

**DEROGATION LETTER  
IN RESPECT OF INITIAL ENFORCEMENT ORDERS  
ISSUED PURSUANT TO SECTION 72(2) ENTERPRISE ACT  
2002**

**Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 9 June 2020**

**Completed acquisition by Facebook, Inc. of Giphy, Inc.**

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

Dear Mr. [X],

We refer to your submissions dated 20, 21 and 29 April 2021 requesting that the CMA consents to derogations to the Initial Enforcement Order of 9 June 2020 (the '**Initial Order**'). Unless otherwise stated, the terms defined in the Initial Order have the same meaning in this letter. Further, in this letter:

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

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

Under the Initial Order, save for written consent by the CMA, Facebook Inc. (**Facebook**), Tabby Acquisition Sub, Inc. (**Tabby Acquisition**), Facebook UK Limited (**Facebook UK**) and their subsidiaries are required to hold separate the Facebook business from the business of Giphy, Inc. (**Giphy**) and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference.

After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, the CMA consents to Facebook, Tabby Acquisition and Facebook UK carrying out the following actions, in respect of the specific paragraphs:

**1. Paragraph 4(a) of the Initial Order [X]**

Facebook submitted that it intends to launch an experimental standalone app in the United States designed to [X]. As part of the implementation of [X], Facebook intends to connect the [X] app to Giphy's public application programming interface ('**API**') in order to provide users with GIF-related Content to share. Facebook confirmed that any third party would be able to connect to Giphy in the same way. In addition, Facebook

submitted that implementing [X] will require no action from Giphy and will not result in any changes to the contractual relationship between Giphy and Facebook.

Facebook submitted that the proposed implementation of [X] is entirely unrelated to the Merger and will not affect the nature, description, range or quality of goods and/or services supplied by Facebook in the UK, given that the [X] app will not be made available in the UK.

After due consideration of Facebook's request and in the light of the information submitted by it, the CMA consents to a derogation from paragraph 4(a) of the Initial Order permitting the connection of the [X] app to Giphy's public API, strictly on the basis that this derogation will not result in any pre-emptive action which might prejudice the reference or impede the taking of any action which may be justified by the CMA's decision on the reference.

## **2. Paragraph 5(e)(i) of the Initial Order ([X])**

Facebook submitted that it intends to sunset an experimental app used for [X] available in the United States ('[X]'). [X] is connected to Giphy's public API and enables users to create [X] from their phone and share them on the web.

Facebook confirmed that the decision to sunset [X] is entirely unrelated to the Merger and will not affect the nature, description, range or quality of goods and/or services supplied by Facebook in the UK, since the app is not available in the UK. Facebook further confirmed that sunsetting [X] does not require any action from Giphy, or result in any change to the contractual relationship between Facebook and Giphy. On this basis, Facebook submitted that this derogation will not result in any pre-emptive action which might prejudice the reference or impede the taking of any action which may be justified by the CMA's decision on the reference.

After due consideration of Facebook's request and in the light of the information submitted by it, the CMA consents to a derogation from paragraph 5(e)(i) of the Initial Order permitting Facebook to sunset the experimental E.gg app.

## **3. Paragraph 5(i) of the Initial Order (Staff changes)**

Facebook submitted a request for a derogation from the Initial Order to allow an internal change of role for the following two employees:

- Ms. [X], Product Manager; and
- Mr. [X], Software Engineer.

Facebook requested that Ms. [X] be permitted to transition to another role as part of [X]. The CMA understands that Ms. [X] is the line manager of Ms. [X], and that both employees are engaged in GIF-related Activities (albeit that Ms. [X] is engaged in GIF-related Activities only on an ad hoc or de minimis basis).

Facebook confirmed that Ms. [X]'s role and related work will not change, and that he will temporarily report to Mr. [X] (Ms. [X]'s line manager).

Facebook also requested that Mr. [X] be permitted to work on alternative projects which are unrelated to GIF-related Activities and which are currently under-staffed. Facebook submitted that the change is necessary to more efficiently allocate its staff

resources and to use Mr. [X] skillset in a new project within the Facebook.com app that requires his skillset. Facebook confirmed that two employees, Mr. [X] and Mr. [X], will take over Mr. [X] GIF-related responsibilities and that these employees each have the capability and capacity to effectively assume Mr. [X] GIF-related Activities.

The CMA consents to a derogation from paragraph 5(i) of the Initial Order to permit the key staff changes described above, strictly on the basis that:

- (i) Facebook has represented that the employees assuming the roles of Ms. [X] and Mr. [X] have the necessary capacity and experience to effectively take on the GIF-related Activities previously carried out by Ms. [X] and Mr. [X]. Further, Facebook will ensure a smooth handover of responsibilities, with a view to ensuring that the key staff changes will not have any adverse impact on Facebook's GIF-related Activities;
- (ii) No other organisational or key staff changes will be made to the Facebook business as a result of the proposed key staff changes identified above; and
- (iii) This derogation will not lead to any integration of the Facebook business and the Giphy business.

#### **4. Paragraph 5(i) of the Initial Order (Staff changes)**

Facebook submitted that following the departure of a Product Manager responsible for managing Facebook's API relationship with Giphy, it proposes to appoint [X], Mr. [X], to this role. Facebook submitted that Mr. [X] will have the same responsibilities for GIF-related Activities as his predecessor and that he is well qualified to assume the role. Accordingly, Facebook requests a derogation from paragraph 5(i) of the Initial Order to appoint Mr. [X] to the role of Product Manager.

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

- (i) Facebook has represented that Mr. [X] has the necessary capacity and experience to effectively take on the role of Product Manager with responsibility for managing Facebook's API relationship with Giphy. As a result, the appointment of Mr. [X] to this role will not have any adverse impact on Facebook's GIF-related Activities;
- (ii) No other organisational or key staff changes will be made to the Facebook business as a result of the appointment of Mr. [X]; and
- (iii) This derogation will not lead to any integration of the Facebook business and the Giphy business.

Yours Sincerely

**Richard Romney**  
**Director, Mergers**

7 May 2021