

**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 and 18 December 2020, and 11 January and 15 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 notice issued under section 109 of the Enterprise Act 2002 dated 4 December 2020, Facebook provided information to the CMA specifying which of its subsidiaries act as: (i) entertainment entities (the **Entertainment Entities**) and (ii) local ad and sales entities (the **Local Marketing Entities**) (together, the

Entertainment and Marketing Subsidiaries). The Entertainment and Marketing Subsidiaries are identified in Annex 1.

In respect of the Entertainment Entities, Facebook submits that these entities either (1) are associated with the production of video content (such as TV series and sitcoms) by commissioning, overseeing, and/or distributing the video content across Facebook's video platforms (e.g. Facebook Watch); or (2) develop video games. Facebook submits that some of its Entertainment Entities may have developed GIF-related Content to highlight its products that may ultimately become available for users to share on social media.

In respect of the Local Marketing Entities, Facebook submits that these entities either (i) are responsible for marketing and selling advertising inventory to certain customers in their territory or (ii) provide sales and marketing support to local customers which have purchased advertising space from Facebook Inc. or Facebook Ireland Limited. Facebook cannot exclude that, as part of these activities, these entities may occasionally carry out GIF-related Activities. However, the GIF-related Activities of the Local Marketing Entities do not form part of their core activities and are no more than an ad hoc by-product of their services.

On the basis of the information provided by Facebook, the CMA understands that whilst the Entertainment and Marketing Subsidiaries may engage in GIF-related Activities, such activities are de minimis and incidental to their core activities. Further, Facebook represents that limiting the application of the above-mentioned provisions of the Initial Order to the Entertainment and Marketing Subsidiaries could not give rise to a risk of pre-emptive action.

The CMA consents to a derogation to exclude the Entertainment and Marketing 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) The Entertainment and Marketing Subsidiaries do not employ any key staff engaged in GIF-related Activities;
- (ii) The derogation from paragraph 5(d) of the Initial Order is granted subject to the exception that, to the extent that the Entertainment and Marketing Subsidiaries provide support to any GIF-related Activities (including GIF-related Content creation), Facebook will ensure the continued support of all GIF-related Activities by the Entertainment and Marketing Subsidiaries in line with its pre-merger budget; and
- (iii) This derogation applies only to the Entertainment and Marketing Subsidiaries as identified in Annex 1. In the event that Facebook establishes new Entertainment and Marketing Subsidiaries as of the date of this derogation, Facebook will seek the prior written consent of the CMA (which can be provided by email) to include such subsidiaries within the Entertainment and Marketing Subsidiaries list.

Yours sincerely,

Alex Knight
Assistant Director, Remedies, Business and Financial Analysis
24 February 2021

Annex 1 – Entertainment and Marketing Subsidiaries

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