

# Completed acquisition by Facebook, Inc. of GIPHY, Inc.

## Decision on relevant merger situation and substantial lessening of competition

**ME/6891-20**

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 25 March 2021. Full text of the decision published on 5 May 2021.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

### SUMMARY

#### Introduction

1. On 15 May 2020, Facebook, Inc. (**Facebook**) acquired GIPHY, Inc. (**GIPHY**) (the **Merger**). Facebook and GIPHY are together referred to as the **Parties**, or for statements referring to the future, the **Merged Entity**.
2. The Facebook group offers various online products and services to customers in the UK, including the Facebook app, Instagram, Messenger, WhatsApp, Oculus, Portal and Workplace.
3. GIPHY is also active in the UK, with an online database and search engine that allows users to search and share GIFs and GIF stickers. A GIF is a digital file that displays a short, looping, soundless video, while a GIF sticker displays an animated image comprised of a transparent (or semi-transparent) background over which images or text are placed. Unless otherwise specified, the term 'GIFs' refers to both video GIFs and GIF stickers. GIPHY offers its GIFs and GIF stickers both on its own website and app, and via Application Programming Interfaces (**APIs**) that allow third party apps (eg Snapchat, TikTok or Instagram) to integrate GIPHY's GIF and GIF sticker databases. GIPHY's products are offered free of charge to users and companies using its

APIs globally. Until May 2020, GIPHY generated revenues in the United States by offering brand partners a 'paid alignment' service to align their GIFs with popular search terms (so that users see them first when searching for a GIF), or to insert them into GIPHY's trending feed, in exchange for a fee.

4. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Facebook and GIPHY is an enterprise and that these enterprises have ceased to be distinct as a result of the Merger. The four-month period for a decision, as extended, has not yet expired. The CMA believes that the share of supply test is or may be met on two bases (which are distinct from the frames of reference in which the CMA has found concerns, as described in more detail below):
  - (a) The supply of apps and/or websites that allow UK users to search for GIFs, in which the Parties have a combined share (by average monthly searches) of [50-60]% with an increment of [0-5]%; and
  - (b) The supply of searchable libraries of animated (ie non-static) stickers (including both GIF and non-GIF stickers), provided direct to users in the UK, in which the Parties have a combined share (by sticker library size) of [80-90]% with an increment of [0-5]%.
5. The CMA has considered the impact of the Merger against two counterfactuals, and considers that the realistic prospect standard is met in both scenarios:
  - (a) Pre-Merger conditions, in which GIPHY would have continued to operate independently of Facebook, generating revenue through activities such as its paid alignment contracts and pursuing additional funding via external investment; and, in the alternative
  - (b) The acquisition of GIPHY by an alternative purchaser, possibly another social media platform.
6. To the extent that one counterfactual scenario is considered more competitive than the other, the CMA has considered this further in its competitive assessment.

## **Frame of reference**

7. The CMA considered whether GIFs are substitutable for other types of content. The CMA has found that GIFs have unique characteristics that differentiate them from other types of content (eg videos, music, micro-games, animations, emojis, animojis, memes, etc), and that GIPHY's internal documents did not suggest that GIPHY considered other content types as

competitive constraints. The CMA also found that an important part of Facebook's rationale for the Merger focused on the importance of GIFs specifically, and the impact on Facebook were it to lose access to GIPHY's GIFs.

8. The CMA considered whether the product frames of reference for social media platforms and for display advertising should be expanded. In particular, the CMA carefully considered the findings in its recent market study into online platforms and digital advertising (the **Market Study**), which found that the strongest competitive constraints on Facebook with regard to social media were imposed by providers that were close substitutes, and that providers in other sectors are unlikely to provide a strong constraint on Facebook. In relation to digital advertising, the Market Study found that search and display advertising serve distinct purposes, with only limited substitutability between them, and that there is limited substitutability between digital advertising and traditional advertising media. The CMA found no evidence suggesting that different product frames of reference would be more appropriate.
9. With regard to geographic frame of reference, the CMA found that:
  - (a) in relation to the supply of searchable GIF libraries, GIPHY's GIFs are generally available to users throughout the world, as are the GIFs provided by GIPHY's competitors;
  - (b) in relation to social media, Facebook and its competitors' services are generally available to users throughout the world (which is also supported by previous cases in this sector); and
  - (c) in relation to display advertising, advertisers are often interested in targeting users with particular characteristics, including (among others) their location, language and culture, supporting a national frame of reference.
10. The CMA has therefore assessed the impact of the Merger in the following frames of reference:
  - (a) The supply of searchable GIF libraries worldwide;
  - (b) The supply of social media worldwide; and
  - (c) The supply of display advertising in the UK.

## Competitive assessment

11. The CMA's recent Market Study concluded that Facebook had significant market power in both social media and display advertising. In particular, the Market Study found that the competitive threat to Facebook from the entry and expansion of other platforms is limited by several self-reinforcing barriers, including same-side network effects, cross-side network effects, and the breadth of the Facebook 'family' of apps. The Market Study also found that Facebook is by far the largest supplier of display advertising, and that it is viewed as a 'must have' by advertisers both because of its reach and its extensive data on users. Facebook's 'data advantage' both increases the value of Facebook's advertising inventory and creates barriers for its competitors in display advertising.
12. Given the recency of the Market Study findings, and the breadth of evidence considered by the Market Study, the CMA believes that the evidence and findings of the Market Study are relevant for the competitive assessment of the Merger, and that any reduction in competitive constraints should be considered in the context of Facebook's existing market power in social media and display advertising. In this context, the CMA's concern about any given level of constraint removed or reduced by the Merger may be greater than in a scenario where Facebook did not have such significant market power.
13. The CMA has considered the following four theories of harm:
  - (a) Theory of harm 1 (**TOH1**): Loss of potential competition in display advertising;
  - (b) Theory of harm 2 (**TOH2**): Vertical effects through the foreclosure of social media platforms;
  - (c) Theory of harm 3 (**TOH3**): Raising barriers to entry and expansion by increasing Facebook's data advantage in display advertising; and
  - (d) Theory of harm 4 (**TOH4**): Loss of potential competition in the supply of searchable GIF libraries.

### ***TOH1: Loss of potential competition in display advertising***

14. The CMA has considered whether the Merger may lead to a loss of potential competition in display advertising. In particular, the CMA has considered whether, absent the Merger, GIPHY would have expanded in digital advertising, including via its paid alignment offering, and whether this would have resulted in greater competition with Facebook. The CMA considered whether the Merger may (i) reduce GIPHY's incentives to continue with

ongoing efforts towards expansion, and/or (ii) lessen future competition between Facebook and GIPHY; both these effects could cause competitive harm in display advertising.

15. The CMA has found that while GIPHY was not active in digital advertising in the UK at the time of the Merger, it had plans to start monetising its GIFs internationally outside the US, including in the UK, and to increase the overall scale of its digital advertising activities through its paid alignment services absent the Merger. One of the unique selling points of GIPHY's paid alignment services is the opportunity to include non-intrusive adverts within messages when users browse or search for GIFs. This is reflected in GIPHY's internal documents, some of Facebook's internal documents also discuss the importance of monetising messaging.
16. The CMA also found that while GIPHY was yet to reach profitability at the time of the Merger and had not yet begun providing paid alignment services to UK customers, GIPHY's revenues from its US sales had been increasing prior to the Merger, and it had plans to expand internationally. The CMA also found that GIPHY had only recently started offering digital advertising, via its paid alignment services, having invested significant resources to reach its size and build its network of integration partners. Accordingly, the CMA believes that its revenues understate its expansion potential. The CMA also found that GIPHY's ability to raise external funding indicated that external investors believed that GIPHY had the potential to generate significant revenues from digital advertising in future, and that this was likely the basis on which GIPHY was able to obtain such funding.
17. In the context of Facebook's significant market power in display advertising, the CMA also found that were GIPHY to expand successfully in digital advertising, and were GIPHY's paid alignment opportunities to become a prominent channel for advertising on messaging and other social media platforms, Facebook would potentially face stronger competitive constraints in display advertising, which could threaten its market power and push it to compete more vigorously.
18. The CMA believes that the Merger may reduce GIPHY's efforts to expand its digital advertising business – both geographically and in terms of range of advertising formats and partners – reducing future competition in display advertising. In particular, the CMA notes that GIPHY's paid alignment services may strengthen the advertising offering of messaging and social media platforms competing with Facebook. This impact may have been even more significant if GIPHY had been acquired by an existing display advertising competitor such as another social media platform. By acquiring GIPHY, an

alternative platform could have strengthened its digital advertising offering and posed a stronger competitive constraint on Facebook.

19. The CMA therefore believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of a loss of potential competition in display advertising.

***TOH2: Vertical effects through the foreclosure of social media platforms***

20. The CMA has considered whether, as a result of the Merger, the Merged Entity could harm Facebook's rivals and lessen current and future competition in social media and display advertising by (i) ceasing to supply GIPHY's GIFs via GIPHY's API integrations (total foreclosure), and/or (ii) engaging in strategies that worsen the terms of GIPHY's supply or otherwise harm Facebook's competitors, such as requiring them to provide more user data to access GIPHY (partial foreclosure). These foreclosure strategies could also limit competitors' ability to benefit from revenue share agreements with GIPHY, which could be particularly significant were GIFs to become an important advertising channel.
21. With regard to the Merged Entity's ability to engage in foreclosure, the CMA has found that GIFs are an important feature for driving user engagement on online platforms and that GIFs may become an even more important input for social media platforms in future as an advertising channel within messaging. Third parties told the CMA that having a significantly worse GIF offering would have some impact on their competitiveness and ability to win and retain users. This was also confirmed in Facebook's internal documents, including those prepared in contemplation of the Merger, which indicate that Facebook was concerned that GIPHY may have been acquired by one of its rivals. The CMA also found that usage of GIFs has been growing rapidly in the last few years and that GIFs appear to be particularly popular among younger users – the CMA believes that this trend may continue in future.
22. Whilst Tenor (which is owned by Google) is generally viewed as a strong competitor to GIPHY (both by third parties and in GIPHY's internal documents), other GIF providers were considered less attractive by third parties who responded to the CMA. In line with this evidence, GIPHY had by far the highest share of API/SDK searches in the UK in 2019 ([80-90]%), followed by Tenor ([10-20]%). In contrast, Gfycat – the next largest competitor – had a very low share ([0-5]%). While some integration partners may be able to switch to Tenor in the event of foreclosure, the CMA has found that for some social media platforms, it is important for them to have more than one GIF provider. Some third parties also submitted that switching to another GIF provider could affect user experience and/or engagement on their platforms.

Importantly, the CMA believes that, were GIFs to become an important advertising channel in the future, their importance to social media platforms may increase significantly, providing them with an opportunity to enhance their digital advertising offering.

23. With regard to the Merged Entity's incentive to engage in foreclosure, the CMA has considered the costs and benefits of a vertical foreclosure strategy. In particular, the CMA believes that total or partial foreclosure may harm Facebook's competitors by affecting user experience on their platforms, to the benefit of Facebook, which would face weaker competitors as a result. Total or partial foreclosure could also limit Facebook's competitors' ability to benefit from revenue share agreements with GIPHY, which could be particularly significant were GIFs to become an important advertising channel.
24. The CMA also believes that there is little risk of any reduction in GIPHY's traffic materially affecting the quality of GIPHY's services as a result of total or partial foreclosure, suggesting that there is little cost to Facebook of adopting such a strategy. As the Market Study found, Facebook's activities are highly profitable, and, overall, the CMA believes that Facebook may benefit substantially from any strategy that may weaken Facebook's competitors and sustain Facebook's market power, and there would be limited cost to doing so.
25. With regard to the effect of any foreclosure strategy, in the context of Facebook's significant market power in both social media and digital advertising, the CMA found that any reduction in competitive constraint resulting from a foreclosure strategy may give rise to greater concerns than in a scenario where Facebook did not have such significant market power in social media and display advertising.
26. The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC as a result of vertical effects in social media and display advertising.

***TOH3: Raising barriers to entry and expansion by increasing Facebook's data advantage in display advertising***

27. As noted above, the CMA's recent Market Study found that Facebook has a significant data advantage over smaller platforms and publishers, which creates barriers for its competitors to overcome. The CMA has assessed whether the Merger may further raise these barriers to entry and expansion by increasing Facebook's data advantage in display advertising.

28. The CMA has found that the Merger may lead to Facebook having access to additional data via GIPHY about the usage of GIFs on competing platforms. However, the evidence seen by the CMA does not suggest that the additional data to which Facebook may gain access post-Merger would materially increase its existing data advantage. Facebook's access to its competitors' user data may be limited by GIPHY integration partners' ability to curtail the data that is passed to GIPHY through proxy and content caching servers. Whilst the Merged Entity may require Facebook's competitors to provide more user data as a condition of accessing GIPHY after the Merger, the evidence suggests that at least some competitors would stop using GIPHY rather than providing more user data, even if this were to result in a deterioration in their offering (see TOH2 above). This suggests that even in these circumstances, the amount of new data gained by Facebook and the impact that this data may have on Facebook's data advantage may be limited.
29. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of raising barriers to entry and expansion by increasing Facebook's data advantage in display advertising. However, to the extent that the Merged Entity may require more user data from its integration partners as a condition of accessing GIPHY, this has been taken into account in the assessment of TOH2.

***TOH4: Loss of potential competition in the supply of searchable GIF libraries***

30. The CMA assessed whether, absent the Merger, Facebook would have successfully developed a searchable GIF library, and whether this would have resulted in increased competition. The CMA found that a few of Facebook's internal documents discussed the possibility of building its own GIF library, but that this was not its preferred option. Facebook's internal documents also suggested that [REDACTED]. Were GIPHY to have been acquired by a third party competitor, absent the Merger, the CMA believes that developing a GIF library may have become a priority for Facebook. The CMA also considered a number of factors which suggest that Facebook would have had the ability to successfully build its own GIF library, including Facebook's resources and large existing user base. The CMA believes Facebook may have had the ability and incentive to develop a GIF library, in the scenario where GIPHY was acquired by a third party competitor.
31. The CMA also considered whether Facebook's expansion would have had an impact on competition, noting that if Facebook had successfully developed a GIF library, there would be an increase in the total number of GIF libraries. However, Facebook's internal documents indicate that Facebook's sole motivation would have been self-supply and the CMA has not seen any



evidence to suggest that Facebook would have provided third parties with access to its GIF library. In these circumstances, the CMA does not believe that the Merger would have a material impact on competition for the supply of GIF libraries.

32. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of a loss of potential competition in the supply of searchable GIF libraries.

## Conclusion

33. The CMA therefore believes that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC as a result of:

- (a) loss of potential competition in display advertising in the UK, and
- (b) vertical effects, in relation to social media worldwide, and in relation to display advertising in the UK.

34. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). Facebook has until 1 April 2021 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 22(1) and 34ZA(2) of the Act.

## PARTIES

35. Facebook is a publicly traded company listed on NASDAQ, with headquarters in California. The Facebook group offers various products and services, including the Facebook app, Instagram, Messenger, WhatsApp, Oculus, Portal and Workplace.<sup>1</sup>
36. Facebook's total turnover in FY19 was GBP 55,419 million, of which approximately [X] was generated in the UK.<sup>2</sup>
37. GIPHY, which was founded in 2013 and is headquartered in New York, is an online database and search engine that allows users to search and share GIFs and GIF stickers.<sup>3</sup> A GIF is a digital file that displays a short, looping, soundless video, while a GIF sticker displays an animated image comprised of a transparent (or semi-transparent) background over which images or text are placed. Both can be used to expressively convey emotions or as a way of

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<sup>1</sup> Final Merger Notice, submitted on 26 January 2021 (**FMN**), paragraph 2.1.

<sup>2</sup> FMN, paragraph 2.2.

<sup>3</sup> FMN, paragraph 2.3.

demonstrating an understanding of popular culture. For the purposes of this Decision, until otherwise specified, the term ‘GIFs’ refers to both video GIFs and GIF stickers.

38. GIPHY has created APIs,<sup>4</sup> otherwise known as app ‘extensions’, that allow third party apps (eg Snapchat, TikTok or Instagram) to integrate GIPHY’s GIF and GIF sticker databases.<sup>5</sup> GIPHY currently provides its API integration to Facebook’s services, including the Facebook App, Messenger, Instagram and WhatsApp.<sup>6</sup> GIPHY’s products are offered free of charge to users and companies via APIs globally. Until May 2020, GIPHY generated revenues in the United States by offering brand partners a ‘paid alignment’ service to align their GIFs with popular search terms (so that users see them first when searching for a GIF) or to insert them into GIPHY’s trending feed in exchange for a fee.<sup>7</sup>
39. GIPHY’s total turnover in FY19 was approximately [REDACTED], none of which was generated in the UK.<sup>8</sup>
40. Facebook and GIPHY are together referred to as the **Parties**, and for statements referring to the future, as the **Merged Entity**.

## TRANSACTION

41. On 15 May 2020, Facebook acquired, via its direct wholly owned subsidiary Tabby Acquisition Sub, Inc., all outstanding equity in GIPHY for consideration of approximately USD 315 million in cash. [REDACTED].<sup>9</sup>
42. The Parties informed the CMA that competition authorities in [REDACTED] and [REDACTED] have also opened investigations into the Merger.<sup>10</sup>

## Merger rationale

43. The Parties submitted that Facebook’s rationale for the Merger was as follows:<sup>11</sup>

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<sup>4</sup> An API is an interface that defines interactions between software, enabling applications and tools to interact. GIPHY has also developed a Software Development Kit (**SDK**) that provides tools to third-party host apps to program GIPHY’s library in such a way that its integration is aligned with the style and functionality of the host app’s user interface.

<sup>5</sup> FMN, paragraph 2.4.

<sup>6</sup> FMN, paragraph 2.11.

<sup>7</sup> FMN, paragraphs 2.6 and 12.10.

<sup>8</sup> FMN, paragraph 5.2.

<sup>9</sup> FMN, paragraphs 2.7 and 2.8.

<sup>10</sup> FMN, paragraph 2.15.

<sup>11</sup> FMN, paragraph 2.11.

- (a) To sustain GIPHY – Facebook had concerns about GIPHY’s viability and there was a risk that losing GIPHY before Facebook could develop an alternative source of supply (in addition to Tenor, which already supplies Facebook) would negatively impact user experience across Facebook services;
  - (b) To enhance user experience – by significantly investing in additional GIPHY services and additional integration of GIPHY’s library into Facebook’s services, Facebook wanted to enhance user experience; and
  - (c) To integrate talent – Facebook hoped that the addition of the GIPHY team would accelerate Facebook’s efforts around other creative expression use cases across its services.
44. The Parties submitted that GIPHY’s rationale for the Merger was to continue operations with access to sufficient funding.<sup>12</sup> The CMA considers GIPHY’s ability to continue to generate funding, either through its paid alignments service, or from external investors, in the Counterfactual section below.

## **PROCEDURE**

45. The CMA’s mergers intelligence function identified this transaction as warranting an investigation.<sup>13</sup>
46. The Merger was considered at a Case Review Meeting.<sup>14</sup>

## **JURISDICTION**

### **Enterprises ceasing to be distinct**

47. Each of Facebook and GIPHY is an enterprise. As a result of the Merger, these enterprises have ceased to be distinct.

### **Turnover test**

48. In its most recent financial year (2019), GIPHY generated no turnover in the UK. Accordingly, the Merger does not satisfy the turnover threshold set out in section 23(1)(b)(i) of the Act.

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<sup>12</sup> FMN, paragraphs 2.12-2.14.

<sup>13</sup> See *Mergers: Guidance on the CMA’s jurisdiction and procedure* (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60 (**J&P Guidance**).

<sup>14</sup> **J&P Guidance** from paragraph 7.34.

## Share of supply test

49. Under section 23 of the Act, the share of supply test is satisfied if the merged enterprises both either supply or acquire goods or services of a particular description in the UK, and will, after the merger, supply or acquire 25% or more of those goods or services in the UK as a whole or in a substantial part of it.
50. The CMA has a wide discretion to identify a specific category of goods or services supplied or procured by the merging parties for the purposes of the share of supply test.<sup>15</sup> The J&P Guidance identifies a number of considerations to which the CMA will have regard when describing the relevant category of goods or services.<sup>16</sup> In particular, it notes that:
- (a) The CMA will have regard to any reasonable description of goods or services; and
  - (b) The share of supply test is not an economic assessment of the type used in the CMA's substantive assessment and therefore the group of goods or services to which the test is applied need not amount to a relevant economic market. Therefore, it is not necessary that the description of services for the purposes of the share of supply test aligns with the market definition analysis for the purposes of the substantive assessment.
51. In addition, the CMA has a wide discretion to apply whatever measure (eg value, cost, price, quantity, capacity, number of workers employed), or combination of measures, it considers appropriate to calculate the merging parties' share of supply and to determine whether the 25% threshold is met.<sup>17</sup>
52. The CMA believes that the share of supply test is met on two bases:<sup>18</sup>
- (a) The supply of apps and/or websites that allow UK users to search for GIFs; and
  - (b) The supply of searchable libraries of animated (ie non-static) stickers, provided direct to users in the UK (including both GIF and non-GIF stickers).

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<sup>15</sup> Section 23(8) of the Act.

<sup>16</sup> *J&P Guidance*, paragraph 4.56.

<sup>17</sup> Section 23(5) of the Act.

<sup>18</sup> Whilst it is only necessary for the purposes of establishing jurisdiction for the CMA to find that the share of supply test is met on the basis of one description of goods or services, given that this is a sector that the CMA has not previously examined, the CMA has considered alternative bases.

## ***The Parties' submissions***

### *The supply of apps and/or websites that allow UK users to search for GIFs*

53. The Parties submitted that the Merger does not satisfy the share of supply test within the meaning of section 23 of the Act, because the various strands of Facebook's business do not overlap with the activities of GIPHY.
54. The Parties submitted that the supply of apps and websites that allow UK consumers to search for GIFs was not a reasonable description of services.<sup>19</sup> The Parties submitted that GIPHY is active in the provision of the following services:
- (a) the supply of a searchable library for GIFs to: (1) API partners for use in their apps; and (2) direct to users via its website and app;
  - (b) the supply of creative services (eg GIF creative design and production) to advertisers; and
  - (c) the supply of paid alignment services to brand partners in the United States only.<sup>20</sup>
55. The Parties submitted that Facebook is not active in the provision of any of the same services as GIPHY in the UK and does not have GIF search functionality.<sup>21</sup> Specifically, Facebook is active in the provision of:
- (a) the supply of social media services; and
  - (b) the supply of digital advertising services.<sup>22</sup>
56. In relation to the supply of GIFs in the UK, the Parties submitted that GIPHY's services are merely an input into Facebook's services. When users access GIFs on Facebook's services they are routed directly to GIPHY's content library via its API, and it is therefore GIPHY that is serving the provision of GIFs to Facebook's users. The Parties further submitted that GIPHY provides its API at the upstream level and Facebook integrates that API at the downstream level to provide its users with access to GIPHY's library and that two services cannot be horizontal overlaps while also being vertically linked.<sup>23</sup>

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<sup>19</sup> Parties' response slides to the CMA's Issues Paper, slide 8.

<sup>20</sup> FMN, paragraph 5.6. Although the FMN states that GIPHY is "active in the provision of" the supply of Paid Alignment services, the CMA notes that such supply ceased in May 2020. See paragraph 99.

<sup>21</sup> Parties' response slides to the CMA's Issues Paper, slide 8.

<sup>22</sup> FMN, paragraph 5.8.

<sup>23</sup> FMN, paragraph 5.17(d).

*The supply of searchable libraries of animated (ie non-static) stickers, provided direct to users in the UK (including both GIF and non-GIF stickers)*

57. The Parties submitted that the supply of searchable libraries of animated stickers provided direct to users in the UK is not a reasonable description of goods and services. The Parties submitted that the description excluded all video GIFs and static stickers and included Facebook's stickers despite these only being available on its Facebook and Messenger apps.<sup>24</sup>
58. The Parties submitted that while GIPHY's library includes 'GIF stickers' and Facebook has its own sticker offering available on the Facebook, Messenger and WhatsApp platforms, the content available and functionality provided to users on each Party's offering is substantially different.<sup>25</sup> The Parties submitted that GIPHY's stickers are 'GIF stickers', which are GIF files with at least 20% of the pixels transparent in the first frame, while Facebook's stickers are more akin to emojis or avatars. The Parties submitted that Facebook's sticker offering does not contain GIF stickers.<sup>26</sup>
59. The Parties also submitted that Facebook's sticker offering only contains first-party content, meaning that it is designed in-house by Facebook or commissioned/licensed by Facebook from external creative artists and that its sticker store is limited in size and scope.<sup>27</sup>
60. The Parties also submitted that Facebook's sticker offering cannot be characterised as a library because users cannot save the stickers supplied by Facebook to the local memory of their device and cannot share stickers on other apps.

### ***CMA's analysis***

*The supply of apps and/or websites that allow UK users to search for GIFs*

61. A user who wishes to search for a GIF has several available options:
  - (a) The user can search for the GIF on a GIF provider's own website or app. The user can then share the GIF by copying the image or by using the integrated share functionality of the website or app if available; or

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<sup>24</sup> FMN, Parties' response to Question 32.3(d) and 32.3(e) of RFI 1, page 148.

<sup>25</sup> FMN, Parties' response to Question 32.3 of RFI 1, page 148.

<sup>26</sup> FMN, Parties' response to Question 32.3(a) of RFI 1, page 148.

<sup>27</sup> FMN, Parties' response to Question 32.3(b) and 32.3(c) of RFI 1, page 148.

- (b) The user can search for the GIF through a third party website or app (eg WhatsApp, Messenger, Tinder). The user can then share the GIF directly within that app.
62. Search results can differ depending on whether a particular user searches for a GIF through a GIF provider's own website or app or through a third party. This is because a third party website or app can integrate with a GIF provider in various ways, depending on its preferences and features,<sup>28</sup> with some websites/apps only presenting search results from one GIF provider to users, while others access several GIF libraries for each search. For example, when a user conducts a GIF search on Facebook Messenger, the Messenger server combines GIPHY and Tenor links and presents these to the user by randomly interweaving them.<sup>29</sup> A third party website can also use content caching servers to copy specific GIFs from the website of GIF providers onto its own servers and serve them from there rather than from the GIF provider's servers.<sup>30</sup>
63. Facebook offers its users the ability to search for GIFs on several of its platforms, including Instagram, WhatsApp and Messenger. GIPHY allows users to search for GIFs on its own website and app. Accordingly, the Parties overlap in the supply of apps and/or websites that allow UK users to search for GIFs.
64. As set out in **Table 1** below, on the basis of data provided by the Parties and third parties on the volume of GIF searches by UK users, the Parties have a combined share of supply of [50-60]% with an increment of [0-5]% in the supply of apps and/or websites that allow UK users to search for GIFs.

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<sup>28</sup> Facebook Response to Section 109 Notice of 8 February 2021, paragraph 2.2.

<sup>29</sup> FMN, White Paper on Data Related Theory of Harm, paragraph 9, page 311.

<sup>30</sup> FMN, Executive Summary, paragraph 43.

**Table 1: Estimates of shares in the supply of apps and/or websites that allow UK users to search for GIFs<sup>31</sup>**

Platform	Av. monthly searches (UK, '19)	Share	Notes
Facebook	[X]	[50-60]%	Searches run on FB, IG, WA and Messenger
GIPHY	[X]	[0-5]%	Searches run on GIPHY's website and app
<b>Combined</b>	<b>[X]</b>	<b>[50-60]%</b>	
Tenor	[X]	[0-5]%	Searches run on Tenor's own website and app
Gfycat	[X]	[0-5]%	Searches run on Gfycat's own website and app
Google Images	[X]	[0-5]%	Searches run on Google Images
Apple iMessage	[X]	[0-5]%	Searches run on Apple iMessage
Other platforms integrated with GIPHY, Tenor and/or Gfycat	[X]	[30-40]%	Searches run on other platforms integrated with GIPHY, Tenor and/or Gfycat (excluding Facebook)
<b>Total</b>	<b>[X]</b>	<b>100%</b>	

Source: CMA analysis based on GIPHY and third party data.

65. The Parties submitted that the CMA had underestimated the total supply by failing to include the shares of Google (beyond Google Images).<sup>32</sup>
66. Google web searches are not included in the total average monthly search figures because they return links rather than GIFs. In this context, Google submitted that [X]. Therefore, any searches made via this route would already be included in the total figures.
67. Accordingly, the CMA believes that it is or may be the case that the share of supply test under section 23 of the Act is met in relation to the supply of apps and/or websites that allow UK users to search for GIFs.

*The supply of searchable libraries of animated stickers, provided direct to users in the UK (including both GIF and non-GIF stickers)*

68. The CMA believes that the Parties overlap in the supply of searchable libraries of animated stickers provided direct to users in the UK (including both GIF and non-GIF stickers). GIPHY supplies a library which offers a searchable collection of approximately six million GIF stickers, all of which are

<sup>31</sup> The Parties were not aware of any publicly available sources on the total size of the market. The CMA therefore collected information on search volumes from the Parties, Google, Tenor and Gfycat. The CMA is aware that other providers also allow users to search for GIFs. However, third parties generally considered that Tenor is GIPHY's closest competitor and that Gfycat is one of only a few other competitors. As such, while the CMA cannot exclude that there may be additional searches not captured in this data, it considers that all such searches taken together would be unlikely to materially increase the CMA's market size estimate and in particular would not be of such a size as to reduce Facebook and GIPHY's combined share of supply below 25%.

<sup>32</sup> Parties' response slides to the CMA's Issues Paper, slide 8.



animated. Facebook also has searchable sticker stores available to users of the Facebook and Messenger apps, which offer users the ability to download virtual packs of both static and animated stickers.

69. While the CMA recognises that video GIFs and animated stickers have certain common features, which are taken into account in the competitive assessment below, the CMA considers that there is a distinction between these products such that the supply of searchable libraries of animated stickers constitutes a reasonable description of goods or services for the purposes of the share of supply test. For example, GIPHY differentiates between GIFs and GIF stickers on its website by presenting stickers under a separate menu, and there are also differences in GIPHY's SDK and API operating instructions for partners to gain access to GIFs or GIF stickers.<sup>33</sup> In addition, the Parties' internal documents discuss stickers and GIFs as distinct tools. The CMA also notes that users of some social media platforms appear to use GIF stickers considerably more frequently than video GIFs (eg Instagram's users).<sup>34</sup>
70. In addition, the CMA believes that GIF stickers (as offered by GIPHY) and other types of animated sticker (as offered by Facebook) have sufficient elements of commonality to constitute a reasonable description of goods or services. The CMA notes that although there are technical differences between Facebook's animated stickers and GIPHY's GIF stickers, they both comprise animated images which can be used to convey emotions or actions, and which are distinct from static stickers. In addition, the available evidence suggests they are viewed within a single category of products by the Parties.
71. First, the CMA has seen various internal documents of both Parties which discuss Facebook stickers and GIPHY stickers within the same context.<sup>35</sup> One Facebook document in particular notes that Facebook's sticker inventory would expand from [🔗] to [🔗] stickers as a result of the Merger.<sup>36</sup> A further document which appears to have input from both Parties, suggests that Facebook will present its first party stickers alongside GIPHY API results when users search for stickers on its platforms.<sup>37</sup>
72. Second, the CMA does not consider that having a different source of creation prevents the Parties' animated sticker offerings from falling within the same

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<sup>33</sup> See <https://developers.giphy.com/docs/sdk#content-types>

<sup>34</sup> FMN, figures 9-10 of the Parties' response to Question 37 of RFI 1, page 163 and 164.

<sup>35</sup> See for example, a document named 'Project-Tabby-Rationale.pdf' (2020); a document named 'FB Camera M2 Roadmap - H1 2018.pdf' from April 2018; and see also email chain with the subject: 'Re: [Product Review] Jennifer [every 2 weeks]' (TABBY\_FTC\_000000370.pdf.) from March 2020.

<sup>36</sup> Annex 010.8 - GIF Product Landscape overview. The CMA notes that the library size of each of the Parties is now larger than described in this document (see **Table 2** below).

<sup>37</sup> Document named 'Facebook\_GIPHY Partnership Revision - 12-20-2019.pdf'.

reasonable description of goods or services. As noted above, the Parties' internal documents discuss Facebook stickers and GIPHY stickers within the same context. One Facebook document in particular suggests that Facebook considered its stickers and those provided by GIPHY as substitutable.<sup>38</sup>

73. Third, the CMA considers that the smaller size of Facebook's sticker offering does not prevent it from falling within the same reasonable description of goods or services as GIPHY's sticker offering.
74. Fourth, the CMA considers that the term 'library' reflects a repository of resources that users can select and use within the boundaries of that service. In the CMA's view, the fact that users cannot save Facebook stickers to the local memory of their device does not prevent Facebook's sticker offering from being a library. The CMA also considers that the lack of ability to share Facebook stickers on other platforms is not determinative of whether Facebook operates a sticker library. The CMA considers that a website or app can offer its users a searchable library of content, without necessarily offering users the ability to save content to their local devices or share it on other platforms.
75. Lastly, with regard to the Parties' submissions that Facebook only provides its sticker store to users of its own apps, the CMA believes that a description of goods and services that includes libraries that serve customers on an owned and operated platform, and libraries that serve customers through third party websites or apps, is reasonable.
76. For the reasons outlined above, the CMA believes that Facebook's and GIPHY's sticker offerings fall within the same reasonable description of goods or services for the purposes of the share of supply test.
77. As set out in **Table 2** below, on the basis of data provided by the Parties and third parties, the Parties have a combined share of supply in the provision of searchable libraries of animated stickers provided direct to users in the UK of [80-90]% with an increment of [0-5]%.

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<sup>38</sup> Document named 'Facebook\_GIPHY Partnership Revision - 12-20-2019.pdf'.

**Table 2: Estimates of shares in the supply of searchable, animated sticker libraries provided direct to users in the UK (including both GIF and non-GIF stickers)<sup>39</sup>**

Platform	Searchable, animated sticker library size	Share
Facebook	[REDACTED]	[0-5]%
Messenger <sup>40</sup>	[REDACTED]	[0-5]%
GIPHY	[REDACTED]	[80-90]%
<b>Combined</b>	[REDACTED]	<b>[80-90]%</b>
Tenor	[REDACTED]	[0-5]%
Gfycat	[REDACTED]	[10-20]%
Snap	[REDACTED]	[0-5]%
Viber	[REDACTED]	[0-5]%
<b>Total</b>	[REDACTED]	<b>100%</b>

Source: CMA analysis based on Parties' and third party data.<sup>41</sup>

78. The Parties submitted that the CMA had underestimated the total supply by failing to include the shares of Google, Apple, Bing and WeChat.
79. Google told the CMA that [REDACTED].<sup>42</sup> Microsoft (the operator of Bing) also told the CMA that it did not offer its own animated sticker library.<sup>43</sup>
80. Apple told the CMA that [REDACTED].<sup>44</sup>
81. For these reasons, the CMA does not consider that it has underestimated the total supply by omitting Apple, Google or Bing from its calculation.
82. While the CMA has not received submissions from WeChat on the size of its searchable animated sticker library, no third party referred to WeChat as an alternative to GIPHY. The CMA believes that in light of GIPHY's [80-90]% share of supply, the inclusion of WeChat's library would not reduce Facebook's and GIPHY's combined share of supply below 25%.

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<sup>39</sup> The Parties were not aware of any publicly available sources on the total size of the market. The CMA therefore collected information on sticker library size from the Parties, Tenor, Gfycat, Snap and Viber. The CMA is aware that other providers may also offer searchable animated sticker libraries. However, third parties generally considered that Tenor is GIPHY's closest competitor and that Gfycat is one of only a few other competitors. As such, while the CMA cannot exclude that there may be additional libraries not captured in this data, it considers that all such libraries taken together would be unlikely to materially increase the CMA's market size estimate and in particular would not be of such a size as to reduce Facebook and GIPHY's combined share of supply below 25%.

<sup>40</sup> Messenger is owned by Facebook but is shown separately as it operates a separate sticker library.

<sup>41</sup> The Parties noted that Facebook's sticker library is in constant flux, growing from approximately [REDACTED] units of content in 2019 to over [REDACTED] units of content (including animated and non-animated) across all Facebook platforms by October 2020 – see FMN, Parties' response to Question 11 of RFI 3, page 258.

<sup>42</sup> Email from [REDACTED].

<sup>43</sup> Email from [REDACTED].

<sup>44</sup> Email from [REDACTED].

83. Accordingly, the CMA believes that it is or may be the case that the share of supply test under section 23 of the Act is also met in the supply of searchable libraries of animated stickers provided direct to users in the UK.

### ***Conclusion on jurisdiction***

84. The Merger completed and was made public on 15 May 2020. The four month deadline for a decision under section 24 of the Act is 29 March 2021, following multiple extensions under section 25(2) of the Act.<sup>45</sup>
85. On the basis of the evidence set out above, the CMA believes that it is or may be the case that a relevant merger situation has been created.
86. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 29 January 2021 and the statutory 40 working day deadline for a decision is therefore 25 March 2021.

## **COUNTERFACTUAL**

87. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>46</sup>

### **The Parties' submissions**

88. The Parties submitted that the relevant counterfactual in this case is the pre-merger conditions of competition, taking into account developments which would have resulted from the Coronavirus (COVID-19) pandemic.<sup>47</sup>
89. The Parties submitted that GIPHY had no realistic prospect of transitioning to a profitable business model [X], had it not been acquired by Facebook.<sup>48</sup> On

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<sup>45</sup> The four month period mentioned in section 24 of the Act was extended between 19 June 2020 and 31 December 2020 following the Parties' failures to comply, with or without reasonable excuse, with requirements of notices issued by the CMA under section 109 of the Act.

<sup>46</sup> [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [J&P Guidance](#), Annex D).

<sup>47</sup> FMN, paragraphs 11.1 and 11.5.

<sup>48</sup> FMN, paragraph 11.7 and GIPHY Story in Context submission of 21 December 2020, page 299.

this basis, the Parties submitted that the most likely counterfactual would have been GIPHY's deterioration into a significantly weakened business.<sup>49</sup>

90. The Parties further submitted that it was not realistic that GIPHY would have attracted sufficient external investment to expand its offering. In particular, that:<sup>50</sup>
- (a) GIPHY was operating at a monthly average loss of more than [REDACTED] – it had [REDACTED] months to secure funding of at least [REDACTED] (pre-COVID) or [REDACTED];
  - (b) GIPHY had attracted declining investment, with its final funding round raising [REDACTED];<sup>51</sup>
  - (c) The investment environment was tightening, with COVID having disrupted financial markets and advertising markets, dampening external interest; and
  - (d) [REDACTED].
91. Finally, the Parties also submitted that it is not realistic that an alternative purchaser would have been found, in particular:<sup>52</sup>
- (a) GIPHY began contacting possible bidders in August 2019, [REDACTED] months before it signed a term sheet with Facebook;
  - (b) Throughout this period, Facebook was the only company to express concrete interest and the only company to [REDACTED];
  - (c) Each of the [REDACTED] companies listed by the CMA in its issues letter had expressly declined the M&A opportunity; and
  - (d) Investment bankers' efforts to solicit bids were not evidence of a realistic intent to acquire GIPHY.

## The CMA's analysis

92. The CMA has considered whether it should assess the competitive effects of the Merger against a counterfactual other than the current competitive conditions.

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<sup>49</sup> FMN, paragraph 11.9 and GIPHY Story in Context submission of 21 December 2020, page 299

<sup>50</sup> Parties' response slides to the CMA's Issues Paper, slide 11.

<sup>51</sup> The CMA notes that GIPHY raised [REDACTED] in 2019, compared to [REDACTED] in 2016. FMN, GIPHY Story in Context submission of 21 December 2020, Table 1, page 302.

<sup>52</sup> Parties' response slides to the CMA's Issues Paper, slide 12.

93. In particular, the CMA has considered whether there is a realistic prospect that, absent the Merger:
- (a) pre-merger conditions of competition would have continued, with GIPHY continuing to:
    - (i) generate revenue by supplying (and potentially expanding) its paid alignments offering to customers; and/or
    - (ii) generate funding via external investment; or
  - (b) GIPHY would have been purchased by an alternative purchaser.

### **GIPHY's revenue generation**

#### *The Parties' submissions*

94. GIPHY generated [REDACTED] in paid alignments revenue in 2019. The Parties submitted that these revenue results [REDACTED] called into question GIPHY's ability to scale its monetisation business.<sup>53</sup> [REDACTED].<sup>54</sup> The Parties also submitted that GIPHY's revenue-generating business was uncertain, unproven [REDACTED].<sup>55</sup> Finally, the Parties submitted that GIPHY was operating at a monthly average loss of more than [REDACTED] and [REDACTED].<sup>56</sup>

#### *Internal documents*

95. The CMA has, however, seen several internal documents (including some produced as recently as 2020) which indicate that GIPHY was optimistic about its monetisation options.<sup>57</sup> In particular, these include internal documents which project breakeven profitability in 2022 (and potentially even sooner)<sup>58</sup> and which give estimated revenues of [REDACTED] in 2023.<sup>59</sup> Some internal

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<sup>53</sup> FMN, GIPHY Story in Context submission of 21 December 2020, paragraph 4.5, page 305.

<sup>54</sup> FMN, paragraph 11.4 and GIPHY Story in Context submission of 21 December 2020, paragraph 5.1, page 308.

<sup>55</sup> FMN, GIPHY Story in Context submission of 21 December 2020, paragraphs 2.6, and section 4B, page 301 and page 305.

<sup>56</sup> Parties' response slides to the CMA's Issues Paper, slide 11.

<sup>57</sup> See, for example, the document named 'Project Brief - International Programmatic Ads – 03/20' from March 2020; the document named 'GIPHY Series E Management Presentation v5 - Jan 2020.pdf' from January 2020; the document named '2019.09.30 LRP Scenario.pdf' from September 2019; and the document named 'GIPHY\_DEC10\_2018.pptx' from December 2018.

<sup>58</sup> The document named 'Project Gondola - Illustrative Q&A – 03/20'.

<sup>59</sup> The document named '2.1 Project Gondola\_Financial Overview.pptx' from November 2019.

documents highlight that GIPHY's revenue projections were based on certain assumptions [REDACTED].<sup>60 61</sup>

96. The CMA has not seen evidence in GIPHY's internal documents that GIPHY would have been unable to continue to generate revenue from its paid alignments offering post-Merger, nor that it would have deteriorated into a significantly weakened business. In fact, as set out in more detail in the competitive assessment below (paragraphs 172-175), several GIPHY internal documents prepared for external funding rounds compare GIPHY's growth to that of other successful technology businesses [REDACTED], suggesting that GIPHY considered that it had the potential to grow very rapidly.<sup>62</sup>
97. Overall, Facebook's internal documents seen by the CMA did not discuss GIPHY's monetisation options in much detail. While one Facebook internal document was somewhat sceptical of revenue generation by GIF providers, [REDACTED],<sup>63</sup> others prepared in contemplation of the Merger noted GIPHY's monetisation as a possible upside to the Merger.<sup>64</sup>

#### *GIPHY's growth to date*

98. [REDACTED], the CMA notes that it had successfully grown its revenue significantly since its paid alignments pilot testing was launched in 2017: GIPHY generated [REDACTED] in annual revenue in 2017; this increased to [REDACTED] in 2018 and [REDACTED] in 2019.<sup>65</sup> The CMA also notes that GIPHY's ability to generate external funding (as discussed in further detail below) may be an indicator of expected future revenue generation on the part of investors. Overall, the CMA has not seen evidence that, absent the Merger, GIPHY would have deteriorated into a significantly weakened business. On the contrary, GIPHY's business appeared to be growing rapidly, with GIPHY's total API/SDK GIF searches in the UK increasing from [REDACTED] in 2018 to [REDACTED] in 2019.<sup>66</sup> Finally, the CMA notes

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<sup>60</sup> Revenue share agreements allowed GIPHY to run paid alignment advertising on inventory from integration partners.

<sup>61</sup> FMN, GIPHY Story in Context submission of 21 December 2020, paragraph 4.15, page 307. GIPHY Q1 2020 Board Deck, slide 26.

<sup>62</sup> See for example the document named 'GIPHY\_DEC10\_2018.pptx' (December 2018); the document named 'GIPHY\_Series E\_DRAFT15.pptx' (2017); and the document named 'GIPHY ONE PAGER SEP 2018 - V1.pptx' (September 2018).

<sup>63</sup> Annex 010.8 - GIF Product Landscape overview – 2020. See also, email chain from 3 March 2020 with the subject RE: A/C Priv: Giphy proposals (TABBY\_FTC\_000000032.pdf).

<sup>64</sup> See for example, the document named 'Project Tabby XFN Kickoff\_updated\_VS.pptx'; the document named 'Annex 010.5 - Request for Approval'; document named 'Annex 010.6 - Project Tabby kickoff'; Document named 'Annex 010.9- Project Tabby Value Analysis'; and a document with the ID TABBY\_FTC\_000000241.pdf.

<sup>65</sup> FMN, GIPHY Story in Context submission of 21 December 2020, paragraphs 4.3-4.5, pages 304-305.

<sup>66</sup> Annex 027\_Q56 of the FMN.

that it is common for technology businesses to take time to become profitable due to the need to build a sufficient user base prior to effective monetisation.<sup>67</sup>

99. The CMA also notes that while GIPHY shut down its revenue generating business in 2020, the Parties' internal documents show that this was as a result of the Merger and was a decision primarily led by Facebook, not GIPHY.<sup>68</sup> Although the evidence from third party alignment customers of GIPHY was mixed on the effectiveness of GIFs as an advertising channel, one considered that GIFs were growing rapidly in importance to advertisers and that it would have been interested in expanding its advertising with GIPHY.<sup>69</sup>
100. In relation to the impact of the Coronavirus (COVID-19) pandemic, the CMA's guidance is clear that a 'merger control investigation typically looks beyond the short-term and considers what lasting structural impacts a merger might have on the markets at issue. Even significant short-term industry-wide economic shocks may not be sufficient, in themselves, to override competition concerns that a permanent structural change in the market brought about by a merger could raise'.<sup>70</sup> The CMA has not seen evidence that the impact of Coronavirus (COVID-19) would have a long-term, structural impact, on GIPHY's ability to generate revenue.

#### *Conclusion on GIPHY's revenue generation*

101. On the basis of the evidence set out above, the CMA believes that there is a realistic prospect that GIPHY would have continued to generate revenue via its paid alignments revenue stream, as it had pre-Merger, and that this revenue stream may have continued to grow, absent the Merger.

#### **External fundraising**

##### *The Parties' submissions*

102. The Parties submitted that, absent the Merger, it is possible that GIPHY may have secured limited funding from investors, which would have been sufficient

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<sup>67</sup> For example, the CMA understands that Snap has grown its user base and revenue over the past five years but has not yet achieved profitability: see [Snap Inc. 2020 Annual Report](#), pages 43 and 47. Similarly, the CMA understands that Slack has experienced rapid growth but has consistently incurred significant net losses since its public launch in 2014. See its Annual Report for the period ended 31 January 2021: [Slack Technologies - Financials - SEC Filings Details \(slackhq.com\)](#), pages 20 and 70.

<sup>68</sup> See, for example, the document named 'Re: Tabby Comms Plan Sync.msg' from 13 May 2020; the document named 'LT 05 26 20 Compiled - USE.pptx' from May 2020; Internal communication, 11 March 2020 (Message summary [{"otherUserFbld":100032566629051,"threadFbld":null}].msg); Project tabby – Deal Update - May 2020 (TABBY\_FTC\_000000245.pdf); and the document named 'M&A deal for Instagram (Project Tabby), April 2020'.

<sup>69</sup> Note of call with [REDACTED].

<sup>70</sup> [Merger assessments during the coronavirus \(COVID-19\) pandemic](#), 22 April 2020.



to ensure its survival. [REDACTED].<sup>71</sup> <sup>72</sup> The Parties noted in particular that GIPHY was currently operating at a loss of more than [REDACTED] and had [REDACTED] months to secure funding or [REDACTED].<sup>73</sup>

103. The Parties also submitted that GIPHY had struggled to prove its monetisation model, and had come close to a [REDACTED],<sup>74</sup> [REDACTED].<sup>75</sup> In 2019, GIPHY successfully secured investment in an extension of its Series D funding from late 2016, [REDACTED].<sup>76</sup> During the Issues Meeting, Alex Chung (CEO of GIPHY) told the CMA that although facing significant practical difficulties (see paragraph 171) below), the prospect that GIPHY might successfully monetise the messaging space formed a key part of their pitch to investors.

#### *Internal documents and third party evidence*

104. GIPHY's internal documents show the potential for minority investments from strategic partners to lead to a later acquisition. One GIPHY internal document from 2020 mentions possible strategic partners including [REDACTED].<sup>77</sup> Another GIPHY internal document from 2020, prepared by GIPHY's investment bankers, JPMorgan, sets out a list of target investors for a GIPHY fundraising.<sup>78</sup> Over 60 possible investors are listed with a mixture of private equity, family office and sovereign wealth fund/pension plan backgrounds. One internal document prepared [REDACTED] in September 2019 is also optimistic about GIPHY's options for a capital raise, suggesting that [REDACTED].<sup>79</sup> The CMA has not seen evidence in GIPHY's internal documents that GIPHY was concerned about the possibility of obtaining external investment in future.
105. Facebook's internal documents suggest that [REDACTED].<sup>80</sup>
106. JPMorgan also confirmed that, to the best of its knowledge, GIPHY had [REDACTED].<sup>81</sup>

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<sup>71</sup> FMN, paragraphs 11.6-11.7.

<sup>72</sup> Parties' response slides to the CMA's Issues Paper, slide 11.

<sup>73</sup> Parties' response slides to the CMA's Issues Paper, slide 11.

<sup>74</sup> [REDACTED] (FMN, GIPHY Story in Context submission of 21 December 2020, paragraph 2.3, page 300).

<sup>75</sup> FMN, GIPHY Story in Context submission of 21 December 2020, paragraphs 2.3 and section 3, page 300 and 302-304

<sup>76</sup> Parties' response slides to the CMA's Issues Paper, slide 11. GIPHY Story in Context submission of 21 December 2020, paragraph 3.5. The CMA notes that GIPHY raises [REDACTED] in 2019, compared to [REDACTED] in 2016.

<sup>77</sup> Annex 011.3 - Giphy - BM - 03.29.2020, slide 6.

<sup>78</sup> Annex 011.2 - GIPHY - BM - 02.14.2020 (GIPHY Discussion Materials). See also the document called 'Project Gondola\_JPM Process Update\_2019.11.14.pdf' from November 2019, slide 6 & 7; and the document named 'GIPHY\_DEC10\_2018.pptx' from December 2018.

<sup>79</sup> Document named 'GIPHY Process Considerations', Allen & Company, 20 September 2019.

<sup>80</sup> See for example: Annex 010.11 - Re Giphy Proposals.pdf; the document with the ID TABBY\_FTC\_00000031.pdf; Internal Communication, 8 March 2020 (Re: REQUEST FOR APPROVAL: M&A PROJECT TABBY.msg); Internal Communication, 11 March 2020 (Re: A/C Priv: Giphy Proposals).

<sup>81</sup> Email from JPMorgan on 19 March 2021.

## *Conclusions on external funding*

107. On the basis of the evidence set out above, the CMA believes that there is a realistic prospect that GIPHY would have continued to generate external funding absent the Merger, as it had pre-Merger, whether through financial investment or minority strategic investment.

## **Alternative purchasers**

### *The Parties' submissions*

108. The Parties submitted that it was not realistic that GIPHY would have been purchased by an alternative purchaser and that while historically GIPHY had evaluated opportunities for M&A (including acquisition by a third party),<sup>82</sup> there were no credible alternative purchasers to Facebook, as [REDACTED].<sup>83</sup> The Parties also noted that GIPHY had begun contacting potential bidders [REDACTED] months prior to signing a term sheet with Facebook, but Facebook had been the only company to [REDACTED].<sup>84</sup>

### *Internal documents*

109. GIPHY's internal documents describe [REDACTED] companies as having expressed an interest in GIPHY [REDACTED].<sup>85</sup> The Parties submitted that all of these other potential bidders had [REDACTED].<sup>86</sup> However, while the CMA asked the Parties to provide evidence of potential bidders [REDACTED], the CMA has seen no internal documents which record that these other potential bidders had [REDACTED]. In the Issues Meeting, the Parties submitted that one internal document did record that potential bidders had [REDACTED].<sup>87</sup> The CMA has reviewed this document and notes that, whilst the title of one slide is 'historical buyer outreach / engagement', it is not clear from this document that any of the companies listed had [REDACTED]. In fact, [REDACTED] of the companies listed are noted as having expressed an interest, and the document also refers to one potential bidder [REDACTED] having an open 'right of first negotiation'. Having been asked by the CMA whether it had any written records of bidders declining, the Parties also submitted that generally

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<sup>82</sup> FMN, paragraph 11.5.

<sup>83</sup> FMN, Parties' response to Question 21(b) of RFI 3, page 266. GIPHY Story in Context submission of 21 December 2020, paragraph 5.2.

<sup>84</sup> Parties' response slides to the CMA's Issues Paper, slide 12.

<sup>85</sup> Annex 011.4 of the FMN - Giphy - BM - 04.04.2020, slide 4. These [REDACTED] companies were listed as [REDACTED]. See also the document named 'Project Gondola JPM Process Update', 14 November 2019; the document with the ID TABBY\_FTC\_GIPHY\_00001224, 15 November 2019; and the document with the ID TABBY\_FTC\_GIPHY\_00001225, 25 November 2019.

<sup>86</sup> Parties' response slides to the CMA's Issues Paper, slide 12.

<sup>87</sup> Issues Meeting, 3 March 2021. Document named 'Annex 011.4 – Giphy – BM – 04.04.2020.pdf'.

declining by potential bidders was not recorded in documents, but was communicated by the investment bankers to GIPHY orally.<sup>88</sup>

110. A further GIPHY internal document describes [REDACTED] as 'potential interlopers' in the negotiations between GIPHY and Facebook.<sup>89</sup>
111. Several Facebook internal documents suggest that the acquisition of GIPHY was in part to prevent an acquisition by one of Facebook's rivals [REDACTED], indicating that Facebook considered an alternative purchaser of GIPHY to be a credible prospect, for example:
  - (a) One document describes a benefit of acquiring GIPHY being to [REDACTED];<sup>90</sup>
  - (b) Another document notes that while a partnership with GIPHY would address some concerns, Facebook would [REDACTED];<sup>91</sup>
  - (c) An internal chat noted that [REDACTED];<sup>92</sup>
  - (d) Another internal chat comments [REDACTED];<sup>93</sup> and
  - (e) An internal email describes [REDACTED].<sup>94</sup>

#### *Third party evidence*

112. JPMorgan (GIPHY's investment banker) told the CMA [REDACTED].<sup>95</sup>
113. JPMorgan also told the CMA that [REDACTED].<sup>96</sup> The CMA therefore considers that, absent the Merger, it is realistic that some of these potential purchasers may have continued to progress in the sales process.
114. A third party also informed the CMA that it had approached GIPHY as a potential purchaser, [REDACTED].<sup>97</sup>

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<sup>88</sup> Issues Meeting, 3 March 2021.

<sup>89</sup> Annex 011.3 - Giphy - BM - 03.29.2020, slide 5.

<sup>90</sup> Annex 010.11 - Re GIPHY proposals.

<sup>91</sup> Annex 010.8 - GIF Product Landscape overview.

<sup>92</sup> The document with the ID TABBY\_FTC\_000000042.

<sup>93</sup> The document with the ID TABBY\_FTC\_000000234.

<sup>94</sup> The document with the ID TABBY\_FTC\_000000237.pdf.

<sup>95</sup> Email from JPMorgan on 19 March 2021.

<sup>96</sup> Email from JPMorgan on 19 March 2021.

<sup>97</sup> Note of call with [REDACTED].

### *Conclusion on alternative purchasers*

115. On the basis of the evidence set out above, the CMA believes that there is a realistic prospect that GIPHY would have been purchased by an alternative purchaser absent the Merger.

### *Conclusion on the counterfactual*

116. On the basis of the evidence set out above, the CMA believes that there is a realistic prospect that, absent the Merger, GIPHY would either (i) have continued to operate independently, as it had pre-Merger, generating revenue through activities such as paid alignment contracts and pursuing additional funding via external investment; or, alternatively (ii) have been purchased by an alternative purchaser, possibly another social media platform. The CMA believes that both of the scenarios set out above are realistic.
117. For the purposes of a Phase 1 investigation, the CMA will consider whether there is a realistic prospect of a counterfactual that is more competitive than the pre-Merger conditions.<sup>98</sup> To the extent that the alternative counterfactual scenario described above (namely GIPHY being acquired by an alternative purchaser) is considered more competitive than the pre-Merger conditions, this will be discussed in the competitive assessment section of this Decision.

## **FRAME OF REFERENCE**

118. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.<sup>99</sup>

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<sup>98</sup> [Merger Assessment Guidelines](#), paragraph 4.3.5.

<sup>99</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

## Product scope

### *The Parties' submissions*

119. The Parties submitted that the relevant narrowest plausible product frames of reference are:<sup>100</sup>
- (a) For GIPHY's activities, the supply of a searchable GIF library via an API to third parties.
  - (b) For Facebook's activities:
    - (i) The supply of social media to users; and
    - (ii) The supply of digital advertising services.
120. The Parties also submitted that:<sup>101</sup>
- (a) GIPHY is also constrained by providers of other types of content aimed at driving user engagement on social media (eg videos, music, micro-games, animations, emojis, animojis, memes, etc), which should be included in the relevant frame of reference;
  - (b) Facebook competes with many different offerings to attract and retain users' interest beyond social media; and
  - (c) All types of advertising (both online and offline) compete to increase sales and profits for advertisers, and should be included under the same relevant frame of reference.

### **CMA's assessment**

#### *The supply of searchable GIF libraries*

121. When considering the relevant frame of reference in horizontal mergers, the CMA will include at least the substitute products of the merger firms. In non-horizontal mergers, the CMA will include at least one of the products of the merger firms.<sup>102</sup>
122. As noted above, GIPHY supplies a library of GIFs and GIF stickers. Facebook also supplies searchable sticker stores available to users of the Facebook and Messenger apps, containing packs of both static and animated stickers. As

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<sup>100</sup> FMN, paragraph 13.3.

<sup>101</sup> FMN, paragraphs 13.4-13.21.

<sup>102</sup> [Merger Assessment Guidelines](#), paragraph 5.2.11.

discussed at paragraph 68 above, for the purposes of the share of supply test the CMA considers that the Parties overlap in the supply of searchable libraries of animated stickers provided direct to users in the UK (including both GIF and non-GIF stickers).

123. However, noting that the share of supply test is not an economic assessment and the ‘reasonable description’ of goods or services to which that test is applied need not amount to a relevant economic market, the CMA has considered:
- (a) Whether video GIFs and GIF stickers should be considered within the same product frame of reference;
  - (b) Whether GIF stickers should be considered within the same product frame of reference as other forms of sticker; and
  - (c) Whether the product frame of reference should be widened to include other types of content aimed at driving user engagement on social media.

*Video GIFs and GIF stickers*

124. On the demand side, the Parties submitted that:
- (a) GIF stickers are commonly used as a content enhancement feature (eg as an overlay to an Instagram or Snapchat story), while video GIFs are more often used on a standalone basis;<sup>103</sup>
  - (b) GIF stickers are not always offered as built-in features by social media platforms;<sup>104</sup> and
  - (c) Some social media platform users appear to use GIF stickers considerably more often than GIFs (eg Instagram’s users).<sup>105</sup>
125. However, on the supply side, the CMA found that GIPHY, Tenor and Gfycat (the three largest GIF platforms) all supply both video GIFs and GIF stickers.
126. On the basis of these supply-side characteristics, the CMA has included video GIFs and GIF stickers (together, GIFs) within the same frame of reference, and has considered any relevant differences in the competitive assessment.

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<sup>103</sup> FMN, Parties’ response to Question 27 of RFI 1, page 140

<sup>104</sup> FMN, Parties’ response to Question 27 of RFI 1, footnote 73, page 140

<sup>105</sup> FMN, figures 9-10 of the Parties’ response to Question 37 of RFI 1, page 163 and 164.

### *GIF stickers and other forms of sticker*

127. As discussed at paragraph 70 above, the CMA believes that GIF stickers (as offered by GIPHY) and other types of animated sticker (as offered by Facebook) have sufficient elements of commonality to constitute a reasonable description of goods or services. However, the CMA believes that non-GIF stickers are sufficiently differentiated from GIF stickers to fall outside of the relevant economic frame of reference for the substantive assessment.
128. The Parties submitted that there are substantial differences between GIF stickers and other forms of sticker, including Facebook's sticker offering, in that GIF stickers are GIF files with at least 20% of the pixels transparent in the first frame, and are different in nature and serve different purposes than Facebook's stickers, which are more akin to emojis or avatars.<sup>106</sup>
129. Some GIPHY API/SDK partners submitted that other content types (including stickers) could be potential alternatives to GIFs in certain contexts.<sup>107</sup> However, other GIPHY partners submitted that they do not consider GIFs (including GIF stickers) to be substitutable with other content types.<sup>108</sup>
130. On the supply-side, the CMA notes that non-GIF stickers are supplied by different suppliers to those that supply GIFs (and GIF stickers).<sup>109</sup>
131. For these reasons, the CMA did not include non-GIF stickers in the product frame of reference.

### *Other content*

132. The CMA recognises that some other types of content aimed at driving user engagement on social media (eg emojis, animojis, etc) are used as a way to express emotions or reactions, and as such could be seen as substitutes for GIFs by some users in some contexts (as noted by some third parties – see paragraph 132(d) below). However, the CMA's investigation found that GIFs have characteristics that do not make them easily substitutable with other content aimed at driving user engagement on social media. In particular, the CMA's investigation found that:

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<sup>106</sup> FMN, Parties' response to Question 32.3 of RFI 3, page 148.

<sup>107</sup> Third party responses to the CMA's market testing.

<sup>108</sup> Ibid.

<sup>109</sup> As noted above, GIPHY, Tenor and Gfycat (the three largest GIF platforms) all supply both video GIFs and GIF stickers. Non-GIF stickers appear to be more often supplied by the social media platform itself, for example, Facebook, Snap and Viber.

- (a) GIFs have some unique characteristics that differentiate them from other content types. In particular:
- (i) GIFs are short, looping, soundless videos, often including a caption;
  - (ii) GIFs often demonstrate an understanding of popular culture (with many being clips from TV shows, movies, sport events, etc); and
  - (iii) GIFs allow users a wider scope to express themselves compared with other content types (for example, emojis normally include only a facial expression, object or symbol).
- (b) An important part of the rationale of the Merger (as submitted by the Parties) is to sustain GIPHY and avoid a reduction in revenues that Facebook would incur if it lost access to GIFs (see paragraph 203 below). This suggests that GIFs are an important input that is not easily substitutable with other content for Facebook.
- (c) The CMA did not find any internal document suggesting that GIPHY considers other content types as competitive constraints – in contrast, other GIF providers (in particular Tenor) are mentioned in the documents.
- (d) Some GIPHY API/SDK partners submitted that other content types (emojis, avatars, memes, etc) could be potential alternatives to GIFs at least in certain contexts. However, other GIPHY partners submitted that they do not consider GIFs to be substitutable with other content types (including for some of the reasons listed in paragraph 132(a) above).<sup>110</sup>

133. For these reasons, the CMA did not include other types of content aimed at driving user engagement on social media in the product frame of reference.

### *Social media*

134. As noted in paragraph 120(b) above, the Parties submitted that Facebook competes with any firm that attracts user time away from Facebook, and not only with social media platforms, on the basis that users multi-home across a range of services and that it is therefore straightforward for users to switch their time between services.<sup>111</sup> The CMA has considered whether the frame of reference for supply of social media to users should include other types of offerings to attract and retain users' interest.

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<sup>110</sup> Third party responses to the CMA's market testing.

<sup>111</sup> FMN, paragraph 13.16.



135. The CMA most recently examined the market for social media in the July 2020 Market Study into online platforms and digital advertising. The Parties submitted that Facebook strongly disagrees with the conclusions of the Market Study.<sup>112</sup> In the Market Study, social media platforms were described as follows:<sup>113</sup>

‘Social media platforms facilitate interaction between their users, allowing them to communicate with each other, and share and discover engaging content. Social media platforms are generally available through a mobile app, with some also available via a web browser ... Features commonly provided by social media platforms include: user profiles or accounts; user ‘friends’ or connections; a personalised ‘feed’ of news or other content; content sharing features; comments; private messaging features; and likes or ‘reactions’.’

136. The Market Study found that there is some differentiation within social media,<sup>114</sup> with some social media platforms focusing more closely on content sharing and the provision of a personalised ‘feed’ of content, and others focusing mainly on messaging. The CMA believes that a broad definition of social media (including a range of online platforms that allow consumers to interact with each other and with engaging content, as set out in the Market Study) is appropriate in this case, as the Parties have submitted that Facebook considers a broad range of platforms to be rivals,<sup>115</sup> and a range of these social media providers are currently or have been integration partners of GIPHY.<sup>116</sup> The CMA also considers that messaging is an important feature of social media platforms<sup>117</sup> and that Facebook offers the full breadth of social media features across its platforms.<sup>118</sup>

137. In the Market Study, the CMA also found that, in a broad sense, a range of different online and offline providers that serve different consumer needs are all seeking to capture user attention. However, the CMA found that the strongest competitive constraints on Facebook are imposed by providers that are close substitutes, and that providers in other sectors are unlikely to provide a strong constraint on Facebook in relation to social media.<sup>119</sup>

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<sup>112</sup> Parties' response slides to the CMA's Issues Paper, slide 13.

<sup>113</sup> [Market Study's final report \(Final Report\)](#), paragraphs 2.30-2.31.

<sup>114</sup> Final Report, paragraph 3.155.

<sup>115</sup> FMN, paragraph 13.11.

<sup>116</sup> FMN, paragraphs 2.3-2.4.

<sup>117</sup> Demonstrated by the Final Report, Table 3.1: Social media platforms' functionalities, in which every social media platform included was shown to offer messaging features.

<sup>118</sup> FMN, paragraphs 2.1-2.2.

<sup>119</sup> Final Report, paragraphs 3.198-3.201.

138. Based on the available evidence, and consistent with the approach adopted in the Market Study, the CMA has assessed the effects of the Merger in the supply of social media.

### *Digital advertising*

#### *Search and display advertising*

139. As noted in paragraph 120(c) above, the Parties submitted that all types of digital advertising should be included in the same product frame of reference. The CMA recently examined digital advertising markets in the Market Study. The Parties submitted that Facebook strongly disagrees with the conclusions of the Market Study.<sup>120</sup>
140. The Market Study found that search and display advertising<sup>121</sup> serve distinct purposes, with only limited substitutability between them.<sup>122</sup> In particular, the Market Study found that there are important differences between search and display in that search advertising is targeted in response to intent while display is targeted to specific audiences; in addition, search advertising is unlikely to be a viable alternative for those advertisers targeting brand awareness.<sup>123</sup> Facebook is mainly active in display advertising.<sup>124</sup>
141. The CMA has not seen any evidence that undermines the findings of the Market Study in relation to the distinction between search and display advertising. The particular form of advertising offered by GIPHY is considered in the competitive assessment below.
142. Based on the available evidence in this case, and in line with the findings of the Market Study, the CMA has assessed the effects of the Merger in the supply of display advertising as distinct from search advertising, but it has taken into account the constraint imposed by digital advertising more broadly in the competitive assessment.

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<sup>120</sup> Parties' response slides to the CMA's Issues Paper, slide 13.

<sup>121</sup> Search advertising is where advertisers pay online companies to link their company website to a specific search word or phrase so that it appears in relevant search engine results. Display advertising is where advertisers pay online companies to display advertising using a range of advertising content types shown within defined ad units on web pages or mobile apps. See paragraph 5.6 of the Final Report.

<sup>122</sup> Final Report, paragraph 5.370.

<sup>123</sup> Final Report, paragraph 5.149.

<sup>124</sup> Final Report, paragraph 5.131.

### *Offline advertising*

143. As noted in paragraph 120(c) above, the Parties submitted that offline and online advertising should be included in the same product frame of reference.
144. However, in the Market Study the CMA found that there is limited substitutability between digital advertising and traditional advertising media. In particular, the CMA found that the ability of advertisers to use data to target specific audiences through digital (or online) advertising substantially distinguishes digital from traditional advertising media, and advertisers may treat offline and online advertising as complementary channels within their campaigns to achieve certain objectives, rather than substitutes.<sup>125</sup>
145. The CMA has not seen any evidence that undermines the findings of the Market Study in relation to the distinction between online and offline advertising.
146. Based on the available evidence in this case, and in line with the findings of the Market Study, the CMA believes that offline advertising should not be included in the frame of reference.

### **Conclusion on product scope**

147. For the reasons set out above, the CMA has considered the impact of the Merger in the following product frames of reference:
- The supply of searchable GIF libraries;
  - The supply of social media; and
  - The supply of display advertising.

### **Geographic scope**

148. The Parties submitted that their services are available on a global basis, with the exception of GIPHY's creative and paid alignment services (which were only available in the United States). The Parties also submitted that on the advertising side of their services, some demand is likely to be national.<sup>126</sup>
149. In relation to the supply of searchable GIF libraries, the CMA's investigation found that GIPHY's GIFs are generally available to users throughout the

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<sup>125</sup> Final Report, paragraph 5.23.

<sup>126</sup> FMN, paragraphs 13.22-13.23.

world, as are the GIFs provided by GIPHY's competitors (eg Tenor and Gfycat).

150. In relation to social media, the CMA found that Facebook and its competitors' services are generally available to users throughout the world. Moreover, in [Facebook/Instagram](#), the OFT found that the relevant frame of reference for the provision of social networking to users was likely to be international,<sup>127</sup> and, in [Facebook/WhatsApp](#), the European Commission concluded that the geographic scope for the market for social networking services was at least EEA-wide, if not worldwide.<sup>128</sup>
151. In relation to display advertising, advertisers are often interested in targeting users with particular characteristics, including (among others) their location, language and culture.<sup>129</sup> For example, businesses advertising on Facebook can decide the country, city or community where to run their advertising campaigns.<sup>130</sup> In [Facebook/Instagram](#), the OFT found that the provision of display advertising is likely to be national.<sup>131</sup> Moreover, in [Facebook/WhatsApp](#), the European Commission concluded that the online advertising market and its sub-segments (including the display advertising market) should be defined as national in scope or alongside linguistic borders.<sup>132</sup>
152. For the reasons set out above, and in line with the approach adopted in previous cases, the CMA has considered the impact of the Merger in the following geographic frames of reference:
- Worldwide in relation to the supply of searchable GIF libraries;
  - Worldwide in relation to the supply of social media; and
  - UK-wide in relation to the supply of display advertising.

## Conclusion on frame of reference

153. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- The supply of searchable GIF libraries worldwide;

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<sup>127</sup> [Facebook/Instagram](#), paragraph 13.

<sup>128</sup> [Facebook/WhatsApp](#), paragraph 68.

<sup>129</sup> [Facebook/Instagram](#), paragraph 11.

<sup>130</sup> [Facebook advertising targeting options | Facebook for Business](#).

<sup>131</sup> [Facebook/Instagram](#), paragraph 13.

<sup>132</sup> [Facebook/WhatsApp](#), paragraph 83. See also, the Final Report, including Appendix N: understanding advertiser demand for digital advertising.

- The supply of social media worldwide; and
- The supply of display advertising in the UK.

## COMPETITIVE ASSESSMENT

### Market Study evidence

154. In July 2020, the CMA published the final report in its Market Study into online platforms and digital advertising. The CMA considers that certain evidence and findings of the Market Study are relevant to each of the theories of harm described further below.
155. In the Market Study, the CMA found that Facebook has significant and enduring market power in social media.<sup>133</sup> In particular, the Market Study found that the competitive threat to Facebook from the entry and expansion of other platforms is limited by several self-reinforcing barriers, including same-side network effects,<sup>134</sup> cross-side network effects,<sup>135</sup> and the breadth of the Facebook ‘family’ of apps insulating Facebook from competitive pressure and restrictions on the interoperability of other social media platforms with Facebook’s services.<sup>136</sup>
156. The Market Study also found that Facebook’s market power in social media is likely to have several negative impacts for consumers. First, Facebook has weaker incentives to innovate. Second, Facebook can extract more consumer data or worsen the terms that it offers consumers for this data. Third, consumers are harmed indirectly through higher prices for other goods and services if Facebook is able to use its market power over consumers to raise the prices it charges providers of other goods and services for display advertising.<sup>137</sup>

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<sup>133</sup> Final Report, paragraph 3.250.

<sup>134</sup> Social media platforms, particularly those focusing on communication, become more valuable to consumers if other consumers with whom they want to interact join the platform.

<sup>135</sup> The value of a social media platform to its users may also depend on the number of customers active on another ‘side’ of the platform.

<sup>136</sup> Final Report, paragraphs 3.252-3.256.

<sup>137</sup> Final Report, paragraph 3.257.

### **Box 1: Audience and shares of supply in social media**

The Market Study found that:<sup>138</sup>

- Facebook had an audience of over 43 million users in the UK, accounting for 84% of the British online population; and
- Facebook (including Facebook, Instagram and WhatsApp) had a share of 73% of time spent on social media as of February 2020, with the next-greatest share held by Snap, which had only 11% of time spent (YouTube was excluded due to its differentiated offering).

157. In the Market Study, the CMA also found that Facebook has significant market power in display advertising. In particular, Facebook is by far the largest supplier of display advertising, and it is viewed as a 'must have' by many advertisers because of its reach and extensive data on users. Facebook faces limited constraints from other display advertising platforms and other forms of advertising, and display advertising is subject to significant barriers to entry that further limit the actual or potential competitive constraint faced by Facebook.<sup>139</sup>

158. The CMA also found in the Market Study that Facebook has been able to exploit its market power to earn significantly higher revenues per user than its competitors. Moreover, there is likely to be a substantial long-run impact on consumers and advertisers from a loss of innovation.<sup>140</sup>

### **Box 2: Shares of supply in display advertising**

In the Market Study, the CMA found that Facebook (including Instagram) was by far the largest supplier, with a share of [50-60]% of online display advertising expenditure in 2019. The second largest supplier was YouTube, which was much smaller with a [5-10]% share.<sup>141</sup>

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<sup>138</sup> Final Report, paragraphs 3.166-3.171.

<sup>139</sup> Final Report, paragraph 5.373.

<sup>140</sup> Ibid.

<sup>141</sup> Final Report, paragraph 5.131.

### **Box 3: Facebook's data advantage**

In the Market Study, the CMA found that a contributing factor to Facebook's market power in display advertising is the significant data advantage Facebook has over smaller platforms and publishers. This data advantage both increases the value of Facebook's advertising inventory and creates barriers for its competitors to overcome.<sup>142</sup> The inability of smaller platforms and publishers to access equivalent data reduces their ability to compete on a level playing field and realise the full value of their advertising inventory.<sup>143</sup>

In particular, Facebook has a very large audience with over 43 million unique monthly active users in the UK, from which it collects very granular user data.<sup>144</sup> Facebook can infer users' likely demographic attributes, preferences and behaviours from their interactions on its leading social media platforms, but also from their friends' and families' interactions. This enables Facebook to collect a greater quantity and variety of high-quality data that is useful to obtain insight on its audiences and to target advertising.<sup>145</sup>

Moreover, the reach of Facebook tools on third party sites and apps is extensive and far greater than that of other platforms – this data is used to provide precise targeting capabilities and attribution services to advertisers.<sup>146</sup>

159. Facebook submitted that it strongly disagrees with the conclusions of the Market Study<sup>147</sup> and submitted that Facebook does not have market power in any downstream market. Facebook submitted that it has a moderate share of supply of [30-40]% in social media and a share of only [10-20]% in the digital advertising market in the UK (and a much lower share of all advertising in the UK).<sup>148</sup>
160. However, on the basis of the breadth of the evidence considered and the recency of the Market Study, the CMA believes that the evidence and findings of the Market Study are relevant for the competitive assessment of the Merger.
161. Given the Market Study findings set out above, the CMA believes that any reduction in competitive constraints must be considered in the context of Facebook's existing significant market power in social media and display advertising. In this context, the CMA's concern about any given level of

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<sup>142</sup> Final Report, page 211.

<sup>143</sup> Final Report, paragraph 5.165.

<sup>144</sup> Final Report, Appendix F.

<sup>145</sup> Final Report, paragraph 5.308.

<sup>146</sup> Final Report, Appendix F.

<sup>147</sup> Parties' response slides to the CMA's Issues Paper, slide 13.

<sup>148</sup> FMN, paragraph 19.28.

constraint on Facebook removed or reduced by the Merger may be greater than in a scenario where Facebook did not have such market power.<sup>149</sup>

## Theories of harm

162. The CMA focused its assessment on the following theories of harm:

- (a) TOH1: Loss of potential competition in display advertising;
- (b) TOH2: Vertical effects through the foreclosure of rival social media platforms;
- (c) TOH3: Raising barriers to entry and expansion by increasing Facebook's data advantage in display advertising; and
- (d) TOH4: Loss of potential competition in the supply of searchable GIF libraries.

### ***TOH1: Loss of potential competition in display advertising***

163. The CMA has considered whether the Merger may lead to a loss of potential competition in display advertising.<sup>150</sup> The concern under this theory of harm is that the Merger may (i) reduce GIPHY's incentives to continue with ongoing efforts towards expansion, and/or (ii) lessen future competition between Facebook and GIPHY. Both of these effects could cause competitive harm in display advertising.<sup>151</sup> Given the evidence of Facebook having existing significant market power in display advertising (see paragraphs 157-158 above), any loss of potential competition may give rise to greater concerns than in a scenario where Facebook did not have such market power.

164. The CMA has considered:

- (a) Whether GIPHY had plans, or was already making significant efforts, to expand in digital advertising;

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<sup>149</sup> A lessening of competition may be considered "substantial" if there is only limited competition in the market to begin with. For example, in [Celesio AG/Sainsbury's Pharmacy Business](#), the CMA found that regulation inhibited to some extent the degree of competition, but the amount of competition was still sufficiently significant that its loss would be a matter of concern. Similarly, in [JLA/Washstation](#), the CMA noted that it is allowed to exercise its judgment when assessing whether the lessening of competition is substantial having regard to the relevant competitive environment (in that case relating to the percentage of contestable contracts per year).

<sup>150</sup> [Merger Assessment Guidelines](#), paragraph 5.4.15.

<sup>151</sup> During the course of its investigation, the CMA also considered (i) whether GIPHY would have expanded in social media absent the Merger (eg by adding social features such as comments, likes, following, etc), and (ii) whether this would have resulted in greater competition in social media. The CMA analysed GIPHY's internal documents and the usage of GIPHY's 'owned and operated' (O&O) platforms, and found limited evidence that GIPHY would have developed an independent social media offering absent the Merger, so this is not considered further below.



- (b) The likelihood of GIPHY's success;
- (c) The impact of GIPHY's efforts to compete and the impact of GIPHY's successful expansion on range, customer choice and competition in display advertising; and
- (d) The impact of the Merger on GIPHY's incentive to continue to invest and the impact of the Merger on the Parties' incentive to innovate and compete in the supply of display advertising in future.

165. In assessing this theory of harm, the CMA has primarily considered evidence from (i) the Parties' submissions; (ii) evidence of GIPHY's previous efforts to expand; (iii) the Parties' internal documents; (iv) evidence of GIPHY's revenue growth; (v) evidence from third parties and (vi) evidence from the Market Study (as discussed in more detail at paragraph 154 above).

#### *GIPHY's expansion plans and pre-Merger efforts*

##### *The Parties' submissions*

166. The Parties submitted that GIPHY is not active in digital advertising in the UK, although it had plans to start monetising internationally through paid alignment services before the Merger. The estimated revenues expected to be generated in the UK in FY 2020 were [REDACTED] (as noted in paragraph 99 above, GIPHY shut down its advertising activities in 2020 after the Merger). The Parties submitted that paid alignment advertising does not compete with Facebook's digital advertising to any meaningful extent.<sup>152</sup>

##### *Pre-merger efforts to expand*

167. The available evidence shows that GIPHY had already taken concrete steps to monetize its business and expand into digital advertising. As noted in paragraph 98 above, GIPHY started monetizing its offering in 2017. Since then, its digital advertising revenues from paid alignment in the United States had achieved significant growth, from [REDACTED] in 2017, to [REDACTED] in 2018 and [REDACTED] in 2019. By 2019, GIPHY had also entered into revenue share agreements with [REDACTED], which allowed GIPHY to run paid alignment advertising on these partners' inventory in the United States.<sup>153</sup> In 2020, following the Merger, GIPHY's monetization efforts were shut down.

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<sup>152</sup> FMN, paragraph 18.8.

<sup>153</sup> FMN, Parties' response to Question 39 of RFI 1, page 169.

168. The available evidence also shows that GIPHY had invested significant resources to reach its size and build its extensive network of integration partners, with both its API/SDK and ‘owned and operated’ website/mobile app (O&O) traffic growing rapidly. In particular, GIPHY’s total API/SDK GIF searches in the UK increased from [REDACTED] in 2018 to [REDACTED] in 2019.<sup>154</sup> GIPHY’s average monthly active users in the UK increased from [REDACTED] in 2018 to [REDACTED] in 2019.<sup>155</sup>

#### *GIPHY’s plans to expand*

- *Internal documents*

169. GIPHY’s internal documents show that GIPHY was planning to significantly expand its digital advertising activities both geographically (outside the United States),<sup>156</sup> and in terms of range of advertising formats and partners, [REDACTED].<sup>157</sup> In particular:

(a) GIPHY’s recent internal documents show its plans to expand its paid alignment activities by expanding outside the United States, by partnering with messaging platforms through revenue share agreements and monetising international pages with programmatic banner advertising.<sup>158</sup>

(b) GIPHY’s internal documents show that GIPHY had initial discussions with at least 27 brand partners ([REDACTED]) about international advertising opportunities, including in the UK.<sup>159</sup> The Parties estimated that GIPHY was expected to generate [REDACTED] in the UK in the 2020 financial year.<sup>160</sup>

(c) GIPHY’s recent internal documents also show its plans to partner with messaging platforms through revenue share agreements.<sup>161</sup> [REDACTED]. These documents suggest that GIPHY considered that messaging had so far resisted monetisation by other companies and that if GIPHY were able to monetise messaging, it could unlock a market opportunity [REDACTED].<sup>162</sup> In this

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<sup>154</sup> Annex 027\_Q56 RFI 2\_GIPHY Monthly GIF Sticker Searches and Shares by Partners 2018-2019\_CONFIDENTIAL.

<sup>155</sup> FMN, Parties’ response to Question 11 of RFI 5, page 295.

<sup>156</sup> See for example the document named ‘Project Brief\_International Programmatic Ads.html’ dated March 2020, Annex 014.30 of the FMN, the document named ‘GIPHY Series E Management Presentation v5 - Jan 2020.pdf’ dated March 2020 and the document named ‘Project Brief\_International Ad Campaigns.html’ dated March 2020.

<sup>157</sup> See for example the document named ‘Project Gondola\_Illustrative Q&A\_2020.03 (1).docx’ dated March 2020 and the document named ‘GIPHY Series E Management Presentation v5 - Jan 2020.pdf’ dated March 2020.

<sup>158</sup> Annexes 014.1 and 014.4 of the FMN; the document named ‘Project Brief\_International Programmatic Ads.html’ dated March 2020.

<sup>159</sup> Annex 044 of the FMN.

<sup>160</sup> FMN, paragraph 18.8.

<sup>161</sup> Annexes 014.1, 014.2 and 014.3 of the FMN, and the document named ‘GIPHY Series E Management Presentation v5 - Jan 2020.pdf’ dated March 2020.

<sup>162</sup> Document named ‘GIPHY Series E Management Presentation v5 - Jan 2020.pdf’ dated March 2020. See also Annex 014.4 - GIPHY Diligence Part 2.

context, another internal document quotes Mark Zuckerberg (CEO of Facebook) as saying that private messaging, ephemeral stories, and small groups are the fastest growing areas of online communication.<sup>163</sup> GIPHY considered that its products would provide advertisers with the opportunity to include non-intrusive adverts within messages when users browse or search for GIFs.<sup>164</sup> This is aligned with GIPHY's public statements – for example, in July 2019, Alex Chung (CEO of GIPHY) stated that GIPHY's value proposition was being the only platform that allows advertising within messaging.<sup>165</sup>

- *Third party evidence*

170. Although the evidence from third party alignment customers of GIPHY was mixed on the effectiveness of GIFs as an advertising channel, one considered that GIFs were growing rapidly in importance to advertisers and that it would have been interested in expanding its advertising with GIPHY, including into the UK.<sup>166</sup>

### *Likelihood of GIPHY's success*

#### *The Parties' submissions*

171. The Parties submitted that GIPHY's monetisation model faced unresolved, existential impediments, including that:<sup>167</sup>

(a) [REDACTED];<sup>168</sup>

(b) [REDACTED];<sup>169</sup>

(c) [REDACTED];<sup>170</sup>

(d) [REDACTED]

(e) [REDACTED]<sup>171</sup>

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<sup>163</sup> See for example, the document named 'Series E Executive Summary v 5 – Jan 2020.pptx'.

<sup>164</sup> Examples of documents in relation to monetising messaging include, among others, Annexes 014.1 and 014.3 of the FMN, and the document named 'GIPHY Series E Management Presentation v5 - Jan 2020.pdf' dated March 2020.

<sup>165</sup> [Campaignlive.co.uk](https://www.campaignlive.co.uk) (15 July 2019).

<sup>166</sup> Responses to the CMA's market testing.

<sup>167</sup> Parties' response slides to the CMA's Issues Paper, slide 19.

<sup>168</sup> FMN, GIPHY Story in Context submission of 21 December 2020, pages 304-305.

<sup>169</sup> FMN, GIPHY Story in Context submission of 21 December 2020, pages 302-304.

<sup>170</sup> FMN, GIPHY Story in Context submission of 21 December 2020, pages 305-306.

<sup>171</sup> FMN, GIPHY Story in Context submission of 21 December 2020, pages 306-307.

### *GIPHY's growth potential*

172. As noted at paragraph 167 above, GIPHY had grown its revenue significantly since its paid alignments pilot testing was launched in 2017, and several internal documents (including some produced as recently as 2020) show that GIPHY was optimistic about its monetisation options (see paragraph 95 above), despite missing its early revenue goals. In particular, the CMA has seen internal documents which project breakeven profitability in 2022 (and potentially even sooner)<sup>172</sup> and which give estimated revenues of [REDACTED] in 2023.<sup>173</sup> As set out at paragraph 167 above, GIPHY had already entered into several revenue share agreements, including with Samsung and Tinder.
173. The available evidence also shows that GIPHY considered that several realistic revenue generation strategies were available to it. For example, in its presentations to potential investors, GIPHY:
- (a) described itself as the future of animated conversations, [REDACTED];<sup>174</sup>
  - (b) emphasised its ability to scale daily active user growth by comparing it to that of Snap, YouTube and Facebook;<sup>175</sup> and
  - (c) stated that it was able to earn very significant revenues [REDACTED].<sup>176</sup>
174. Further, the CMA found that several GIPHY internal documents prepared for funding rounds compare GIPHY's growth to that of other successful technology businesses (such as Facebook, Google and Snap), suggesting that GIPHY considered that it had the potential to grow very rapidly.<sup>177</sup>
175. The CMA also found that GIPHY raised almost [REDACTED] from investors between 2013 and 2019, of which [REDACTED] was raised in 2019,<sup>178</sup> suggesting that external investors agreed that GIPHY had the potential to generate significant revenues from digital advertising in the future and were willing to invest money in its potential success.

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<sup>172</sup> The document named 'Project Gondola - Illustrative Q&A – 03/20'.

<sup>173</sup> The document named '2.1 Project Gondola\_Financial Overview.pptx' from November 2019.

<sup>174</sup> Document named 'GIPHY Series F v2.pptx'. See also the document named 'GIPHY Series F v1.pptx'.

<sup>175</sup> Document named 'GIPHY Series F v1.pptx'.

<sup>176</sup> Document named 'Series\_b.pptx'. See also the document named 'Series\_c.pptx'.

<sup>177</sup> See for example the document named 'GIPHY\_DEC10\_2018.pptx' (December 2018); the document named 'GIPHY\_Series E\_DRAFT15.pptx' (2017); and the document named 'GIPHY ONE PAGER SEP 2018 - V1.pptx' (September 2018).

<sup>178</sup> FMN, GIPHY Story in Context submission of 21 December 2020, pages 302-303.

### *The potential growth of advertising in messaging*

176. Facebook's internal documents set out that private messaging is growing faster than other segments of social media.<sup>179</sup> As set out at paragraph 169(c) above, GIPHY considered that monetisation of messaging was [redacted] and that if GIPHY were able to monetise messaging, it could unlock a market opportunity [redacted].<sup>180</sup>
177. Furthermore, the available evidence shows that Facebook has identified monetisation of messaging as important for its business, and sponsored GIFs present a potential opportunity to do so. In particular:
- (a) In its annual reports, Facebook has stated that a risk factor for its business is the difficulty of monetising messaging.<sup>181</sup>
  - (b) Facebook has recently started monetising Messenger and WhatsApp (albeit through business-consumer messaging functionality rather than advertising).<sup>182</sup>
  - (c) Facebook internal documents prepared in contemplation of the Merger note that a potential 'upside' of the acquisition of GIPHY is the possibility of monetising the messaging space.<sup>183</sup> One document in particular notes that, while speculative, the monetisation of sponsored GIFs (which the CMA understands would be similar to GIPHY's paid alignment products) could [redacted].<sup>184</sup> Moreover, Facebook already allows advertisers to use GIFs in their advertising.<sup>185</sup>

### *Conclusion on GIPHY's expansion efforts*

178. On the basis of the evidence above, the CMA believes that GIPHY was in the early stages of its expansion in digital advertising. Although it had not yet become profitable, GIPHY had only recently started monetising and was on a clear growth trajectory. It was focusing its efforts on expanding its digital advertising business and had experienced some early success through its paid alignment agreements. The CMA notes in this respect that it is common

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<sup>179</sup> See the document named '4 & 5 (pre) - Interoperability H1H2 2019.pdf' dated June 2019.

<sup>180</sup> Document named 'GIPHY Series E Management Presentation v5 - Jan 2020.pdf' dated March 2020.

<sup>181</sup> Facebook annual report 2018, page 13; Facebook annual report 2019, page 16; Facebook annual report 2020, page 18.

<sup>182</sup> See for example the document named '4 & 5 (pre) - Interoperability H1H2 2019.pdf' dated June 2019, the document named '# Messenger org HPM 5/29/2018.msg' dated May 2018, the document named 'Re: [tasks] T30184612: Expose rate card information for each Business.msg' dated June 2018 and the document named 'Messaging\_in\_Partnerships\_-\_Apr\_6\_2020.pdf' dated April 2020.

<sup>183</sup> Document named Annex 010.9- Project Tabby Value Analysis; and document named Annex 010.5 - Request for Approval.

<sup>184</sup> Document with the ID TABBY\_FTC\_000000241.pdf.

<sup>185</sup> See: [Use a GIF in your video ad | Facebook Business Help Centre](#).

for technology businesses to take time to become profitable due to the need to build a sufficient user base prior to effective monetisation.<sup>186</sup>

179. The available evidence shows that GIPHY had taken concrete steps to expand its digital advertising offering pre-Merger and had plans not only to expand geographically (including into the UK) but also to monetise the messaging space, which both Parties considered could grow considerably in the near future. The CMA believes that such efforts to expand would have continued absent the Merger.
180. The CMA also believes that it is realistic that GIPHY's expansion efforts would have been successful. GIPHY's revenue growth and existing partnerships show that, despite any limitations, its advertising products were attractive. GIPHY's ability to attract external funding indicates that investors also believed in its growth potential.

### *Impact of GIPHY's expansion*

#### *The Parties' submissions*

181. The Parties submitted that even if GIPHY had entered into digital advertising in the UK, there would have been no competitive constraint on Facebook or on advertising generally. In particular, the Parties noted that GIPHY's maximum potential revenues with paid alignments in the UK (based on its UK user traffic) would have accounted for less than 0.01% market share in the UK digital advertising space, and that the impediments to GIPHY's business model (see paragraph 171 above) would remain.<sup>187</sup>

#### *CMA's assessment*

182. As noted in paragraphs 157-161 above, in the Market Study the CMA found that:
- (a) Facebook has significant market power in display advertising, and faces limited competitive constraints from rival platforms and new entrants; and
  - (b) Display advertising is characterised by significant barriers to entry and expansion.

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<sup>186</sup> For example, the CMA understands that Snap has grown its user base and revenue over the past five years but has not yet achieved profitability: see [Snap Inc. 2020 Annual Report](#), pages 43 and 47. Similarly, the CMA understands that Slack has experienced rapid growth but has consistently incurred significant net losses since its public launch in 2014. See its Annual Report for the period ended 31 January 2021: [Slack Technologies - Financials - SEC Filings Details \(slackhq.com\)](#), pages 20 and 70.

<sup>187</sup> Parties' response slides to the CMA's Issues Paper, slide 20; FMN, page 76.

183. Although one third party described advertising through GIFs and advertising on Facebook as complementary, the CMA has found that GIPHY's internal documents describe the current and potential future impact on competition from GIPHY's expansion efforts, showing that GIPHY considered that Facebook was a competitor to GIPHY in digital advertising:
- (a) First, one of GIPHY's internal documents compares GIPHY's existing cost-per-mille<sup>188</sup> (CPM) impressions against a list of competitors including Facebook and Instagram.<sup>189</sup>
  - (b) Second, GIPHY's internal documents show that GIPHY was planning to introduce programmatic banner advertising internationally, a form of display advertising that could compete directly with Facebook,<sup>190</sup> and GIPHY had discussed international advertising paid alignment campaigns with several brand partners ([§<])<sup>191</sup>;
  - (c) Third, a GIPHY internal document discussing GIPHY's plans to monetise messaging indicates that GIPHY would compete with both sponsored search advertising (eg Google) and sponsored feeds advertising (eg Facebook).<sup>192</sup>
184. The CMA considers that were GIPHY to expand successfully in digital advertising, particularly through the successful monetisation of messaging, Facebook would potentially face stronger competitive constraints in display advertising, which could threaten its market power and push it to compete more vigorously.
185. Moreover, GIPHY's expansion could provide advertisers with more choice and alternatives to Facebook. In fact, the CMA believes that advertisers and revenue share partners had already started benefitting from the additional marketing channel offered by GIPHY's paid alignment services in the United States. GIPHY's advertising within messaging could be particularly valuable for advertisers, as it offers an opportunity to advertise in a non-intrusive but targeted way.
186. The available evidence does not indicate that other providers of searchable GIF libraries currently have plans to offer an equivalent advertising channel or could offer a viable alternative to GIPHY as a tool to monetize messaging for social media platforms. In particular, one GIPHY internal document suggests

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<sup>188</sup> Cost-per-mille is a term common in the advertising industry and refers to cost per thousand impressions.

<sup>189</sup> Annex 014.5 of the FMN.

<sup>190</sup> Document named 'Project Brief - International Programmatic Ads – 03/20' from March 2020; Annex 014.30 - Q1 2020 Board Deck.

<sup>191</sup> Annex 044 of the FMN.

<sup>192</sup> Document named 'GIPHY Series E Management Presentation v5 - Jan 2020.pdf' dated March 2020.

that Tenor laid off its sales team in 2018.<sup>193</sup> The CMA is aware of only one further provider that offers paid alignment advertising [X] although this provider has not done any paid alignments work with UK customers. However [X] as set out in further detail below (see TOH2 section).

187. In relation to the Parties' submission on the maximum potential revenues GIPHY could achieve in the UK (see paragraph 181 above), the CMA notes that the Parties' estimate is only based on FY 2020 figures, while the impact of GIPHY's expansion should be assessed over a longer period and not only on the first year of expansion in the UK, especially given GIPHY estimated its revenues would have grown substantially after 2020 (see paragraph 95 above).

### *Impact of the Merger*

188. The CMA believes that the Merger may reduce GIPHY's efforts to expand its digital advertising – both geographically and in terms of range of advertising formats and partners.
189. GIPHY shut down all its paid alignment activities in 2020 as a result of the Merger and GIPHY's sales team left the business on completion of the Merger.<sup>194</sup> The CMA believes this is strong evidence of an impact of the Merger on potential competition through reduced investment into the development of existing and new avenues for digital advertising.
190. The CMA believes that GIPHY would have greater incentives to continue in its investments and efforts to expand in digital advertising as a standalone entity than as part of the Merged Entity. This is because GIPHY's advertising products could compete with Facebook's display advertising, particularly through the successful monetisation of messaging (see paragraph 184 above). The Merger therefore reduces GIPHY's incentives to expand.
191. In addition, the CMA is concerned that the Merger may reduce future competition in display advertising. In particular, the Merger may reduce the growing and future competitive constraint that GIPHY may exert on Facebook. The loss of a potential future competitive constraint is particularly concerning given Facebook's existing market power in display advertising and its impact on consumers and advertisers (see paragraphs 157-158 above).
192. Even if the Merged Entity continued GIPHY's efforts to expand its digital advertising business, the Merger would still result in the elimination of the

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<sup>193</sup> Annex 056.1 Email of 17 December 2018 sent by B. Fathieh to A. Chung.

<sup>194</sup> Parties' response to the CMA's integration questionnaire of 9 June 2020.



competitive constraint posed by GIPHY (and GIPHY's integration partners) on Facebook, as GIPHY would no longer be independent from Facebook. GIPHY's digital advertising business would be developed in a way that avoids competing directly with Facebook's existing display advertising business.

193. As noted at paragraph 169(c) above, GIPHY had plans to partner with messaging platforms through revenue share agreements. In addition, five social media platforms (other than Facebook) expressed an interest in acquiring GIPHY, all of which have messaging functionalities: Apple, ByteDance, Snap, Twitter and Kuaishou.<sup>195</sup> The impact of the Merger on competition may have been even greater if GIPHY had partnered with (or had been acquired by) existing social media platforms with messaging functionalities. In particular, such platforms would provide the messaging functionalities within which GIPHY could integrate its paid alignment advertising. Thus, the Merger may prevent the integration of GIPHY's advertising service within the messaging functionalities of social media platforms competing with Facebook.

#### *Conclusion on TOH1*

194. On the basis of the evidence set out above, the CMA believes that the Merger raises significant competition concerns as a result of a loss of potential competition in the supply of display advertising in the UK.

#### ***TOH2: Vertical effects through the foreclosure of social media platforms***

195. The CMA has investigated whether the Merged Entity could harm Facebook's rivals and lessen current and future competition in social media and display advertising by (i) ceasing to supply GIPHY's GIFs via GIPHY's API/SDK integrations (total foreclosure), and/or (ii) engaging in strategies worsening the terms of GIPHY's supply or otherwise harming Facebook's competitors (partial foreclosure). The partial foreclosure strategies could include the following (among others): (i) GIPHY including Facebook advertising among the GIFs provided to Facebook's competitors,<sup>196</sup> worsening those competitors' user experience; and (ii) GIPHY requiring Facebook's competitors to provide more user data to access GIFs.<sup>197</sup> These foreclosure strategies could also limit competitors' ability to benefit from revenue share agreements with

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<sup>195</sup> Annex 011.4 of the FMN - Giphy - BM - 04.04.2020, slide 4.

<sup>196</sup> The Merged Entity could place Facebook sponsored GIFs on competitors' platforms, allowing Facebook to expand the reach of its advertising business onto such platforms.

<sup>197</sup> The CMA has also considered the following foreclosure strategies, though, on balance, these were considered less likely strategies, based on evidence from third parties: GIPHY provides a worse service (eg slower API responses); GIPHY requires platforms to pay commissions/fees to access its GIFs; and GIPHY provides lower quality GIFs (eg reduced range).

GIPHY, which could be particularly significant were GIFs to become an important advertising channel (see TOH1 above). Both existing rival platforms and future new entrants in social media could be targeted.

196. The CMA has considered: (i) the ability of the Merged Entity to harm Facebook's social media platform rivals through total or partial foreclosure; (ii) its incentive to do so; and (iii) the effect of such strategies on competition.

### *Ability*

197. To assess the Merged Entity's ability to harm Facebook's social media platform rivals, the CMA has considered: (i) the importance of GIFs as an input for social media platforms; and (ii) the extent to which there are viable alternative suppliers of GIFs.

#### *The importance of GIFs*

- *The Parties' submissions*

198. The Parties submitted that GIFs are not an important input for social media platforms and that since they are just one of many content features that drive user engagement, they are only a 'nice to have'.<sup>198</sup> The Parties also submitted that GIFs are not 'indispensable or essential for carrying out a business' in social media.<sup>199</sup>

199. The CMA has considered a range of sources of evidence to assess the importance of GIFs for social media platforms, including: (i) the views of third parties; (ii) the Parties' internal documents; and (iii) data on GIF usage.

- *Third party views*

200. The majority of the social media platforms that responded to the CMA's market testing stated that GIFs are important for driving user engagement on their platforms. Some respondents also noted that GIFs are important for the competitiveness of new/emerging platforms in their industry. Moreover, almost all the respondents submitted that having a significantly worse GIF offering would have some impact on their competitiveness and ability to win and retain users (although only a minority considered that the impact would be 'material').

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<sup>198</sup> FMN, paragraphs 19.19-19.20.

<sup>199</sup> Parties' response slides to the CMA's Issues Paper, slide 27.

201. Third party evidence also suggests that GIFs may have particular importance to younger users: some competitors submitted that Gen Z<sup>200</sup> users use GIFs more than older users. Another competitor submitted that maintaining a competitive GIF offering may be important for winning younger users.
202. One paid alignment customer of GIPHY told the CMA that GIFs were growing rapidly in importance to advertisers (see paragraph 99 above). In particular, this customer explained that the appeal of using GIFs for advertising is due to the prominent cultural relevance of GIFs on social media, and that GIFs assist with the effectiveness of advertising campaigns when engaging with social media platforms. As noted at paragraph 99 above, GIPHY shut down its advertising efforts in 2020 after the Merger, resulting in the decision to terminate all paid alignment contracts in the United States.
- *Internal documents*
203. Facebook's internal documents confirm that GIFs are important for user engagement, with one setting out that GIFs have become increasingly important for its platforms and users, and another stating that GIFs drive a meaningful amount of user engagement.<sup>201</sup> A further internal document sets out that Instagram would have [redacted].<sup>202</sup> While the Parties submitted that this represents only [0-5]% of Instagram revenues,<sup>203</sup> the CMA notes that the same internal document shows that avoiding such a reduction in revenues was a key part of the rationale for the Merger.<sup>204</sup> Therefore, the CMA believes this estimate indicates the importance of GIFs for the competitiveness of a social media platform.
204. Some of the Parties' internal documents also suggest that GIFs are popular among younger users. For example, one of Facebook's documents indicates that the Merger will allow it to integrate GIPHY with Facebook and 'build for teens',<sup>205</sup> while one of GIPHY's documents suggests that GIPHY is particularly used by Gen Z and teens.<sup>206</sup>
205. Furthermore, GIPHY's internal documents show that GIF usage was increasing substantially, suggesting the demand for GIFs is increasing. For example, one document shows that GIPHY's total GIFs served, API requests

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<sup>200</sup> The generation born between the mid-late 1990s and the early 2010s.

<sup>201</sup> Annexes 010.5 and 010.8 of the FMN.

<sup>202</sup> Annex 010.9 of the FMN.

<sup>203</sup> Parties' response slides to the CMA's Issues Paper, slide 27.

<sup>204</sup> Annex 010.9 of the FMN.

<sup>205</sup> See the document named 'Message summary [{"otherUserFbId":null,"threadFbId":3712622608812042}].msg' dated May 2020. The CMA notes that the Market Study found that the Facebook platform had a relatively lower share of time spent for younger consumers, but 18-24 year olds still spent the greatest proportion of their time on social media platforms within the Facebook 'ecosystem' (Final Report, paragraph 3.196).

<sup>206</sup> See the document named 'GIPHY\_ Netflix Julie and the Phantoms.pptx' dated May 2020.

and O&O traffic all grew substantially between 2015 and 2019.<sup>207</sup> In particular, the document shows that the number of GIFs served increased from less than [redacted] per month in 2015 to [redacted] in December 2019, the number of API requests increased from less than [redacted] per month in 2015 to [redacted] in December 2019, the number of O&O web page views increased from less than [redacted] per month in 2015 to [redacted] in December 2019, and the number of O&O mobile page views increased from less than [redacted] in 2017 to [redacted] in December 2019.

- *Data on GIF usage*

206. The available evidence suggests that the usage of GIFs has been increasing rapidly in the last few years, although the proportion of users who use GIFs currently varies by platform and features within each platform.

207. In particular:

(a) GIPHY's total API/SDK GIF searches in the UK increased from [redacted] in 2018 to [redacted] in 2019;<sup>208</sup> and

(b) Data provided by Facebook shows that, between 24 and 30 June 2020, the share of UK Messenger users who included one or more GIFs among their messages was [5-10]%, while the share of UK Instagram Stories users who included one or more GIFs among their stories was [10-20]%.<sup>209</sup> While the Parties submitted that the proportion of messages including GIFs is low and that stories represent a low share of the content posted on Instagram,<sup>210</sup> the CMA notes that the share of *users* including GIFs in their messages and stories is higher, suggesting that GIFs are important for some social media users.

208. In this context, the available evidence also indicates that GIFs tend to be more popular among younger users. For example, [5-10]%, [0-5]% and [0-5]% of Facebook's UK users younger than 35 years old who posted comments, posts and stories respectively between 24 and 30 June 2020 included one or more GIFs in their content, compared with [5-10]%, [0-5]% and [0-5]% for all Facebook's UK users of any age.<sup>211</sup>

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<sup>207</sup> Annex 014.30 - Q1 2020 Board Deck.

<sup>208</sup> Annex 027\_Q56 of the FMN. GIPHY's UK O&O traffic has also increased substantially between 2018 and 2020 – for example, GIPHY's average monthly active users in the UK increased from [redacted] in 2018 to [redacted] in 2019, and then further increased (although at a lower rate) to [redacted] in 2020 (see FMN, pages 295-296).

<sup>209</sup> Facebook comments [5-10%]; Facebook posts [0-5%]; Facebook stories [0-5%]; WhatsApp messages [0-5%]; WhatsApp statuses [0-5%]; Instagram Create [0-5%]; Instagram direct messages [0-5%]. See FMN, page 235.

<sup>210</sup> Parties' response slides to the CMA's Issues Paper, slide 27.

<sup>211</sup> With respect to Facebook's other services, it was not possible for Facebook to provide the requested data to the same degree of accuracy since users do not necessarily record their age when creating and registering new accounts.

- *Conclusion on the importance of GIFs*

209. Overall, based on the evidence set out above, the CMA believes that while GIFs are currently only used by a minority of users of social media platforms, usage is rapidly increasing (see paragraphs 205 and 207(a) above). Third party views suggest that GIFs are already considered important for driving user engagement (see paragraphs 200-202 above), particularly amongst younger users.
210. Importantly, the CMA also believes that, were GIFs to become an established advertising channel within messaging (see TOH1 above), their importance to social media platforms may increase significantly, providing them with an opportunity to enhance their digital advertising offering.

#### *Alternatives to GIPHY*

- *The Parties' submissions*

211. The Parties submitted that there are many alternatives to GIPHY, including Tenor, Imgur, Gfycat, Gifbin, Vlipy and Holler, with Tenor viewed as largely interchangeable with GIPHY and Gfycat also having a similar focus.<sup>212</sup> Moreover, the Parties submitted that GIPHY's API partners have the ability to switch to alternative GIF providers, with Tenor in particular being a 'perfect substitute', and that there are many examples of partners switching from GIPHY to Tenor in the past.<sup>213</sup>
212. In addition to the Parties' submissions, the CMA has focused its assessment of GIPHY's alternatives on: (i) the Parties' internal documents; (ii) shares of supply estimates; (iii) third party feedback; (iv) an economic analysis prepared by the Parties; and (v) an analysis of the features of social media platforms.

- *Internal documents*

213. GIPHY's internal documents show that GIPHY considers itself to be the leading GIF platform, describing itself in one document as 'the scaled market leader, synonym with GIFs'.<sup>214</sup> Moreover, the internal documents show that GIPHY considers that it has several competitive advantages over other providers, including its global recognition and usage across platforms, the quality and safety of its content, its size and technical infrastructure, its

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<sup>212</sup> FMN, paragraphs 19.8-19.15.

<sup>213</sup> FMN, paragraphs 19.25-29.27; Parties' response slides to the CMA's Issues Paper, slide 23.

<sup>214</sup> Examples of such documents include Annexes 011.2 and 014.19 of the FMN.

established relationships with content partners, developers and technology companies, and its past successful funding.<sup>215</sup>

214. GIPHY’s internal documents also show that GIPHY views Tenor as its only strong competitor. In particular, one document sets out that ‘Tenor is the only other scaled player in GIFs’.<sup>216</sup>

215. Facebook’s internal documents show that Facebook considers GIPHY and Tenor as the two main GIF providers that [redacted], while other alternatives (including Gfycat, Imgur and Vlipsy) are considered [redacted].<sup>217</sup>

- *Shares of supply*

216. **Table 3** below shows the CMA’s estimates of the main GIF platforms’ UK shares of supply based on the number of API/SDK searches in 2019.

**Table 3: GIF platforms’ UK shares of supply – API/SDK searches, 2019<sup>218</sup>**

GIF platform	Monthly API/SDK searches (UK, 2019)	Share
GIPHY	[redacted]	[80-90]%
Tenor	[redacted]	[10-20]%
Gfycat	[redacted]	[0-5]%
Total	[redacted]	100%

Source: CMA analysis based on GIPHY’s and third parties’ data.

217. GIPHY had by far the highest share of API/SDK searches in the UK ([80-90]%), followed by Tenor ([10-20]%). In contrast, Gfycat ([0-5]%) had a very low share. The CMA believes that other, minor GIF platforms are likely to have very low shares, noting in this context that third parties only listed Tenor, Gfycat and Holler as alternatives to GIPHY, with no third party considering Holler as a competitive alternative (see paragraphs 219-221 below).

218. The Parties submitted that the CMA’s shares of supply estimates are not credible, and that the CMA overestimated GIPHY’s share and underestimated Tenor’s share.<sup>219</sup> The Parties did not submit any alternative estimates and the CMA notes that its estimates are based on data on UK API/SDK searches

<sup>215</sup> See the document named ‘InvestorPreso (1)’ dated April 2019.

<sup>216</sup> See the document named ‘Project Gondola\_Illustrative Q&A\_2020.03 (1)’ dated March 2020.

<sup>217</sup> See Annex 010.8 of the FMN and the document named ‘Re: GIF Partnership Options.msg’ dated March 2020.

<sup>218</sup> The CMA is aware that other providers may also offer API/SDK integrations to search for GIFs (eg Holler). However, third parties generally considered that Tenor is GIPHY’s closest competitor and the only other alternatives mentioned were Gfycat and Holler, which were both not considered competitive alternatives. As such, while the CMA cannot exclude that there may be additional searches not captured in this data, any such searches would be unlikely to materially increase the CMA’s estimate of the total number of monthly API/SDK searches.

<sup>219</sup> Parties’ response slides to the CMA’s Issues Paper, slides 25-26.

data obtained from GIPHY and third parties. The CMA therefore considers that its estimates are reliable.

- *Third party feedback*

219. In terms of the alternatives to GIPHY, the majority of third parties responding to the CMA's market testing submitted that Tenor is GIPHY's closest competitor. Several respondents submitted that Tenor is at least as good as GIPHY, with only one competitor submitting that Tenor is inferior to GIPHY due to an inferior GIF sticker selection.
220. However, [REDACTED] and one GIPHY internal document suggests that Tenor laid off its sales team in 2018.<sup>220</sup> Tenor may therefore not represent a good alternative to GIPHY from an advertising perspective.
221. Several respondents also referred to Gfycat or Holler as alternatives to GIPHY. However, both of these providers were consistently considered inferior and/or differentiated when compared with GIPHY and Tenor. In particular, Gfycat's and Holler's selection of GIFs were generally considered inferior, and one Facebook competitor stated that Holler requires excessive user data, which made it a less attractive option. [REDACTED].
222. In relation to the potential impact of a foreclosure strategy, several third parties submitted that, if GIPHY were to engage in total or partial foreclosure, they would likely switch to, or rely on, an alternative GIF provider.<sup>221</sup> Viber [REDACTED] submitted they switched from GIPHY to Tenor after the Merger. The CMA notes that several platforms, including Messenger, [REDACTED], [REDACTED] and [REDACTED], already use at least one alternative provider in addition to GIPHY, which may reduce switching costs. However, some third parties submitted that losing access to GIPHY's GIFs could affect user experience and/or engagement on their platforms. One competing online platform, in particular, submitted that it would expect a slow leakage of users to rival platforms as users realised that its GIF offering was less competitive. The same platform also submitted that switching GIF provider would be difficult.
223. The Parties submitted that having one GIF supplier is sufficient, and that Facebook and many other API partners appear to only use one GIF provider.<sup>222</sup> However, some social media platforms submitted that it is

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<sup>220</sup> Annex 056.1 Email of 17 December 2018 sent by B. Fathieh to A. Chung.

<sup>221</sup> One third party submitted it would also consider expanding its self-supply or removing its GIF functionality.

<sup>222</sup> Parties' response slides to the CMA's Issues Paper, slide 30. The Parties also submitted that the shares of supply do not suggest API partners are consistently using both GIPHY and Tenor, and that outages are infrequent.

important for them to have more than one GIF provider to have a reliable supply and more selection, and to negotiate better terms.

- *The Parties' economic analysis*

224. The Parties submitted a vertical foreclosure analysis including (i) 'natural experiments' on GIPHY and Tenor outages on Messenger, and (ii) an engagement drivers analysis on the relative importance of GIFs and other content types.<sup>223</sup>
225. In relation to the 'natural experiments', the Parties submitted that their results show that Tenor and GIPHY are highly substitutable, and that there would be no diversion of users from a platform losing access to GIPHY.<sup>224</sup>
226. The CMA recognised that the results are consistent with the evidence, including the Parties' internal documents and third party feedback, that Tenor is currently a viable alternative to GIPHY for most social media platforms. However, the CMA also noted that there are factors that may limit the weight that can be attached to the results when analysing the impact of foreclosure strategies.
227. First, the analysis is focused on Facebook Messenger only. The Parties responded that the focus was on Facebook Messenger given that no GIPHY outages occurred on other Facebook platforms, and that there was no reason why customer behaviour should differ across platforms.<sup>225</sup> However, the CMA notes that the usage of GIFs does vary by platform (see paragraphs 206-209 above), and so could customer behaviour in the event of foreclosure.
228. Second, the outages only lasted a few days, which may not be long enough for user diversion to materialise. The Parties submitted that users could react instantaneously, and that the duration of the outages was therefore not relevant.<sup>226</sup> However, the CMA does not consider that consumers would switch<sup>227</sup> social media platform instantaneously as a result of a worse GIF offering, and that it may take time for users to switch as they realise that a better GIF offering is available on other platforms. In particular, the CMA cannot rule out that during the GIPHY outage on Messenger, users may have noticed the unavailability of GIPHY, but that the outage was too short for users to start switching or for Facebook Messenger's growth to be affected. The CMA also notes that avoiding a loss of access to GIPHY was part of the

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<sup>223</sup> FMN, White Paper on Vertical Foreclosure Analysis, pages 327-367.

<sup>224</sup> Ibid.

<sup>225</sup> Parties' response slides to the CMA's Issues Paper, slide 24.

<sup>226</sup> Ibid.

<sup>227</sup> Switching in this context includes spending more time on other platforms.



rationale for the Merger (see paragraph 43 above), which suggests that maintaining access to GIPHY is important for Facebook.

229. Third, the CMA notes that this analysis is only relevant to the substitutability of GIPHY and Tenor from a user perspective. As noted at paragraph 220 above, Tenor may not be a viable alternative from an advertising perspective. If GIFs were to become an important advertising channel (see TOH1 above), social media platforms may be significantly adversely affected by not having access to GIPHY (or only having access on worse terms) in the future (see paragraph 193). In particular, Facebook's rivals could lose the advertising revenues that could be earned by partnering with GIPHY through revenue share agreements. Moreover, Facebook's competitors integrated with GIPHY could also be harmed if GIPHY included Facebook advertising among the GIFs provided to them (see paragraph 195 above).
230. In relation to the engagement drivers analysis, the Parties submitted that the evidence suggests that GIFs are not an important input for consumers because (i) GIFs are less popular than other engagement drivers, and (ii) users who use GIFs also use a wide variety of other engagement drivers.<sup>228</sup>
231. However, the CMA believes that the fact that other engagement drivers (eg images, videos, emojis, etc) are used more than GIFs does not imply that GIFs are unimportant for consumers, but rather may suggest that it is important for social media platforms to offer consumers a range of complementary content types, including GIFs.
232. As set out at paragraph 203 above, Facebook's internal documents show the importance of GIFs for user engagement. Further, as noted in paragraph 209 above, the CMA has found evidence showing that the popularity of GIFs has been increasing and this trend may continue in future. As noted above, GIFs may also become increasingly important from an advertiser perspective.

- *Features of social media platforms*

233. The CMA notes that there are a number of features of social media platforms which may make foreclosure of third party platforms more likely, for example:
- (a) Capturing consumer attention and engagement is a key factor of success for online platforms funded by digital advertising;<sup>229</sup> and

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<sup>228</sup> Ibid.

<sup>229</sup> Final Report, paragraphs 2.3-2.11.

(b) Even losing some users can be significant due to same-side network effects in social media acting as a barrier to entry and expansion.<sup>230</sup>

- *Conclusion on alternatives to GIPHY*

234. Based on the evidence set out above, the CMA believes that Tenor is the only significant competitive alternative to GIPHY (at least from a user perspective), and that other GIF providers are not competitive alternatives.

235. However, the CMA believes that the presence of Tenor as the only significant competitive alternative to GIPHY may not be sufficient to prevent foreclosure. On the user side, for at least some social media platforms it is important to have more than one GIF provider and Tenor may not be a universally good substitute for GIPHY (see paragraphs 219-223 above). On the advertising side, [REDACTED].<sup>231</sup>

236. For these reasons, the CMA believes that, were GIFs to become an important advertising channel in the future (see TOH1), Tenor may not be a viable alternative to GIPHY [REDACTED]. In addition, the CMA has found no evidence indicating that other third party GIF providers would offer a viable alternative to GIPHY as a tool to monetize messaging.

*Conclusion on ability*

237. For the reasons set out above, the CMA believes that the Merged Entity would have the ability to harm Facebook's rivals integrated with GIPHY through one or more of the foreclosure strategies described above.

*Incentive*

*The Parties' submissions*

238. The Parties submitted that the Merged Entity would have no incentive to engage in vertical foreclosure because:<sup>232</sup>

(a) Facebook does not have market power in the relevant downstream services (see paragraph 159 above), and so there is no basis to conclude that a significant share of users or advertisers would divert to Facebook as a result of foreclosure.

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<sup>230</sup> Final Report, paragraphs 3.203-3.213.

<sup>231</sup> Annex 056.1 Email of 17 December 2018 sent by B. Fathieh to A. Chung suggests that Tenor laid off its entire sales team in 2018. [REDACTED].

<sup>232</sup> FMN, pages 84-86; Parties' response slides to the CMA's Issues Paper, slide 30.

- (b) Any input foreclosure strategy would result in reduced user traffic to GIPHY, which would in turn reduce content upload and brand awareness, as well as the attractiveness for GIF partners such as production studios or celebrities. As a result, the quality of GIPHY's services would be degraded (in turn affecting Facebook too).
  - (c) Google is already vertically integrated with Tenor and yet has continued to offer GIFs to third parties following its acquisition of Tenor. This suggests Google had no incentive to engage in foreclosure, and the same would be true for Facebook.
  - (d) If the Merged Entity foreclosed GIPHY's API partners, Tenor would likely be in a stronger bargaining position, and this would benefit Tenor, not the Merged Entity.
239. The Parties also noted that Facebook publicly committed to keeping GIPHY free and open, that after the Merger GIPHY entered into a 5 year agreement with Snap, and that it is prepared to enter into similar extensions with other API partners.<sup>233</sup>
240. The CMA has considered whether the Merged Entity would have the incentive to engage in total or partial foreclosure. In particular, in addition to the Parties' submissions, the CMA has considered: (i) third party feedback; (ii) the Parties' internal documents; (iii) the costs and benefits of foreclosure; (iv) and the Market Study findings.

#### *Internal documents*

241. While the CMA has not found any internal documents suggesting that Facebook was planning on engaging in a foreclosure strategy post-Merger, the CMA has set out at paragraph 111 above several Facebook internal documents which suggest that the acquisition of GIPHY was in part to prevent an acquisition by one of Facebook's rivals [REDACTED], which suggests that Facebook was concerned about being foreclosed itself.<sup>234</sup> The internal documents also show that Facebook considered [REDACTED].<sup>235</sup>

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<sup>233</sup> Parties' response slides to the CMA's Issues Paper, slide 31.

<sup>234</sup> See for example, Annex 010.11 - Re GIPHY proposals; the document with the ID 'TABBY\_FTC\_000000042'; Annex 010.8 - GIF Product Landscape overview; the document with the ID 'TABBY\_FTC\_000000237.pdf'; and the document with the ID 'TABBY\_FTC\_000000234.pdf'.

<sup>235</sup> FMN, Parties' response to Question 6 of RFI 1, page 107.

### *Costs and benefits of foreclosure*

242. The CMA has considered the costs and benefits of engaging in vertical foreclosure for the Merged Entity.
243. The CMA believes that total or partial foreclosure may harm Facebook's competitors by affecting user experience on their platforms (see paragraph 222 above), to the benefit of Facebook, which would face weaker competitors. Social media users could engage less on these weakened competing platforms and spend more time instead on other platforms, in particular on Facebook's, which is likely to attract more diversion given Facebook's market power in social media (see paragraphs 154-161 above).
244. Total or partial foreclosure could also limit Facebook competitors' ability to benefit from revenue share agreements with GIPHY, which could be particularly significant were GIFs to become an important advertising channel in future (see TOH1 above) – Facebook would benefit as these competitors' digital advertising offering would be weakened, in particular in relation to their ability to monetize messaging. GIPHY could also include Facebook advertising among the GIFs provided to Facebook's competitors (see paragraph 195 above).
245. In relation to the Parties' submission that any input foreclosure strategy would result in reduced user traffic to GIPHY, which would in turn reduce the quality of GIPHY's services (see paragraph 238(b) above), the CMA notes that more than half of GIPHY's traffic originates from Facebook.<sup>236</sup> Therefore, the CMA believes that the risk of materially reducing GIPHY's traffic and degrading the quality of GIPHY's services as a result of total or partial foreclosure is limited. Moreover, the Merged Entity could decide to foreclose (or partially foreclose) only some of its rivals, further reducing such risk.
246. In the Market Study, the CMA found that Facebook's activities are highly profitable (in particular Facebook's returns are much higher than its cost of capital, with a ROCE<sup>237</sup> of 51% globally in 2018 and an estimated WACC<sup>238</sup> of around 9%).<sup>239</sup> Therefore, overall, the CMA believes that Facebook may benefit substantially from any strategy that may weaken Facebook's competitors and sustain Facebook's market power in social media and display advertising (see paragraphs 154-161 above), while the costs of engaging in either total or partial foreclosure strategies are likely to be limited.

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<sup>236</sup> FMN, White Paper on Data Related Theory of Harm, page 321.

<sup>237</sup> Return On Capital Employed.

<sup>238</sup> Weighted Average Cost of Capital.

<sup>239</sup> Final Report, Appendix D.

247. Finally, the CMA is aware of examples where Facebook has previously degraded the interoperability of its services with competitors (examples of such behaviours were reported in the Market Study<sup>240</sup> and by third parties) – this may suggest that Facebook could also engage in similar strategies in the future by degrading its competitors' interoperability with GIPHY.

#### *Conclusion on incentive*

248. The CMA believes that total or partial foreclosure strategies would be unlikely to materially harm GIPHY, while they could potentially significantly benefit Facebook (see paragraphs 242-246 above). In particular, the cost of engaging in foreclosure strategies for GIPHY is likely to be limited (see paragraph 245 above) while possibly benefitting Facebook substantially, allowing it to weaken its rivals and sustain its market power in social media and display advertising.

249. As such, the CMA believes that the Merged Entity may have the incentive to engage in either total or partial foreclosure strategies post-Merger.

#### *Effect*

250. The Parties submitted that a foreclosure strategy would have no effect due to the existence of Tenor as a perfect substitute and the lack of importance of GIFs.<sup>241</sup>

251. The CMA considered the importance of GIFs and whether there are viable alternatives to GIPHY (including the extent to which Tenor is a substitute) at paragraphs 197-237 above.

252. As set out at paragraphs 154-161 above, the CMA's recent Market Study found that:

(a) Facebook has significant and enduring market power in social media;<sup>242</sup>

(b) Facebook's market power in social media is likely to have negative impacts for consumers;<sup>243</sup>

(c) Facebook also has significant market power in display advertising;<sup>244</sup> and

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<sup>240</sup> Final Report, Appendix J.

<sup>241</sup> Parties' response slides to the CMA's Issues Paper, slide 29.

<sup>242</sup> Final Report, paragraph 3.250.

<sup>243</sup> Final Report, paragraph 3.257.

<sup>244</sup> Final Report, paragraph 5.373.

(d) Facebook's market power in display advertising has allowed it to earn significantly higher revenues per user than its competitors, and there is likely to be a substantial long run impact on consumers and advertisers from a loss of innovation.<sup>245</sup>

253. The CMA believes that if the Merged Entity engaged in foreclosure strategies, the user experience of the platforms foreclosed by the Merged Entity may be adversely affected. Moreover, foreclosed competitors may not be able to benefit from revenue share agreements with GIPHY, which could be significant in the future if GIPHY were to become successful in monetising messaging.
254. In relation to the potential introduction of a requirement to provide more user data as a condition of accessing GIPHY, rival platforms would be forced to choose between accepting these worsened terms of service or losing access to GIPHY. The evidence suggests that at least some rivals would choose the latter option. One third party competitor has already switched away from GIPHY following the Merger [X]. Another third party rival submitted that requiring the removal of user data protection tools (such as its proxy server) would be equivalent to ceasing supply, as it would never accept to provide user-level data to GIPHY.
255. As a result, the foreclosed competitors may exert a weaker competitive constraint on Facebook in both social media and display advertising. Facebook's already significant market power in social media and display advertising may be further strengthened, resulting in a substantial loss of competition.

### *Conclusion on TOH2*

256. On the basis of the evidence set out above, the CMA believes that the Merged Entity would have the ability and incentive to engage in one or more total or partial foreclosure strategies. Given Facebook's already significant market power in social media and display advertising, further weakening Facebook's rivals may significantly harm competition.
257. Therefore, the CMA believes that the Merger raises significant competition concerns as a result of vertical effects in the supply of social media worldwide and of display advertising in the UK.

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<sup>245</sup> Ibid.

***TOH3: Raising barriers to entry and expansion by increasing Facebook's data advantage in display advertising***

258. The CMA has considered whether the Merger may raise barriers to entry and expansion by increasing Facebook's data advantage in display advertising. The concern under this theory of harm is that (i) Facebook will be able to combine its data with GIPHY's data, (ii) that this could strengthen Facebook's existing data advantage, and (iii) that this could in turn raise barriers to entry and expansion and lessen competition in display advertising.
259. The CMA considered:
- (a) Whether Facebook currently has a significant data advantage in display advertising;
  - (b) Whether the Merged Entity would have access to data that Facebook did not previously have access to; and
  - (c) If so, what impact this data would have on Facebook's existing data advantage and barriers to entry and expansion in display advertising.
260. The CMA also considered the following additional concerns raised by a third party:
- (a) A concern that Facebook could use GIPHY's data to monitor usage trends for competing platforms integrated with GIPHY and copy their innovations. The CMA found that Facebook already has access to detailed monthly and weekly data on the growth of its competitors. Facebook's internal documents also include updates on new entrants shortly after their entry and launch on app stores.<sup>246</sup> Thus, the CMA believes that GIPHY's data does not materially improve Facebook's ability to monitor usage trends for competing platforms.
  - (b) A concern that Facebook could use GIPHY's data to identify trending content, allowing Facebook to acquire that content ahead of third parties and reinforce Facebook's market power in social media. Third party views on whether Facebook would be able to identify emerging content and stars as a result of access to GIPHY's data were mixed and the CMA has not seen any further evidence to support any concerns in this respect.

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<sup>246</sup> See, for example, Facebook's Industry Insights documents.

261. For these reasons, the CMA does not believe that these additional concerns are supported by the available evidence and does not consider them further below.

### *The Parties' submissions*

262. The Parties submitted that gaining access to new data did not form part of the rationale of the Merger.<sup>247</sup>

263. The Parties further submitted that the new data to which Facebook would gain access via GIPHY is limited in scope and value, and would not be useful for targeted advertising. This is due to various factors:

- (a) GIPHY's data is narrow in scope and limited to high-level and non-detailed information on users' interactions with GIPHY's GIF library. GIPHY does not have access to the kind of detailed user, context, or activity data that could provide meaningful insights.
- (b) Data on GIF search terms (even if individualised) is not valuable, as the meaning or sentiment of GIFs can depend on the context. Much of this data also contains substantial "noise" (eg because of pre-loaded terms<sup>248</sup> or searches for parts of words), further undermining their usefulness.
- (c) Facebook already accounts for more than half of GIPHY's API traffic. Since user search queries appear largely uniform across GIPHY's API partners, there is little incremental information that Facebook can derive from seeing queries originating from GIPHY's other API partners.
- (d) While Facebook logs data in relation to its own users' GIF usage on its platforms,<sup>249</sup> the main purposes of this data logging are to understand the overall popularity of GIFs on its services and to improve GIF recommendations.
- (e) There is no guarantee that Facebook would have access to further individualised data, as GIPHY's API partners can and do use proxy

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<sup>247</sup> FMN, Parties' response to Question 53 of RFI 2, page 229 and White paper on the data related theory of harm, page 313.

<sup>248</sup> GIPHY's integration partners can pre-load some searches and GIFs that appear when the user opens the integration.

<sup>249</sup> FMN, Parties' response to Question 46 of RFI 2, page 222.



servers<sup>250</sup> and content caching servers<sup>251</sup> to prevent GIPHY from accessing user-level data.

264. The Parties further submitted that there was no evidence that rivals' profitability would be materially affected as a result of the combination of Facebook's and GIPHY's data.<sup>252</sup>

### *Facebook's data advantage*

265. In the Market Study, the CMA found that Facebook possesses a significant data advantage over smaller platforms and publishers (see **Box 3** above). This data advantage creates barriers to entry and expansion for Facebook's competitors.<sup>253</sup> The inability of smaller platforms and publishers to access equivalent data reduces their ability to compete and realise the full value of their advertising inventory.<sup>254</sup> The Market Study also found that a lack of competition in digital advertising can result in substantial detriment to consumers, as a result of the increase of the price of goods and services across the economy.<sup>255</sup>
266. In the Market Study the CMA also found that user-side barriers, including the difficulty of offering consumers personalised relevant content, are a key barrier to entry and expansion in display advertising, and that the network effects present in social media result in very high barriers to entry also restricting competition in display advertising.<sup>256</sup>
267. The CMA has not seen any evidence that undermines the findings of the Market Study in this respect. The CMA therefore considers that Facebook already has a significant data advantage, which raises barriers to entry and expansion for its rivals in display advertising.

### *Access to new data*

268. The CMA's investigation found that the user data that GIPHY currently collects differs depending on whether users are accessing GIPHY via GIPHY's website, mobile or desktop applications, or via integrations with API/SDK partners such as Facebook and its competitors.<sup>257</sup> The CMA has

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<sup>250</sup> These are server applications or appliances that act as intermediaries for requests from the users seeking GIFs from GIPHY or other GIF providers.

<sup>251</sup> These are services that save GIFs locally and then serve them to users, preventing GIPHY (or other GIF providers) from serving GIFs to users directly.

<sup>252</sup> Parties' response slides to the CMA's Issues Paper, slides 33-42.

<sup>253</sup> Final Report, page 211

<sup>254</sup> Final Report, paragraph 5.165

<sup>255</sup> Final Report, page 211

<sup>256</sup> Final Report, paragraphs 5.153-5.155.

<sup>257</sup> FMN, Parties' response to Question 21 of RFI 1, pages 127-134.

focused its analysis on the user data GIPHY collects from users of integration partners such as Facebook and its competitors, as this represents the vast majority of data gathered by GIPHY (see 65 above).

269. Unless integration partners take steps to limit the user data shared with GIPHY (as discussed below), GIPHY can generally access detailed data on users that interact with GIPHY through the API. This data includes users' IP addresses, user agent information,<sup>258</sup> the country they are connecting from, the identity of the integration partner (eg Snap, Twitter etc.), users' GIF query information (ie the GIFs seen and selected), and action type events (eg the fact that a user shared a GIF). Some integration partners also provide GIPHY with unique identifiers for their users (eg cookie IDs, or unique mobile identifiers for Android and Apple users<sup>259</sup>).<sup>260</sup>
270. Post-Merger, Facebook may gain access to this data from users who access GIPHY via other integration partners. However, the amount of new data may be limited as GIPHY's integration partners can use proxy servers and content caching to reduce the user data that is made available to GIPHY. In particular, Snap and Twitter, which together with Facebook account for approximately 75% of GIPHY's usage, both currently limit the data shared with GIPHY through the use of proxies and caching.<sup>261</sup> Signal also prevents GIPHY from accessing its users' IP addresses by using a proxy server.<sup>262</sup>

### *Impact of the data on Facebook's data advantage*

271. Some of GIPHY's internal documents set out that GIPHY's data could provide advertisers with real time insights into users' sentiments, thoughts and feelings.<sup>263</sup> In the Market Study, the CMA found that 'detailed data on consumers' demographics, interests, preferences and behaviours is most valuable in terms of profiling consumers, predicting consumers' potential response to advertising and tailoring advertising messages'.<sup>264</sup> In this context, GIPHY's user data may be particularly useful for the purposes of targeting advertising.<sup>265</sup>

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<sup>258</sup> A user agent is a software acting on behalf of a user, such as a web browser. User agents identify themselves by providing information such as their name and version.

<sup>259</sup> GAID and IDFA respectively.

<sup>260</sup> FMN, Parties' response to Question 21 of RFI 1, pages 131-134.

<sup>261</sup> Parties' response to s.109 dated 8 February 2021.

<sup>262</sup> FMN, White Paper on Data Related Theory of Harm, pages 311-313 and 324-326.

<sup>263</sup> Annexes 014.1 and 014.3 of the FMN.

<sup>264</sup> Final Report, Appendix F, paragraph 4.

<sup>265</sup> Final Report, Appendices F and G.

272. This is also supported by evidence from third parties. One third party submitted that Facebook could use the data to enrich its social graph<sup>266</sup> and give insights on users interests and emotional state, and several third parties submitted that they considered that GIPHY's data could allow Facebook to better target its advertising.
273. Nevertheless, the evidence seen by the CMA does not suggest that the additional data to which Facebook may gain access post-Merger would materially increase its existing data advantage. In particular, the CMA notes that:
- (a) A number of GIPHY's third party integration partners, including Snap and Twitter, currently limit the user data that GIPHY receives through the use of proxy servers and content caching (see paragraph 270 above). This limits the amount of additional user data available to Facebook post-Merger (which in turn is likely to reduce its value to Facebook).
  - (b) Viber [REDACTED] submitted they switched from GIPHY to Tenor following the Merger. This further reduces the volume of new data to which Facebook will have access following the Merger and its likely value to Facebook.
  - (c) Facebook already had access to a significant amount of user data on GIF usage prior to the Merger, as it accounts for more than half of GIPHY's API traffic<sup>267</sup>, [REDACTED]. There may therefore be limited incremental value from the additional data that Facebook may receive post-Merger.
274. Whilst the amount and value of new data to which Facebook would currently gain access following the Merger may be limited, as explained in paragraph 195 above, the Merged Entity may require Facebook's competitors to provide more user data as a condition of accessing GIPHY. This may result in Facebook receiving more valuable user data from rival platforms integrated with GIPHY. However, the evidence suggests that at least some competitors would likely stop using GIPHY rather than provide more user data, even if this were to result in a deterioration in their offering (see paragraph 236 and TOH 2 above). This suggests that, even in these circumstances, Facebook may not gain access to a significant volume of additional user data.
275. In these circumstances, the CMA considers that barriers to entry and expansion for rivals in display advertising would not be materially increased as a result of the Merger.

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<sup>266</sup> The social graph is a representation of the information, or data, held by Facebook – see Final Report, Appendix F.

<sup>267</sup> FMN, White Paper on Data Related Theory of Harm, pages 321-323.

### *Conclusion on TOH3*

276. On the basis of the evidence set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of an increase in Facebook's data advantage leading to increased barriers to entry and expansion in display advertising. However, to the extent that the Merged Entity may require more user data from its integration partners as a condition of accessing GIPHY, this is taken into account in the assessment of TOH2.

### ***TOH4: Loss of potential competition in the supply of searchable GIF libraries***

277. The CMA considered whether the Merger may lead to a loss of potential competition in the supply of searchable GIF libraries. The CMA assessed whether, absent the Merger, Facebook would have successfully developed a searchable GIF library, and whether this would have resulted in increased competition.

278. The concern under this theory of harm is that the Merger may: (i) reduce Facebook's incentives to expand into the supply of searchable GIF libraries; and (ii) lessen future competition in the supply of searchable GIF libraries.

279. The CMA considered evidence on the extent to which:

- (a) Facebook would have expanded in the supply of searchable GIF libraries absent the Merger; and
- (b) Facebook's expansion would have led to greater competition.

### *Likelihood of Facebook's expansion*

#### *The Parties' submissions*

280. The Parties submitted that Facebook is not active in the supply of searchable GIF libraries and had no plans to start such activity.<sup>268</sup>

#### *CMA's assessment*

281. In some internal documents, Facebook listed building its own GIF library as a potential option prior to the Merger.<sup>269</sup> The same documents show that Facebook considered that building a GIF library was [✂]. These internal

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<sup>268</sup> FMN, paragraph 18.5; Parties' response slides to the CMA's Issues Paper, slide 44.

<sup>269</sup> Annex 010.8 - GIF Product Landscape overview; Annex 010.9 - Project Tabby Value Analysis; and the document named 'Fwd: GIF Product Landscape Overview Meeting: Context and Meeting Objective.msg' dated February 2020.

documents also note that building a GIF library would take several years, would require a significant investment, and would be a [REDACTED] for Facebook.<sup>270</sup>

282. However, Facebook's internal documents also show that Facebook considered [REDACTED].<sup>271</sup> The CMA also notes that certain of Facebook's platforms already [REDACTED].<sup>272</sup> The CMA considers that this indicates that Facebook may also have been reluctant to rely on a third party rival for its GIF supply if GIPHY had been purchased by an alternative purchaser.
283. As discussed at paragraph 115 above, the CMA believes that it is a realistic counterfactual for GIPHY to have been purchased by a third party competitor, and in this scenario developing its own GIF library may have become a priority for Facebook. The CMA has also seen evidence in Facebook's internal documents that the Merger was in part to prevent an acquisition of GIPHY by one of Facebook's rivals (see paragraph 111 above).
284. Third party views on Facebook's incentives to build its own GIF library were mixed. While some third parties considered that Facebook would have the incentive to build its own GIF library absent the Merger, others submitted that it would not.
285. The CMA also notes that there are a number of factors which suggest that Facebook would have had the ability to successfully build its own GIF library. Facebook has significant financial and human resources as well as a large existing user base. Facebook has also been growing its own library of non-GIF animated stickers (including branded stickers),<sup>273</sup> suggesting an ability to develop its own first-party content and enter into licensing arrangements. Furthermore, the internal documents and third party statements referred to above suggest that Facebook has the ability to build its own GIF library.
286. Therefore, the CMA believes Facebook may have had the ability and incentive to develop a GIF library, in the scenario that GIPHY was acquired by a third party competitor.

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<sup>270</sup> Annex 010.1 – L1 Approval Request; Annex 010.9 - Project Tabby Value Analysis; and Annex 010.10 - Project Tabby Rationale.

<sup>271</sup> FMN, Parties' response to Question 6 of RFI 1, page 107. Annex 010.8 – GIF Product Landscape Overview; document with the ID TABBY\_FTC\_000000237.pdf; document with the ID TABBY\_FTC\_000000042.

<sup>272</sup> Annex 010.8 – GIF Product Landscape Overview.

<sup>273</sup> In 2019 there were [REDACTED] stickers available in the Facebook sticker drawer, by October 2020 there were approximately [REDACTED] available on the Facebook website and app, and [REDACTED] via the Messenger sticker store. FMN, Parties' response to Question 11 of RFI 3. page 258.

### *Impact of Facebook's expansion on competition*

287. As noted at paragraphs 217 and 234 above, GIPHY is the largest GIF provider with Tenor being the only significant competitive alternative (at least on the user side). If GIPHY had been purchased by a third party rival, and if Facebook had successfully developed a GIF library, this would have made an additional GIF library available to users. This could have led to increased choice for GIF creators, brands and users.
288. However, the CMA has not seen any evidence to suggest that Facebook would have provided third parties with access to its GIF library. Internal documents suggest that any 'build case' was solely for the purposes of self-supply. Therefore, the CMA does not believe that the Merger would have a material impact on competition for the supply of GIF libraries, in particular by increasing incentives for GIPHY and Tenor to invest and innovate.

### *Conclusion on TOH4*

289. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of a loss of potential competition in the supply of searchable GIF libraries.

## **COUNTERVAILING FACTORS**

### **Barriers to entry and expansion**

290. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.<sup>274</sup> Conversely, the merger may also increase barriers to entry and/or expansion.<sup>275</sup>
291. The Parties submitted that barriers to entry are low for the supply of GIFs, and that Facebook faces broad competition in social media and messaging. With regard to digital advertising, the Parties submitted that barriers to entry are 'extremely low'.<sup>276</sup>
292. As set out above, the Market Study found that Facebook has significant market power in social media and display advertising and that as a result the

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<sup>274</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.

<sup>275</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.13

<sup>276</sup> FMN, paragraphs 22.1-22.10.

competitive threat from the entry and expansion of other platforms is limited. In particular, the Market Study found that display advertising is subject to significant barriers to entry.<sup>277</sup>

293. The CMA has not seen any evidence that undermines the findings of the Market Study in this respect. The CMA therefore considers that barriers to entry and expansion in the supply of social media and the supply of display advertising are high.
294. With regard to the supply of searchable GIF libraries, as set out above, GIPHY's internal documents show that GIPHY considers that it has several competitive advantages over other providers, including its global recognition and usage across platforms, the quality and safety of its content, its size and technical infrastructure, its established relationships with content partners, developers and technology companies, and its past successful funding.<sup>278</sup> Facebook's internal documents also note that building its own GIF library would [redacted] and require significant investment.<sup>279</sup> The CMA therefore considers that barriers to entry and expansion in the supply of searchable GIF libraries are high.
295. The CMA has not received evidence of any specific entry or expansion by a third party in any of the relevant markets outlined above. In particular, [redacted].
296. The CMA therefore believes that entry or expansion would not be sufficient, timely and likely to prevent a realistic prospect of an SLC, either as a result of the loss of potential competition in display advertising in the UK or as a result of vertical effects in social media worldwide and display advertising in the UK.

## Efficiencies

297. While mergers can harm competition, they can also give rise to efficiencies. Efficiencies arising from the merger may enhance rivalry, with the result that the merger does not give rise to an SLC. Efficiencies may also be taken into account in the form of relevant customer benefits.<sup>280</sup>
298. The Parties submitted that the Merger will enable Facebook to enhance its user experience across its various services (which, they submitted, was one of the key rationales for the Merger, as set out at paragraph 43(b) above).<sup>281</sup> The Parties also submitted that the Merger would allow GIPHY's creative

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<sup>277</sup> Final Report, paragraph 5.373.

<sup>278</sup> See the document named 'InvestorPreso (1)' dated April 2019.

<sup>279</sup> Annex 010.1 – L1 Approval Request; Annex 010.9 - Project Tabby Value Analysis; and Annex 010.10 - Project Tabby Rationale.

<sup>280</sup> [Merger Assessment Guidelines](#), paragraphs 5.7.1 to 5.7.4.

<sup>281</sup> FMN, paragraph 24.1.

production team to help accelerate Facebook's efforts around other creative expression use cases.<sup>282</sup> The Parties submitted that while some of these efficiencies could be achieved absent the Merger, most user benefits would only be made possible by a full vertical and technical integration of the Parties.<sup>283</sup>

299. In order to be satisfied that claimed efficiencies will enhance rivalry so that the merger does not result in an SLC, the CMA must consider that there is compelling evidence (a) that the efficiencies must be timely, likely and sufficient to prevent an SLC from arising, and (b) that the efficiencies must be merger specific, ie a direct consequence of the merger.<sup>284</sup>

300. The CMA considers that it has not received sufficiently compelling evidence<sup>285</sup> indicating that any rivalry-enhancing efficiencies would be timely, likely and sufficient to prevent an SLC. In particular:

(a) The efficiencies submitted by the Parties do not appear to be Merger-specific. While the Parties submitted that there were no other credible alternative purchasers of GIPHY (see paragraph 108, above), they also submitted that other social media providers – had they been interested – could also have expanded their integration with GIPHY and/or offered new GIF-related products and features if they had acquired GIPHY.<sup>286</sup>

(b) While there may be benefits to the Merger for some of the Parties' users, there is insufficient evidence that such benefits would exceed the potential anticompetitive effects of the Merger.

## **Conclusion on substantial lessening of competition**

301. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC as a result of:

(a) loss of potential competition in display advertising in the UK, and

(b) vertical effects, in relation to social media worldwide, and in relation to display advertising in the UK.

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<sup>282</sup> FMN, paragraph 24.2.

<sup>283</sup> FMN, Parties' response to Question 21 of RFI 3, page 265.

<sup>284</sup> [Merger Assessment Guidelines](#), paragraph 5.7.4.

<sup>285</sup> [Merger Assessment Guidelines](#), paragraph 5.7.4.

<sup>286</sup> FMN, Parties' response to Question 21 of RFI 3, page 266.



## DECISION

302. Consequently, the CMA believes that it is or may be the case that (i) a relevant merger situation has been created; and (iii) the creation of that situation has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.
303. The CMA therefore believes that it is under a duty to refer under section 22(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.<sup>287</sup> Facebook has until 1 April 2021<sup>288</sup> to offer an undertaking to the CMA.<sup>289</sup> The CMA will refer the Merger for a phase 2 investigation<sup>290</sup> if Facebook does not offer an undertaking by this date; if Facebook indicates before this date that it does not wish to offer an undertaking; or if the CMA decides<sup>291</sup> by 12 April 2021 that there are no reasonable grounds for believing that it might accept the undertaking offered by Facebook, or a modified version of it.
304. The statutory four-month period mentioned in section 24 of the Act in which the CMA must reach a decision on reference in this case expires on 29 March 2021. For the avoidance of doubt, the CMA hereby gives Facebook notice pursuant to section 25(4) of the Act that it is extending the four-month period mentioned in section 24 of the Act. This extension comes into force on the date of receipt of this notice by Facebook and will end with the earliest of the following events: the giving of the undertakings concerned; the expiry of the period of 10 working days beginning with the first day after the receipt by the CMA of a notice from Facebook stating that it does not intend to give the undertakings; or the cancellation by the CMA of the extension.

**Andrea Gomes da Silva**  
**Executive Director, Markets and Mergers**  
**Competition and Markets Authority**  
**25 March 2021**

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<sup>287</sup> Section 22(3)(b) of the Act.

<sup>288</sup> Section 73A(1) of the Act.

<sup>289</sup> Section 73(2) of the Act.

<sup>290</sup> Sections 22(1) and 34ZA(2) of the Act.

<sup>291</sup> Section 73A(2) of the Act.