

ACQUISITION BY FACEBOOK, INC, THROUGH ITS SUBSIDIARY TABBY ACQUISITION SUB, INC., OF GIPHY, INC

Variation Order made by the Competition and Markets Authority pursuant to section 72(4)(b) of the Enterprise Act 2002 (the Act)

Whereas:

- (a) the Competition and Markets Authority (**CMA**) imposed an initial enforcement order on Facebook, Inc (**Facebook**), Tabby Acquisition Sub, Inc. (**Tabby Acquisition**), Facebook UK Limited (**Facebook UK**) and Giphy, Inc (**Giphy**) pursuant to section 72(2) of the Act in relation to the completed acquisition by Facebook, through its subsidiary Tabby Acquisition, of Giphy on 9 June 2020 (the **Initial Enforcement Order**);
- (b) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act; and
- (c) the CMA considers that it is appropriate to vary the Initial Enforcement Order in light of the derogation granted by the CMA on 29 June 2021.

Now, pursuant to section 72(4)(b) of the Act and for the purpose of varying the Initial Enforcement Order, the CMA makes the following order addressed to Facebook, Inc, Tabby Acquisition Sub, Inc., Facebook UK Limited and Giphy, Inc (the **Variation Order**).

1. Paragraph 7 to the Initial Enforcement Order is substituted by the following paragraph:
 - 7. Facebook, Tabby Acquisition, Facebook UK and Giphy shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by Facebook, Tabby Acquisition, Facebook UK and Giphy and their subsidiaries with this Order. In particular, on 29 June 2021 and subsequently every two

weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer or other persons as agreed with the CMA of each of Facebook, Tabby Acquisition, Facebook UK and Giphy shall,

(a) on behalf of Facebook / Tabby Acquisition / Facebook UK provide a statement to the CMA in the form set out in the Annex A to this Order confirming compliance with this Order.

(b) on behalf of Giphy provide a statement to the CMA in the form set out in the Annex B to this Order confirming compliance with this Order.

2. In paragraph 13 of the Initial Enforcement Order, the following definitions are inserted:

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).

Ordinary course of business GIF-related Activities means the ongoing day-to-day operation, management and technical administration of Facebook's application programming interface (API) relationship with any third-party GIF-related Content providers, excluding any activities that are likely to have a material effect on, or result in a substantial change to, the functionality of the API relationship for longer than 24 hours.

3. The Annex to the Initial Enforcement Order (Compliance statement for Facebook / Tabby Acquisition / Facebook UK / Giphy) is substituted with the compliance statements set out at **Annexes A and B** to this Variation Order (with changes highlighted in track).

This Variation Order comes into force on 29 June 2021.

Signed,

Richard Romney
Director, Mergers

29 June 2021

ANNEX TO THE VARIATION ORDER

ANNEX A

Compliance statement for Facebook / Tabby Acquisition / Facebook UK / ~~Giphy~~

I [insert name] confirm on behalf of Facebook / Tabby Acquisition / Facebook UK / ~~Giphy~~ that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) Facebook / Tabby Acquisition / Facebook UK / ~~Giphy~~ has complied with the Order made by the CMA in relation to the transaction on 9 June 2020 (the Order).
 - (b) Facebook / Tabby Acquisition / Facebook UK's / ~~Giphy's~~ subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by Facebook / Tabby Acquisition / Facebook UK / ~~Giphy~~ that might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the Giphy business with the Facebook business;
 - (ii) transfer the ownership or control of the Facebook business or the Giphy business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the Giphy business or the Facebook business to compete independently in any of the markets affected by the transaction.
 - (b) The Giphy business has been carried on separately from the Facebook business and the Giphy business's separate sales or brand identity has been maintained.
 - (c) The Giphy business and the Facebook business have been maintained as a going concern and sufficient resources have been made available for the development of the Giphy business and the Facebook business, on the basis of their respective pre-merger business plans.

- (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Giphy business or the Facebook business, except in the ordinary course of business.
- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the Giphy business and the Facebook business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the Giphy business and the Facebook business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the Giphy business or the Facebook business have been disposed of; and
 - (iii) no interest in the assets of the Giphy business or the Facebook business has been created or disposed of.
- (g) There has been no integration of the information technology of the Giphy or Facebook businesses, and the software and hardware platforms of the Giphy business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Giphy business have been carried out by the Giphy business alone and, for the avoidance of doubt, the Facebook business has not negotiated on behalf of the Giphy business (and vice versa) or entered into any joint agreements with the Giphy business (and vice versa).
- (i) All existing contracts of the Giphy business and the Facebook business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Giphy business or the Facebook business.
- (k) No key staff have been transferred between the Giphy business and the Facebook business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Giphy business and the Facebook business.

- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Giphy business (or any of its employees, directors, agents or affiliates) to the Facebook business (or any of its employees, directors, agents or affiliates), or vice versa.
- (n) Except for ordinary course of business GIF-related Activities or as listed in paragraph (p) below, Facebook has not entered into any GIF-related Activities in the reporting period.
- (o) Except as listed in paragraph (p) below, there have been no:
 - (i) key staff that have left or joined the Giphy business or the Facebook business;
 - (ii) interruptions of the Giphy business or the Facebook business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
 - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Giphy business or the Facebook business; or
 - (iv) substantial changes in the Giphy or Facebook business's contractual arrangements or relationships with key suppliers.
- (p) [*GIF-related Activities in the reporting period, save for ordinary course of business GIF-related Activities, and list of material developments*]

- 3. Facebook / Tabby Acquisition / Facebook UK ~~/Giphy~~ and its subsidiaries remain in full compliance with the Order and will, or will procure that Giphy, continue actively to keep the CMA informed of any material developments relating to the Giphy or the Facebook business in accordance with paragraph 8 of the Order.

Interpretation

- 4. Terms defined in the Order have the same meaning in this compliance statement.

I understand that:

- 5. it is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **fin**es, **imprisonment for a term not exceeding two years, or both**. (Section 117 of the Enterprise Act 2002.)

6. Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF FACEBOOK / TABBY ACQUISITION / FACEBOOK UK ~~/GIPHY~~

Signature

Name

Title

Date

Compliance statement for Giphy

I [insert name] confirm on behalf of Giphy that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) Giphy has complied with the Order made by the CMA in relation to the transaction on 9 June 2020 (the Order).
 - (b) Giphy's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by Giphy that might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the Giphy business with the Facebook business;
 - (ii) transfer the ownership or control of the Facebook business or the Giphy business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the Giphy business or the Facebook business to compete independently in any of the markets affected by the transaction.
 - (b) The Giphy business has been carried on separately from the Facebook business and the Giphy business's separate sales or brand identity has been maintained.
 - (c) The Giphy business has been maintained as a going concern and sufficient resources have been made available for the development of the Giphy business on the basis of its pre-merger business plan.
 - (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Giphy business, except in the ordinary course of business.
 - (e) The nature, description, range and quality of goods and/or services supplied in the UK by the Giphy business have been maintained and preserved.
 - (f) Except in the ordinary course of business for the separate operation of the two businesses:

- (i) all of the assets of the Giphy business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the Giphy business have been disposed of; and
 - (iii) no interest in the assets of the Giphy business has been created or disposed of.
- (g) There has been no integration of the information technology of the Giphy or Facebook businesses, and the software and hardware platforms of the Giphy business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Giphy business have been carried out by the Giphy business alone and, for the avoidance of doubt, the Facebook business has not negotiated on behalf of the Giphy business (and vice versa) or entered into any joint agreements with the Giphy business (and vice versa).
- (i) All existing contracts of the Giphy business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Giphy business.
- (k) No key staff have been transferred between the Giphy business and the Facebook business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Giphy business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Giphy business (or any of its employees, directors, agents or affiliates) to the Facebook business (or any of its employees, directors, agents or affiliates), or vice versa.
- (n) Except as listed in paragraph (p) below, there have been no:
 - (i) key staff that have left or joined the Giphy business;
 - (ii) interruptions of the Giphy business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;

- (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Giphy business; or
- (iv) substantial changes in the Giphy business's contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

- 3. Giphy and its subsidiaries remain in full compliance with the Order and will, or will procure that Giphy, continue actively to keep the CMA informed of any material developments relating to the Giphy business in accordance with paragraph 8 of the Order.

Interpretation

- 4. Terms defined in the Order have the same meaning in this compliance statement.

I understand that:

- 5. it is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **fines, imprisonment for a term not exceeding two years, or both**. (Section 117 of the Enterprise Act 2002.)
- 6. Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF GIPHY

Signature

Name

Title

Date