK and Giphy with any derogations granted by the CMA; and

- f. without prejudice to the right of Facebook, Tabby Acquisition, Facebook UK and Giphy to directly contact the CMA, respond to any questions which Facebook, Tabby Acquisition, Facebook UK and Giphy may have in relation to compliance with the Order, in consultation with the CMA.
10. The MT must take such steps as he or she reasonably considers necessary in order to carry out his or her functions effectively, including requiring the provision of information or the production of documents relating to communications within and between the Facebook Business and the Giphy Business, such as written and electronic communications, telephone conversations and meetings as may be required.
  11. The MT must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by with the Order.

### **Obligations of Facebook, Tabby Acquisition, Facebook UK and Giphy**

12. Facebook, Tabby Acquisition, Facebook UK, Giphy, their respective affiliates and their employees, officers, directors, advisers and consultants must cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge his or her functions, including but not limited to:
  - a. the provision of full and complete access to all personnel, books, records, documents, facilities and information of the Facebook business and the Giphy business as the MT may reasonably require; and
  - b. the provision of such office and supporting facilities as the MT may reasonably require.
13. If the Facebook business or the Giphy business are in any doubt as to whether any action or communication would infringe the Order, they are required to contact the MT for clarification.
14. If Facebook, Tabby Acquisition, Facebook UK and/or Giphy has any reason to suspect that the Order may have been breached, it must notify the MT and the CMA immediately.

### **Reporting functions**

15. The MT is required to provide an initial report to the CMA no later than **5pm on 9 July 2020**, giving details of any arrangements which have been, or should be, put in place to ensure compliance with the Order, and including among other things:
  - a. details of the current extent of compliance with the Order;

- b. a description of the current arrangements made for the operation of the Giphy business and for the preservation of the assets (including its organisational capital and its relationships with content creators and customers) required to operate the Giphy business; and
- c. recommendations as to what changes to those arrangements, if any, are necessary.

16. In addition to providing the initial report referred to in paragraph 15 above, the MT must provide a statement to the CMA every two weeks thereafter (or otherwise as required by the CMA) stating whether or not, in his or her view, Facebook, Tabby Acquisition, Facebook UK and Giphy have complied with the Order. At the same time, the MT must provide the CMA with a report setting out the following:

- a. the basis for the MT's view that the Order has or has not, as the case may be, been complied with and in particular whether:
  - i. anything has caused him or her to be concerned as to whether Facebook, Tabby Acquisition, Facebook UK and Giphy have complied with the Order, and if it has, whether those concerns have been resolved and why;
  - ii. he or she has any remaining doubts or uncertainties as to whether Facebook, Tabby Acquisition, Facebook UK and Giphy have complied with the Order; and
  - iii. anything that causes him or her to be concerned about a possible future breach of the Order (whether deliberate or inadvertent);
- b. details of the performance of the Giphy business, including any factors that might indicate asset deterioration;
- c. whether appropriate steps are being taken to maintain the Giphy business as a going concern;
- d. the extent to which Facebook, Tabby Acquisition, Facebook UK and Giphy have cooperated with the MT in his or her task of monitoring its compliance with the Order and details of any aspects of the cooperation of Facebook, Tabby Acquisition, Facebook UK and Giphy that he or she considers could be improved;
- e. the extent to which the MT considers that he or she is in an appropriate position to monitor the compliance of Facebook, Tabby Acquisition, Facebook UK and Giphy with the Order and if there is anything that the MT considers would assist him or her in monitoring compliance;
- f. any current or anticipated requests for consent to vary the Order; and
- g. the information he or she used to compile the report.

17. When providing reports to the CMA, the MT must ensure that he or she does not disclose any information or documents to the CMA which Facebook, Tabby Acquisition, Facebook UK and/or Giphy would be entitled to withhold from the CMA on the grounds of legal privilege and nothing in these directions requires Facebook, Tabby Acquisition, Facebook UK and/or Giphy to produce any information or documents to the MT which are privileged.
18. The MT must immediately notify the CMA in writing if he or she forms a reasonable suspicion that the Order has been breached, or if he or she considers that he or she is no longer in a position to effectively carry out his or her functions. In that situation, the MT must give reasons for this view, including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 17 above).
19. All communications between the MT and the CMA (including the statements and reports referred to in paragraphs 15 and 16) are confidential and should not be disclosed to Facebook, Tabby Acquisition, Facebook UK or Giphy, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.