

**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.

Dear Mr. Parker,

We refer to your submissions of 4 and 9 September 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(g) and 5(i) of the Initial Order

Prior to completion of the acquisition by Facebook of Giphy (the **Merger**), the CMA understands that [X] was the [X] at Giphy and [X] was the [X] at Giphy. Following completion of the Merger, both [X] and [X] have continued to provide the same services to Giphy as provided pre-Merger, but as contractors to Giphy pursuant to contracts entered into between Facebook and [X] (the **[X] Contracts**). Based on the information provided by Facebook and Giphy, the CMA considers that [X] and [X] are key staff of Giphy.

Facebook submits that [X] contract is due to expire on 30 September 2020 and [X] contract is due to expire on 30 November 2020. The CMA understands that Giphy requires the continued services of [X] and [X] and as such, Facebook is seeking CMA consent to extend the [X] Contracts.

Facebook therefore requests a derogation from paragraphs 5(g) and 5(i) of the Initial Order in order to extend the [X] Contracts, including any further extensions as necessary, until such time that the Initial Order is no longer in force or any reference is concluded such that [X] and [X] can continue to provide services to Giphy.

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

- (i) The extension of the [X] Contracts is strictly necessary in order to ensure the ongoing viability and operation of the Giphy business;
- (ii) [X] and [X] will continue to be paid the same rates as currently specified in the [X] Contracts (or a higher rate) in order to financially incentivise them to remain with the Giphy business;
- (iii) The [X] Contracts will be amended to reflect the changes contained in the addendum attached as Annex 1;
- (iv) [X] has agreed to the [X] Contracts being amended in line with Annex 1;
- (v) [X] and [X] will continue to assist in running the Giphy business independently of Facebook, subject to any derogations granted by the CMA;
- (vi) This derogation will not lead to any integration of the Facebook or Giphy businesses; and
- (vii) This derogation should not prevent any remedial action that the CMA may need to take regarding this Merger.

Yours sincerely,

Alex Knight

Assistant Director, Remedies, Business and Financial Analysis

17 September 2020

Annex 1- Addendum to the [X] Contracts