

**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, 11 January and 28 January 2021, 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: (i) act as a data centre for data storage, (ii) operate servers to cache data and network equipment to transmit data and (iii) procure network assets in the United States (together, the **Data Centres**). The Data Centres are identified in Annex 1.

Facebook submits that it maintains Data Centres in multiple locations and typically stores information in multiple Data Centres. Facebook [§]. However, within the wide variety of Facebook data stored as part of Facebook's ordinary course of business data storage activities, some data will contain data related to GIF-related Content.

Further, prior to the commencement date of the Initial Order, Facebook informed the CMA that the GIPHY source code was transferred to a [§] which operates in a distributed environment. As a result, [§].

On the basis of the information provided by Facebook, the CMA considers that the Data Centres engage in GIF-related Activities. Facebook represents however, that limiting the application of the above-mentioned provisions of the Initial Order to the Data Centres, could not give rise to a risk of pre-emptive action.

The CMA consents to a derogation to exclude the Data Centres 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 maintains the ability to take the necessary steps to entirely and permanently remove the GIPHY source code from Facebook's systems (including from the Data Centres), should this be required by the CMA; and
- (ii) Facebook will continue to implement hold-separate measures in respect of the GIPHY source code, and will not take steps to transfer the GIPHY source code to any third parties.

For the avoidance of doubt, this derogation applies only to the Data Centres as identified in Annex 1. In the event that Facebook establishes new data centres as of the date of this derogation, Facebook should seek the prior written consent of the CMA (which can be provided by email) to add such subsidiaries to the list in Annex 1.

Yours sincerely,

Alex Knight

Assistant Director, Remedies, Business and Analysis

8 February 2021

Annex 1 – Data Centres

[8]