

**DEROGATION LETTER**  
**IN RESPECT OF INITIAL ENFORCEMENT ORDERS ISSUED**  
**PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002**

**Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 9 June 2020**

**Completed acquisition by Facebook, Inc. of Giphy, Inc.**

We refer to your submission of 10 June and 6 July 2020 requesting that the CMA consents to a derogation to the Initial Enforcement Order of 9 June 2020 (the '**Initial Order**'). Unless otherwise stated, the terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, Facebook Inc. (**Facebook**), Tabby Acquisition Sub, Inc. (**Tabby Acquisition**), Facebook UK Limited (**Facebook UK**) and their subsidiaries are required to hold separate the Facebook business from the business of Giphy Inc. (**Giphy**) and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference.

After due consideration of your request for a derogation from the Initial Order, based on the information received from you and in the particular circumstances of this case, the CMA consents to Facebook, Tabby Acquisition, Facebook UK and Giphy carrying out the following actions, in respect of the specific paragraphs:

**1. Paragraphs 5(a) and 5(l) of the Initial Order – HR support in respect of Facebook employee benefits**

Following the onboarding of Giphy employees onto Facebook employment contracts subsequent to completion of the acquisition of Giphy by Facebook (the **Merger**), Facebook submits that Giphy employees have been provided with access to Facebook employee benefits, including healthcare, dependent care, paid time-off, medical and family leave, restricted stock units, performance bonuses, costs reimbursement, 401K retirement, and immigration visa support).

Prior to the issuance of the Initial Order, the CMA understands that Giphy employees were able to access Facebook IT systems, including Workplace and internal wiki which are Facebook company-wide systems that provide employees with access to information regarding payroll, benefits, and paid time off, and also allows them to interact with the system. Facebook submits that access to these systems was disabled for Giphy employees on 9 June 2020.

Facebook is therefore seeking CMA consent to designate a limited number of Facebook HR personnel to carry out the following functions for Giphy employees:

- (i) Locating relevant payroll information;
- (ii) submitting vacation requests;
- (iii) checking on the status of various benefits; and
- (iv) acting as a dedicated point of contact to help Giphy employees address day-to-day personnel issues.

The CMA consents to a derogation from paragraphs 5(a) and 5(l) of the Initial Order, strictly on the basis that:

- (a) Confidential information shared by Giphy employees with Facebook under this derogation will be:
  - shared with Elsie Zecca (HR Business Partner), Varneet Mehta (People Operations Partner), Annie Tan (Employee Relations Partner), Donna Zontos (HR Director), Brian Safran (US Immigration Partner) and Keji Ayorinde (Associate General Counsel, Labor & Employment) (together, the **Authorised Individuals**) for whom it is strictly necessary to see the information for the permitted purpose;
  - limited to that which is strictly necessary to allow the Authorised Individuals to carry out the actions specified in paragraphs (i) to (iv) above;
- (b) The Authorised Individuals shall enter into an NDA in the form approved by the CMA;
- (c) The Authorised Individuals do not have any control or influence over Facebook's commercial strategy or decision-making, either directly or in an advisory function, and they do not hold roles which are external commercial client-facing;
- (d) For the avoidance of doubt, no Giphy commercially-sensitive information will be provided to Facebook in relation to this derogation;

- (e) Effective firewalls will be put into place to prevent any unauthorised personnel at Facebook from accessing information provided by Giphy for the permitted purpose;
- (f) The Authorised Individuals can only be amended with the CMA's prior written consent (including via email);
- (g) Should the Merger be prohibited, Facebook will ensure that any confidential information received from the Giphy business for the purposes of this derogation will be returned to the Giphy business and any copies destroyed, except to the extent that record retention is required by law or regulation; and
- (h) This derogation will not prejudice a reference and will not prevent any remedial action that the CMA may need to take regarding the Merger.

Yours sincerely,

Alex Knight

Assistant Director, Remedies Business and Financial Analysis

16 July 2020