

COMPLETED ACQUISITION BY FACEBOOK, INC OF GIPHY, INC

Directions issued on 30 July 2020 pursuant to paragraph 10 of the Initial Enforcement Order made by the Competition and Markets Authority on 9 June 2020 pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

On 9 June 2020, the Competition and Markets Authority (**CMA**) issued an Initial Enforcement Order in accordance with section 72(2) of the Enterprise Act 2002 (the **Act**) concerning the completed acquisition of Giphy Inc (**Giphy**) by Facebook, Inc (**Facebook**) through a stock conversion by its wholly-owned subsidiary, Tabby Acquisition Sub, Inc (**Tabby Acquisition**) (the **Initial Enforcement Order**).

On 19 June 2020, the CMA issued directions to Facebook, Tabby Acquisition, Facebook UK Limited (**Facebook UK**) and Giphy to appoint a monitoring trustee (**MT**) for securing compliance with the Initial Enforcement Order.

The CMA wishes to ensure that no action is taken pending final determination of any reference under section 22 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decision on the reference.

On 16 June 2020, the CMA received Facebook's response to the CMA's integration questionnaire and on 20 July 2020, the CMA received the first report of the Monitoring Trustee appointed by Facebook, Tabby Acquisition, Facebook UK and Giphy pursuant to the directions issued by the CMA on 19 June 2020. The CMA understands that members of Giphy's senior management team left the Giphy business on completion, and that key Giphy employees have received restricted stock units in Facebook. Further, the CMA considers there to be a general lack of independence of the Giphy business from Facebook resulting from certain provisions included in the Facebook employment contracts to which Giphy employees were transferred on completion of the merger. On the basis of the information available to the CMA and following careful consideration, the CMA considers that a number of risk factors are present in this case and the CMA is concerned about the incentives in place for Giphy to run the Giphy business independently of Facebook, in accordance with the obligations under the Initial Enforcement Order.

The CMA now issues written Directions under paragraph 10 of the Initial Enforcement Order that, for the purpose of securing compliance with the Initial Enforcement Order,

Facebook, Tabby Acquisition, Facebook UK and Giphy must appoint a formal Hold Separate Manager (**HSM**) of the acquired Giphy business in accordance with the terms provided for, and must comply with the obligations set out, in Annex 1.

Alex Knight

Assistant Director, Remedies, Business and Financial Analysis

30 July 2020

ANNEX 1

Directions to appoint a hold separate manager

Interpretation

1. In these Directions:

'the Act' means the Enterprise Act 2002;

'business' has the meaning given by section 129(1) and (3) of the Act;

'CMA' means the Competition and Markets Authority;

'Commencement date' means 9 June 2020, which is the commencement date of the Initial Enforcement Order;

'Derogations' means any derogations granted whether before or after the appointment of the HSM by the CMA by which Facebook, Tabby Acquisition, Facebook UK and Giphy may undertake certain actions that derogate from the Initial Enforcement Order;

'Facebook' 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;

'Facebook UK' means Facebook UK Limited (Company number 06331310);

'the Facebook business' means the business of Facebook and its subsidiaries carried on as at the commencement date;

'Giphy' means Giphy, Inc, a company incorporated in the state of Delaware, United States;

'the Giphy business' means the business of Giphy and its subsidiaries carried on as at the commencement date;

'HSM' means the Hold Separate Manager appointed in accordance with these Directions;

'Initial Enforcement Order' means the Initial Enforcement Order issued by the CMA on 9 June 2020 and addressed to Facebook, Tabby Acquisition, Facebook UK and Giphy;

'MT' means the Monitoring Trustee appointed by Facebook, Tabby Acquisition, Facebook UK and Giphy pursuant to the directions issued by the CMA on 19 June 2020 under paragraph 10 of the Initial Enforcement Order;

'Tabby Acquisition' means Tabby Acquisition Sub, Inc., a company incorporated in the state of Delaware, United States;

'the transaction' means the transaction by which Facebook and Giphy have ceased to be distinct within the meaning of section 23 of the Act;

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

Appointment

2. Facebook, Tabby Acquisition, Facebook UK and Giphy must appoint a formal HSM to ensure that the Giphy business operates as a viable and competitive business, separately from and independently of the Facebook business. The HSM must be subject to the approval by the CMA of his or her identity and the terms and conditions of appointment. Any appointment must be made in accordance with the provisions of these Directions.
3. Facebook, Tabby Acquisition, Facebook UK and Giphy must appoint the HSM without delay and in any event by midnight UK time on 7 August 2020 (or such longer period as the CMA may reasonably agree in writing) and the HSM will continue to act until the CMA has finally determined the reference (within the meaning of section 79 of the Act) or revoked the Initial Enforcement Order. Facebook, Tabby Acquisition, Facebook UK and Giphy must provide the CMA with the identity and draft terms and conditions of appointment of the potential candidate HSM, by midnight UK time on 4 August 2020 (or such longer period as the CMA may reasonably agree in writing).
4. The HSM must act on behalf of the CMA and be under an obligation to the CMA to carry out his or her functions to the best of his or her abilities.
5. Facebook, Tabby Acquisition, Facebook UK and Giphy must ensure that the terms and conditions of appointment of the HSM reflect and give effect to the functions and obligations of the HSM and the obligations of Facebook, Tabby Acquisition, Facebook UK and Giphy as set out in these Directions.
6. Facebook, Tabby Acquisition, Facebook UK, Giphy and their subsidiaries and their employees, officers, directors, advisers and consultants must provide the HSM with all cooperation, assistance and information as the HSM may reasonably require in order to discharge his or her functions.

Functions

7. The functions of the HSM will be to exercise day-to-day management and control of the Giphy business so that:

- (a) it operates as a viable and competitive business, separately from and independently of the Facebook business and competes actively with the Facebook business;
 - (b) appropriate management, reporting and decision-making systems are put in place to preserve the independence of the Giphy business and ensure such independence on an ongoing basis;
 - (c) the Giphy business is maintained as a going concern with access to sufficient resources for its continued operation and development.
8. The HSM will also be required to:
- (a) ensure that the Giphy business complies with the Initial Enforcement Order;
 - (b) ensure the economic viability and competitiveness of the Giphy business in accordance with good business practice;
 - (c) minimise, as far as possible, any risk of loss of competitive potential of the Giphy business;
 - (d) assist the CMA and MT in monitoring the extent of compliance by Facebook, Tabby Acquisition, Facebook UK and Giphy with the Initial Enforcement Order (including any direction issued under paragraph 10 of the Initial Enforcement Order) or any other order issued by the CMA pursuant to section 72 of the Act;
 - (e) discuss with the MT arrangements which have been, or should be, put in place to ensure the separate operation from the Facebook business of a viable, competitive Giphy business and compliance by Facebook, Tabby Acquisition, Facebook UK and Giphy with the Initial Enforcement Order; and
 - (f) provide every two weeks (or otherwise as required by the CMA) a statement stating whether or not the Giphy business has complied with the Initial Enforcement Order.
9. The HSM must take such steps as he or she reasonably considers necessary in order to carry out the HSM's functions effectively.
10. The HSM must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by Facebook, Tabby Acquisition, Facebook UK and Giphy with the Initial Enforcement Order.

11. The HSM must immediately notify the CMA in writing if he or she forms a reasonable suspicion that the Initial Enforcement Order has been breached or if he or she considers that he or she is no longer in a position to effectively carry out the HSM's functions.

General

12. The HSM must possess the appropriate qualifications and experience to carry out the HSM's functions.
13. The HSM must neither have nor become exposed to a conflict of interest that impairs the HSM's objectivity and independence in discharging his or her functions under these Directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
14. Facebook, Tabby Acquisition, Facebook UK and Giphy shall remunerate and reimburse the HSM 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 HSM's independence or ability to effectively and properly carry out the HSM's functions.
15. Facebook, Tabby Acquisition, Facebook UK and Giphy must provide the CMA with a copy of the agreed terms and conditions of the appointment of the HSM prior to his or her appointment.
16. Any termination of the appointment of the HSM is subject to the agreement of the CMA, such agreement not to be unreasonably withheld.
17. All communications between the HSM and the CMA are confidential and should not be disclosed to Facebook, Tabby Acquisition, Facebook UK and Giphy, save with the prior written consent of the CMA. The HSM shall not disclose such communications to third parties.
18. The CMA may issue such further directions as it considers necessary to ensure compliance with the Initial Enforcement Order, including, where the appointment of the HSM has been terminated, directions for the appointment of a further HSM.