

**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 23 November, 11 December, 18 December and 22 December 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. Further, in this letter:

GIF-related Content means non-text content created or shared by users via a social media, social network or messaging platform (including GIFs, stickers (including GIF stickers), emojis, video clips, images and other micro-expression assets).

GIF-related Activities means any activities relating to the procurement, supply or development of GIF-related Content whether by or to Facebook, GIPHY or any third party, including (without limitation) any operational, relationship management, strategic, development, technical or back-office activities or services.

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 and Facebook UK carrying out the following actions, in respect of the specific paragraphs:

1. Paragraphs 4(b), 5(c), 5(d), 5(e), 5(i), 5(k) and 8 of the Initial Order

Facebook has sought CMA consent to exclude certain of its subsidiaries from the scope of the above-mentioned provisions on the Initial Order.

In response to a CMA Section 109 Notice, dated 4 December 2020, Facebook provided information to the CMA specifying which of its subsidiaries are dormant or inactive entities, holding companies and/or entities which have no connection to any GIF-related Activities (**Carve-out Subsidiaries**). The Carve-out Subsidiaries are identified in Annex 1.

The CMA consents to a derogation to exclude the Carve-out Subsidiaries from paragraphs 4(b), 5(c), 5(d), 5(e), 5(i), 5(k) and 8 of the Initial Order strictly on the basis that:

- (i) Facebook has represented that the Carve-out Subsidiaries do not have any connection to GIF-related Activities. As a result, this derogation will not result in any pre-emptive action which might prejudice the outcome of a reference or impede the taking of any action which may be justified by the CMA's decisions on a reference;
- (ii) This derogation applies only to the Carve-out Subsidiaries as identified in Annex 1. In the event that Facebook establishes new subsidiaries as of the date of this derogation which do not engage in GIF-related Activities, Facebook will seek the prior written consent of the CMA (which can be provided by email) to include such subsidiaries within the Carve-out Subsidiaries list;
- (iii) Facebook will not take steps to transfer any of its GIF-related Activities to the Carve-out Subsidiaries. For the avoidance of doubt any such transfer would not be covered by this derogation; and
- (iv) Going forward, Facebook will not take steps to restart any GIF-related Activities in the dormant subsidiaries which are included in the list of Carve-out Subsidiaries. For the avoidance of doubt any such action would not be covered by this derogation.

Yours sincerely,

Alex Knight

Assistant Director, Remedies, Business and Financial Analysis

22 December 2020

Annex 1

