Completed acquisition by Facebook, Inc of Giphy, Inc.

Provisional Findings report

Notified: 12 August 2021

The Competition and Markets Authority has excluded from this published version of the Provisional Findings report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. [Some numbers have been replaced by a range. These are shown in square brackets.] [Non-sensitive wording is also indicated in square brackets.]

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Summary

Overview of our findings

1. The Competition and Markets Authority (**CMA**) has provisionally found that the merger between Facebook, Inc. (**Facebook**) and GIPHY, Inc. (**GIPHY – together, the Parties**) (the **Merger**) has resulted or would result in a substantial lessening of competition (**SLC**) in social media and display advertising, harming social media users and businesses in the UK.

2. The report and its appendices, which will be published shortly after this summary, constitute the CMA's **Provisional Findings**. We invite any interested parties to make representations on these provisional findings by no later than **2 September 2021**. Interested parties should refer to the notice of provisional findings for details of how to do this.

3. Facebook completed the acquisition of GIPHY on 15 May 2020, but has been required to hold the businesses separate since 9 June 2020, when the CMA imposed an Initial Enforcement Order. In our notice of possible remedies published alongside our Provisional Findings, we have set out our initial view that the only effective way to address the competition issues that we have identified is for Facebook to sell GIPHY, in its entirety, to a suitable buyer. We also invite submissions from interested parties on these initial views by **25 August 2021**.

Who are the businesses and what services do they provide?

Facebook is by far the largest provider of social media and messaging services in the UK

4. The Facebook group offers various online products and services to customers in the UK. This includes popular social media and messaging platforms such as the Facebook app, Instagram, Messenger and WhatsApp. Facebook is by far the largest provider of social media and messaging services in the UK, by number of users. Indeed over 80% of UK internet users access at least one Facebook site per month. Such platforms are generally provided to users for no monetary cost. However, Facebook's platforms (alongside many other social media platforms) are multi-sided in nature, meaning that they supply services to two or more distinct, but related, customer groups. In Facebook's case, in addition to serving users, who use Facebook's social media and messaging platforms to connect with their friends and family, it also serves advertisers, who use Facebook's platforms to market their products to users, and in return, pay Facebook a fee.

5. Multi-sided platforms such as Facebook are often characterised by network effects, in that the value of the product for users on one side of the platform depends on the number of users either on the same side of the platform, or on the other side. For example, in Facebook's case, having a large user-base on its social media platform makes it more attractive to advertisers. Facebook's business model, and the business model of other social media platforms, therefore relies on attracting and retaining users' attention (and gathering data about them), which they then use to sell advertising.

6. An important way of attracting users' attention is by offering engaging content and features. Social media platforms, including Facebook and its rivals (eg Snapchat, TikTok, Twitter), therefore compete to offer users interesting content and features to keep them engaged on their platform for longer. Some of these features and content are provided by the social media platforms and some of it is provided by external providers, or the users themselves (eg photo-sharing on Instagram).

7. A popular feature on social media and messaging platforms are GIFs and GIF stickers, such as those provided by GIPHY.

GIPHY is the world's leading provider of free GIFs and GIF stickers

8. GIPHY provides an online database and search engine that allows users to search and share GIFs and GIF stickers. A GIF (or video 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 which is placed over images or text (such as a Story on Instagram or Snapchat). We use the term 'GIF' to refer to both video GIFs and GIF stickers).

9. While the GIF file format was invented in the 1980s, the onset of social media provided an opportunity to reimagine the GIF as a part of modern internet culture. The main GIF libraries that are used today were launched less than ten years ago, and the popularity of GIFs has grown enormously since then. Every day, millions of users in the UK post content that includes a GIF.

10. GIPHY describes itself as the world's largest library of free GIFs and stickers. GIPHY offers its GIFs and GIF stickers to UK users both on its own website and app, and via Application Programming Interfaces (**APIs**) or Software Development Kits (**SDKs**) that allow apps (eg Snapchat, TikTok, Facebook, Instagram) to integrate GIPHY's GIF and GIF sticker databases. These integrations allow GIPHY to reach a wide audience, making it the second largest search engine after Google by number of searches.

11. Like Facebook, GIPHY's products are offered free of charge to users and companies using its APIs and SDKs, as well as on GIPHY's own website and app. While GIPHY's API partners do not pay for access to GIPHY's products, these products are important to some API partners as a tool for enhancing user engagement. 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 payment. In the context of its acquisition of GIPHY, Facebook required the termination of all Paid Alignment activities.

Our assessment

Why are we examining this Merger?

12. The CMA's primary duty is to seek to promote competition, both within and outside the UK, for the benefit of UK consumers. Following an initial 'phase 1' investigation, the Merger was referred for a more in-depth 'phase 2' investigation on 1 April 2021. At phase 2, the CMA considers whether:

    (a) there is a 'relevant merger situation' for the purposes of the Enterprise Act 2002,

    (b) that relevant merger situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within any market or markets in the UK for goods or services, and

    (c) if so, whether remedial action should be taken, and if so, what action and by whom.

13. While both Facebook and GIPHY are US-based entities (and prior to the Merger, GIPHY's revenue-generating activities were limited to the US), the important question for the CMA is whether the Merger may have an impact on competition in the UK. This link to the UK is established by meeting one of two jurisdiction tests: (i) the turnover test (based on the target's turnover in the UK), and (ii) the share of supply test (requiring that the Parties together supply at least 25% of a particular good or service supplied in the UK, and there is an increment to the share of supply).

14. Facebook and GIPHY are both active in the UK, and provide services to UK users. In this case, we provisionally conclude that the Merger has resulted in the creation of a relevant merger situation on the basis of the share of supply test, as the Parties overlap in the supply of:

(a) apps and/or websites that allow UK users to search for and share GIFs, in which the Parties have a combined share (by average monthly searches) of [50-60]% with an increment of [0-5]%; and

(b) searchable libraries of animated 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]%.

How have we examined this Merger?

15. In deciding whether a Merger has resulted, or may be expected to result, in an SLC, the CMA must apply a 'balance of probabilities' standard. This means that the CMA must decide whether it is *more likely than not* that a Merger will result in an SLC.

16. To determine whether this is the case, we have gathered information from a wide variety of sources, using our statutory powers to ensure that we have as complete a picture as possible under the constraints of the statutory timetable to understand the implications of this Merger on competition. The evidence we have gathered has been tested rigorously, and the context in which the evidence was produced has been considered when deciding how much weight to give it.

17. At phase 2, we have focused on two ways in which the Merger could give rise to an SLC. Both of these 'theories of harm' relate to the two-sided market for social media services and display advertising:

(a) horizontal unilateral effects resulting from loss of potential competition in display advertising; and

(b) vertical effects resulting from input foreclosure in relation to the supply of social media.

18. We provisionally conclude that the Merger is more likely than not to give rise to an SLC on both counts. This is discussed in further detail below.

What evidence have we looked at?

19. In assessing this Merger, we looked at a wide range of evidence that we considered in the round to reach our provisional decision.

20. We examined the Parties' own internal documents which show how they run their businesses and how they view their partners and their rivals in the ordinary course of business. Such internal documents can also be helpful in

understanding the Parties' plans for the future of their businesses. We undertook a widescale review having collected over 280,000 internal documents from the Parties.

21. We spoke to and gathered evidence from other market participants in the industry to understand better the competitive landscape for the provision of GIF libraries, including the GIF advertising model, and to get their views on the impact of the Merger. In particular, we spoke to the following four categories of market players:

(a) social media and messaging platforms and providers of keyboard apps;

(b) GIF providers;

(c) investors and potential investors in GIPHY; and

(d) advertising companies and brands familiar with GIPHY's Paid Alignment advertising services.

22. We also considered the internal documents of certain social media and messaging platforms, and those of GIPHY's key investors, in order to determine how others viewed the GIPHY business prior to the Merger and GIFs more generally, and how they reacted to the Merger.

23. We also calculated market shares. However, in markets such as the ones in which Facebook and GIPHY operate, where there is a wide range of different products and offerings, and where new features and products are introduced regularly, it can be difficult to define the precise boundaries of a 'market'. In these circumstances, when assessing the impact of the merger on competition, the CMA will consider evidence on market shares, if helpful, alongside evidence on how closely the merging parties compete (either currently or in the future). As well as the size of the Parties' market shares, our assessment of the extent to which Facebook and GIPHY have market power also took into account the stability of the relevant market shares, the strength of competitive constraints on the Parties, and the extent of past entry and exit from the relevant markets.

24. Finally, as well as looking at how competition works currently (and the Parties' current shares of the relevant markets), we recognise that markets, and in particular markets for digital products and services such as those offered by the Parties, change over time. Our assessment is therefore forward-looking and considers the Parties' plans for their businesses in future.

What did this evidence tell us…?

… about market power?

25. Market power is typically used to refer to firms who have such strength in a particular market that they are able to influence the price of the goods or services that they sell (eg charging higher prices than they would be able to if an industry was more competitive). This could also be the case in relation to non-price factors such as quality of a good or service, or level of innovation. We therefore considered the relative strength of the Parties in the markets in which they operate. For GIPHY, this is searchable GIF libraries, while for Facebook, this is social media and display advertising. In assessing this relative strength, we considered the other options available to the Parties' customers or users and whether they offer a good alternative to the Parties.

26. In relation to **searchable GIF libraries**, we have provisionally found that social media and messaging platforms have very limited choice of alternatives to GIPHY. Tenor (owned by Google) is GIPHY's only close competitor. GIPHY has a number of distinctive features that may make it particularly attractive to social media platforms, for example, the quality of its content, its reach among distribution partners and the fact that, at the time of the Merger, GIPHY was the only significant provider of GIF-based advertising services. All of this points towards GIPHY having market power in the supply of searchable GIF libraries.

27. In relation to the supply of **social media**, our investigation has provisionally found that Facebook has significant market power. In particular, we considered the fact that the Facebook platforms make up by far the highest share of user time spent on social media in the UK and that other platforms tend to be accessed in addition to the Facebook platforms, rather than as an alternative to them. These provisional findings are also consistent with the findings of the CMA's Online Platforms and Digital Advertising Market Study (the **Market Study**) in 2020, which found that Facebook's platforms had a combined share of 73% of time spent on social media.

28. Finally, in relation to **display advertising**, our provisional view is that Facebook also has significant market power in display advertising in the UK. Display advertising is a form of digital advertising where advertisers pay online companies such as social media platforms to display their advertising on their web pages or mobile apps. This is in contrast to search advertising where advertisers pay online companies to link their company website to a specific search word or phrase. Display advertising is an important industry in the UK, worth over GBP 5.5 billion in 2019. Our analysis shows that the

Facebook platforms currently have a combined market share of around [40-50]%. Again, this is largely consistent with the findings of the Market Study.

…about what would have happened had the Merger not taken place?

29. In order to provide a comparator and determine the impact that the Merger may have on competition, we have considered what would have happened had the Merger not taken place. This is known as the counterfactual.

30. The Parties told us that it was likely that GIPHY would have become a significantly weakened business had it not been bought by Facebook. Our provisional view is that, had the Merger not gone ahead, GIPHY would have continued to supply GIFs to social media platforms (including Facebook), as it had done before the Merger, and would have continued to innovate, develop its products and services, generate revenue and explore (with the financial and commercial support of investors) various options to further monetise its products. This would have been the case regardless of GIPHY's ownership (ie whether it were to operate independently, as it did before the Merger, or in the hands of an alternative purchaser). We consider that GIPHY had a number of possible options for ensuring the ongoing funding of its business in the short and medium term, including generating revenue through its Paid Alignment model, agreeing a fee for using its services on major social media platforms, obtaining additional funding from existing investors, or sale to an alternative purchaser.

31. We also noted the short-term impact that Coronavirus (COVID-19) had on GIPHY's business prior to the Merger. However, we have not seen any evidence to demonstrate that Coronavirus (COVID-19) would have had a long-term, structural impact on GIPHY's ability to innovate and generate revenue had the Merger not taken place.

32. We also considered what Facebook would have done had the Merger not taken place. As noted above, GIFs are an important driver of user engagement on social media and messaging platforms, including Facebook's platforms, and Facebook told us that a key part of its rationale for acquiring GIPHY was to ensure its continued access to a supply of GIFs in future. We have therefore assessed the alternative options available to Facebook to ensure continued availability of high-quality GIFs had the Merger not gone ahead, namely: (i) paying some form of platform fee or licence fee to GIPHY, (ii) relying more heavily on other GIF providers (eg Tenor), or (iii) building its own GIF library.

33. Following an assessment of the Parties' internal documents which discussed these options in some detail, our provisional view is that it was likely that

Facebook would have continued to procure GIFs from GIPHY had the Merger not taken place, rather than choosing one of the alternative options set out above. We also consider that if Facebook were to develop its own GIF library, this would have been in the longer term and it would have continued to rely on GIPHY in the interim.

34. Our assessment of the effects of the Merger is therefore considered in comparison to a scenario in which, had the Merger not gone ahead, GIPHY would have continued to supply GIFs, innovate, develop its products and services, generate revenue and explore various options to further monetise its products, and Facebook would have continued to procure GIFs from GIPHY, at least in the short to medium term.

…about any horizontal effects of the Merger?

35. One of the potential concerns that we have investigated is whether the Merger could lead to horizontal unilateral effects as a result of loss of potential competition. What we mean by this is the possibility that the Merger could remove from the market a business that was competing, or had the potential to compete, with Facebook. In this case we are particularly interested in whether GIPHY could have competed with Facebook in relation to display advertising in the UK. We describe this as 'horizontal' effects because, in this respect, Facebook and GIPHY would both be active at the same level of the supply chain (ie offering display advertising). We consider that GIPHY's Paid Alignment model competes closely with display advertising, such as that offered on Facebook's platforms, in particular because GIPHY's advertising model is typically used to raise brand awareness (as with display advertising), rather than to drive purchases of specific products or services (as with search advertising).

36. In some sectors, including fast-moving technology markets such as the one in which Facebook and GIPHY operate, an important aspect of how firms compete involves efforts or investments aimed at protecting or expanding their profits in the future.

37. One of GIPHY's key innovations was its Paid Alignment advertising proposition, which it first offered in 2017 in the US and which it was making efforts to expand. Under this model, GIPHY obtained payment from advertisers in exchange for advertising. GIPHY had also entered into revenue-sharing agreements with certain social media partners in the US, under which GIPHY would give partners a share of its advertising revenues in exchange for the partners allowing GIPHY to run its Paid Alignment advertising on these partners' platforms. Paid Alignment was used by a number of leading international consumer brands, including Pepsi and Dunkin'

Donuts, and was increasingly growing, both in revenue and number of advertisers using the service, until the Merger in May 2020. In the context of the Merger, Facebook required the termination of all Paid Alignment activities.

38. The Parties told us that GIPHY's advertising model was flawed for a number of reasons, including because GIPHY's user base was largely achieved through API integrations with social media platforms, it could not provide brands with helpful audience data and metrics, and it could not offer 'direct response' ads (where the user clicks on the ad to buy the product).

39. However, most of the advertisers that we spoke to were positive about their experience of working with GIPHY, and some of them told us that they had been able to monitor the effectiveness of their advertising with GIPHY to a level that they were satisfied with. This is also reflected in GIPHY's internal documents. Our investigation also found that there were a number of potential advantages to GIPHY's Paid Alignment model which may have outweighed its disadvantages – for example:

(a) The advertising has been specifically selected by the user to express a particular idea or emotion to the recipient, which has the potential to make the ad very personal and impactful.

(b) Similarly, advertising through private messaging, such as Paid Alignments, provides an air of credibility to the advertising, as it is shared by someone that you trust in a private forum.

(c) We also heard that an advantage of advertising using GIFs was the fact that they operate on a loop, meaning that one GIF might be seen by users a number of times.

(d) Finally, we note that messaging has historically been a difficult format for providers to use to generate revenue, as most forms of advertising significantly worsen the user experience. However, due to its GIF format, the Paid Alignment model of advertising is subtle and intrinsic to the message, rather than interrupting it. This is reflected in GIPHY's internal documents. Facebook's internal documents also discuss the importance of monetising messaging.

40. We also note from GIPHY's internal documents that GIPHY hoped to develop its Paid Alignments product and expand its offering internationally, including into the UK. Prior to the Coronavirus (COVID-19) pandemic, GIPHY was considering how to respond to significant interest from advertisers regarding international expansion.

41. Despite these plans for expansion, GIPHY's forecasts did not envisage becoming anything like the size or scale of Facebook in the medium term. However, given Facebook's significant market power in display advertising (as discussed above), the acquisition by Facebook of a potential entrant may be concerning, even if that potential entrant is expected to be small.

42. By removing GIPHY from the market, we consider that the Merger has removed a firm with pre-Merger activities that we consider were likely to be valuable in driving other companies' (including Facebook's) efforts in display advertising. GIPHY's efforts to innovate and monetise its services prior to the Merger were valuable, as they increased the likelihood of new innovations and products being made available in future, even allowing for the possibility that GIPHY's Paid Alignment model ultimately might not have been successful. This is the case both for those products and innovations that GIPHY had already begun to develop itself or may have developed in future, but also for any developments that may have been made by Facebook in response to the possibility of competition from GIPHY, or from other social media platforms in partnership with GIPHY. By removing GIPHY, the Merger has eliminated this form of 'dynamic' competition.

43. We consider that the loss of GIPHY as a potential competitor in display advertising is substantial in the light of:

(a) Facebook's significant market power in display advertising (as discussed above);

(b) GIPHY's strong position as a leading provider of an important social media engagement tool;

(c) GIPHY's efforts in recent years to monetise its services, using an innovative advertising model, which had the potential to compete against Facebook for display advertising revenues;

(d) Evidence that Facebook and other market participants were also interested in monetising the same or similar social media features;

(e) The fact that successful expansion into a multi-sided market such as display advertising can be magnified by network effects (eg GIPHY's Paid Alignment model could have generated additional revenues for Facebook's rival social media platforms, leading them to invest more in attracting new users; while if Facebook owns and controls GIPHY, it will be able to reinforce its strong position in this space); and

(f) The high barriers to entry in display advertising, demonstrated by very limited successful entry in the market since Facebook became market

leader. GIPHY has already developed a large user base and begun to grow its advertising revenue, despite a number of challenges. Another potential competitor may face even more challenges in a world in which the two largest GIF providers, GIPHY and Tenor, are owned by two of the largest tech companies, Facebook and Google.

44. On the basis of the evidence we have seen to date, we therefore consider that the Merger will result in an SLC as a result of horizontal effects, in the form of a loss of potential competition.

…about any vertical effects of the Merger?

45. As set out above, GIPHY allows apps (eg social media platforms such as Snapchat, TikTok, Facebook, Instagram) to integrate GIPHY's GIF and GIF sticker databases into their own platforms via an API or SDK free of charge. One of the potential concerns that we have investigated is whether Facebook could disadvantage its rivals in social media by limiting their access to GIPHY in some way, either by preventing them from accessing GIPHY at all, or allowing them to access GIPHY but on worse terms than they did before the Merger. This is known as foreclosure. We describe this as 'vertical' effects because, in this respect, Facebook and GIPHY are operating at different levels of the supply chain (ie GIPHY is acting as an input into Facebook's, and its rivals', products).

46. Our assessment has focused on whether Facebook would have the **ability** and **incentive** to limit access to GIPHY in this way, and whether this 'foreclosure' would have an **effect** on the ability of rival apps to compete with Facebook in social media. We also specifically assessed whether Facebook would be able to disadvantage its rivals by reprioritising innovation and development of GIPHY's services towards the requirements of Facebook's own platforms rather than those of other social media platforms, or by requiring rival platforms to provide more data (eg on individual or aggregate user behaviour) in order to access GIPHY.

47. As discussed above, our assessment has shown that GIPHY has a number of distinctive qualities which mean that many social media platforms rely on it to facilitate user expression. Our assessment of the Parties' internal documents and our discussions with other players in the industry suggest that GIFs are an important feature for social media platforms (including Facebook), particularly in relation to encouraging user engagement. As noted above, GIFs are a popular feature of social media platforms, with the proportion of users posting content that included a GIF being over 25% on some platforms. We also found that there was only one other GIF provider offering a comparable service to GIPHY: Tenor, which is owned by Google. On this

basis we consider that following the Merger, Facebook does have the ability to foreclose its rivals.

48. In determining whether Facebook has the incentive to foreclose, we have assessed the costs and benefits of this strategy for Facebook. We have provisionally found that there would be direct benefits of foreclosure to Facebook, in that reducing the engaging features available on a rival social media platform may mean that users switch at least a proportion of their time to other platforms and that, due to Facebook's high share of the market, this is likely to be to a Facebook platform; this in turn may encourage their friends and followers to switch too. We have also considered whether there would be a cost to Facebook of foreclosure, as by limiting access to GIPHY, Facebook would lose (at least partly) the benefit to GIPHY in having a wide pool of users (which makes it more attractive to content creators and to advertising partners). However, we have provisionally found that even if GIPHY were removed from all other platforms, the large user base of Facebook's platforms would mean that it would still be an attractive proposition to partners and creators. A foreclosure strategy targeting one or more specific rival platforms would have even fewer costs. On this basis we consider that Facebook would also have an incentive to foreclose its rivals from access to GIPHY.

49. Our provisional view is that this strategy would have the effect of strengthening Facebook's existing significant market power in social media, and reducing the competition that it faces from others. On the basis of the evidence we have seen to date, we therefore provisionally conclude that the Merger will result an SLC as a result of vertical effects, in the form of input foreclosure.

…about any countervailing factors?

50. Once we have decided that a Merger could give rise to an SLC, we also consider whether there are any factors that might prevent or mitigate against that SLC from arising. These are known as countervailing factors. In this case, we focused on whether there could be any new entrants to the supply of searchable GIF libraries that could prevent an SLC from arising.

51. The evidence that we have collected shows that there are five main barriers to entering or expanding in relation to searchable GIF libraries, and on this basis a new entrant or an existing small provider would face considerable challenges in trying to grow or compete at scale:

(a) A large, high-quality content library;

(b) A sophisticated search engine;

(c) Scale and brand;

(d) A viable monetisation model; and

(e) Capital.

52. As described above, recent new entrants and smaller GIF providers have not to date been able to reach the same size and quality as GIPHY and Tenor.

53. Our assessment has provisionally concluded that it is not likely that entry or expansion of sufficient scale would occur in a timely manner in order to prevent or reduce the impact of an SLC from arising as a result of this Merger.

Provisional conclusions

54. As a result of our investigation and our assessment, we have provisionally concluded that the completed acquisition by Facebook of GIPHY has resulted or would result in the creation of a relevant merger situation.

55. We have also provisionally concluded that the Merger has resulted or may be expected to result in an SLC:

(a) in the supply of display advertising in the UK due to horizontal unilateral effects arising from a loss of dynamic competition, and

(b) in the supply of social media services worldwide (including in the UK) due to vertical effects resulting from input foreclosure.

56. Due to the multi-sided nature of the markets in which the Parties operate, a lessening of competition in the supply of social media services also has effects on competition in the supply of display advertising. The vertical effects resulting in a loss of competition in social media that we have highlighted above therefore exacerbate the effects on competition in display advertising arising from the elimination of a potential competitor.

Provisional Findings

1. The reference

1.1 On 1 April 2021, the Competition and Markets Authority (**CMA**) in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the **Act**), referred the completed acquisition by Facebook, Inc (**Facebook**) of GIPHY, Inc. (**GIPHY**) (the **Merger**) for further investigation and report by a group of independent panel members on the following questions in accordance with section 35(1) of the Act:

(a) whether a relevant merger situation has been created; and

(b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom for goods or services.

1.2 Throughout this document, Facebook and GIPHY are referred to collectively as 'the **Parties**' and Facebook and GIPHY are referred to collectively following the Merger as 'the **Merged Entity'**.

1.3 Our terms of reference, along with information on the conduct of the inquiry, are set out in Appendices A and B.

1.4 We are required to publish a final report by 6 October 2021.

1.5 This document, together with its appendices, constitutes the CMA's Provisional Findings (the **Provisional Findings**). Further information relevant to this inquiry, including non-confidential versions of submissions, including from the Parties, can be found on the CMA case page.[1]

[1] Facebook / GIPHY Merger Case Page.

2. The Parties, Merger and Rationale

The Parties

GIPHY

2.1 GIPHY was founded in 2013 and is headquartered in New York. GIPHY is an online database and search engine that allows users to search for and share digital GIFs and GIF stickers.

2.2 A video GIF is a digital file that displays a short (typically 2.5 seconds), looping, soundless video,[2] which can be used to expressively convey emotions, or as a way of demonstrating an understanding of popular culture (eg clips from TV shows). A GIF sticker displays an animated image comprised of a transparent (or semi-transparent) background which can be placed over images or text. For the purposes of these Provisional Findings, unless otherwise specified, the term '**GIFs**' refers to both video GIFs and GIF stickers.

2.3 GIPHY has built a large GIF library and search engine, along with a recognisable brand in GIFs, stickers and conversational content. It has also established partnerships with brands to obtain directly licensed content which it distributes directly and through a wide network of distribution partners.

2.4 GIPHY's worldwide user reach (through its owned and operated channels as well as distribution partners) is over 800 million users and GIPHY facilitated, on average, [✂] monthly searches in 2020 through its Application Programming Interfaces (**API**)[3] and Software Development Kits (**SDK**)[4] distribution channels.

2.5 In the UK in 2020, GIPHY delivered over [✂] monthly searches on average across its entire distribution network (the majority through API/SDK partners and the remainder through its owned and operated (**O&O**) website and app).[5]

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[2] GIPHY released a 'GIF with sound' feature in June 2021 that enables users to hear the GIFs; this is available on Android and iOS. digitalinformationworld.com.
[3] An API is the software interface that allows computer programs and applications to connect with each other.
[4] GIPHY's Software Development Kit provides tools to third-party host apps to programme GIPHY's library in such a way that its integration is aligned with the style and functionality of the host app's user interface.
[5] GIPHY's API partners can choose to cache users' searches, which means that the total number of searches performed on individual API partners' platforms is not completely visible to GIPHY. In addition, GIPHY's UK-specific data are likely to be an under-estimate due to API partners proxying search requests from their own servers (which are typically based in the US, not the UK) on behalf of end-users. Therefore, the number of UK searches facilitated by GIPHY in 2020 likely represents the lower range of the actual searches performed in that year. [✂]

2.6 Based on data provided by Facebook across a one-week period in March/April 2021, in the UK, over [✄] pieces of content (eg messages, comments, posts and stories) containing a GIF were posted/sent across Facebook's family of platforms.[6] Although it is not possible to determine how much of that content was fulfilled by GIPHY due to Facebook's integration with both GIPHY and Tenor, on Instagram, which integrates solely with GIPHY, over 3 million UK users posted/shared content that included a GIF and over 9 million pieces of content containing a GIF were posted/shared by UK users during that one-week period.

2.7 GIPHY has innovated and developed its offering over time. For example, GIPHY told us that it facilitated the creation of a new search behaviour – searching and sharing expression and content for conversations – which is now integrated into almost every conversation platform.

2.8 GIPHY started to generate revenue in 2017 through '**Paid Alignment**' agreements through its O&O channel. Paid Alignment offers brands and advertisers the ability to align their GIFs with popular search terms, so users see these brands' content first when searching for a GIF, or to insert their GIFs into GIPHY's 'trending feed' on its O&O channel, in exchange for a fee.

2.9 GIPHY expanded its revenue generation model in February 2018 through its API distribution network. GIPHY's Paid Alignment service continued to operate until the Merger was finalised in May 2020.

2.10 Facebook submitted conflicting statements regarding whether Facebook or GIPHY decided to terminate the Paid Alignments revenue stream and whether the Paid Alignments agreements were in fact terminated. In one submission Facebook stated that GIPHY had terminated and/or had given notice to terminate its Paid Alignment contracts with brand partners by 15 June 2020. Facebook later submitted that GIPHY had not terminated the Paid Alignment agreements but wound down its revenue sharing agreements with its API partners which means GIPHY is no longer paying revenue shares in respect of these contracts.

2.11 However, we have seen evidence of Facebook's internal documents regarding the approval of the Merger which indicates that the decision to terminate GIPHY's Paid Alignment revenue stream came from Facebook '[✄]'.

2.12 GIPHY's internal communications around the time of the completion of the Merger also indicates that there was no prior decision made by GIPHY to wind

[6] Facebook, Messenger, WhatsApp, and Instagram.

down its Paid Alignment agreements and confirms that the decision not to continue the revenue generation was made as a result of the Merger.

2.13 In an email from GIPHY to Facebook on 20 May 2020, GIPHY asks for guidance and approval from Facebook with regard to the messaging around its Paid Alignments service: 'We are getting a number of inbounds from agencies and client direct who are waiting on immediate deliverables from GIPHY - some coming with increasing levels of frustration'. Subsequently, GIPHY notified its advertisers and API partners about GIPHY 'sunsetting' its revenue part of the business. The decision to stop GIPHY's Paid Alignments contracts came as a surprise to its advertisers and partners, with one advertiser inquiring how this decision would impact its '[✂]' and another advertiser noting 'what a big shift' this was for GIPHY.

2.14 Therefore, we consider that Facebook required the termination of all of GIPHY's existing Paid Alignment arrangements and the cessation of all of GIPHY's revenue-generating activities.

2.15 GIPHY's revenue in 2019 was [✂],[7] all generated in the United States, with no revenue generated in the UK.

Facebook

2.16 Facebook was incorporated in July 2004 and completed its initial public offering in May 2012, with the company's stock being listed on the NASDAQ stock exchange.

2.17 Facebook often refers to the 'Facebook family of apps', which represents the following four products/platforms and which are its main user-facing platforms:

(a) Facebook;

(b) Instagram;

(c) WhatsApp; and

(d) Messenger.

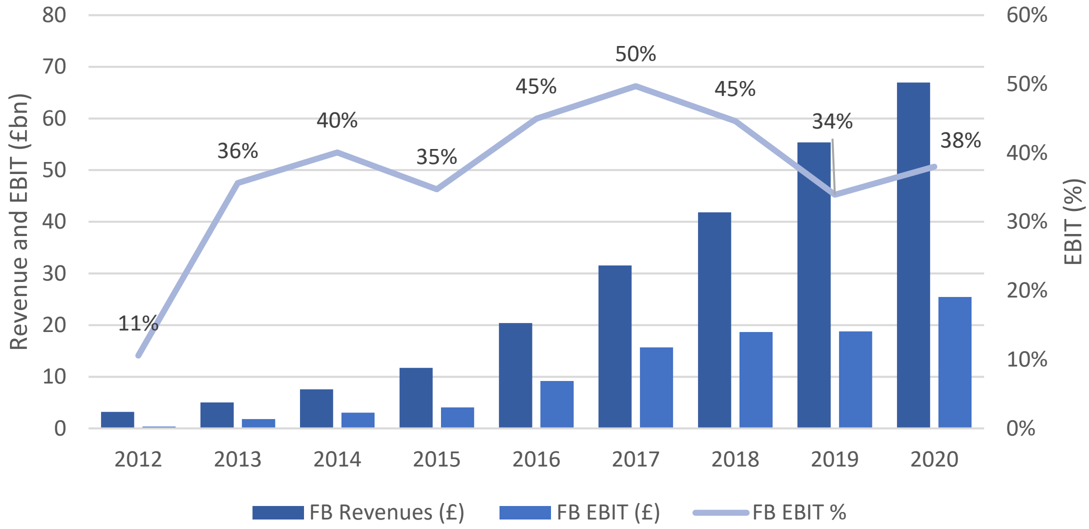
2.18 Facebook's family of apps are monetised through display advertising to varying degrees. In 2020, the Facebook Group generated revenue of USD 86

[7] Using Bank of England average 2019 exchange rate of USD1.2766 to GBP1.

billion (equivalent to GBP 67 billion)[8] globally, an increase on the prior year of USD 15.3 billion (equivalent to GBP 11.9 billion).

2.19 Figure 1 below sets out Facebook's global revenues and EBIT. In the UK in 2020, the Facebook app and Instagram alone generated [✂] (equivalent to [✂]) of revenue from display advertising.

Figure 1: Facebook Group's global revenue and EBIT (earnings before interest and tax) between 2012 and 2020



Source: CMA analysis of Facebook Inc 10-K (updated following CMA Online platforms and digital advertising market study)

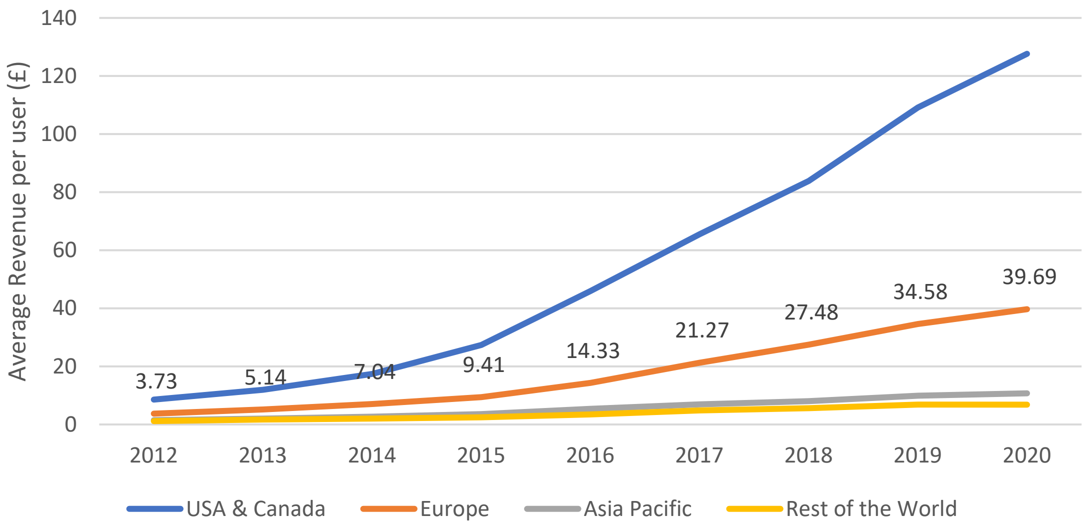
2.20 Facebook relies heavily on digital advertising to support its operations. In 2012, 84% of Facebook's total revenue was from digital advertising – this had increased to 98% by 2020 (a reduction of just 1% from 2019, which was 99%).

2.21 Since its inception, Facebook has been successful in growing its daily and monthly active user base year on year, increasing to 1.85 billion and 2.80 billion respectively in 2020. This makes the Facebook family of apps a very attractive proposition for advertisers with its wide and global reach.

2.22 The value to advertisers of the users of the Facebook family of apps is demonstrated in the consistently increasing 'average revenue earned per user' (**ARPU**) by Facebook (see Figure 2 below).

[8] Bank of England annual average 2020 of USD1.2837 to GBP1.

Figure 2: Facebook ARPU split across geographical regions 2012 to 2020



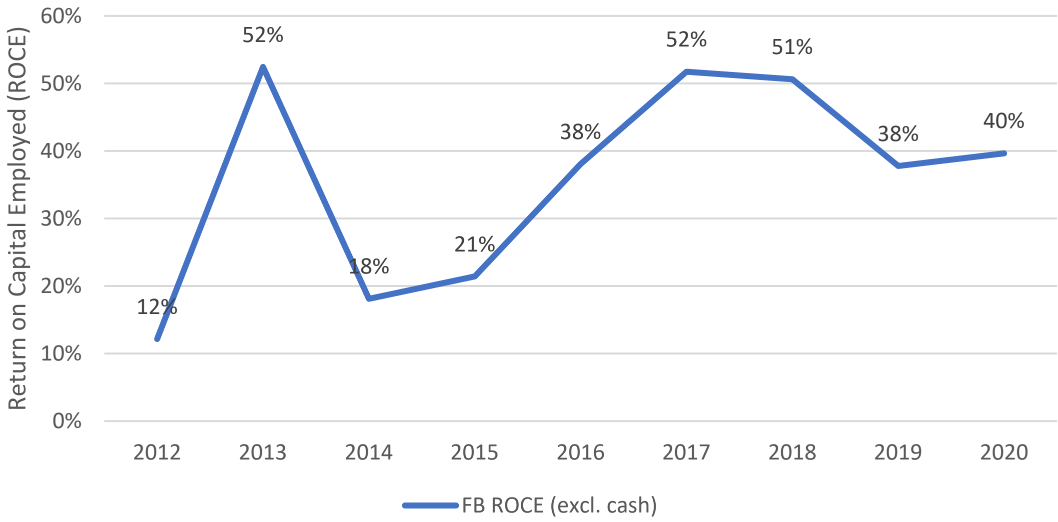
Source: CMA analysis of Facebook 10-K (updated following Market Study)

2.23 Facebook's ARPU in the UK has increased from less than GBP 5 in 2011 to over GBP 50 in 2019. This average was noted as being 'significantly higher than that of its competitors' as part of the analysis conducted during the CMA's Market Study into Online Platforms and Digital Advertising, which published its Final Report in July 2020 (the **Market Study**).[9]

2.24 During the Market Study, Facebook's revenue and accounting profit were reviewed, along with the company's estimated Return on Capital Employed (**ROCE**), to measure its profitability. To measure ROCE the CMA adjusted accounting profits to provide an 'economically meaningful measure of profitability'. Calculations performed as part of the Market Study have been updated for the latest financial year available (year ended 31 December 2020) and are presented below in Figure 3.

[9] CMA, Online platforms and digital advertising market study, July 2020.

Figure 3: Facebook Group Return on Capital Employed 2012 to 2020



Source: CMA analysis of Facebook Inc 10-K (updated following Market Study)[10]

2.25 There has been little change to Facebook's ROCE between 2019 and 2020. In fact, ROCE has slightly increased from 38% to 40%, demonstrating the lack of impact that the global Coronavirus (COVID-19) pandemic has had on Facebook's profitability.

2.26 The Market Study estimated the weighted average cost of capital (**WACC**) for the large digital platforms at around 9% in 2018.[11] There is no evidence to suggest that this has changed over the last two years. Facebook's ROCE in 2020 of 40% therefore indicates that Facebook has been generating profits comfortably in excess of its cost of capital.

The Merger

2.27 Facebook set up a wholly owned subsidiary (Tabby Acquisition Sub, Inc) for the purpose of acquiring GIPHY. The Merger completed on 15 May 2020 and consequently all outstanding equity in GIPHY was cancelled on the date of completion.

2.28 Facebook paid USD 315 million (equivalent to GBP 260 million)[12] [✂] for GIPHY, with an additional [✂].

[10] Market Study, Appendix D.
[11] Market Study, Figure 2.11.
[12] Bank of England exchange rate as at 15 May 2020 of USD1.2126 to GBP1 on the date of the completion of the Merger.

The rationale for the Merger

Facebook's rationale

2.29 Facebook submitted that its rationale for the Merger was threefold:

(a) To sustain GIPHY. Facebook said it had concerns over GIPHY's viability due to ongoing losses made by the company as a result of failing to establish a successful monetisation model, exacerbated by the decline in the online advertising market due to Coronavirus (COVID-19). In particular:

(i) If GIPHY ceased its operations, Facebook said its services would be compromised from a user experience perspective, due to the high degree of integration of GIPHY in Facebook's platforms.

(ii) Facebook did not think it could develop its own supply of GIFs/GIF stickers (to be utilised in addition to Tenor) before losing access to GIPHY.

(b) To enhance user experience through making significant investments in additional GIPHY services and additional integration of GIPHY's library into Facebook's services. Facebook said that integration of GIPHY's library into Facebook, as well as the ability to have direct control would enable Facebook to develop and launch additional features and deliver more relevant content to its users.

(c) To integrate GIPHY's talent, specifically its creative production specialists. Facebook said that GIPHY's creative team would 'accelerate Facebook's efforts around other creative expression use cases across its services'.

2.30 The approval of the Merger was conducted largely by email. In order to secure internal approval for a transaction of this size at Facebook, Facebook's corporate development team (in this case led by [✄]) was required, in the first instance, to obtain [✄].

2.31 The level of executive and board approval of transactions depends on the transaction value. [✄]. Therefore, in the case of the acquisition of GIPHY, which had a final transaction value of USD 315 million ([✄]), board approval was not required. Once a price had been agreed, a further deal approval request was submitted to [✄].

2.32 The email chains seeking approval for the Merger set out a short summary of the rationale for the Merger. While we have seen supporting evidence in these email chains, along with other Facebook internal documents, for the three reasons for the Merger outlined in Facebook's submissions (and set out at paragraph 2.29 above), we have also seen evidence in Facebook's internal documents of additional motivations for the Merger, namely that the Merger would:

(a) open new monetisation opportunities across the Facebook family of apps; and

(b) prevent competing social media services from acquiring GIPHY.

2.33 These additional motivations are discussed in further detail below.

Facebook's consideration of alternatives to the Merger

2.34 The importance of GIFs to the Facebook family of apps for driving user engagement and content creation was highlighted in Facebook's internal documents, with GIFs being described as a 'clearly important feature for consumers'. Further discussion of the importance of GIFs to driving user engagement is contained in Chapter 8, Vertical Effects.

2.35 Before pursuing the Merger, Facebook considered internally various alternative options with regard to its relationship with GIPHY, at least in part due to its concerns about losing access to GIPHY; these included building its own GIF and GIF sticker library, partnering with alternative GIF providers or paying an annual fee to access GIPHY's content. Facebook also considered a possible minority investment in GIPHY. All of these alternative options are discussed in detail in Chapter 6, Counterfactual.

Our provisional view

2.36 Facebook's motivations for the Merger appear to have stemmed from two main objectives:

(a) To manage the downside risks of Facebook's reliance on GIPHY's GIFs and stickers; and

(b) To capitalise on the possible upsides of integrating GIPHY more extensively into Facebook's ecosystem.

2.37 In terms of the downside risks, Facebook's platforms – Instagram in particular – rely on GIPHY for the provision of GIFs and stickers. Facebook was concerned about losing access to GIPHY, either due to GIPHY's exit through inability to sustain its operations or due to its acquisition by a competitor.

2.38 Other Facebook platforms (including WhatsApp and Messenger, but not Instagram) are integrated with GIPHY as well as Tenor (which is owned by Google). However, Facebook was also concerned about being dependent on Google's services. By acquiring GIPHY, Facebook was guaranteeing ongoing access to GIPHY's services (thus securing a source of future supply of popular digital content for all of its platforms) and removing the possibility of GIPHY's acquisition by a competitor.

2.39 Facebook estimated that should Instagram lose access to GIPHY's content it would degrade Instagram's proposition to end users and therefore impact Instagram's monetisation. This deterioration was estimated to be valued at at least [✄] in 2020 alone.

2.40 In terms of the upsides, the monetisation opportunities offered a new ad format to Facebook, including within the sticker 'tray' on Instagram.[13] Facebook's team recognised that the upside presented by this potentially new ad format would require some development, but discussed the opportunity with enthusiasm and showed an intention to explore how this advertising method could be applied at scale.

2.41 Furthermore, the monetisation opportunity resulting from acquiring GIPHY was discussed throughout the process of the evaluation of GIPHY as an acquisition target, demonstrating the importance of the possible revenue generation to Facebook's decision-making.

2.42 On seeking approval [✄] to acquire GIPHY, the monetisation potential to Instagram from the Merger was indicatively valued at [✄]. This was based on a model prepared by Instagram's Vice President of Product, who had primarily identified this monetisation opportunity to be in the sticker tray (where Instagram users can search for available GIFs and GIF stickers).

2.43 The importance of Instagram to the Facebook family of apps has been growing over the years and in a Facebook Board of Directors' presentation dated May 2019, it was stated that the base revenue forecast of the core business is '[✄]'.

2.44 Additionally, '[✄]'.

2.45 Facebook's internal documentation setting out its wider product strategy discusses the shift in how users communicate online which has a direct impact on how Facebook can monetise its platforms. In a product strategy document, Facebook notes that the main location or opportunity to serve ads

[13] The sticker tray enables search and retrieval of GIFs and stickers to be used as part of the Instagram 'Story'.

([✄]) is being threatened by changes in user preferences and behaviour. The document claims there has been: ‘A sharp shift in how people share: from feed sharing towards messaging and ephemeral sharing’ and that [✄].

2.46 An internal document setting out Facebook’s 5-year bets does not explicitly mention how Facebook will achieve its strategy for each of the platforms, but what the document does present is the importance and prominence of Story production and Story consumption on Messenger to ‘Facebook ecosystem’. Therefore, any successful launch of a feature or development in Instagram Stories (the location where currently majority of GIF stickers are being used) is likely to be replicated on other Facebook surfaces where the Stories feature is also important.

2.47 Lastly, Facebook’s ability to personalise users’ GIF searches across its user-facing platforms, which was not possible prior to the Merger, may enable Facebook to provide a better quality service compared to its social media competitors. This potentially increases its revenue generation possibilities through increased user engagement across its platforms.

2.48 The consideration paid by Facebook was significantly impacted ([✄]) by Facebook’s knowledge of GIPHY management team’s willingness to recommend an offer that was on par or below GIPHY’s latest fund-raising valuation (completed in 2019) and the operational and financial challenges that GIPHY was facing (which were disclosed by GIPHY to Facebook prior to the Merger).

GIPHY’s rationale

2.49 GIPHY submitted that its rationale for the Merger was to enable it to obtain funding to continue its operations.

2.50 GIPHY’s revenue levels in 2019 were not sufficient to cover its operational costs. Therefore, the company relied on regular external funding rounds to carry on its operations. As noted in further detail in Chapter 6, Counterfactual, GIPHY had undertaken a dual process of fund-raising since the middle of 2019, involving both M&A and an exploration of a possible external capital raise.

2.51 GIPHY submitted that the onset of Coronavirus (COVID-19) had put additional pressure on GIPHY’s ability to raise finance in the first quarter of 2020. GIPHY faced increasing hosting costs due to the increased traffic,[14] general uncertainty in the venture capital market and a slowdown in the advertising market. These factors all contributed to GIPHY's management team's decision to recommend the sale of the company to Facebook.

2.52 Further discussion of GIPHY's financial position prior to the Merger is discussed in Chapter 6, Counterfactual. We also present further information on the views of GIPHY's main investors regarding the Merger in Appendix E: GIPHY's Timeline.

[14] Similar to other online platforms, such as Netflix, Facebook and YouTube, GIPHY saw an increase in traffic driven by changes in people's behaviour, with more people spending time online with many social activities being unavailable (see article in the nytimes.com). GIPHY notes in internal communications that in other circumstances, an increase in traffic (of about 30%) would be positive for the business. However, in parallel to increased traffic, the advertising market is noted by Alex Chung to be 'dampened', therefore increasing GIPHY's short-term costs with no instant upside from increased revenue. [✂]

3. Jurisdiction

Introduction

3.1 In accordance with section 35(1) of the Act and pursuant to our terms of reference we are required to investigate and report on two statutory questions: (i) whether a relevant merger situation (**RMS**) has been created; and (ii) if so, whether the creation of that situation has resulted, or may be expected to result, in an SLC within any market or markets in the UK for goods or services.

3.2 We address the first of the statutory questions in this chapter and have considered each element of the jurisdictional test in turn.

3.3 An RMS has been created if: (i) two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 24 of the Act; and (ii) the value of the turnover in the UK of the enterprise being taken over exceeds GBP70 million (the turnover test) or the share of supply test is satisfied.[15]

3.4 Our provisional view is that an RMS has been created:

(a) Facebook and GIPHY are both enterprises that have ceased to be distinct within the statutory period for reference; and

(b) The share of supply test is met on two distinct bases, namely that the acquisition has resulted in an increment to the share of supply and the Parties supply, in the UK, at least 25% of:

(i) apps and/or websites that allow UK users to search for and share GIFs; and

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

Two or more enterprises

3.5 The Act defines an 'enterprise' as 'the activities or part of the activities of a business'.[16] The term 'business' includes 'a professional practice and includes any other undertaking which is carried on for gain or reward or which is an

[15] Section 23(1) of the Act.
[16] Section 129(1) of the Act.

undertaking in the course of which goods or services are supplied otherwise than free of charge'.[17]

3.6 The CMA's Guidance on Jurisdiction and Procedure states that this definition 'simply means that the activities in question could be carried on for gain or reward. However, there is no requirement that the transferred activities generate a profit or dividend for shareholders: indeed, the transferred activities may be loss making or conducted on a not-for-profit basis'.[18]

The Parties' submissions

3.7 The Parties submitted that GIPHY is not an enterprise for the purposes of the Act because GIPHY does not supply any services in the UK 'otherwise than free of charge', and that GIPHY's services in the UK are provided entirely free of charge.

CMA's analysis

3.8 Facebook was incorporated in July 2004 and the company's stock is listed on the NASDAQ stock exchange. As noted in Chapter 2, The Parties, Merger and Rationale, Facebook provides a number of products/platforms including Facebook, Instagram, Messenger, WhatsApp, Oculus, Portal and Workplace. Through these platforms, Facebook makes GIFs, animated and static stickers available to users without charge, and engages in digital advertising to support its operations. It is common ground that Facebook is an enterprise for the purposes of the Act.

3.9 GIPHY was incorporated in February 2013 and is regulated by the US Securities and Exchange Commission. GIPHY is a platform providing an online database and a search engine that allows users to search and share GIFs and GIF stickers both on its own website and app, and via third-party platforms. GIPHY does not currently charge for access to its online database and search engine.

3.10 GIPHY has completed a number of investment rounds in order to sustain and expand its commercial operations and develop its products and services. GIPHY promotes itself to investors as a business that would be carried on for gain or reward. GIPHY also started to generate revenue in 2017 through Paid Alignment agreements which continued until completion of the Merger (May 2020), when Facebook terminated all existing paid arrangements in place and ceased the revenue-generating arm of the platform, and GIPHY had a range

[17] Section 129(1) of the Act.
[18] Mergers: Guidance on the CMA's jurisdiction and procedure (CMA 2 – 2014) at paragraph 4.6.

of pre-merger plans for revenue generation. The evidence shows that GIPHY has the aim and ambition to be a profitable business (see Chapter 6, Counterfactual and Chapter 7, Horizontal Effects).

3.11 The fact that GIPHY currently seeks to attract UK users by offering its services to them without charge has no bearing on whether or not it is an enterprise for the purposes of the Act for the following reasons:

(a) There is nothing unusual in a network business building up a user-base by offering its services to them at little or no charge, and then leveraging that substantial user-base to fund its business through other arrangements, such as revenue from advertising. For example, Facebook does not charge users for using its Facebook, Instagram or Messenger apps. As noted above, GIPHY was developing revenue generation plans that did not rely on charging UK users for access to its GIFs and GIF stickers.

(b) There is nothing in the definition of 'enterprise' or 'business' that limits the geographic scope of the definition to the UK. We agree that in order for an RMS to be established there must be a UK nexus, but the statutory language is clear that this UK nexus falls to be assessed as part of the turnover or share of supply test, not as part of the assessment of whether the merger parties constitute enterprises.

(c) Facebook has acquired the whole of the GIPHY business, not simply GIPHY's UK activities, and so it is the whole of the GIPHY business which must be taken into account.

3.12 For these reasons, our provisional view is that GIPHY is a business and is an 'enterprise' for the purposes of UK merger control.

'Ceased to be distinct'

3.13 Section 26 of the Act provides that enterprises have ceased to be distinct once they are brought under common ownership or common control.

3.14 On 15 May 2020, Facebook, through its wholly-owned subsidiary, Tabby Acquisition Sub, Inc., acquired all outstanding equity in GIPHY. The Merger has given Facebook a controlling interest (ie 'de jure', or 'legal' control) over GIPHY. As a result of the Merger, Facebook and GIPHY have therefore come under common ownership or control and have ceased to be distinct.

3.15 On this basis, our provisional view is that each of Facebook and GIPHY is an enterprise and that as a result of the Merger these enterprises have ceased to be distinct.

At a time or in circumstances falling within section 24

3.16 Section 24 of the Act requires that the completed merger must have taken place not more than four months before the reference is made.

3.17 The acquisition was completed and made public on 15 May 2020. The CMA started its Phase 1 investigation in June 2020, but time was extended on various occasions between 19 June 2020 and 31 December 2020 in accordance with section 25(2) of the Act, following the Parties' failures to comply, with or without reasonable excuse, with requirements of information notices issued by the CMA under section 109 of the Act.

3.18 The four month deadline under section 24 of the Act for a decision to refer became, therefore, 29 March 2021 unless further extended while the Parties decided whether to offer undertakings.[19] The CMA took a decision on 25 March 2021 to make a reference unless Facebook gave undertakings in lieu of a reference under section 73 of the Act by 1 April 2021, and the statutory deadline was extended to allow for the Parties to offer undertakings. As no such undertakings were given, a reference under section 22 of the Act to the Chair to constitute a Group was made on 1 April 2021.

3.19 The Merger was therefore completed within the statutory period for reference.

Turnover test

3.20 The turnover test is met where the value of the turnover in the UK of the 'enterprise being taken over'[20] exceeds GBP70 million.[21] GIPHY did not generate more than GBP70 million of turnover in the UK in its most recent financial year and so the turnover threshold set out in section 23(1)(b)(i) of the Act is not satisfied.

Share of supply test

3.21 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 at least 25% or more of those goods or services in the UK as a whole, or in a substantial part of it.

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[19] Under section 25(4) and (5) of the Act.
[20] Section 28 of the Act confirms that turnover for the purposes of section 23(1) is determined by taking the total value of the UK turnover of the enterprises which cease to be distinct.
[21] Section 23(1)(b) of the Act.

3.22 The CMA has a wide discretion to identify a specific category of goods or services supplied or procured by the merger parties for the purposes of applying the share of supply test.[22] The CMA's Guidance on Jurisdiction and Procedure identifies a number of considerations to which the CMA will have regard when describing the relevant category of goods or services.[23] In particular, it notes that:

(a) The CMA will have regard to any reasonable description of a set of goods or services to determine whether the share of supply test is met. This will often mean that the share of supply used corresponds with a standard recognised by the industry in question, although this need not necessarily be the case; and

(b) The share of supply test is not an economic assessment of the type used in the CMA's substantive assessment; therefore, the group of goods or services to which the jurisdictional test is applied need not amount to a relevant economic market.[24]

3.23 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.[25]

3.24 The share of supply test requires that the merger would result in the creation or enhancement of at least a 25% share of supply or acquisition of goods or services either in the UK or in a substantial part of the UK. This does not require, however, that the merger parties be legally incorporated in the UK.[26] The Guidance on the CMA's jurisdiction and procedure states that services or goods are generally supplied in the UK where they are provided to customers who are located in the UK.[27]

3.25 The CMA's provisional view is that the share of supply test should be assessed on two descriptions of services:[28]

[22] Section 23(8) of the Act.
[23] Mergers: Guidance on the CMA's jurisdiction and procedure (CMA 2 – 2014) at paragraph 4.56.
[24] See for example the CMA's decision in the Completed acquisition by ION Investment Group Limited of Broadway Technology Holdings LLC (7 July 2020).
[25] Section 23(5) of the Act.
[26] Mergers: Guidance on the CMA's jurisdiction and procedure (CMA 2 – 2014) at paragraph 4.57.
[27] Mergers: Guidance on the CMA's jurisdiction and procedure (CMA 2 – 2014) at paragraph 4.58.
[28] 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, we do not consider that there is anything that precludes the CMA from determining that the share of supply test is met on multiple bases.

(a) The supply of apps and/or websites that allow UK users to search for and share 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).

The Parties' submissions

3.26 The Parties submitted that the Merger does not satisfy the share of supply test within the meaning of section 23 of the Act on either basis put forward by the CMA.

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

3.27 The Parties submitted that Facebook is not active in the supply of searchable GIF libraries, and the overlap the CMA purports to identify is artificial. The Parties consider, therefore, that the description of services is not reasonable.

3.28 In particular, the Parties submitted that Facebook users do not search for GIFs on Facebook; Facebook users search for GIFs on GIPHY or Tenor and Facebook is simply a mechanism that allows users to access GIFs provided by GIPHY or Tenor.

3.29 The Parties stated that in identifying an overlap: 'GIPHY's activities are being treated as both horizontally overlapping with Facebook (in terms of providing an access mechanism to a GIF search engine) and being vertically-integrated into Facebook's services (in terms of providing the GIF search engine that Facebook users access to search for GIFs). However, GIPHY cannot reasonably be both of those things at the same time for the purposes of calculating a single share of supply. As a result, this construction fails and the share of supply test is not met on this basis'.

3.30 The Parties further submitted that, even if the CMA's description of services is reasonable, the Parties' combined share of supply does not exceed 25%:

(a) The Parties suggested that if seeking to identify the shares of supply of 'apps and/or websites that allow users to search for GIFs', the appropriate methodology would be to count the number of apps and/or websites that provide this service (of which Facebook and GIPHY would each, at best, only be one such app/website), rather than calculating shares of supply by reference to average number of monthly searches.

(b) Even on the basis of average monthly searches, the Parties' combined share of supply does not exceed 25% as the CMA has failed to properly account for significant suppliers of GIFs such as Google, Apple and others, which the Parties say significantly understates the correct size of the denominator:

(i) The Parties consider that Google is by some considerable margin the largest repository of GIFs in existence and that a 'very significant number of people searching for GIFs will originate from a Google Web Search on desktop and be directed to the GIPHY or Tenor website'. The Parties state that to exclude GIF searches carried out by Google Web desktop searches on the basis that they return links or images rather than the GIF itself is arbitrary and unreasonable. The Parties further state that users that find a GIF through Google Web Search on desktop can 'share' that GIF. The Parties state that although a user would need to 'navigate away from Google Web Search to the GIF provider' in order to share the GIF, it is inconsistent to exclude Google desktop searches from the description of services on this basis, given that a GIF search on 'Facebook directs users [away from Facebook] to GIPHY's searchable GIF library'. The Parties say this demonstrates that a search for a GIF on Google Web and Facebook are 'entirely substitutable from a user perspective'.

(ii) The Parties submitted that the *de minimis* number of searches the CMA has identified for Apple iMessage must be incorrect given Apple accounts for over 50% of mobile operating systems in the UK.

(iii) The Parties state that CMA does not account for other established GIF providers including Imgur, Gifbin, Reaction GIFs and others.

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)

3.31 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 for five main reasons:

(a) Facebook's animated stickers have been included despite the fact that their use is limited to Facebook's own applications, which the Parties consider makes them fundamentally different from searchable libraries accessible to third parties like those provided by GIPHY, Tenor and others.

(b) The Parties contend that the ‘inclusion of Facebook self-supply of stickers is contrary to the rationale for exclusion of self-supply in *Sabre v CMA* at paragraph 158’.

(c) The Parties state that the CMA ‘has failed to take account of the fact that GIPHY provides [✂] of its content to API partners and *not* directly to users. (…) a consistent “direct to user” approach (…) would be limited to UK users’ consumption of GIPHY’s stickers from only GIPHY’s own (O&O) services, and not via API interfaces’.

(d) It excludes all video GIFs. The Parties state that video GIFs and GIF stickers may contain exactly the same image; one is just slightly more transparent than the other. It is not easy to tell video GIFs and GIF stickers apart and Instagram and Snap both provide GIF stickers under a button that simply says ‘GIFs’.

(e) It excludes all static stickers, which the Parties contend has no reasonable basis and must have been done simply to increase the Parties’ purported share of supply.

3.32 The Parties further submitted that even if the CMA’s description of services was reasonable, the Parties’ combined share of supply does not exceed 25%:

(a) The Parties consider that the CMA has improperly excluded animated stickers that are not provided ‘direct to users’, most likely so as to exclude Google from the denominator. But users can search for animated stickers on Google; they are merely required to click a link and can then share the sticker via a messaging service or email. The Parties state that GIPHY’s library content is available on Google and therefore it is irrational to exclude the search engine from the analysis.

(b) The Parties state that the CMA has also failed to include other suppliers including Apple, Bing, Line and others.

CMA’s analysis

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

Description of services

3.33 A user who wishes to **search** for a GIF has two available options:

(a) the user can search for the GIF on a GIF provider’s own website or app (eg the GIPHY app or GIPHY.com); or *(b)* the user can search for the GIF through a third party website or app (eg WhatsApp, Messenger, Twitter, Tinder).

3.34 A user could then, depending on the functionality of the website or app, **share** the GIF (i) within the website or app on which the user conducted the search; (ii) on a separate platform by using the integrated share functionality.

3.35 In some circumstances, a user may find a GIF on a particular website or app, copy the GIF and then manually paste the GIF on a separate platform. However, this process does not involve the provision of any functionality by the website or app that allows users to share GIFs (such as a 'share' button), as envisaged by our description of services.

3.36 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, 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 GIFs and presents these to the user by randomly interweaving them. 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.

3.37 Facebook offers its users (including UK users) the ability to search for and share GIFs on several of its platforms, including Instagram, WhatsApp and Messenger. GIPHY also allows its users (including UK users) to search for and share GIFs on its own website and app.

3.38 The GIFs that Facebook users can search for on Facebook platforms are provided to Facebook by GIPHY (or Tenor) through an API. However, we see no reason why this vertical relationship precludes the finding of an overlap in respect of services provided to UK users. By way of analogy, in cases of dual distribution, a manufacturer may compete with its distributors downstream through its own direct sales. As the Tribunal recently recognised in *Sabre v CMA*, 'the Mergers Guidance makes it clear that the exclusion of vertical relationships from the share of supply test applies only where that relationship is wholly vertical. Where there is some horizontal overlap between the services supplied by the Parties, the share of supply test is still applicable'.[29]

[29] *Sabre Corporation v Competition and Markets Authority* [2021] CAT 11 at paragraph 156.

3.39 We consider that Facebook is not 'simply a mechanism that allows users to access GIFs provided by GIPHY or Tenor'. From a technical perspective, Facebook provides an interface to users and has some involvement in the technical provision of the GIFs (eg by interweaving GIPHY and Tenor GIFs). Also, from the perspective of the user, Facebook provides websites and apps within which users can search for and share GIFs seamlessly as part of their social media activity; the user does not leave the Facebook platform and may not even be aware that the GIFs they are searching for and sharing are provided by GIPHY or Tenor. In this respect, we consider that the service provided by Facebook is not 'entirely substitutable' with a Google Web search on desktop, and that it is not unreasonable to include Facebook within the description of services but exclude Google Web search on desktop. We discuss this further below with respect to the Google search data.

3.40 Accordingly, our provisional view is that the Parties overlap in the supply of apps and/or websites that allow UK users to search for and share GIFs.

3.41 We consider this description of services to be reasonable: the Merger concerns the acquisition of a GIF database and search engine by a platform that also makes it possible for UK users to search and share GIFs within its own apps and websites. As recognised by the Tribunal in *Sabre v CMA*, 'the purpose of the share of supply test is to identify a merger which does not meet the turnover test, but in respect of which there is a sufficient prospect of a competition concern arising from an overlap in relevant commercial activity as to render it worthy of investigation'.[30]

3.42 The description of services clearly identifies a degree of overlap between the Parties. The overlap relates, simply speaking, to the use of GIFs. This is relevant to both the horizontal and vertical theories of harm we are considering as part of the competitive assessment. The fact that the description of services may not align with a classification used by the industry or the economic markets the CMA has defined, does not make the description of services unreasonable or inappropriate for use as part of the share of supply test.[31]

25% threshold

3.43 We have calculated the shares of supply by reference to the average monthly searches on the apps and/or platforms falling within our description of services. Section 23(5) of the Act expressly states that for the purposes of

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[30] *Sabre Corporation v Competition and Markets Authority* [2021] CAT 11 at paragraph 144.
[31] Mergers: Guidance on the CMA's jurisdiction and procedure (CMA 2 – 2014) at paragraph 4.56. See also *Sabre Corporation v Competition and Markets Authority* [2021] CAT 11 at paragraph 154.

deciding whether the 25% threshold is met, the CMA shall apply the criterion, or combination of criteria, that the CMA considers appropriate. In our view, average monthly searches provides an appropriate measure for the shares of supply as it allows us to assess the relative size and significance of the Parties and third parties in respect of GIF searches.

3.44 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 and share GIFs.

Table 1: Estimates of shares in the supply of apps and/or websites that allow UK users to search for and share GIFs[32]

Platform	Av. monthly searches (UK, '20)	Share	Notes
Facebook	[✂]	[50-60]%	Searches run on Facebook, Instagram, WhatsApp and Messenger
GIPHY	[✂]	[0-5]%	Searches run on GIPHY's O&O website and app
Combined	[✂]	[50-60]%	
Tenor	[✂]	[0-5]%	Searches run on Tenor's O&O website and app
Gfycat	[✂]	[0-5]%	Searches run on Gfycat's website and app
Google Search	[✂]	[0-5]%	All searches (mobile and desktop) run on Google Images and mobile searches run on Google Web[33]
Google Messages	[✂]	[0-5]%	All searches for GIFs and stickers run on Google's Messages service
Apple iMessage	[✂]	[0-5]%	Searches run on Apple iMessage
Other platforms integrated with GIPHY, Tenor and/or Gfycat	[✂]	[40-50]%	Searches run on other platforms integrated with GIPHY, Tenor and/or Gfycat (excluding Facebook)
Total	[✂]	100%	

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

[32] The Parties are not aware of any publicly available sources on the total size of the market. The CMA has therefore collected information on search volumes from the Parties, Tenor, Gfycat, Google and Apple. The CMA has not received data from Imgur, Gifbin, Reaction GIFs or Holler. However, third parties generally consider that Tenor is GIPHY's closest competitor and that Gfycat is one of only a few other competitors. Other market information also indicates that these websites or apps have a very small presence in the UK. As such, we consider 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%.

[33] The CMA included all searches (both desktop and mobile) for 'GIF' or 'GIFs' (not case sensitive) run on Google Images search, and mobile searches for 'GIF' or 'GIFs' (not case sensitive) run on Google Web search.

Note: The CMA received data on the number of GIF searches by UK users for each month of 2020 (and then calculated an average monthly figure) from the three main GIF providers that serve the vast majority of API/SDK integrations: GIPHY, Tenor, and Gfycat. The data were disaggregated by API/SDK partner (and separately O&O searches), allowing us to identify the number of searches through Facebook platforms versus 'other' third party platforms. We additionally requested data from Apple on the total number of GIF searches run on #images by users in the UK in 2020 (for iMessage) and calculated a monthly average. We additionally requested data from Google on the numbers of average monthly searches (on Web and Image Search) by UK users in 2020 containing the term 'GIF' or 'GIFs' (not case sensitive) and/or filtered by type 'GIF', and the number of GIF searches by UK users on Google's 'Messages' service.

3.45 With respect to the Parties' submissions that the CMA has failed to properly account for significant suppliers of GIFs such as Google, Apple and others:

- *Google*

(a) The CMA understands that a search for a GIF on Google Web using a *desktop* returns a combination of static images and links, not GIFs.[34] To access an actual GIF, the user must first click on a search result. This click either takes the user to a third party website, or, where the user clicks on a Google Image, a side bar opens displaying an individual GIF in motion (in the form of a preview to a third party website). Therefore, we consider that a Google Web search on desktop does not allow users to 'search for GIFs', as the search does not return GIFs in the initial search results; it rather allows users to search for links to GIFs, or static images of GIFs.[35] On that basis we have not included Google Web searches on desktop in the shares of supply in Table 1 above.[36]

(b) By contrast, a Google Web search for a GIF using a *mobile device* typically returns a range of GIFs. The CMA understands that it is possible for the user to then browse the range of GIFs displayed in the search results as they would if conducting the search on Facebook or GIPHY. If the search is a Google Images search, it is also possible to share the GIF on another website or app through Google's integrated share functionality. We therefore consider that GIF searches carried out on Google from mobile devices do fall within the description of services. We have obtained search data for GIF searches on Google Web via mobile devices

[34] For example, a Google Web search of 'Happy GIF' returns a number of images under the Google Images banner at the top of the search results, followed by a number of links to other websites such as GIPHY.com and Tenor.com. Google does not offer a specialised GIF search bar, only its general search bar. Therefore, when referring to a GIF search on Google we are referring to a general search that includes the term 'GIF' or 'gif'.
[35] Moreover, the CMA understands that the individual GIFs that are displayed on Google Web on desktop (after clicking on the static image) cannot be shared in an integrated way (the way that GIFs typically can be on websites and apps that allow users to search for GIFs). Although we have excluded Google Web searches on desktop from our shares of supply on the basis that such a search does not return GIFs, we also consider it would be appropriate to exclude Google Web searches on desktop on the basis that the links to GIFs, static images of GIFs, or GIF previews (which appear after clicking on the static image) cannot be 'shared'.
[36] In any case, data collected by the CMA during Phase 2 suggest that the number of Google Web searches for 'GIF' or 'GIFs' conducted via desktop in the UK (totalling approximately [✂] in 2020) is immaterial to our findings on share of supply, as it would change Google's share by less than one percentage point.

from Google during our Phase 2 investigation and these searches are reflected in Table 1 above.

(c) Google also provides a ‘Messages’ service on its Android phones, which enables users to search for and share GIFs and stickers. We have obtained data from Google for the number of GIF searches and the number of stickers sent[37] by UK users on Google Messages during the Phase 2 investigation and these searches are reflected in Table 1 above.

(d) It is important to note that even if all Google searches for a GIF were included in our shares of supply (regardless of search device), the Parties’ combined share of supply would still well exceed 25% (at [50% - 60%]) and therefore the precise treatment of Google is not determinative.

- *Apple*

(e) The Parties challenged the proportion of GIF searches attributed to Apple on the basis that the searches seemed low given Apple’s large share of mobile devices in the UK. We re-checked the search data provided by Apple and Apple confirmed its accuracy. The searches for GIFs and GIF stickers on Apple’s iMessage service represent only a small proportion of the total number of iMessages sent in the UK. On the figures given by Apple we estimate these to be a ratio of 1 GIF search to approximately [✂] messages.[38] Although this could be seen as a low ratio, we do not consider it indicates that the data on GIF searches provided by Apple is incorrect; the ratio may, for example, be linked to differences in the context in which iMessages are used, as compared with other forms of messaging and social media. Indeed, we have calculated the equivalent ratio of GIF searches to total number of messages sent for WhatsApp[39]

[37] Google was not able to provide the number of searches for stickers. We have taken the total number of stickers sent by UK users and multiplied this by a factor of five to estimate the number of searches (conservatively assuming that all stickers were *GIF* stickers). Based on the CMA’s calculations for WhatsApp (based on data submitted by GIPHY regarding the number of monthly GIF searches, and data submitted by Facebook regarding the number of WhatsApp messages sent containing a GIF over an equivalent time period, which we use as a proxy for number of GIFs sent), we estimate a ratio of [✂] searches to GIFs sent for WhatsApp. Thus, we consider that a ratio of five searches is highly conservative.

[38] Apple submitted to the CMA that it estimates there were approximately [✂] GIF searches of #images, and [✂] iMessages sent, by users in the UK in 2020. The CMA took the ratio of the mid-point of each range (ie ratio of [✂] to [✂].

[39] For WhatsApp, we calculated this on a global (rather than UK) basis, given GIF search data is less reliable on a UK basis (due to potential proxying). We used total number of WhatsApp messages sent globally (data obtained from Facebook, relating to a one-week period in April 2021, which we multiplied by 4.3 to estimate monthly data). We used total GIF searches sent from WhatsApp to GIPHY (data obtained from GIPHY, relating to month of March 2021, as April 2021 was not available) and multiplied this by two to account for the fact that WhatsApp is also integrated with Tenor and end-users are allocated one out of these two GIF providers at random; we therefore assume that approximately half of all GIF searches on WhatsApp are recorded by GIPHY.

and Google Messages,[40] and found these to be lower than the ratio for Apple: [✂] and [✂], which indicates that the figures for Apple are highly plausible.

- *Others*

(f) As noted above and explained further in Chapter 5, Market Definition and Market Power, we consider that smaller providers such as Imgur, Gifbin and Reaction GIFs are unlikely to have material search volumes in the UK and therefore are not likely to affect the Parties' share of supply.

3.46 Accordingly, our provisional view is 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 and share GIFs.

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)

Description of services

3.47 A searchable library of animated stickers is a repository of animated (ie non-static) digital images from which users can select and use their chosen sticker. The selected sticker can then be shared on social media and messaging platforms (eg within message threads or comments).

3.48 Our provisional view is 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):

(a) GIPHY supplies a library which offers a searchable collection of over two million GIF stickers, all of which are animated. GIPHY makes its GIF stickers available direct to users (including in the UK) on its O&O platform.

(b) Facebook also has searchable sticker libraries in the form of its Sticker Stores, available to users of the Facebook and Messenger apps, which offer users (including in the UK) the ability to download virtual packs of both static and animated stickers.

3.49 We consider this to be a reasonable description of services. There are a range of features used to enhance digital communication and expression

[40] We calculated this using data obtained from Google on numbers of GIF searches and stickers sent by UK users (the latter multiplied by five as explained in footnote 37) and total number of Google Messages sent by UK users in 2020.

including emojis, static stickers, animated stickers and GIFs. The description of services refers to one such feature and identifies a clear overlap between the Parties. We consider these common activities of the Parties indicate that the Parties are competing in similar spheres and render the merger worthy of investigation.[41]

3.50 With respect to the Parties' submissions that the description of services is not reasonable:

(a) We consider it reasonable to include both Facebook's animated sticker library and GIPHY's animated sticker library within the same description of services notwithstanding the fact Facebook does not make its stickers available to third party apps or websites. In calculating shares of supply in Table 2 below, we have collected data on the size of the Parties' and third parties' searchable sticker libraries. GIPHY makes its searchable sticker library available directly to users through its O&O platform and Facebook also makes its searchable sticker library available directly to users on the Facebook and Messenger apps. The fact that GIPHY also provides GIF stickers to third party platforms via an API/SDK is not material.

(b) We note that some of the Parties' internal documents discuss Facebook stickers and GIPHY stickers within the same context, which we consider indicates that it is reasonable to treat Facebook's and GIPHY's stickers as capable of falling within the same description.[42] As the Tribunal succinctly put the question in *Sabre v CMA*, '[t]he issue is whether the parties to the merger do a sufficiently similar thing';[43] we consider that the supply of searchable libraries of animated stickers provided direct to users is sufficiently similar to constitute a reasonable description of services.

(c) With respect to the Parties' suggestion that the inclusion of Facebook's 'self-supply' of stickers is contrary to the Tribunal's findings in *Sabre v CMA*, the description of services assesses an overlap of searchable animated sticker libraries provided direct to users in the UK. The CMA has taken account of the searchable sticker libraries of Facebook and GIPHY

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[41] As the Tribunal held in *Sabre Corporation v Competition and Markets Authority*, 'the purpose of the share of supply test is to identify a merger which does not meet the turnover test, but in respect of which there is a sufficient prospect of a competition concern arising from an overlap in relevant commercial activity as to render it worthy of investigation. The CMA's chosen definition of the [description of services] must therefore serve this statutory purpose'. *Sabre Corporation v Competition and Markets Authority* [2021] CAT 11 at paragraph 143.
[42] For example, one Facebook document notes that [✂] The CMA notes that the library size of each of the Parties is now larger than described in this document (see Table 2 below). A further document, which appears to have input from both Parties, suggests that Facebook will in future present its first party stickers alongside GIPHY API results when users search for stickers on its platforms, and [✂] ([✂]).
[43] *Sabre Corporation v Competition and Markets Authority* [2021] CAT 11 at paragraph 150.

supplied direct to users. We consider that this is consistent with the Tribunal's analysis in *Sabre v CMA*.[44]

(d) The CMA has taken a consistent approach to the assessment of Facebook's, GIPHY's and third parties' respective libraries. As set out further below, in calculating shares of supply the CMA has assessed the size of the Parties' and third parties' animated sticker libraries. The animated stickers attributed to GIPHY in Table 2 below are available on GIPHY's O&O platform (ie they are supplied 'direct to users') just as the animated stickers attributed to Facebook are available direct to users on Facebook's platforms.

(e) We consider it is reasonable to limit the description of services to animated stickers, thus excluding video GIFs. While the CMA recognises that video GIFs and certain animated stickers have certain common features, which are taken into account in the competitive assessment, 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 video GIFs and GIF stickers on its website by presenting GIF stickers under a separate menu, and there are also differences in GIPHY's SDK and API operating instructions for partners to gain access to video GIFs or GIF stickers.[45] 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).

(f) The exclusion of static stickers is not unreasonable. A static sticker lacks animation and therefore does not contain the same richness of content as animated stickers, where the animation itself can convey emotions or actions. For example, one Facebook internal document discussing the findings of WhatsApp user research in the United States, Singapore and India notes that, [✂].[46]

[44] We consider that the Tribunal's analysis should properly be read as an acknowledgment that the exclusion of self-supply was not irrational in that case. That is because the description of services expressly related to the supply of services to airlines, and therefore the notion of supply from A to B was inherent in the description. The Tribunal did not find that self-supply cannot be taken into account for the purposes of the share of supply test in other cases.

[45] See https://developers.giphy.com/docs/sdk#content-types

[46] A comment by a staff member in this document states, [✂]. We note that this research was based on a limited sample and refers to users in the US, Singapore and India (rather than the UK). [✂].

25% threshold

3.51 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]%.

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)[47]

Platform	Searchable, animated sticker library size	Share
Facebook	[✂]	[0-5]%
Messenger[48]	[✂]	[0-5]%
GIPHY	[✂]	[80-90]%
Combined	[✂]	**[80-90]%**
Tenor	[✂]	[5-10]%
Gfycat	[✂]	[10-20]%
Snap	[✂]	[0-5]%
Viber	[✂]	[0-5]%
WeChat	[✂]	[0-5]%
Total	[✂]	**100%**

Source: CMA analysis based on Parties' and third party data.[49]

Note: The CMA requested each supplier to provide an estimate of the total number of animated (non-static) stickers (inclusive of both GIF and non-GIF animated stickers) in its searchable library available to be provided direct to UK users.

3.52 The Parties submitted that the CMA has underestimated the total supply by failing to include the shares of Google, Bing, Apple, Line and others. However, we do not consider these platforms to have animated sticker libraries falling within the relevant description of services:

(a) Google told the CMA that [✂]. The CMA understands that a search for an animated sticker via Google Web would require the user to click-through to a third party site and therefore it would not be Google providing the sticker library.

[47] The Parties are not aware of any publicly available sources on the total size of the market. The CMA sent questionnaires to 24 third parties (including social media and messaging platforms, digital content providers, and technology companies), asking the size of their own animated sticker library available to UK consumers. The platforms included in Table 2 are those that responded affirming that they have their own animated sticker library available to UK consumers, of a non-negligible size. We later requested updated data as to the size of the library from these platforms. The CMA is aware that other providers may also offer searchable animated sticker libraries. However, as set out in Chapter 5, Market Definition and Market Power, third parties generally consider 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%.

[48] Messenger is owned by Facebook but is shown separately as it operates a separate sticker library.

[49] [✂].

(b) Microsoft (the operator of Bing) also told the CMA that it did not offer its own animated sticker library. As with Google, Bing's general search engine redirects users to third party animated sticker libraries.

(c) Apple told the CMA that it did not offer its customers the ability to search for animated stickers as it does not have a sticker library. Apple further submitted that its users can generate personalised emojis titled 'Memojis'. Apple submitted that Memoji sticker packs are static and generated on a user's device and, further, that there is no search function or library for these products.

(d) The CMA did not receive data from Line; however, we are confident that its inclusion would not bring the Parties' combined share of supply below 25% given that approximately 2% of UK users use Line regularly (which puts it on par with Viber and WeChat in terms of magnitude in the UK).[50]

3.53 Accordingly, our provisional view is 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.

UK nexus, international comity and business certainty

3.54 The Parties made a number of broader submissions on the issue of jurisdiction, in summary stating that:

(a) 'Facebook is a US entity. GIPHY is also a US entity, with no UK turnover, assets, employees, or any physical UK presence'.

(b) 'It is exorbitant from the perspective of international comity for the CMA to review this Transaction at all'.

(c) For the CMA to assert jurisdiction over this transaction would make 'the application of the UK merger regime highly unpredictable' and create 'high levels of business uncertainty'.

3.55 The Competition Appeal Tribunal has recently reviewed the case law regarding the CMA's jurisdiction under the Act to review transactions between overseas companies for merger control purposes, having regard to considerations of international comity.

3.56 The Tribunal concluded that:

[50] According to data from Statista Global Consumer Survey (2020) Messaging App Usage Statistics Around the World | MessengerPeople

‘Parliament has expressly identified the relevant connecting factors which enable consideration of a merger with an “extra-territorial” dimension. Both jurisdictional tests in section 23 are based on a UK territorial connection. As regards the turnover test, there exists a jurisdictional nexus with the United Kingdom because the relevant turnover arises “in the United Kingdom”. As regards the share of supply test, the jurisdictional nexus to the United Kingdom is provided by the fact that the goods or services are supplied “in the United Kingdom, or in a substantial part of the United Kingdom”. Considerations of territoriality (and thus comity) are addressed within the share of supply test itself. Parliament has deemed these territorial connections sufficient as the basis for the exercise of statutory powers by a UK authority … . Either the UK has jurisdiction under this territorially defined test, or it does not’.[51]

3.57 The CMA accordingly considers that if the jurisdictional tests in section 23 of the Act are met, it will have jurisdiction to review a transaction as a relevant merger situation for the purposes of merger control, and that ‘considerations of territoriality (and thus comity) are addressed within the share of supply test itself’ as set out in the Act.

3.58 In addition, we consider that the analysis set out above demonstrates a clear UK nexus and are satisfied that:

(a) there is a clear overlap between the Parties in respect of both GIFs and animated stickers which we consider gives rise to sufficient prospect of a competition concern arising as to render the merger ‘worthy of investigation’; and

(b) the broad discretion afforded to the CMA in applying the share of supply test is made clear in the wording of section 23 of the Act, the CMA’s guidance and the recent decision in *Sabre v CMA*.

Provisional conclusions on the relevant merger situation

3.59 Our provisional view is that the conditions of section 23 of the Act are met and that therefore a relevant merger situation has been created as a result of the acquisition of GIPHY by Facebook.

[51] *Sabre Corporation v Competition and Markets Authority* [2021] CAT 11, paragraph 86.

4. Industry Background

4.1 As set out in Chapter 2, The Parties, Merger and Rationale, GIPHY is an online database and search engine that is used to search and share GIFs and GIF stickers. GIPHY offers its GIFs and GIF stickers both on its own website and app, and through APIs and SDKs that allow third party apps (eg Snapchat, TikTok or Instagram) to integrate access to GIPHY's GIF databases into their platforms.

4.2 Facebook operates a number of user-facing social media and messaging platforms such as Facebook, Instagram, WhatsApp, and Messenger (collectively referred to as the Facebook family of apps).

4.3 Facebook facilitates user expression via video GIFs and GIF stickers using third-party GIF suppliers (including GIPHY pre-Merger) via API/SDK integrations. Facebook also supplies its own in-house searchable non-GIF sticker library available to users of its Facebook and Messenger apps, containing packs of both static and animated stickers. However, Facebook does not distribute these stickers to third party platforms, nor does it provide a variety of other tools surrounding GIF creation, hosting and distribution, which are discussed below.

4.4 This chapter sets out a brief description of GIFs (video GIFs and GIF stickers) and non-GIF stickers.

4.5 The chapter also provides an overview and analysis of the services involved in GIF supply, and an analysis of the characteristics and trends in GIF supply and usage.

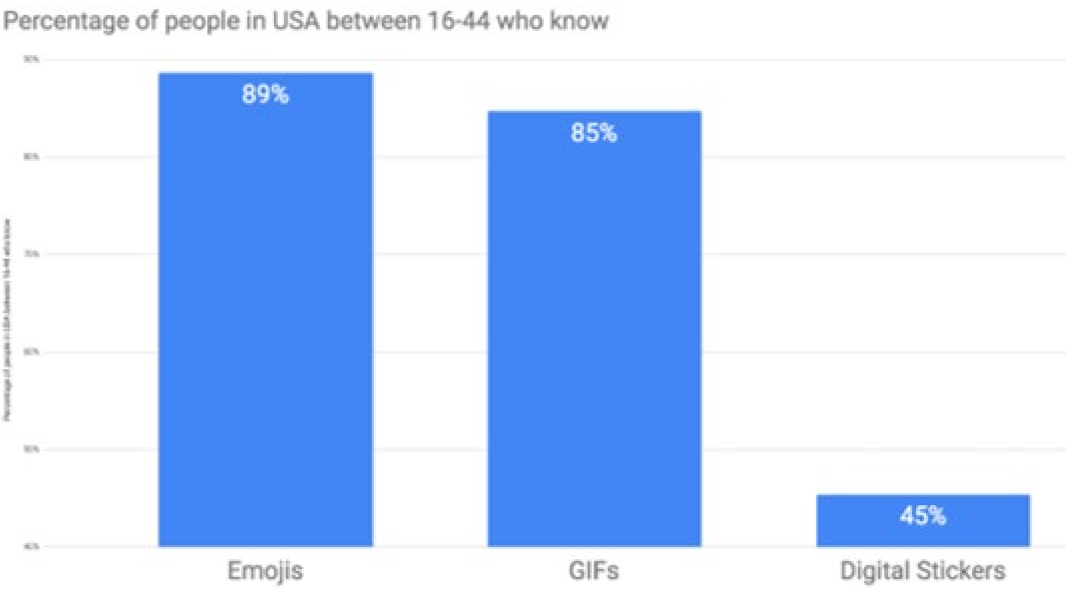
What are GIFs?

4.6 As explained in Chapter 2, The Parties, Merger and Rationale, a video GIF is a digital file that displays a short (typically 2.5 seconds), looping, soundless video, which can be used to expressively convey emotions or as a way of demonstrating an understanding of popular culture (eg clips from TV shows). A GIF sticker displays an animated image comprised of a transparent (or semi-transparent) background which can be placed over images or text. Unless otherwise specified, we use the term 'GIFs' to refer to both video GIFs and GIF stickers.

4.7 Facebook's own in-house sticker library (its 'Sticker Store') lets Facebook users download non-GIF stickers, enlarged emoji-like 'sticker' images. These can be static or animated. The user can access these in their sticker drawer ‘in app’ when using the Facebook feed or Messenger thread. This tool is not made available by Facebook to third party host apps.

4.8 GIFs are a popular form of content for use on social media and messaging applications. According to a survey performed by Statista, commissioned by GIPHY, GIFs are almost as well-known as emojis in the US among people aged 16 to 44 (Figure 4).

Figure 4: Percentage of people in the US between 16-44 who know about Emojis, GIFs and Digital Stickers



Source: [✄]

4.9 An internally commissioned study for Facebook on the desirability of certain features within messaging conducted at the end of 2018 found GIFs to be one of the top [✄] priority features with [✄] of the participants viewing GIFs as [✄] on Messenger.

Overview and analysis of services related to GIF supply

4.10 As a GIF supplier, GIPHY is engaged in a number of activities which either directly contribute to GIF supply to users or provide complementary features to enhance digital communication and creative expression. We understand GIPHY’s core activities directly related to supplying GIFs to users to include the following:

(a) **Sourcing, moderating,**[52] **and hosting a library** of GIF content. The content in GIPHY’s library includes both video GIFs and GIF stickers.

[52] Moderating refers to ensuring the library contains no content that may be harmful to users – see further below in paragraph 4.30.

Where a GIF is based on content that is itself protected by intellectual property rights (eg a TV show or film) GIPHY secures the rights to the usage and distribution of this content from the owner of the intellectual property for that content under a purpose-built licence.

(b) Using **search algorithms** to identify relevant content responsive to users' search queries, as well as displaying content in a 'trending' feed that shows the latest and most popular GIFs largely selected by GIPHY's editorial team.[53]

(c) **Distributing** (serving) the relevant GIFs to end users via several channels: to users of third party platforms (such as social media apps and third party mobile phone keyboard interfaces[54]) via an API or SDK, direct to users via an O&O platform (GIPHY's own website, mobile app and mobile phone keyboard interface), and through users choosing to embed GIFs within their own websites.

4.11 In addition to the activities above, GIPHY supplies a range of features and services that aim to promote user engagement with GIFs and/or increase the reputation of GIPHY's brand among the creative community and contributors to popular culture. For example:

(a) Tools and services for the creation of GIFs, including an in-house content creation studio and features on GIPHY's website and app allowing users to create their own GIFs.[55]

(b) GIF artist services, including GIPHY Artist channels (for digital and visual artists who would like to create and distribute their own artwork via GIPHY), and an Artist directory and 'Hire Me' button on artists' account profiles, allowing digital artists to connect with potential clients.[56]

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[53] [✂]. GIPHY submitted that, prior to the acquisition, GIPHY's editorial team selected GIFs to appear in the trending feed based on certain information and a set of principles for what to include (real-time trending topics and events such as holidays; reaction GIFs; currently popular memes, eg TV catchphrases; simple and clear GIFs; and avoid GIFs that are controversial, larger than 5 mega-bytes, poor quality, or with non-standard aspect ratios). [✂].

[54] A GIF keyboard is a downloadable app that smartphone users can install and enable. The keyboard is then accessed alongside the standard phone's keyboard and allows users to search for GIFs and send them on a variety of social media platforms and messaging services. Tenor explained that its initial method of distribution was its downloadable GIF keyboard, but it now also integrates directly (via a GIF button) with social media apps; [✂]. For the purposes of our assessment we consider that there are two types of keyboards offering GIFs: O&O keyboards run by GIF providers (notably the GIPHY keyboard and Tenor keyboard), and third party keyboards (such as Samsung and Kika) that feature GIFs (alongside other features) sourced through an API/SDK integration from GIPHY or another GIF provider.

[55] For example, the GIPHY CAM app (which allows users to create their own GIFs) and GIPHY Capture (a desktop application that lets users extract any video and convert it into a GIF).

[56] Gaining an Artist channel requires an application and approval by GIPHY; for further details, see GIPHY Support 'Apply for an Artist Channel', accessed 10 May 2021.

(c) Provision of 'verified' status (blue tick badge) to officially recognised brands and artists, which allows their channel to appear as a search result on GIPHY's website/app and provides access to exclusive content creation tools.[57] Companies, celebrities/performing artists and public figures who wish to distribute content they own can also apply for a Brand Channel.[58]

4.12 Below we discuss GIPHY's core activities in further detail.

Sourcing, moderating, and hosting a library

4.13 To **source a relevant library** of GIFs, GIPHY enables individuals and businesses, including GIPHY's own employees (eg as part of its in-house content studio), to create and/or upload GIFs using its O&O website or apps.[59] All users who adhere to GIPHY's guidelines can upload GIFs, but only a minority of this content enters the public library.[60] Only content uploaded by approved users and moderated by GIPHY enters the public library, after which it becomes available to users. The Parties submitted that around [✄] are uploaded to GIPHY per month on a worldwide basis, but the majority of content does not enter the public library (in the UK the number of user uploads was close to [✄], including both approved and non-approved users).

4.14 Figure 5 shows, by source, the proportions of GIPHY's total content library compared to the proportions of the subset of content included in the public search index (ie content that has been vetted by GIPHY) and the subset of content that was actually served (ie the relevant content returned in response to a given API/SDK search query), as of March 2020. Out of GIPHY's total library, only content that is included in the search index is searched and served to users. The search index does not include content that is not vetted; the majority of uploaded content that is *not* included in the search index is user-generated content (**UGC**) (by registered and signed-in users) and anonymous uploads (users who are not registered and signed-in). According to data submitted by GIPHY, as of May 2021, only around [✄] of content in its

[57] Gaining verified status requires an application and approval by GIPHY; for further details, see GIPHY Support 'Verified on GIPHY', accessed 10 May 2021.
[58] A Brand channel is a dedicated page on GIPHY's O&O site which hosts content created by that brand (eg to increase brand awareness) which is verified by GIPHY. Gaining a Brand channel requires an application and approval by GIPHY; for further details, see GIPHY Support 'Apply for a Brand Channel', accessed 10 May 2021.
[59] Users cannot upload GIFs from third party integrated platforms.
[60] Users can also create GIFs on GIPHY with the option of saving/downloading them for private use, without uploading them to the public library if they do not wish to.

total library was included in its public search index,[61] suggesting the latter is strongly vetted and curated.

Figure 5: Sources of GIPHY's content library (cumulatively, to 30 March 2020) vs. sources of GIFs actually served (during week of 24-30 March 2020)

[✂]

Source: CMA analysis of data submitted by the Parties.
Note: Includes all content (video GIFs and GIF stickers). Within total library, content from Paid Alignment companies, in-house content studio, and scraped/copied from other websites make up a negligible proportion; the proportions of all types of content listed in the legend sum to 100%.

4.15 Figure 5 demonstrates that the distribution of content across different categories is different for content in the total library, the public search index, and content actually served. In particular:

(a) [✂] of the total library cannot be attributed to a defined source ('Other') - these are largely 'anonymous' uploads, ie content uploaded by users who were not registered or signed-in to their account.[62] Despite the [✂] of this content uploaded to the library, it accounts for only [✂] of content included in the search index. We understand that this is because [✂].[✂] of the search index, this type of content accounts for [✂] of content served ([✂]). This may suggest that content created by anonymous users is [✂]. However, we understand that UGC and anonymous uploads are [✂] (ie it is probable that [✂].)

(b) UGC accounts for [✂] of the total library, [✂] of the public search index and [✂] of content served. This category includes content uploaded directly to GIPHY's website or mobile app that is generated by registered users that have a GIPHY account and are signed-in (and are not verified as a 'brand', 'artist' or 'verified user').[63] It may include users who consider themselves artists or brands but have not applied for and/or been approved as verified users, as well as casual users.

(c) The category 'Other companies' includes corporate brands, celebrity/performing artist brands, and studios (including verified 'Brand Channels' and 'Artist Channels')[64] refers to companies that own the original content copyright, with which GIPHY did not have a Paid

[61] GIPHY submitted that there were 17.45 million GIFs were in its total library, with 6.07 million of these included in the search index. [✂]
[62] GIPHY submitted that since mid-2020, its users are required to have an account and be signed into their account in order to upload content. Prior to this date, any 'anonymous' content (uploaded by users who were not signed into an account) would be recorded under the 'other' category. [✂].
[63] Verified users are those with a blue tick badge, allowing their channel to appear as a search result on GIPHY's website. For further information about verified channels, see: Verified on GIPHY – GIPHY (accessed 26 May 2021).
[64] See earlier explanation of Brand Channels and Artist Channels at paragraph 4.17.

Alignment agreement.[65] This category contributes only [✂] of the content in the total library, but accounts for the [✂] of content in the public search index ([✂]) and the [✂] ([✂]) of the content actually served. The fact that this category of content accounts for a [✂] of content served than content available in the search index might suggest that this type of content is relatively [✂] than other types of content included in the search index, in particular anonymous uploads. However, as noted above, we understand that anonymous uploads also account for the [✂] of content that does not get added to the search index, suggesting that GIPHY's content moderation team [✂].

(d) As regards GIFs from companies with which GIPHY had Paid Alignment agreements,[66] [✂] of content in the library and public search index. However, non-sponsored GIFs from such companies accounted for [✂] of content served.

(e) [✂] of total content are supplied by GIPHY's in-house studio[67] or copied or scraped from other platforms or websites.

4.16 The prominence of branded (ie 'company') content among results served in response to search queries suggests this type of content is identified by GIPHY as relatively more popular, engaging, and higher quality than GIFs from other sources. GIPHY told us that one reason for the prominence of branded GIFs among content served is that it deliberately prioritised these in the search algorithm because it knew this content would be rights-cleared with respect to intellectual property; see more on this below in paragraph 4.26.[68]

4.17 GIPHY submitted that users often appear to prefer UGC. This would appear to be supported by the fact that anonymously uploaded content accounts for a [✂] of content served despite accounting for only a [✂] of the search index. However, this result could also be driven by how GIPHY moderates the search index (see discussion in paragraph 4.21), and professionally created content still accounts for the [✂] of content served.

[65] Within the 'companies' categories, GIPHY does not maintain the data required to be able to disaggregate content produced by its in-house studio on behalf of these companies from their other branded content.
[66] 'Paid Alignment companies (sponsored GIFs)' refers to sponsored (promoted) GIFs from companies with which GIPHY has entered into a Paid Alignment agreement. 'Paid Alignment companies (other GIFs, not sponsored)' refers to GIFs from companies with which GIPHY has entered into a Paid Alignment agreement but are not specifically their sponsored (promoted) GIFs.
[67] 'In-house content studio' refers to original content produced by GIPHY's in-house content creation studio; any content produced by GIPHY's studio for advertisers or brand partners appears in the 'Paid Alignment companies' or 'other companies' categories respectively.
[68] [✂]. However, GIPHY has submitted that many users prefer lower-quality, traditional GIFs to branded content, and that brand partners were not incentivised to protect the licensing of their output; [✂]

4.18 The idea that high-quality, professional content is perceived as important is also supported by GIPHY's internal documents. For example, in an email to a potential API partner, [✂].In an internal e-mail, GIPHY notes that '[✂]', again suggesting that GIF providers see artistic content creation as an important dimension of competition. We discuss third party views on the relative quality and relevance of GIPHY's and other GIF providers' content libraries in Chapter 5, Market Definition and Market Power.

4.19 To attract creators of quality content, a GIF provider needs to offer wide user reach. This may give rise to cross-side network effects whereby smaller GIF suppliers may struggle to attract quality GIF content without securing significant traffic, and vice versa.

4.20 **Licensing rights to content**: For some content (such as clips from television shows or films), a licence may be required to ensure intellectual property is not infringed. GIPHY has created a purpose-built licensing agreement, enabling it to secure legal permission from the owner of the intellectual property for that content to use, edit and distribute content to downstream services and users. [✂].Copyright holders who believe that their copyright has been infringed (for example, through clips uploaded directly by users) can report this. GIPHY will then initiate an investigation and, where required, remove any content from its public library if it has been found to infringe third-party copyright.[69] However, GIPHY does not proactively monitor its public library for IP or copyright infringement specifically.

4.21 In practice, the evidence shows that GIPHY's licensing agreements have not prevented the contents of its library from appearing in other GIF providers' libraries. We discuss the evidence on similarities and differences between GIF providers' libraries further in Chapter 5, Market Definition and Market Power.

4.22 The Parties have submitted that GIPHY was incorrect to believe that there was a gap in the market for high-quality, licensed GIFs, and that there is little appetite from brand partners to enforce licence exclusivity as it is not in their interests to do so. GIPHY told us that brand partners were not incentivised to protect the licensing of their output and that even high-quality, branded content is therefore easily scraped and commoditised.

4.23 However, GIPHY's licensing agreements appear to be an important factor for some platforms in being willing to partner with GIPHY. [✂] Two third party platforms told us GIPHY's claimed rights to distribute the content were an important consideration in the platform's choice of GIPHY over other GIF

[69] For further details, see GIPHY Support 'GIPHY DMCA Copyright Policy', accessed 10 May 2021.

suppliers, but other platforms did not mention this as a consideration when choosing their GIF provider. [✂]

4.24 **Moderation**: As noted above, any content included in GIPHY's public library is first moderated to ensure that it is safe and suitable for use. GIPHY assigns all content a rating (in one of four ascending categories) based on the inclusion and degree of features such as profanity, sexual content, and violence.[70] Content that contains certain features or otherwise violates GIPHY's Community Guidelines is not permitted.[71] Users can flag GIFs they believe violate these rules.

4.25 Well-moderated content is important to social media platforms, including those who partner with GIPHY, as offensive content would degrade the user experience, and may cause reputational damage to the social media platform and expose it to legal liability. Various Parties (including Facebook) have told us that they placed importance on the library being well-moderated to remove inappropriate content.[72] One 2018 incident described as a 'content cleanup emergency' in a GIPHY internal document highlights how seriously offensive content infractions are taken by third party platforms.[73] Facebook's assessment of the GIF provider landscape, undertaken shortly before the Merger, [✂].We discuss third party views of GIPHY's and its competitors' content moderation capabilities further in Chapter 5, Market Definition and Market Power.

Search

4.26 To effectively identify GIFs that are relevant and engaging, GIF providers maintain a **search algorithm** which responds to user queries by finding and ranking the most relevant GIFs. This involves labelling each GIF with a simple tag, and using these tags to identify and rank GIFs responsive to a search term.

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[70] For further details, see GIPHY Support 'Content Rating', accessed 10 May 2021.
[71] Categories not permitted include, for example, real violence or death, self-harm, animal cruelty, and hate speech. For further details, see GIPHY Support 'GIPHY Community Guidelines', accessed 10 May 2021.
[72] For example, the Parties have submitted that one dimension in which GIF providers compete is by ensuring that their content is appropriately moderated, see [✂]. [✂] noted that it considers GIPHY able to do a better job than competitors of screening out objectionable, controversial content. Gfycat told us that one advantage of GIPHY's library (over its own) is that it is largely free from offensive content, which makes it easier to publish on partner platforms without internal filtering/moderation. See further discussion on 'GIPHY's position in the supply of searchable GIF libraries' in Chapter 5, Market Definition and Market Power.
[73] The document describes an incident in which a racist sticker (which had been mis-rated in error) surfaced on Snapchat and Instagram, causing both platforms to temporarily deactivate their integrations with GIPHY (Facebook also informed GIPHY that the next content infraction would likely result in deactivation). The document also describes users' complaints on Twitter and negative press generated by the incident, as well as the significant steps GIPHY took to ensure the renewed safety of the library. [✂]

4.27 The quality of the search algorithm appears to be an important element to GIF supply. Viber told us that it considered the search element of GIF provision to be just as important as the quality of the library. [✂].

4.28 GIPHY describes itself as 'a search engine for GIFs', and claims in its internal documents prepared for potential investors to be the second or third largest search engine in the world. In an internal presentation, GIPHY describes the search task (ie the task of finding and returning, or 'serving', relevant GIFs in response to a user's search query) as one that rarely has a 'right answer'. 'The GIFs we serve are a range of predictions for what the user actually might want to 'say'. To do this well, our system has to understand the complex interplay of linguistics (sarcasm, cynicism), culture (celebrities, media) and human behaviour (biases, perception) that combine together to make a user engage with a piece of content'. The search workflow is illustrated in Figure 6 below.

Figure 6: GIPHY's search workflow

[✂]

4.29 In the same internal presentation, GIPHY makes note of GIPHY-specific innovations that differentiate it from other GIF search engines. These include ranking [✂], among others.

4.30 Tenor describes its search algorithm as a 'machine learning-powered emotional search engine built around the Tenor Emotional Graph, which maps common search terms to GIFs that capture every sentiment, as well as the relationships between each emotion. For example, based on the habits of people searching for GIFs on Tenor, 'happy' is more closely related to 'thumbs up' and 'lol' than it is to 'love' or 'excited''.[74]

4.31 According to Tenor's website, the Tenor Emotional Graph is based on a dataset of over 300 million daily Tenor searches. Tenor explained that in order to [✂].

Distribution

4.32 GIF providers operate two main **distribution channels** to reach end users. These are:

(a) **Supply to third parties via API/SDK**, whereby third party platforms (such as social media platforms or mobile phone keyboard apps) connect

[74] Tenor partners with Samsung to launch GIFs within Messages experience | by Tenor | Tenor (accessed 11 May 2021).

to the GIF library using the provider's API/SDK. Users of these platforms can access the provider's GIFs from within the platform by clicking on a symbol that brings up a GIF search bar (and in some cases displays a 'trending feed' of currently popular GIFs). As the user starts typing the desired term, a signal is sent through the API/SDK to the GIF provider's servers, which generate the results by 'serving' relevant content back to the platform. Data submitted by GIPHY indicates that it has supplied roughly [✂].[75]

(b) **O&O channels**, ie the provider's own website and apps (including GIF keyboard apps/interfaces provided by GIPHY[76] and Tenor), from which users can directly search for, view, and download GIFs, as well as sharing them with others, for example, directly to their social media accounts.

4.33 In addition to the above, users and website owners or platform operators can embed GIFs within third party websites through a link. This requires a user to visit the O&O website or app, select the GIF they wish to embed, and then click an 'embed' button which provides code that can be copied into their HTML code.[77]

4.34 To the CMA's knowledge, those GIF providers that offer API/SDK integrations, including GIPHY, Tenor, Gfycat, Holler (for its SDK)[78] and Vlipsy offer them publicly free of charge (the only exception is Imgur).[79] API/SDK partnership is the most significant distribution method for the major GIF providers. For GIPHY, in 2020, total API/SDK searches [✂] were far higher than O&O searches [✂]. [✂].

Characteristics and trends in GIF supply and usage

4.35 In this section we present our analysis of GIPHY's and other GIF providers' data to assess the main characteristics of GIF supply.

[75] [✂] GIPHY provided a list of [✂] unique partners and API keys that are, or have been, active via an API or SDK integration since January 2020. Most of these were API keys (multiple API keys could be associated to the same API/SDK partner, meaning that the number of partners may be lower).
[76] GIPHY does not provide a standalone keyboard app; rather, keyboard features are integrated into its core mobile app. GIPHY submitted that the sole functionality of GIPHY's keyboard feature is to let users search for content on GIPHY's library directly from within the interface of another app as a 'plug-in' feature, without requiring the user to separately open the GIPHY app to search and select GIFs. Users can toggle this feature by enabling access to the keyboard through their device settings. [✂].
[77] For example, see GIPHY Support 'How to embed a GIF', accessed 10 May 2021. Embed traffic is included within the O&O figures analysed below.
[78] We understand that Holler charges a monthly subscription for its API, but offers its SDK for free.
[79] We understand that Imgur charges a fee for commercial uses of its API.

(a) First, we present an analysis of the evolution of GIF usage on third party platforms which are supplied by GIF providers via an API/SDK. Our analysis suggests that the use of GIFs has consistently increased over the last few years and leading up to the Merger.[80] The long-term growth in GIF usage appears to have been driven by both the growth in the popularity of GIFs on GIPHY's existing API/SDK partners, and the addition of new partners and formats (in particular GIF stickers).

(b) Second, we analyse the evolution of GIPHY's O&O channel traffic and assess the scale of GIPHY's O&O operations as compared to its overall operations and compared to other internet destinations unrelated to GIF supply. We find that GIPHY's O&O traffic accounts for a very small proportion of GIPHY's overall traffic. However, O&O traffic has been growing in absolute terms, with around [✄] billion monthly searches during the first quarter of 2021.

(c) Third, we review evidence on the demographic profile of GIF users. We find that, on balance, GIFs may be used more by younger demographics, but some evidence suggests this may be changing.

Analysis of trends in GIF usage via API/SDK distribution

4.36 Figure 7 shows the evolution of global monthly searches and content served by GIPHY to third parties via API/SDK, averaged on a quarterly basis from Q1 2018 to Q4 2020. Content served captures the number of GIFs returned in response to a search query.

Figure 7: GIPHY monthly global searches and content served to third party platforms integrated via API/SDK, average by quarter

[✄]

4.37 Figure 7 shows that GIPHY's traffic increased steadily at least to the second quarter of 2020. The two metrics (searches and content served) increasingly diverge from Q3 2019; in Q3 2020, the searches metric declines temporarily but increases again in Q4 2020. The peak in the first half of 2020 may have been caused by increased usage of digital communications at the onset of the Coronavirus (COVID-19) pandemic in March 2020 – see also Figure 14 in Chapter 5, Market Definition and Market Power, which shows a spike in social media usage at the same time. However, we note that the overall trend for both metrics is largely upward over the time period analysed.

[80] GIPHY's search volume dropped in Q3 2020; however, we understand this to be a temporary drop rather than a reversal in the long-term trend.

4.38 We understand that, generally, the volume of content served is expected to be a multiple of the volume of searches, because the number of GIFs shown to a user in response to a search is pre-set. Thus, a correlation of the two metrics in the beginning of the period analysed (in this case at a ratio of about [✂] served to one search) is expected. A change in the ratio between searches and content served may occur if an API/SDK partner changes the settings of the integration, such that a larger volume of content is returned for each search. We would thus expect that the search volume is more representative of user *interest* in GIF use. However, content served may help us understand potential user *exposure* to GIFs.[81]

4.39 GIPHY's internal documents suggest that the volume of traffic (in terms of searches, media served, and platform user reach) also grew significantly in the years prior to the time period depicted above, growing steadily between 2015 and 2017 and more than quadrupling between 2017 and 2019. Figure 8 below (taken from a 2019 GIPHY board presentation) shows the trend in content served between 2015 and the first quarter of 2019. It demonstrates that while [✂].

Figure 8: GIPHY global content served, GIFs and stickers, 2015-2019

[✂]

4.40 Overall, we interpret these data and documents to suggest that there has been long-term growth in GIPHY's API/SDK search traffic. The growth has been sustained at least up to the Merger. We note a temporary decline in GIPHY's traffic in Q3 2020; however, we have not seen evidence to suggest an overall reversal in the trend in GIF use, and growth resumed for GIPHY in Q4 2020.[82] Therefore, given the long term trends shown in Figure 7 and Figure 8, we consider the developments in 2020 likely to be temporary, such that the growth in traffic would continue in the future.

4.41 We have also considered trends in the volume of global searches of the three largest GIF suppliers (competitive interactions between GIPHY and these and other GIF suppliers are discussed further in Chapter 5, Market Definition and Market Power). Data from Tenor and Gfycat were available from 2020. During this period, the growth of GIPHY's searches [✂] (see Figure 7). Figure 9 shows the monthly global search volume (via API/SDK) of each of these three

[81] See further discussion of these metrics in Appendix D: Market shares methodology.
[82] For example, an internal Facebook presentation estimates that GIFs usage in messaging grew by [✂] in 2020 (compared to 0% growth in text). [✂]

providers separately, as well as the sum of the three, averaged on a quarterly basis.

Figure 9: Global monthly searches of GIFs via API/SDK of GIPHY, Tenor, Gfycat and the three combined, average by quarter

[✂]

4.42 Figure 9 shows that GIPHY's search volume has fluctuated slightly during the time period analysed (2020 and the first quarter of 2021), which is in contrast to sustained growth up to Q1 2020 as shown in Figure 7. [✂] (see discussion on shares of supply in Chapter 5, Market Definition and Market Power). Given the fluctuations in GIPHY's volume [✂].

4.43 The historic long-term growth in GIF usage may be (at least partly) explained by the GIF format becoming more popular among users. GIPHY has told us that its growth in traffic over the past few years has been driven by several factors, including the addition of GIF stickers to the library (which became particularly popular on platforms such as Instagram and Snap), and as a result of greater numbers of people overall using the third party platforms with which it integrates. Another driver of GIPHY's traffic growth has been the addition of new API partners. The emergence of new API partners as a source of traffic is depicted in Figure 10, which shows the distribution of global GIPHY search traffic by API partner from January 2018 to March 2021.

Figure 10: GIPHY's third party search volume globally – shares by API partner (January 2018 – March 2021)

[✂]

4.44 As Figure 10 demonstrates, although Facebook's platforms (Facebook, Messenger, Instagram, and WhatsApp) still accounted for around half of GIPHY's third party traffic in early 2020 (just prior to the Merger), their share has decreased steadily over time, as new platforms have integrated with GIPHY.[83] [✂].[84]

4.45 For video GIFs in particular, this trend has been even more marked. The share of video GIF searches accounted for by the Facebook owned group of platforms has declined [✂]. By contrast, as also shown in Figure 11, the

[83] Note that the share accounted for by Facebook platforms (notably Instagram) may be under-estimated in these data, particularly during certain periods of time. We understand that GIPHY's 'Rest of network' search volume (included with 'Others') may contain searches on Facebook's platforms. GIPHY submitted that it believes a substantial increase in 'Rest of network' searches from May 2020 may be largely (but not solely) driven by technical changes in Instagram's integration.
[84] Between May 2020 and March 2021 as a whole, the Facebook Group's share was [✂]. However, as noted above, it is possible that the increase in the share accounted for by 'Others' over this time period is actually (at least partly) attributable to Instagram.

Facebook group still accounts for the large majority of GIPHY's GIF sticker searches, due to high volumes of stickers being used on Instagram.

Figure 11: GIPHY's third party search volume, video GIFs and GIF stickers – share accounted for by Facebook group of platforms (January 2018 – March 2021)

[✂]

Analysis of trends in GIF usage via O&O

4.46 We have also considered the evolution of GIF supply via O&O channels. Figure 12 shows the evolution of GIPHY's O&O search traffic since 2018, broken down by the mobile and web applications.

Figure 12: Number of searches on GIPHY's website & mobile app globally (January 2018 – March 2021)

[✂]

4.47 Figure 12 shows that GIPHY's O&O traffic has also generally increased over the past few years, though with a dip in 2019. The majority of this traffic comes through GIPHY's mobile app (which includes GIPHY's keyboard features as these are integrated into its core mobile app). Despite the growth, GIPHY's O&O traffic remains a small fraction of its total traffic (representing [✂]).[85] Whilst API/SDK traffic in recent months was in the region of [✂] billion searches per month, O&O traffic had reached around [✂] billion searches.

4.48 A third party suggested that GIPHY's O&O channels are a well-known destination with a valued audience, even though this accounts for a small proportion of GIPHY's total search traffic. Indeed, GIPHY's O&O channels facilitated around [✂] billion monthly searches on average during the first quarter of 2021. We consider this to be a material volume of activity.

4.49 As search volume is a useful metric to gauge the popularity of GIPHY's website and app, we compare this to the search volume of other established search platforms (other than Google).[86] GIPHY had [✂] billion monthly O&O searches on average during 2020 via its O&O channels, while the search volumes of other search engines (excluding Google) are as follows:

(a) The global search volume of Microsoft Bing, the largest search engine after Google, was around 12 billion per month in 2017.[87]

[85] For the UK specifically, O&O represented around [✂] of total searches.
[86] We note that, whilst other search websites are a useful benchmark because a common metric can be used as a basis for comparison of reach (ie search volume), GIPHY's activities are wider than the provision of search for GIFs, and in any event GIPHY's advertising activities were closer to display advertising rather than the model of advertising offered by search engines. We discuss this further in Chapter 5, Market Definition and Market Power.
[87] Statista (Bing - Statistics & Facts | Statista), accessed on 25 May 2021.

(b) Public sources suggest that over the past three years Yahoo has had roughly half the global search market share of Bing.[88]

(c) DuckDuckGo, a specialised search engine that emphasises privacy, had around 23.7 billion searches in 2020, or nearly 2 billion per month.[89]

(d) Pinterest, a 'visual discovery engine' designed to provide ideas and inspiration through online pinboards (photos and videos), recently reported that it facilitates around 5 billion searches per month.[90]

4.50 Given the above, in terms of search volume, GIPHY's O&O search volume does not come close to the scale of Google's main challenger, Bing. However, GIPHY's O&O search volume is comparable to [✄]. This suggests that GIPHY's O&O operation is material in relative terms when compared with other search engines.

4.51 The Parties have submitted that GIPHY's O&O offering does not include basic offerings such as a messaging function, is used by an extremely small group of people to make and share GIFs, and therefore cannot be described as a material web destination. The Parties also questioned the choice of websites used as the benchmarks in our analysis. However, we consider that the finding that GIPHY's website and app receive significant traffic in absolute terms, at similar levels (or similar order of magnitude) to [✄], respectively, is informative, [✄]. We also note that the Parties have not suggested alternative benchmarks.

4.52 We have also compared GIPHY's O&O search volumes to those of its closest competitor, Tenor, during the period since January 2020 (for which we have comparable data). As shown in Figure 13, GIPHY's O&O search volumes have been substantially higher and with a generally upward trajectory, [✄].

Figure 13: Number of monthly searches globally on O&O platforms, GIPHY and Tenor

[✄]

Source: CMA analysis [✄]

4.53 We have also considered other metrics to assess the scale of GIPHY's O&O operation, in particular its active user base. The average number of monthly

[88] Search engine market share worldwide | Statista, accessed on 26 May 2021.
[89] DuckDuckGo Traffic, accessed on 25 May 2021.
[90] Naveen Gavini (20 May 2021) 'The evolution of search at Pinterest', The evolution of search at Pinterest | by Pinterest Engineering | Pinterest Engineering Blog | May, 2021 | Medium (accessed 11 June 2021).

active users (**MAUs**) and daily active users (**DAUs**) of GIPHY's O&O platforms for 2018 to 2020 are shown in Table 3.

Table 3: MAUs and DAUs of GIPHY's O&O platforms

	2018	**2019**	**2020**
DAUs	[✂]	[✂]	[✂]
MAU	[✂]	[✂]	[✂]
Ratio of DAUs to MAUs	[✂]	[✂]	[✂]

Source: CMA analysis of data provided by GIPHY.
Note: Includes users of both GIPHY's website and app.

4.54 As shown in Table 3, GIPHY's MAUs have grown over the years to a [✂].

4.55 A typical metric of user engagement (or 'stickiness') used in the digital sector is the DAU-to-MAU ratio, as it indicates how frequently users are visiting the site (a maximum ratio of 100% would indicate that every user who visits monthly is visiting daily; a minimum ratio of 3.3% would indicate that every user who visits monthly is only visiting one day per month – ie 1/30 = 3.3%).[91] GIPHY's DAU-to-MAU ratio is [✂]. By contrast, Facebook reported having 1.84 billion DAUs in December 2020, indicating a DAU-to-MAU ratio of 66%.[92] We understand that a rule-of-thumb DAU-to-MAU target for apps aiming to build an engaged user base is around 20%.[93]

Demographic profile of GIF users

4.56 We have also considered the demographic profile of GIF users and found that the evidence is mixed:

(a) Facebook's internal documents indicate that the Merger will allow it to integrate GIPHY with Facebook and '[✂]', and one of GIPHY's documents suggests that GIPHY is particularly used by [✂].

(b) Data submitted by Facebook to the CMA indicated that Facebook's UK users [✂].

(c) However, equivalent but more recent data submitted by Facebook (relating to reference weeks in March/April 2021) suggest [✂].[94]

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[91] See Grey and Nigl (2018) 'AI and Machine Learning Applications for Social Media Platforms', see Skylab (accessed 11 June 2021).
[92] Facebook reported having 1.84 billion DAUs in December 2020, see: Facebook - Facebook Reports Fourth Quarter and Full Year 2020 Results (fb.com) (accessed 11 June 2021).
[93] See, for example, Kumulos (2016) 'MAU Vs DAU: How To Measure Mobile App Retention', MAU vs DAU: How to measure mobile app retention - Kumulos (accessed 11 June 2021).
[94] [✂]

(d) Market research among a US representative sample commissioned by GIPHY in 2018 indicates a mixed picture. Younger users (aged 16-29) were more likely than those aged 30-44 to have heard of GIPHY, to spontaneously identify GIPHY in connection to the term 'GIF', and to be daily users of GIFs. However, people aged 30-44 were more likely than younger users to be daily or weekly users of GIPHY, and were more likely to use digital stickers in messaging or social media on a daily or weekly basis.

(e) One social media platform submitted that maintaining a competitive GIF offering may be important for winning younger users.

(f) One third party submitted that GIPHY likely skews towards a younger demographic. However, the same third party subsequently noted that the usage of GIFs was previously associated with younger audiences, but has changed over time, with GIFs now consumed by people across a broad spectrum of society.

(g) One company that had advertised with GIPHY told us that promoted GIFs were a suitable way of reaching a broad audience rather than targeting a specific demographic. By contrast, another advertiser described its campaign with GIPHY as allowing it to reach a younger audience (as opposed to other paid media, which tended to reach an older audience).

4.57 On balance, we consider that the majority of evidence indicates that GIFs are a communication feature mainly used by younger audiences. However, we note that there may be a new trend of older generations increasingly using GIFs too.

Key players

4.58 Analysis of the competitive landscape in GIF supply is set out in Chapter 5, Market Definition and Market Power. As discussed in Chapter 5 in further detail, we consider that there are only three significant GIF suppliers: GIPHY, Tenor, and (to a lesser extent) Gfycat.

4.59 GIPHY was founded in 2013, followed by Gfycat (launched in 2013 and incorporated in 2015), and Tenor in 2014. Tenor was acquired by Google in 2018 and GIPHY was acquired by Facebook in May 2020. [✂].

4.60 [✂] except Instagram, which is solely supplied by GIPHY [✂]. [✂]. [✂] further explained it was important to have access to GIPHY's GIF stickers [✂].

4.61 There are also a number of smaller players in the industry, including Imgur, Vlipsy, Gifbin, and Holler. As discussed in Chapter 5, Market Definition and Market Power, evidence gathered by the CMA suggests that most of these are very small and some do not offer API/SDK integration with third party platforms. Based on evidence concerning substitutability from the Parties' internal documents and third party views (set out in more detail in Chapter 5), our provisional view is that they do not compete meaningfully with GIPHY.

4.62 Historically, limited attempts have been made by the GIF providers to monetise the content they provide and, as such, GIF providers have predominantly relied on raising external finance, being vertically integrated with a large digital platform or generating revenue through other forms of digital advertising, eg banner advertising on their O&O sites. Further discussion of recent monetisation efforts by GIF providers is included in Chapter 7, Horizontal Effects.

5. Market Definition and Market Power

Introduction and framework

5.1 This chapter sets out our Provisional Findings with respect to the market definitions relevant for the competitive assessment of the Merger.

5.2 Where the CMA makes an SLC finding, this must be 'within any market or markets in the United Kingdom for goods or services'.[95] An SLC can affect the whole or part of a market or markets. Within that context, the assessment of the relevant market(s) is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise.[96]

5.3 Market definition involves identifying the most significant competitive alternatives available to customers of the merger firms and includes the sources of competition to the merger firms that are the immediate determinants of the effects of the merger.

5.4 In this case, the relevant products of the Parties and their rivals are complex, differentiated and include recent (and forthcoming) product developments. The potential issues under analysis relate in various ways to how competition between the merging Parties and their rivals will dynamically evolve over time. In these circumstances, the CMA will place more emphasis on the competitive assessment than on static market definition. In its assessment of the impact of the Merger on competition, it will consider evidence on concentration measures alongside evidence of closeness of competition. This involves assessing the strength of the current and likely future constraints between the products of the merging Parties and their rivals. Evidence on concentration and on closeness of competition can be interpreted and taken into account without the need for a precise definition of the relevant markets.[97]

5.5 Accordingly, our analysis does not seek to conclude on a bright-line definition of the relevant markets, but instead describes the competitive framework within which the Parties and their rivals operate. This is used to inform the assessment of competitive effects of the Merger, as set out in Chapter 7, Horizontal Effects and Chapter 8, Vertical Effects.

[95] The Act, section 35(1)(b).
[96] Merger Assessment Guidelines (CMA129), paragraph 9.1.
[97] Merger Assessment Guidelines (CMA129), paragraph 9.3.

5.6 The starting point for our assessment is the relevant services provided by the Parties:

(a) The supply of searchable GIF libraries;

(b) The supply of social media; and

(c) The supply of display advertising.

5.7 We discuss the provision of each of these services in turn. In doing so, we consider the broad range of services in which the Parties, or their competitors, are active. We consider the availability of substitutes to the Parties' services, as well as services outside of these markets that may pose a competitive constraint. Our assessment relies on information gathered by the CMA during its investigation of the Merger (including the Parties' internal documents and data, and views gathered from third parties), and, where appropriate, evidence from the Market Study, which was published on 1 July 2020. We also set out a shares of supply analysis for each of the relevant markets or segments.

5.8 In setting out the evidence on substitutability of the Parties' services, we consider the extent to which the Parties have **market power** in the markets or segments where they operate. The evidence on market power of Facebook and GIPHY is relevant to the assessment of both the horizontal and vertical theories of harm and is discussed further in Chapter 7, Horizontal Effects, and Chapter 8, Vertical Effects. Evidence relevant to assessing market power includes the level and stability of market shares, the strength of competitive constraints, and the extent of past entry and exit.[98]

5.9 As with many digital sectors, the relevant markets in this case are constantly evolving. This chapter does not attempt to predict the direction in which these markets, and competition in these markets, will evolve in the future. Our views on these issues are set out in Chapter 7, Horizontal Effects, and Chapter 8, Vertical Effects.

5.10 The Parties have submitted that the CMA has not undertaken a robust exercise to define the market, that they disagree with the findings of the Market Study, and that the CMA erred by relying on such findings.

5.11 As set out above, our approach to the assessment of market power draws on a range of evidence as regards substitutability for each relevant service, the Parties' main competitive constraints, and their respective positions in the

[98] Merger Assessment Guidelines (CMA129), paragraph 4.12.

relevant markets. As regards the Market Study, we have relied on evidence gathered in that context to the extent we considered it to be relevant to our assessment (where appropriate taking account of recent market developments, and updating the data collected in the Market Study). This evidence was assessed together with evidence obtained in the course of this investigation in the round for the purpose of reaching our provisional views on market definition and market power. We note that the Parties did not submit any evidence suggesting that the evidence obtained by the CMA in the context of the Market Study was not relevant.

5.12 In the remainder of this chapter we discuss each of the three services identified above in turn. For each, we first discuss the product and geographic market definitions, followed by a discussion of the position of the Parties in the relevant markets (including evidence on shares of supply).

The supply of searchable GIF libraries

5.13 In this section we discuss the market definition relating to services involved in the **supply of searchable GIF libraries** and the position of GIPHY within that market.

5.14 Further information about the industry, an overview and analysis of services related to the supply of searchable GIF libraries, and trends in GIF usage are set out in Chapter 4, Industry Background. Analysis of the competitive landscape and key market participants is set out below from paragraph 5.40.

5.15 This section is structured as follows:

(a) First, we set out our assessment of the **product and geographic market definitions** relevant for our competitive assessment of the Merger.

(b) Second, we consider evidence on the strength of alternatives to GIPHY and the degree to which GIPHY has **market power** in the supply of searchable GIF libraries. Our assessment of GIPHY’s market power draws from evidence on the strength of the alternative GIF providers available to social media platforms, and from our analysis of the shares of supply.

Product market definition: supply of searchable GIF libraries

5.16 In this section we consider the product market definition relating to the supply and distribution of GIFs.

5.17 As set out in Chapter 4, Industry Background, GIPHY is engaged in a range of activities contributing to the supply and distribution of GIFs to users. This involves maintaining a **GIF library**, a **search function**, and **distribution channels** (API/SDK and O&O). GIPHY's library includes both video GIFs and GIF stickers. In the remainder of this section we refer to this set of activities as the **supply of searchable GIF libraries**.

5.18 The CMA has considered substitutability along the following dimensions:

(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 (ie non-GIF stickers); 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 (such as emojis, animojis, and avatars).

5.19 As regards substitutability between video GIFs and GIF stickers, the Parties have stated that GIFs (ie video GIFs) and GIF stickers may contain exactly the same image; one is just slightly more transparent than the other, and it is not easy to tell GIFs and GIF stickers apart (eg Instagram and Snap both provide GIF stickers under a button that simply says 'GIFs'). However, the Parties have also submitted that 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, and some social media platform users appear to use GIF stickers considerably more often than video GIFs (eg Instagram's users). This is consistent with third party evidence; for example, one social media platform told us it sees a distinction between video GIFs and GIF stickers – the former can be used as a standalone communication with limited or no interaction with other content, whereas the latter are translucent and can be placed over content, often as an addition to photos. Consistent with this view, we note that video GIFs and GIF stickers are used in different volumes on different social media platforms.[99] [✂],[100] [✂]. Based on this evidence, we consider that, on the demand side, video GIFs and GIF stickers have different uses and, as such, demand-side substitutability may be somewhat limited.

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[99] For example, GIPHY facilitates large volumes of searches for GIF stickers (but much smaller volumes of video GIFs) on Instagram and Snapchat, which are predominantly visual media platforms focused on sharing photos and videos, whereas on WhatsApp (predominantly a messaging platform) the reverse is true.
[100] The Merger was led within Facebook by Instagram, which (at least currently) predominantly uses GIF stickers. In the request for approval of the deal [✂], the stated rationale highlights in particular the volume of Instagram stories that use GIPHY's content (ie GIF stickers) and the upside from potential monetisation on Instagram alone. [✂]

5.20 However, on the supply side, we note that the larger GIF suppliers (GIPHY, Tenor, and Gfycat) all supply both types of GIF. We also understand that the same resources/assets (ie a creative team) could be used to produce both video GIFs and GIF stickers, such that the two types of GIFs could be considered part of the same product market based on supply-side considerations.[101] Thus, for the purposes of the competitive assessment we consider the two types of GIFs together, and consider any differences between the two where appropriate. We leave the precise market definition open.

5.21 As regards substitutability of GIFs with other forms of stickers, the Parties submitted that there are substantial differences, including with 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. We found that third party views on the demand-side substitutability between non-GIF stickers and GIFs were somewhat mixed. Some GIPHY API/SDK partners submitted that other content types (including stickers) could be potential alternatives to GIFs in certain contexts. However, other GIPHY partners – [✂] – submitted that they do not consider GIFs (including GIF stickers) to be substitutable with other content types.[102] On the supply side, we note that non-GIF stickers are supplied by different suppliers to those that supply GIFs: non-GIF stickers appear to be more often supplied by social media platforms themselves, for example, Facebook, Snap, and Viber. Given the somewhat mixed evidence on the demand side and greater differences on the supply side, for the purposes of the competitive assessment, we do not include non-GIF stickers in the product frame of reference; however, we consider any constraint from non-GIF stickers. Therefore, we do not need to conclude definitively on this aspect of the market definition.

5.22 Finally, as regards substitutability of GIFs with other types of content aimed at driving user engagement on social media, we considered a range of evidence from the Parties and third parties, and found that GIFs do not appear to be closely substitutable with these other types of content.

5.23 The Parties have submitted that they do not consider a functional characteristics approach to be a robust economic exercise to define the

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101 Merger Assessment Guidelines (CMA129), paragraph 9.8.

102 For example, because GIFs (including GIF stickers) are animated, are likely to offer significantly greater volumes of content and variety/selection, are more likely to have pop culture references, and tend to be more expressive and individualised.

relevant market, and that, even based on characteristics, GIFs share many common characteristics with other engagement drivers.

5.24 However, we consider that GIFs have distinctive characteristics that make them less likely to be substitutable with other creative content (such as emojis, animojis, and avatars), including that GIFs: (i) are short, looping, soundless videos, often including a caption; (ii) often demonstrate an understanding of popular culture (with many being clips from TV shows, movies, sport events, etc); and (iii) allow for richer user expression (than a static picture or symbol, for example).

5.25 In addition, we found several other factors suggesting a lack of substitutability with other types of creative content:

(a) First, an important part of the rationale of the Merger (as submitted by Facebook) is to sustain GIPHY and avoid a reduction in revenues that Facebook would incur if it lost access to GIPHY's GIFs (see Chapter 2, The Parties, Merger and Rationale). This suggests that GIFs are an important feature of Facebook's social media services that users would not readily substitute with other content offered by Facebook.[103]

(b) Second, GIPHY's internal documents evidence GIPHY monitoring other GIF providers (in particular Tenor), but we did not find internal documents suggesting that GIPHY considers providers of other content types as material competitive constraints.

(c) Third, several third party platforms [✄] submitted that they do not consider other types of creative content to be valid alternatives to GIFs. Several other platforms submitted that other types of creative content may potentially be alternatives to GIFs; however, in all but one case, they caveated these statements with reference to the different characteristics of or usual purposes served by GIFs.

5.26 Considering all of the above, we do not include other types of content aimed at driving user engagement on social media in the product frame of reference.

5.27 On this basis, our assessment of the effects of the Merger focuses on the supply of searchable GIF libraries including both video GIFs and GIF stickers but excluding non-GIF stickers and other types of content. The importance of GIFs to social media platforms, and their substitutability with other types of

[103] A 2018 Facebook Messenger study found that GIFs were rated by users as significantly higher-priority content than other creative features such as stickers and camera effects and filters. [✄]

content and features as a means to drive user engagement, is further considered in Chapter 7, Horizontal Effects, and Chapter 8, Vertical Effects.

5.28 We have also considered the substitutability of the distribution channels for GIFs. In particular, we have considered whether distribution of GIFs via API/SDK can be substituted with distribution via O&O platforms.

5.29 Users of social media and messaging platforms looking to search for and send/post a GIF would, in most cases, be able to do so via either API/SDK integration or the GIF supplier's O&O website/app. However, a GIF search bar integrated within their chosen platform through an API/SDK represents a considerably easier and quicker way to find and send a GIF, compared to navigating to a GIF provider's O&O website or app, conducting a search, and 'sharing' or copying the chosen GIF over to the user's preferred platform (as the latter involves more steps and greater time and 'friction' for the user). For advertisers, API/SDK distribution may enable them to reach a potentially wider audience than distribution via GIF providers' O&O channels.

5.30 We thus consider that, although both the API/SDK and O&O channels are equally available to end-users looking to find and send a GIF, O&O distribution of GIFs to users may not be a *close* substitute to API/SDK distribution from the demand side (in most cases).[104]

5.31 From the supply side, we note that the largest three suppliers of GIFs via API/SDK also supply GIFs via O&O channels (web and mobile). We understand that the same or similar production resources/assets (ie technical team) could be used to supply both API/SDK and O&O, such that the two channels could be considered part of the same product market based on supply-side considerations.[105]

5.32 We also note that GIPHY's O&O traffic volume, while large in absolute volume of search, is very small compared to its API/SDK volume (see Figures 9 and 13 in Chapter 4, Industry Background), [✄].

5.33 Therefore, our competitive assessment does not need to distinguish between the two channels. We thus consider that, on the basis of the similarity of supply side constraints, and the relatively small scale of O&O operations

[104] The Parties have argued that this is in contradiction to our Jurisdiction assessment (See Chapter 3, Jurisdiction) which considers that the Parties overlap because both allow searching and sharing of GIFs. We note searching for a GIF through GIPHY's O&O and through Facebook's integration of GIPHY and Tenor APIs are both services that have commonalities in that both enable users to find GIFs. However, this does not mean that the two methods are economic substitutes. As set out above, for users communicating via a social media platform the API/SDK integration presents a considerably easier way to find and share GIFs, and evidence suggests that access to GIFs in this way is important to platforms (see Chapter 8, Vertical Effects). Therefore, in our provisional view the two methods are not close substitutes.
[105] Merger Assessment Guidelines (CMA129), paragraph 9.8.

compared to API/SDK operations, the competitive assessment does not depend on the precise market definition along this dimension.

5.34 Considering the above, our competitive assessment of the Merger is focused on the supply of searchable GIF libraries, including video GIFs and GIF stickers, but excluding non-GIF stickers and other types of content, through API/SDK to third party platforms, and through O&O directly to users. We refer to this as the ‘supply of searchable GIF libraries’. As noted above, we leave the precise market definition open with respect to the type of GIF (video GIF and GIF sticker) and the distribution channel (API/SDK and O&O), as it would not materially affect the outcome of our competitive assessment.

Geographic market definition: supply of searchable GIF libraries

5.35 As with product markets, the CMA’s focus in defining geographic markets is on identifying the most important competitive alternatives to the merger firms.[106] Geographic market definition in this case is not an essential determinant of our competitive assessment.

5.36 On the supply side, GIPHY’s GIFs are generally available to users throughout the world, as are GIFs provided by GIPHY’s competitors (eg Tenor and Gfycat). These three largest suppliers are all active globally and have broadly consistent competitive positions (respectively) across Western countries such as the UK and US. We note also that GIPHY’s API/SDK kits are publicly available to any third party regardless of geographic location.

5.37 On the demand side, GIPHY submitted that localisation was a comparatively weak aspect of its offering (see further discussion below from paragraph 5.58) and that it was strongest in Western/English-speaking countries.[107] We recognise that the salience of some GIF content (particularly that drawing on local cultural reference points) may vary in different countries.[108] We also note that at least one third party platform valued the localisation capabilities of its GIF provider.

5.38 We recognise that the demand for GIFs may vary between countries, reflecting these cultural and linguistic differences, and that this may lead to some differentiation in the content provided by global GIF suppliers in different

[106] Merger Assessment Guidelines (CMA129), paragraph 9.13.
[107] For example, GIPHY had only relatively recently added multi-language support. GIPHY noted that over the past few years, it has hired international editors on short-term contracts to curate sets of GIFs targeting particular languages and cultural contexts (principally in Asian countries with higher numbers of users) but found that these were often outperformed by smaller native GIF providers; [✂].
[108] GIPHY explained that certain content may be particularly relevant in some countries but less so in others; for example, the National Football League (NFL) would be more relevant to users in the United States. It considers that offering is primarily geared towards a US-centric and English-speaking audience. [✂]. [✂]

countries and, potentially, the emergence of country/region-specific suppliers, particularly in China and some other Asian countries.[109] However, from a UK customer's perspective, the alternatives available are the same as in the US and include the three major suppliers (GIPHY, Tenor, and Gfycat) whose content is principally oriented towards a Western and English-speaking audience.

5.39 As such, our provisional view is to assess the effects of the Merger on the **supply of searchable GIF libraries globally**, while leaving the precise geographic market definition open. We consider that our competitive assessment and its conclusions would not change if we were to consider a narrower geographic frame of reference (eg Western or English-speaking countries).

GIPHY's position in the supply of searchable GIF libraries

5.40 We set out above that, in our provisional view, the relevant market for the competitive assessment of the Merger is the **supply of searchable GIF libraries** (including both video and non-video GIFs, but excluding non-GIF stickers and other types of content, and including both API/SDK and O&O distribution channels) on a global basis.[110] Our competitive assessment (and related analysis of market power)[111] is therefore focused on API/SDK distribution of GIFs, which accounts for the vast majority of GIF distribution volume.

5.41 For the purpose of assessing GIPHY's position in the supply of searchable GIF libraries, we consider the constraints GIPHY faces in this market and the degree to which it has market power.

(a) First, we set out the evidence on the relative similarities and differences between existing GIF providers. We approach this from the point of view of social media platforms, the primary users of GIPHY's API/SDK

[109] For example, Chinese GIF suppliers include Kuaishou and Dongtu.
[110] We note that GIPHY is active in this market, while Facebook is not. Facebook uses the API/SDK integrations of GIPHY and Tenor.
[111] In Chapter 8, we assess the effects arising from the Merger on competition in social media services in view of the importance of GIFs as an input to social media platforms. For that assessment, pursuant to our Merger Assessment Guidelines (CMA129) (paragraph 7.14(a)), we consider here whether social media platforms can easily switch away from GIPHY to a range of effective alternative suppliers so as to mitigate harm from any attempt at foreclosure (ie whether GIPHY has market power in the supply of searchable GIF libraries for the purposes of that competitive assessment).

services.[112] We find that only Tenor is a close alternative to GIPHY. Smaller GIF suppliers fall short of providing a comparable service.

(b) Second, we present evidence on switching and multi-homing between different GIF suppliers. We find that large social media platforms tend to multi-home. We find only limited evidence of social media platforms switching, with most examples of switching being a result of the Merger. We have not seen evidence of any significant social media platform multi-homing with, or switching to, suppliers other than GIPHY or Tenor.

(c) Finally, we present an analysis of GIPHY's share of GIF search volume. We find that GIPHY accounts for the majority of global GIF search volume.

GIPHY's competitors and substitutability

5.42 In this section we set out the evidence on the strength of competitors to GIPHY. Our assessment considers the degree to which third party platforms, primarily social media platforms, which use GIPHY's services via its API/SDK, may be able to switch to an alternative GIF provider. Evidence as to GIPHY's replicability and the ability of new competitors to enter the market, or smaller competitors to expand, is set out in Chapter 8, Vertical Effects and Chapter 9, Countervailing Factors.

5.43 The Parties submitted that there are many alternatives to GIPHY, including Tenor, Imgur, Gfycat, Gifbin, Vlipsy, and Holler, with Tenor viewed as largely interchangeable with GIPHY, and Gfycat also viewed as similar. The Parties argued that this space is highly dynamic and, while most of these other competitors are currently smaller than GIPHY, it is plausible that, were GIPHY to vacate the market, they would have become larger offerings. Moreover, the Parties submitted that GIPHY's API/SDK 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.

5.44 However, according to its own stated rationale for the Merger, Facebook was concerned about losing access to GIPHY should it have ceased operations, which Facebook considered would lead to Facebook's services being compromised from a user experience perspective, thereby harming its business (see further discussion in Chapter 2, The Parties, Merger and

[112] We note that the evidence we have gathered on alternatives to GIPHY primarily relates to views of social media platforms and other platforms integrating GIPHY's (or Tenor's) API/SDK, and as such we have not directly assessed the preferences of the end users of GIFs. However, the views of social media platforms represent their best understanding of what is preferred by the end users of their platforms.

Rationale). Before pursuing the Merger, Facebook considered various options, including partnering with alternative GIF providers or building its own library (see further discussion in Chapter 6, Counterfactual). Regarding the option of moving off GIPHY and using an alternative GIF provider (such as Tenor, Gfycat, Imgur, or Vlipsy), Facebook's executives noted in an internal email exchange of March 2020 that, '[✂]'.

5.45 In the CMA's view, Facebook's preferred course of action of acquiring GIPHY – in part to ensure continued access to GIPHY's GIFs – is not consistent with a range of alternative providers being adequate substitutes to GIPHY.

5.46 Indeed, Facebook's internal documents show that [✂].For example, in one internal exchange considering the possibility of acquiring GIPHY and discussing potential alternative suppliers, Facebook's Head of EMEA Corporate Development, Nir Blumberger, states: '[✂]'.

5.47 Evidence gathered by the CMA suggests that most of the alternative providers mentioned by the Parties in their submission are very small (and some of them do not offer API/SDK integration with third party platforms). Based on evidence concerning substitutability from the Parties' internal documents and third party views, they do not compete meaningfully with GIPHY. In particular:

(a) Imgur is primarily focused on its O&O destination with a variety of creative content, including GIFs, memes and images, and its API is only available for a fee unless used non-commercially.[113] We have not seen internal documents from either GIPHY or Facebook suggesting that Imgur is a good substitute for GIPHY. In an assessment of the GIF provider landscape undertaken by Facebook shortly prior to the Merger, it identified Imgur as having an extensive library, but with lower quality content, limited stickers, and limited content moderation. No platforms among those the CMA has spoken to that are supplied by GIF providers mentioned Imgur as an alternative to GIPHY.

(b) [✂] primarily distributes video clips with audio rather than GIFs. [✂] does not feature prominently in the Parties' internal documents. In Facebook's assessment of the GIF provider landscape, it rated [✂] as having a smaller inventory and limited investment in content moderation, and noted explicitly that [✂] would not be able to substitute for GIPHY.

(c) Holler was mentioned by two third parties as a potential alternative to GIPHY, but was rated by both as a significantly weaker competitor to

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113 [✂]

GIPHY than Tenor.[114] One of the platforms stated that Holler focuses more on other types of content such as emojis rather than GIFs.[115] The other platform stated that Holler offers a product that is sufficient but not scalable due to limited content and less sophisticated localization features. In addition, it noted that Holler's SDK and user privacy requirements are not in alignment with its own business' values and needs. We understand that certain types of data collected by Holler as part of its SDK terms of service appear more extensive than those collected by GIPHY.[116] The Parties' internal documents do not suggest that Holler currently competes with GIPHY in any meaningful way.

(d) Other GIF providers mentioned by the Parties, such as Gifbin, Imgflip, Anmimoto, have not been mentioned by third parties as alternatives to GIPHY (or Tenor), and do not feature in the Parties' internal documents.[117]

(e) We also note that Facebook supplies some in-house creative content for use on selected Facebook surfaces (Facebook feeds and Messenger threads). This includes the Facebook Sticker Store, which allows Facebook users to download virtual packs of animated and static stickers.[118] However, Facebook does not supply its Sticker Store via an API integration to third parties, and its library does not include GIFs.

5.48 In contrast, both Parties' internal documents and third party views suggest that Tenor,[119] and to a lesser degree Gfycat may be seen as alternatives to

[114] [✂]
[115] [✂]. However, we have not seen any evidence of this being successful or material.
[116] In particular, we note that Holler's published Privacy Statement explains that it collects 'Conversational Metadata and Location Information': 'To help us identify relevant products, we may collect anonymized metadata about your conversations, including, but not limited to, chat identifiers, keywords related to what you talk about and location information, including your GPS location at the time of the conversation. Our systems automatically process content and communications you and others provide to analyze context and what's in them for the purposes described in this Privacy Statement'. Terms of Service | Holler (accessed 17 June 2021). The CMA understands that Holler's SDK (which is available free of charge) collects a large amount of data; whereas its API (for which it charges a monthly subscription) has minimal data requirements. [✂]
[117] One GIPHY partner, which offers a marketplace to its customers of partner-built apps and integrations, submitted that the only other GIF provider of which it was aware on its marketplace (other than GIPHY) was RightGIF. It noted that the RightGIF app was built by a developer that does not focus solely on GIFs, and that GIPHY is significantly more popular with its customers, with eight times the number of installations as RightGIF.
[118] Facebook's stickers are all [✂]. Facebook submitted that approximately [✂] stickers are available on Facebook and approximately [✂] stickers are available on Messenger, as at 22 April 2021. [✂]. When the user downloads the sticker pack, the stickers in the pack are added to the user's 'sticker drawer' (ie the interface with stickers it has downloaded that are ready for use). The user can access stickers in their sticker drawer 'in app' when communicating within a Facebook feed or Messenger thread.
[119] Tenor is owned by Google.

GIPHY. Both of them supply a sizeable library of GIFs and offer API/SDK integrations for third parties such as social media and messaging platforms.[120]

5.49 In the remainder of this section we focus on assessing how Tenor's and Gfycat's services compare to those of GIPHY, and whether either of them may be considered a close substitute to GIPHY. Our assessment is structured around the three sets of core services set out in Chapter 4, Industry Background: (i) sourcing, moderating, and hosting a library; (ii) search; and (iii) distribution.

5.50 In terms of **sourcing, moderating and hosting a GIF library**, according to its internal documents, GIPHY considers that the quality and safety of its content, and its established relationships with content partners are important elements of its competitive advantage. For example, in the 'Competitive Advantage' section of an investor pitch, GIPHY stated that '[✂]'.

5.51 However, the Parties submitted that GIPHY and Tenor have very similar libraries and that content creators often upload exactly the same content to GIPHY and Tenor. Based on evidence from the Parties' internal documents and third parties, Tenor appears to have a comparable content library to that of GIPHY, which is sourced, moderated, and protected under intellectual property licensing in a similar way. For example, Tenor told us that it does [✂].

5.52 Over the course of its investigation, the CMA received submissions from 11 third party platforms that are supplied by GIF providers. Of these, nine mentioned Tenor as an alternative to GIPHY. Of these nine platforms: (i) five described Tenor as very similar to GIPHY (two of which explained that they had not noticed much or any difference in user experience after switching from one to the other); (ii) three described GIPHY as superior in one or more respects; and (iii) one described Tenor as superior in one or more respects.

(a) One third party (that integrates with both providers) told us that Tenor and GIPHY have similar libraries in terms of size and quality, including claims to extensive copyright licensing; however, it regards GIPHY as superior, particularly in regard to its content moderation.

[120] Beyond GIF providers available in the UK, there are other examples of providers of GIF libraries internationally. These include, in China, Kuaishou (which launched in 2011 as a GIF platform, subsequently expanded into broader social media and e-commerce, and in early 2021 launched a USD5 billion IPO), and Dongtu (a GIF platform that integrates with over 3,000 Chinese mobile apps). The CMA has been able to obtain only limited information with regard to these Chinese GIF platforms.

(b) One third party (which uses GIPHY but not Tenor) considered that the volume and quality of Tenor's sticker offering was relatively on par with GIPHY's, but not quite as good.

(c) Another third party stated that it previously tested Tenor and another smaller GIF provider in one of its apps but had chosen to use GIPHY because it offered a more comprehensive library with better content to stimulate user conversation.

(d) Another third party (which is also supplied by GIPHY, but not Tenor) identified only Tenor as another major global GIF provider and commented that it was not aware of any other comparable provider. In its view, there is not a significant difference between the products of GIPHY and Tenor.

(e) As noted above, one platform rated Tenor as superior; this was due to its better localization capability, yielding a better user experience. This platform had run global user testing and had observed a 4% lift in GIFs being sent when integrated with Tenor compared to GIPHY.

5.53 We note that in an internal email exchange prior to the Merger, in which Facebook's executives discussed options (as alternatives to acquiring GIPHY), they commented that [✂].[✂].

5.54 By contrast, the evidence we have reviewed suggests that Gfycat's content library is not of the same high quality or as secure (in terms of both content moderation and IP legal protection) as that of GIPHY and Tenor:

(a) Gfycat told us that all of its content is organically user-generated, in contrast to GIPHY, which sources/creates content with brand partners (for example around major events such as the Oscars), highlighting this as a key point of differentiation between them. Gfycat considered this to be a potential advantage for GIFs, as a wide user base can capture culturally trending context better than a team of employees.

(b) [✂].

(c) Viber also told us that it considered the Gfycat inventory to be inferior to that of GIPHY and Tenor.

(d) ByteDance told us that it believes that a balance between professional-quality branded content (for example, from studios and media providers) and UGC helps to enhance its users' experience.

(e) One third party commented that GIPHY and Tenor are the most superior offerings in the market and Gfycat comes third. It noted that alternatives such as Gfycat may not have the same volume of, or licences to, content.

5.55 Consistent with the above, Facebook's internal documents show that [✂]. For example, in one internal exchange considering the possibility of acquiring GIPHY and discussing potential alternative suppliers, Facebook's Head of EMEA Corporate Development, Nir Blumberger, comments that using Gfycat would be '[✂]'.

5.56 [✂].GIPHY's internal documents demonstrate GIPHY's suspicions that both Tenor and Gfycat may be copying content from GIPHY without attribution, but that it considers that '[✂].This evidence suggests that GIPHY differentiates itself by offering users engaging content in a timely manner and faster than competitors. Furthermore, as discussed in Chapter 4, Industry Background, evidence suggests that at least some platforms, including Facebook, require content to be licensed; therefore, even if a competitor copies GIPHY's library this library may not be seen as a credible alternative to GIPHY in the absence of demonstrable content rights.

5.57 In terms of the sophistication of the **search algorithm**, Tenor appears to possess a comparable degree of capability to GIPHY. Tenor informed us that [✂]. The Parties submitted that conducting searches of GIPHY's and Tenor's libraries shows the similarity of their search algorithms, as these searches return similar and sometimes identical GIFs. Likewise, one third party platform highlighted the similarity in GIPHY's and Tenor's ability to organise GIFs in a way that surfaces the most interesting GIFs to the top of searches, making it easier for users to find the content they are looking for.

5.58 One aspect of the content library and search algorithm for which we have seen some evidence to suggest that Tenor may be superior to GIPHY is in its **localization capability**. This capability refers to maintaining and moderating, and ranking appropriately in search results, content that is relevant to users in different cultural and linguistic contexts outside of the US and Western world. According to one third party that has used both suppliers, Tenor offers superior localization capability and local language features. GIPHY itself told us that localization was a comparatively weak aspect of its offering.[121] In line with this, in one of GIPHY's internal documents (from 2019), members of its Product Team discussed a new strategy being developed to 'beat Tenor in

[121] For example, GIPHY had only relatively recently added multi-language support. GIPHY noted that over the past few years, it has hired international editors on short-term contracts to curate sets of GIFs targeting particular languages and cultural contexts (principally in Asian countries with higher numbers of users) but found that these were often [✂]; [✂].

search'. They noted that, 'According to our API partners, we have historically been outperformed in most non-English languages. Search queries have returned less than relevant results due to poor translations. More recently, partners have shared that we have fallen short in head-to-head testing against competition (Tenor specifically)'.[122]

5.59 We consider that the extent to which localization capability is an important dimension of competition will vary significantly by third party platform (depending on its user base). However, it is notable that we have not seen evidence from either third parties or the Parties' internal documents that suggest that any other global GIF provider (other than Tenor) has the ability to rival or outperform GIPHY in this respect. Furthermore, these localization capabilities are less relevant to our assessment on competitive constraints to GIPHY from the perspective of UK users, given that these capabilities are primarily relevant for adapting content to a non-Western and English-speaking audience.

5.60 Finally, as regards **distribution** of GIFs, GIPHY and Tenor also appear to be set apart from other GIF providers in the number and prominence of their API/SDK distribution partners. Tenor told us that [✂] GIPHY and Tenor both supply several of the most popular social media platforms, including Facebook, WhatsApp, and Twitter, as well as others.

5.61 By contrast, [✂]. Gfycat told us that, although it has created some small distribution partnerships [✂], it is still relatively dependent on [✂] and has struggled to gain traction with larger API partners [✂] and Facebook. If users of platforms such as Facebook want to include a Gfycat GIF in their social media post or message, they would need to leave the Facebook website/app, visit Gfycat's O&O channels, and copy or share (using the integrated 'share' to Facebook button from Gfycat's O&O) the content from there.

5.62 Prior to the Merger, as well as supplying the core services described above, GIPHY also supplied paid advertising services through its Paid Alignment model. As noted above, this involved an advertiser paying GIPHY to promote (make more prominent) the advertiser's GIF, or set of GIFs, in the search results associated with certain search terms, and/or in the trending GIF feed. These services are described in further detail from paragraph 5.135 below (where we consider their positioning within the search and display advertising markets) and are assessed in greater depth in Chapter 7, Horizontal Effects and Chapter 8, Vertical Effects.

[122] One particular issue raised in the discussion was the need to demonstrate to Samsung that GIPHY could perform well with Korean users.

5.63 At the time of the Merger, GIPHY was the only significant GIF supplier offering Paid Alignment or promoted GIF services.[123,124] [✂].

5.64 Given the evidence set out above, we are of the view that **only Tenor is a close competitor to GIPHY** in the supply of searchable GIF libraries via API/SDK to third party platforms. Gfycat does not currently provide a service that is a close substitute to GIPHY's.

Evidence on switching and multi-homing

5.65 Instances of platforms switching between GIF suppliers and multi-homing (whereby a platform sources GIFs from more than one provider) can inform the assessment of substitutability between suppliers.

5.66 The Parties submitted that some websites or apps may find it convenient or attractive to multi-home,[125] but that it is not necessary for social media providers to partner with more than one GIF provider. In the Main Party Hearing, Facebook told us that it will continue to use Tenor alongside GIPHY post-Merger, since 'one of the basic lessons of procurement is never to have a single provider and to make sure you have alternatives'. We understand that the aim of multi-homing is primarily to mitigate the impact of GIF supply outages on the user experience on these platforms.[126]

5.67 Multi-homing appears relatively common among the large social media platforms. For example, WhatsApp is supplied by both GIPHY and Tenor, with individual users randomly assigned to one or the other provider. The main Facebook platform and Messenger are also served by both GIPHY and Tenor, as are Twitter, [✂], and Kika.

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[123] One advertiser commented that GIPHY was 'the leader in this space' ([✂]). Another advertiser told us that it was not aware of any other vendor offering these services, other than potentially Tenor; however, it had not engaged with Tenor as an alternative provider ([✂]). A third advertiser mentioned Holler as a supplier that it believed was developing click-through GIF adverts, though it had not partnered with Holler or any other provider of GIF advertising services ([✂]).
[124] The CMA understands that Holler has also developed an advertising offering (which has attracted a number of large brands) with branded sticker content on third party platforms integrated via its SDK. However, this product appears to be still relatively limited in scope; Holler's audience reach is much smaller than GIPHY's (due to its much more limited range of third party integrations). As explained above, Holler does not meaningfully compete with GIPHY from the perspective of social media and messaging platforms.
[125] They did not specify why it would be considered convenient or attractive.
[126] One third party told us that it considers it important to use more than one GIF provider to combat any technical challenges such as outages and continuity of service. [✂] Another third party explained that the benefit of having more than one provider would be to counter redundancy or continuity of service (although it did not consider this to be of major concern).

5.68 However, some platforms have only one GIF supplier: notably, TikTok and Instagram (which are supplied solely by GIPHY)[127] and [✂], Viber, and [✂] (which are supplied solely by Tenor).

5.69 The CMA has seen limited evidence of platforms switching GIF providers, and most of the known instances of switching were prompted by the Merger:

(a) The Parties submitted that, since January 2018, three platforms have switched away from GIPHY to [✂], all following the Merger in 2020: [✂], and Viber and Telegram (both messaging platforms).

(b) Viber and [✂] confirmed to the CMA that they switched from GIPHY to Tenor as a result of the Merger.

(c) Kika told us that following the Merger it has gradually reduced its use of GIPHY in favour of Tenor.

5.70 An internal document from GIPHY mentions Skype switching from Tenor to GIPHY around October 2019. Skype '[✂]'.

5.71 We have not seen evidence of any significant social media platform multi-homing with, or switching to, suppliers other than GIPHY or Tenor.[128] This evidence therefore supports our view that only Tenor is a close competitor to GIPHY (at least from the perspective of the social media platforms).

GIPHY's position in the supply of searchable GIF libraries

5.72 The evidence discussed above highlights that GIPHY and Tenor's offerings are distinctive from that of other GIF providers in that they maintain an attractive and current content library, a sophisticated search engine, and a wide distribution network of API/SDK partners including, *inter alia*, many major social media and messaging platforms. Although third party views as to how GIPHY and Tenor compare in terms of the quality of their offerings differ to an extent, with different third parties placing different weight on the various features and services offered by each supplier, on balance we are of the provisional view that GIPHY is consistently viewed as the market leader, with Tenor offering a broadly similar service. No other GIF provider currently offers a service of a comparable quality to GIPHY and Tenor.

5.73 This finding is also reflected in the volume of GIF traffic attributable to the different suppliers. Table 4 shows the distribution of GIF search volume across the three largest suppliers (GIPHY, Tenor and Gfycat), calculated on

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127 TikTok is supplied solely by GIPHY in the UK, Europe, and US.
128 [✂].

the basis of average monthly API/SDK searches globally in 2020. Searches are a highly relevant measure of user engagement levels and are a key metric used by the GIF providers themselves to monitor how usage of their network is growing.[129]

Table 4: Shares of supply in GIF provision, based on global API/SDK search volume, 2020

GIF provider	Number of searches (monthly average)	Share of supply
GIPHY	[✂]	[60-70]%
Tenor	[✂]	[30-40]%
Gfycat[130]	[✂]	[0-5]%
Total	[✂]	100%

Source: CMA analysis [✂].

5.74 Table 4 shows that GIPHY and Tenor have substantial shares of API/SDK GIF searches globally, [✂]. Gfycat's share is far lower than those of GIPHY and Tenor; [✂].

5.75 We note that other GIF providers may also offer API/SDK integrations to search for GIFs. We were not able to obtain data from other providers. Therefore, the shares presented in this table may in principle over-estimate GIPHY's (as well as Tenor's and Gfycat's) shares of supply.[131]

5.76 However, as discussed above, in addition to Tenor, the only other alternative GIF supplier mentioned frequently by third parties was Gfycat. Therefore, any other GIF providers are likely to be [✂]. Furthermore, as GIPHY and/or Tenor are the only GIF suppliers to Facebook platforms as well as most other social media platforms of material size (such as [✂], TikTok, [✂]), this also means that the traffic of any suppliers omitted from this analysis would be very small compared to the traffic already included in the analysis. As such, we expect that the shares presented in this table are a reasonable estimate of the shares of supply in the API/SDK distribution of GIFs.

5.77 We also considered several alternative metrics to estimate shares of supply, including:

[129] GIPHY cited number of search requests as one of its key performance indicators (**KPIs**) regularly reviewed by its Board and Management. GIPHY also used monthly search volumes in presentations to potential investors; for example, see [✂]

[130] Gfycat's share may be somewhat under-estimated insofar as its search data do not include calls on its API by users of [✂]. However, we do not believe that including these calls would materially change our findings, [✂] and in light of the qualitative evidence presented above.

[131] Further limitations of this analysis, related to the definition of the searches metric, are set out in Appendix D: Market shares methodology. We consider that the results of this analysis are consistent with our broader understanding of the market. That is, given that GIPHY and Tenor supply many of the largest social media platforms (including Facebook platforms), [✂].

(a) *Amount of content served* (ie returned by the GIF providers on the basis of API search requests). However, [✂].

(b) *Number of GIFs actually selected/clicked*. However, the data available to GIPHY on this metric are very limited, pertaining only to API partners that use its 'Pingback' feature, and thereby excluding the majority of its traffic (including traffic through Facebook, Instagram, and WhatsApp).[132] Furthermore, GIPHY has submitted that even where clicks data are available for selected API partners, they may not be reliable. In addition, Gfycat submitted that it does not maintain data on this metric.

(c) *Number of GIFs posted/shared by users on third party platforms*. However, GIF providers were unable to provide this data as their access to this information is limited. Such data would therefore need to be collected in a 'bottom up' way from every third party platform individually, which was not considered practicable within the scope of our investigation. However, we were able to explore this metric in a limited way for GIPHY's and Tenor's relative shares of GIFs posted/shared on Facebook and Messenger during the period February to April 2021, based on data supplied to us by Facebook. We found that Tenor had a higher share of content posted than GIPHY, accounting for [✂] of all GIFs posted on Facebook during February and March 2021 (versus [✂] for GIPHY), and [✂] of all GIFs sent on Messenger during the week of 20-26 April 2021 (versus [✂] for GIPHY).[133] [✂]. On the one hand, this analysis may suggest that GIPHY's share by search volume on the basis of volume data supplied by GIF providers may be over-estimated (see Appendix D: Market shares methodology for a further discussion of the available metrics). On the other hand, this analysis is based on a very limited sample (in terms of platforms and timeframe) and, therefore, we do not draw wider conclusions. In any event, the broader evidence gathered in this investigation confirms that GIPHY and Tenor are the only two significant GIF suppliers, and the precise share of each is not material to our competitive assessment.

(d) *Size of library available to UK users (unique GIFs).* We sought data on the size of their libraries from each of the larger GIF providers (GIPHY, Tenor, Gfycat), as at April 2021. However, we do not consider this to be

[132] API partners for whom GIPHY could not provide reliable clicks data include Baidu, Design Keyboard, Discord, Facebook, GroupMe, Handcent, Instagram, Microsoft, Outlook, Samsung, Signal, Skype, Slack, Snapchat, Textra, Tinder, Twitter, Whatsapp, and Yellotalk.

[133] The CMA notes that these results present a different picture to those from the API searches. However, these proportions are dependent on how Facebook makes each GIF provider available and to which users, and as such the resulting shares of GIPHY and Tenor do not necessarily reflect user preferences between the two GIF providers. Because of that and given that this is a limited data sample (in terms of both timeframe and platforms), we place less weight on these findings than those for global API searches throughout 2020.

particularly informative for the purposes of the competitive assessment. While some third parties referred to the size of each provider as a differentiating factor (GIPHY was often mentioned as the largest), we understood such comments to refer more to the amount of high-quality content (including branded GIFs from major content producers) and also the scale of reach with major third party platforms than to the absolute number of GIFs in the library.

5.78 We note that GIPHY's share of API/SDK searches is likely to reflect its prominence on social media platforms, including Facebook platforms, rather than end users acting on a preference for GIPHY over other GIF providers (which, in most cases, they could only do by switching between social media platforms).

5.79 However, GIPHY's prominence on social media platforms gives it brand recognition among potential brand partners,[134] end users and prospective employees, helping it to maintain and improve its services in ways that makes it attractive to social media platforms.

(a) [✂] told us that GIPHY has many more brand partnerships than [✂]. [✂] thought that partnerships with, for example, movie studios could be quite profitable.

(b) Similarly, [✂].

(c) The Parties also note that if GIPHY were to lose the scale of its distribution (as a result of foreclosure, discussed in Chapter 8, Vertical Effects), this would 'reduce demand for GIPHY's GIFs, which would undermine the combined entity's ability to attract and retain GIF licencing partners, creators and artists' and that wider distribution of GIPHY's GIFs therefore 'helps to maintain the quality of GIPHY's library'.

(d) As regards staff, Facebook noted that GIPHY 'have a creative and content-oriented DNA that I think we are missing'. Integrating GIPHY's talented creative team, especially its creative production specialists, formed part of Facebook's rationale for the Merger (see Chapter 2, The Parties, Merger and Rationale).

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[134] Several third parties told us that GIPHY's brand partnerships with companies were an important competitive advantage, allowing it to provide high-quality and socially-relevant GIFs. As shown in Figure 5 in Chapter 4, Industry Background, [✂] of GIFs served by GIPHY are provided by companies, indicating the popularity of these GIFs. As discussed further in Chapter 4, Industry Background, according to its internal documents, GIPHY considers that the quality of its content and its established relationships with content partners are important elements of its competitive advantage. In an investor presentation, GIPHY highlights that it has '[✂]'; [✂]

5.80 In summary, based on evidence from Internal Documents, third party views, as well as the shares of supply analysis, our provisional view is that **GIPHY has market power in the global supply of searchable GIF libraries via API/SDK to third party platforms** such as social media platforms (and indirectly, to their users).[135] This provisional view is reached for the purposes of our competitive assessment[136] on the basis that the various types of evidence set out above indicate that social media platforms have very limited close alternatives to GIPHY, for the following reasons:

(a) The distinctive **quality of its content and search algorithm**, and its sizeable **reach** among the major distribution partners.

(b) The fact that **Tenor is GIPHY's only sizeable and close competitor**, as it offers a service of a broadly similar quality, and [✂].

Social media

5.81 In this section we discuss the market definition relating to services involved in the supply of social media. Our assessment is informed by evidence obtained in the course of this investigation as well as evidence presented in the Market Study.

5.82 The CMA most recently examined the market for social media in the Market Study. In the Market Study, social media platforms were described as follows:[137]

> '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'.'

[135] Our assessment focuses on API/SDK distribution of GIFs. However, the inclusion of O&O in this analysis would not change our view, given that O&O traffic is very small in volume relative to API/SDK traffic.
[136] In Chapter 8, Vertical Effects, we assess the effects arising from the Merger on competition in social media services in view of the importance of GIFs as an input to social media platforms. For that assessment, pursuant to our Merger Assessment Guidelines (CMA129) (paragraph 7.14(a)), we consider here whether social media platforms can easily switch away from GIPHY to a range of effective alternative suppliers so as to mitigate harm from any attempt at foreclosure (ie whether GIPHY has market power in the supply of searchable GIF libraries for the purposes of that competitive assessment).
[137] Market Study, paragraphs 2.30-2.31.

5.83 Facebook runs several social media platforms, most notably Facebook, Messenger, Instagram, and WhatsApp. GIPHY integrates with Facebook's and other parties' social media platforms through its API/SDK.

5.84 The rest of this section is structured as follows:

(a) First, we discuss the product market definition.

(b) Second, we discuss the geographic market definition.

(c) Finally, we set out the evidence on Facebook's position in social media. For the reasons set out below, we provisionally find that Facebook has significant market power in the supply of social media services.

Product market definition: social media

5.85 We consider 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 above) is appropriate in this case. We consider the following platforms to fall within this broad definition of social media: Facebook; Messenger; YouTube; Snapchat; WhatsApp (part of the Facebook group); Instagram (part of the Facebook group); TikTok; Twitter; LinkedIn; Pinterest; Reddit; and Tumblr.[138] A number of these social media providers are currently, or have previously been, integration partners of GIPHY. We consider that messaging is an important feature of social media platforms[139] and that Facebook offers the full breadth of social media features across its platforms.

5.86 The Market Study found that platforms compete for user attention through a combination of a range of parameters:[140]

(a) Size and type of user network;

(b) Content;

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[138] Market Study, paragraph 3.155. The Market Study acknowledged a range of smaller platforms that fall within the definition. However, those platforms accounted for a very small proportion of user time spent on social media. A wider range of more specialised platforms/services may compete with specific aspects of Facebook's offering – for instance, dating apps such as Tinder and Bumble (which also integrate GIFs) may compete with Facebook Dating. While we do not focus on these specialised services in our assessment (not least as they account for a very small share of users' time compared to the larger social media platforms listed), we do take into account the potential harm to such platforms' competitiveness as a result of foreclosure from GIPHY's services in our assessment of vertical effects (see Chapter 8, Vertical Effects).
[139] Demonstrated by the Market Study, Table 3.1: Social media platforms' functionalities, in which every social media platform included was shown to offer messaging features.
[140] Market Study, paragraph 3.158.

(c) Innovative features (new ways to communicate or interact with content may attract user attention);

(d) Ad load and quality of advertising;

(e) Privacy;

(f) Platform governance (moderating content to prevent negative content from degrading user experience); and

(g) Price (most platforms providing services to consumers at zero monetary cost).

5.87 Based on an assessment of substitutability drawing on a range of third-party survey evidence and platforms' internal documents, including consumer research, the Market Study found that there is some differentiation between the social media platforms listed above, with some focusing more closely on content sharing and the provision of a personalised 'feed' of content, and others focusing mainly on messaging.[141]

5.88 The Parties have submitted that the market definition should not be limited in scope to social media providers as Facebook faces competition from any website or service that attracts user time and attention away from it, including video and other streaming platforms and games.

5.89 We have considered whether the product market definition should include other types of offerings to attract and retain users' interest. 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 evidence presented in the Market Study shows 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.[142] This is based on research discussed in the Market Study showing that interacting with existing close contacts (ie friends and family) remains the most important reason for which consumers access Facebook,[143] and that Facebook additionally offers a wide portfolio of services (networking with more distant connections and businesses, video streaming, gaming and shopping) that is unmatched by any other platform.[144]

[141] Market Study, paragraph 3.155.
[142] Market Study, paragraphs 3.198-3.201.
[143] Market Study, paragraph 3.186 and Table 3.2.
[144] Market Study, paragraph 3.191.

5.90 We have not seen evidence to contradict the Market Study findings set out above; nor have the Parties supplied evidence demonstrating that these wider platforms/services provide a meaningful competitive constraint on Facebook. Therefore, our competitive assessment of the Merger is focused on the **supply of social media**.

Geographic market definition: social media

5.91 The Parties have submitted that their services are available on a global basis (subject to language variations). We consider that Facebook and its competitors' social media services are generally available to users throughout most of the world.[145] Further, 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.[146]

5.92 Therefore, our provisional view is that we should assess the effects of the Merger on the **supply of social media globally**.[147]

Facebook's position in social media

5.93 As noted above, Facebook runs several social media platforms, most notably Facebook, Messenger, Instagram, and WhatsApp. GIPHY integrates with Facebook's and other parties' social media platforms through its API/SDK.

5.94 Evidence obtained in the context of the Market Study shows that Facebook's portfolio of social media platforms (Facebook, Messenger, Instagram, and WhatsApp) caters to a wide range of user needs. The Facebook platform in particular stands out as a platform that can serve a broad range of consumer needs; as such, it may be seen as must-have by consumers.[148]

5.95 By contrast, other platforms, such as the others listed in paragraph 5.85, while sharing some common functionalities, are differentiated in their users' needs and provide a more specialised offering.[149] For example, Snapchat emphasises communication amongst close friends, through visual rather than text-based messages, and is commonly perceived as a more 'playful' and private platform which encourages its users to present themselves more authentically.[150] We consider that in practice, the specialisation of some social media platforms means that the competitive constraints are asymmetric, with

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[145] We note that some services may not be available in selected locations, such as China.
[146] *Facebook/WhatsApp,* paragraph 68.
[147] We note that there may be some countries that have a different set of social media platforms, for example China.
[148] Market Study, paragraphs 3.163 and 3.193.
[149] Market Study, paragraphs 3.160 to 3.163.
[150] Market Study, paragraph 3.191.

the specialised platforms competing with only part of Facebook's offering or for a portion of Facebook's audience. The asymmetric constraints are evidenced by the cross-visiting analysis set out further below.

5.96 Our analysis of the competitive constraints on Facebook below excludes YouTube, in line with the approach taken in the Market Study. The Parties have submitted that excluding YouTube is unreasonable given that it is an O&O website on which users can share content and interact with each other and accounts for a large share of users' time, and thereby exercises a competitive constraint on Facebook.

5.97 However, the CMA is of the view that excluding YouTube is appropriate, based on a range of evidence (presented in the Market Study) which indicates that YouTube does not impose a strong competitive constraint on Facebook, for a number of reasons. YouTube's focus is on providing content rather than social networking and communication services; it does not have a 'social graph'.[151] There are important distinctions in how and why consumers use the respective platforms, for example, 'keeping in touch with friends and family' the most commonly valued reason for accessing Facebook but is not valued by users when accessing YouTube.[152] Although YouTube and Facebook have some features in common (eg both display entertaining videos), YouTube does not focus on social networking and does not currently appear to provide a strong competitive constraint on Facebook, despite its comparable reach and levels of consumer engagement.

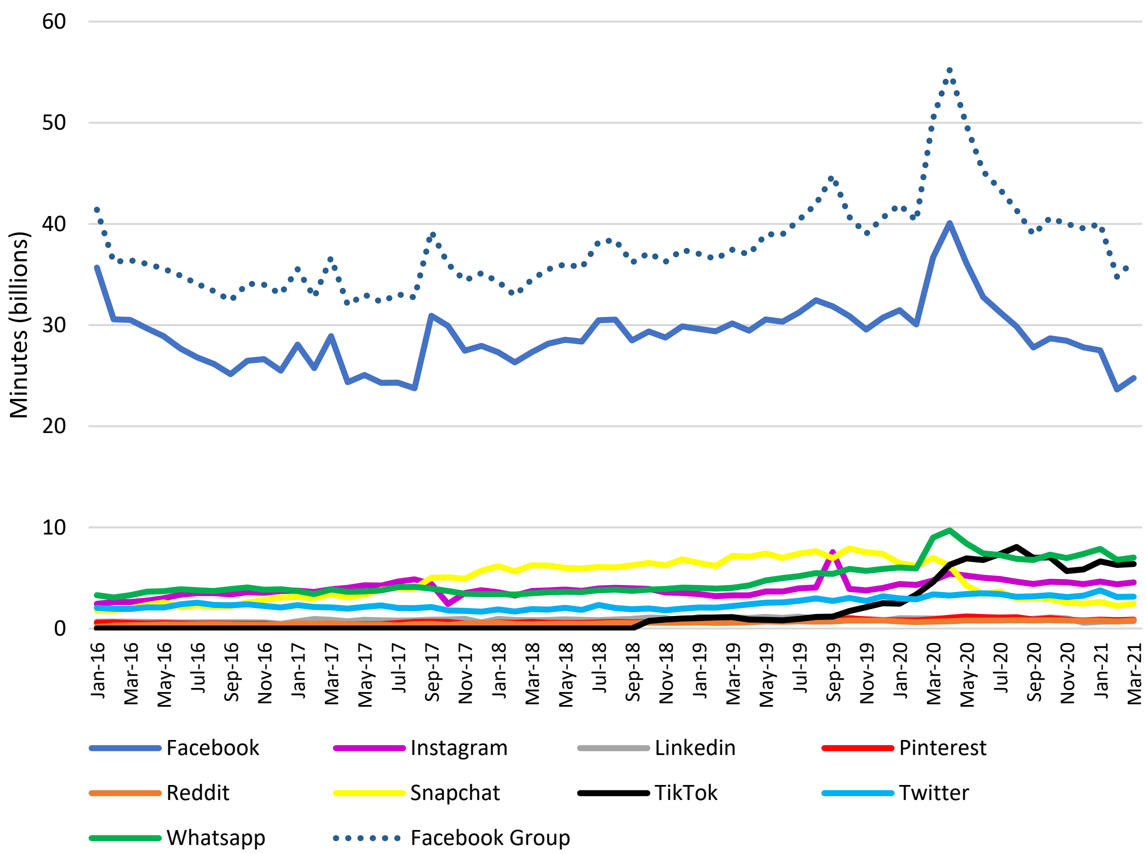
5.98 Below we analyse shares of supply and the prevalence of multi-homing in the UK social media market.

5.99 Figure 14 shows the total time spent by UK consumers on social media platforms between January 2016 and March 2021.

[151] Google has confirmed to the CMA in the course of this Merger Investigation that YouTube does not have a 'social graph' unlike platforms such as Facebook and Instagram that can recommend content to users based on their connections. See also Market Study paragraphs 3.184 to 3.188.

[152] Based on Ofcom survey evidence and Google's internal documents, the Market Study found that users accessed YouTube principally to watch videos (especially entertainment and 'how-to' videos), whereas they accessed Facebook principally to keep in touch with friends and family. It found that user-generated content is a key feature of many social media platforms, whereas YouTube also provides access to a wider range of content, including through its paid-for 'premium' music and video streaming services. Social media platforms seemed to view YouTube as a competitor in its capacity as a provider of content rather than as a provider of the wider communication services offered by social media platforms.

Figure 14: Total time spent on social media platforms, UK



Source: CMA analysis of Comscore data supplied by Comscore (for the period January 2016 to January 2020) and supplied by Facebook (for the period February 2020 to March 2021). Figures include MMX Multi-Platform, Total Digital Population, Desktop aged 6+, Mobile aged 13+, UK.
Note: Facebook includes Messenger as these are grouped in Comscore's data available to us. Facebook Group includes Facebook, Messenger, Instagram, and WhatsApp. Data for Tumblr was not available to the CMA for the period March 2020 to March 2021; we have therefore excluded Tumblr from this analysis.

5.100 Figure 14 shows that consumers spend the greatest quantity of time on Facebook's platforms, most notably on Facebook (including Messenger) itself. Having said this, the picture is not an entirely static one: new social media platforms have emerged and grown over time, including Snapchat (which experienced fairly rapid growth from early 2017) and TikTok (which experienced a surge in time spent on it from early 2020).[153] There was an increase in social media use, especially Facebook, around March/April 2020, corresponding to the start of the Coronavirus (COVID-19) pandemic. After this, the use of Facebook decreased somewhat. Notwithstanding this, in line with the findings of the Market Study, we find that Facebook remains by far the most heavily used social media platform, and that this has persisted over a number of years.

[153] Such platforms may be especially popular with certain demographics – see more in paragraph 5.103 below.

5.101 In Table 5 we show the shares of supply based on total UK user time spent, for 2020 and for the first quarter of 2021.

Table 5: Shares of supply by user time spent on social media, UK

Platform	**Share of supply (2020)**	**Share of supply (Jan-Mar 2021)**
Facebook and Messenger	52.7%	48.8%
WhatsApp	12.3%	13.9%
Instagram	7.8%	8.7%
Facebook Group	*72.8%*	*71.5%*
TikTok	9.9%	12.4%
Snapchat	7.1%	4.7%
Twitter	5.4%	6.5%
Pinterest	1.6%	1.7%
LinkedIn	1.6%	1.4%
Reddit	1.3%	1.5%
Tumblr	0.4%	0.4%

Source: CMA analysis of Comscore MMX Multi-Platform data supplied by Facebook. Total Digital Population, Desktop aged 6+, Mobile aged 13+, UK.

Note: Facebook includes Messenger. Facebook Group includes Facebook, Instagram, and WhatsApp. With the exception of January and February 2020, data for Tumblr was not available to the CMA; we have therefore used data for equivalent months from 2019 as a proxy.

5.102 Table 5 shows that Facebook and Messenger have by far the highest share of user time spent in the UK, at 53% in 2020, declining slightly to 49% in the first quarter of 2021. The Facebook group of platforms as a whole (Facebook, Messenger, Instagram, and WhatsApp) had a consistent combined share of supply of around 72%. While the share of the Facebook Group has gradually declined somewhat over the years, it has nevertheless remained very high, persistently well over 70%.[154] The shares held by most other platforms have been, and continue to be, significantly lower, with TikTok representing the next highest share at 10% (2020), growing slightly to 12% (first quarter of 2021).

5.103 Social media platforms may be differentiated on the basis of their user base, with certain platforms being particularly popular amongst consumers within different age segments.[155] This was echoed in the view submitted by one third party, which stated that it would choose certain platforms (Snapchat, Twitter, TikTok, or Instagram) to target a younger demographic, whereas Facebook would be used to target an older audience. This is pertinent to our analysis because the evidence, although mixed, suggests that GIFs may be more

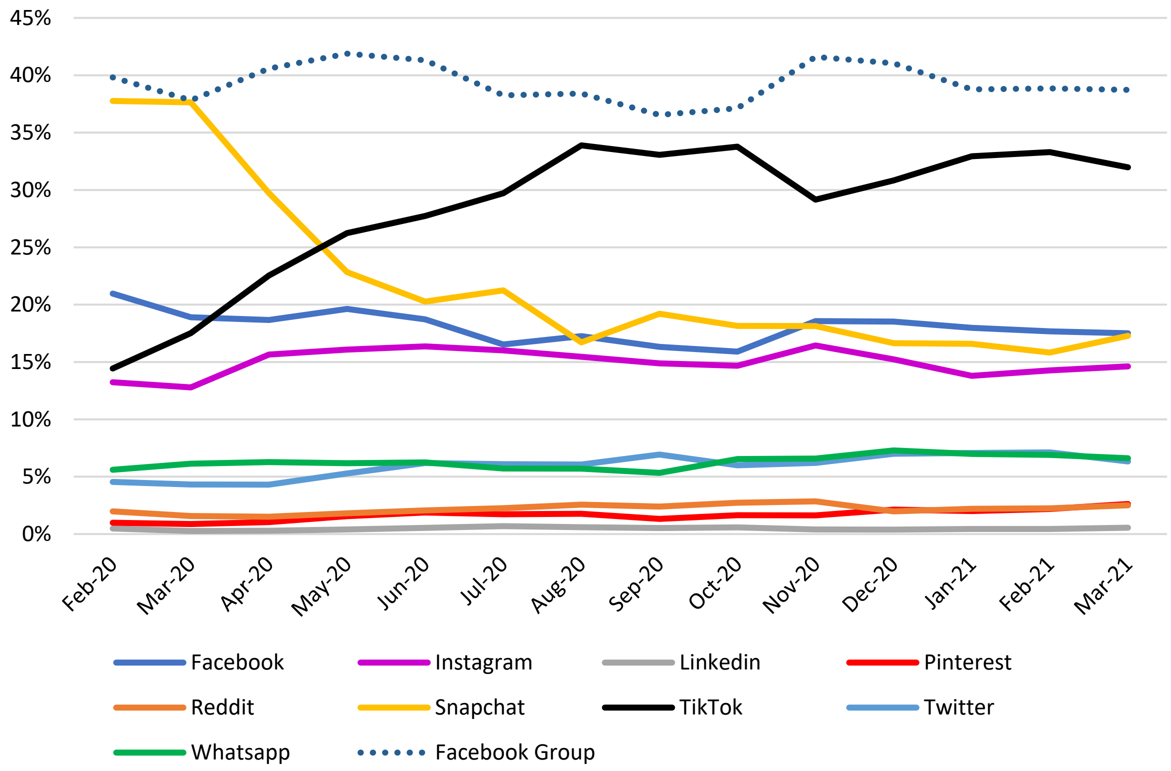
[154] Based on data used in the Market Study, going back to mid-2015.
[155] For example, see discussion of Snapchat in Market Study, Box 3.6.

popular with younger users (see evidence on demographics of GIF usage in Chapter 4, Industry Background).

5.104 Data collected and analysed in the context of the Market Study (using February 2020 data) indicate that, in the UK, Instagram and Facebook are the two most popular platforms amongst the youngest age group (18 to 24 year-olds) in terms of the number of monthly active users.[156] However, by share of total time spent, Snapchat accounted for more than Facebook and Instagram combined.

5.105 We have examined more recent data (from February 2020 to March 2021) on social media platforms' shares of time spent by users in this age group in the UK. This is shown in Figure 15.

Figure 15: Shares of supply by user time spent (18 to 24 year-olds), UK



Source: CMA analysis of Comscore MMX Multi-Platform data supplied by Facebook. Total Digital Population, 18-24 year-olds, UK.
Note: Facebook includes Messenger. Facebook Group includes Facebook, Instagram, and WhatsApp. Tumblr has been excluded due to lack of data.

5.106 Figure 15 shows that amongst 18 to 24 year-olds, the Facebook group of platforms (Facebook, Messenger, Instagram, and WhatsApp) together accounted for the highest share of total user time spent: 39% in March 2021. While Facebook's share remained substantial, it did decline slightly from 21%

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[156] While Comscore data is available for teenagers and selected data for children, the sample sizes are very small; therefore, we use the 18-24 age group to best represent the youth cohort.

to 18%. Facebook has lower engagement (by time spent) among this group than among its overall user base.

5.107 Snapchat's share (38%), which started this period nearly as high as the Facebook Group share among this 18-24 age group, declined substantially during the first half of 2020 and then remained flat at around 16-18% through to March 2021.[157] TikTok's performance was a mirror image of this, growing rapidly from 14% (February 2020) to 34% (August 2020) and levelling off thereafter. We note that Facebook's share has remained largely unaffected throughout these developments.

5.108 As noted above, consumers typically use multiple different social media and messaging platforms ('multi-homing' between them). To gauge the degree of multi-homing, we used Comscore's 'cross-visiting' data for selected major platforms.[158] Figure 16 shows the proportions of unique UK visitors to each (column) platform that also accessed each (row) platform during the month of March 2021.

Figure 16: Consumer cross-visiting behaviour amongst social media platforms, March 2021 (UK)

	Facebook	Instagram	WhatsApp	Snapchat	TikTok	Twitter
Facebook	100.0	90.2	91.8	83.7	84.4	89.4
Instagram	62.5	100.0	67.0	86.9	80.1	72.3
WhatsApp	70.3	74.1	100.0	83.7	77.5	69.1
Snapchat	20.4	30.5	26.6	100.0	45.3	25.0
TikTok	29.9	40.9	35.8	66.0	100.0	37.5
Twitter	45.8	53.4	46.2	52.7	54.3	100.0

Source: CMA analysis of Comscore MMX Multi-Platform data supplied by Facebook. Total Digital Population, UK.
Note: Facebook includes Messenger. Figures show the percentage of unique visitors that visited the column entity that also visited the row entity [bolded] during March 2021. For example, 83.7% of Snapchat's unique visitors also visited Facebook.

5.109 This analysis confirms that multi-homing is indeed prevalent, but also asymmetric in favour of the Facebook group platforms (Facebook and Messenger, Instagram, WhatsApp). The large majority of other major platforms' users cross-visited with Facebook, ranging from 84% of Snapchat and TikTok users to 89% of Twitter users. Similarly, the majority of Snapchat, TikTok and Twitter users also visited Instagram and WhatsApp. Among the Facebook group platforms, the Facebook platform itself (including Messenger) is the most cross-visited. In contrast, the users of Facebook group's platforms cross-visited with non-Facebook platforms at far lower rates, in most cases

[157] [✂] see further explanation in Appendix D: market shares methodology.
[158] Comscore's cross-visiting data does not account for intensity of use. We are also unable to assess the extent to which individual consumers cross-visit across more than two platforms, eg the proportion of consumers that accessed three or four platforms within the month.

well below 50% (the only exception being 53% of Instagram users also visiting Twitter).

5.110 The Parties have argued that barriers to switching are low, and the fact that the results are asymmetric is a result of the size of the relative audiences – given users have a finite amount of time, all these other apps pose a constraint on Facebook because of the trade-off for consumers in choosing to spend more or less time on each app.

5.111 However, in our view, the cross-visiting analysis suggests that other social media platforms are accessed alongside Facebook group platforms (rather than as an alternative to them), which limits the extent to which multi-homing behaviour weakens Facebook's market power.

5.112 Overall, our quantitative analysis set out above is consistent with the analysis presented in the Market Study. The main difference identified is some changes in the shares of time spent on smaller social media platforms, particularly among younger people. However, this development has not altered the share of Facebook in a material way.

5.113 Facebook's market power has been sustained over time and reinforced through **high barriers to entry into social media**. We disagree with the Parties' submission that Facebook's position derives from its continual innovation rather than barriers to entry. As described in the Market Study,[159] although Facebook initially grew through its innovative social networking service, it now has had a much larger network than other platforms for many years. Facebook's large scale, and same-side and cross-side network effects,[160] mean that Facebook benefits from positive feedback loops. For example, its large network of connected users helps it to attract and retain more consumers, while also attracting developers and content providers, which further increases its value to consumers. All social media platforms contacted as part of the Market Study agreed that network effects are important in this industry.[161] The Market Study found that network effects act as a barrier to entry and expansion for social media platforms and prevent smaller competitors from imposing a strong competitive constraint on the Facebook platform – as a result of their less developed consumer networks, smaller competitors are unable to fulfil the same range of consumer needs as Facebook. Therefore, consumers' ability to switch away from its services is

[159] Market Study, 3.176 – 3.183, and section on 'Network Effects' from 3.203.
[160] Same-side network effects refers to network effects within one side of a multi-sided platform (eg the greater the number of Facebook's social media users, the more likely they are to attract more users). Cross-side network effects refers to network effects from one side of the platform to another (eg the greater the number of Facebook's social media users, the more likely they are to attract more content developers and advertisers).
[161] Market Study, 3.204

restricted and Facebook experiences limited direct competition from competitors.[162] In addition to network effects, other key barriers to entry and expansion include lack of interoperability and access to data.[163]

5.114 These findings are reinforced by the scarcity of new entrants at a meaningful scale into the market in recent years. As shown in the Market Study (Box 3.6), in the past decade only Instagram (now owned by Facebook), Snapchat, and TikTok have entered the UK market and achieved a share of more than 5%; each of these platforms is quite differentiated and remains far smaller than Facebook.[164] Indeed, there has been no successful entry in the last 10 years by a direct competitor with a comparable set of services to those provided by Facebook, with Google's attempt (Google+) having failed.[165]

5.115 As such, consistent with the conclusion reached by the CMA in the Market Study,[166] our provisional view is that **Facebook has significant market power in social media**.

Display advertising

5.116 In this section we consider the market definition relevant to the Parties' advertising activities. Our assessment is informed by the findings of the Market Study, as well as more recent data collected in the course of this investigation to update the estimated shares of supply in the UK display advertising market.

5.117 The Parties are, or in the case of GIPHY was pre-Merger, active in various forms of **digital advertising**, an increasingly important segment of advertising. The Market Study identified three broad types of digital advertising:

(a) **Search advertising** – 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;

(b) **Display advertising** – 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; and

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162 Market Study, 3.205
163 See discussion in Market Study, 3.226 to 3.240
164 Twitter launched in 2006; its share of UK time spent on social media has remained at around 4-6% over many years.
165 Market Study, Box 3.7
166 Market Study, 3.250.

(c) **Classified advertising** – where advertisers pay online companies to list specific products or services on a specialised website serving a particular market segment.[167] This type of advertising accounts for a small proportion of digital advertising.[168]

5.118 Facebook primarily derives its revenues from display advertising, by offering to advertisers 'inventory' on its social media platforms (most notably Facebook and Instagram).[169]

5.119 Prior to the Merger, GIPHY's monetisation efforts involved offering to promote sponsored GIFs in its search results and in its 'trending feed' (Paid Alignment). As discussed below, we consider this type of advertising to have similarities to the type of display advertising offered on Facebook platforms, but also to have some distinctions.

5.120 The Parties have submitted that all types of digital advertising should be included in the same product frame of reference. The Parties also submitted that Facebook strongly disagrees with the conclusions of the Market Study, which considered display advertising to be distinct from other forms of advertising. They argue that advertisers allocate their budgets across all different advertising channels with the goal to maximise their return on investment; and that the characteristics and purpose of search and display have significantly converged over the past years.

5.121 Since, in our view, the Parties' advertising activities fall broadly into the display advertising segment (see discussion below from paragraph 5.135), we consider display advertising to be the starting point of our competitive assessment in this investigation.

5.122 In this section we discuss the distinct features of display advertising compared to other forms of advertising, and present evidence on the availability of substitutes within and outside the display advertising sector. Our assessment takes into account the views of advertisers submitted in the course of this investigation, as well as the findings of the Market Study, which collected views of media agencies and advertisers via interviews and a qualitative survey.

5.123 The rest of this sub-section is structured as follows:

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[167] Market Study,5.6.
[168] Market Study, 16.
[169] Inventory is the term used to describe space on an app or a website, where an ad can be placed amongst other content.

(a) First, we review the evidence on substitutes within and outside display advertising. We consider the substitutability between display and search advertising, between display and traditional advertising, and within segments of display advertising. In this context, we also discuss the form of advertising offered by GIPHY prior to the Merger and find that it was closest to display advertising in terms of its nature and purpose as regarded by advertisers themselves.

(b) Second, we discuss the geographic market definition.

(c) Finally, we review Facebook's position in display advertising, conducting a shares of supply analysis and also taking into account evidence presented in the Market Study, which found that Facebook has market power in display advertising.

Product market definition: display advertising

5.124 Display advertising primarily meets the objectives of advertisers who want to reach 'out-of-market' consumers, ie raising brand awareness and reaching new audiences that might not yet have shown interest in the advertiser's products or services. Display advertising is typically sold on the basis of how many times it is viewed, and measured on the basis of cost per thousand impressions (**CPM** or cost-per-mille).[170]

5.125 In this sub-section we discuss the substitutability of display advertising with other forms of advertising, and display advertising segments.

Display vs search advertising

5.126 The Market Study found that there is only **limited substitutability between display and search advertising from the advertiser perspective**. All media agencies and most advertisers told the CMA that search and display advertising were not substitutable. This is mainly because they perform different roles within the customer purchase journey:[171]

(a) Search is primarily intent-based advertising designed to provide immediate answers to consumers who have already shown interest in buying the product and are at the end of the purchase journey ('in-market consumers'); and

[170] Market Study, 2.47-2.52.
[171] Market Study, Appendix N, paragraphs 67 to 76.

(b) Display is suitable for raising brand awareness and reaching new audiences that might not yet have shown interest ('out-of-market consumers').[172]

5.127 Most advertisers set budgets for search and display advertising independently and do not allocate them interchangeably.[173] Display advertising is primarily chosen by advertisers with the objective of targeting increased brand awareness for specific audiences.[174] KPIs for display advertising tend to be focused on the reach achieved with a specific audience group. In contrast, search advertising is chosen by advertisers with the objective of converting 'in-market' consumers.[175]

5.128 However, the distinction between search and display is not absolute in all cases. In the Market Study, the CMA saw evidence – including from Facebook – that some advertisers are increasingly using display advertising for in-market conversions too (ie convincing consumers who are already considering a product to actually purchase it), as well as for more general brand awareness.[176] For some of the spend of those advertisers, search advertising may be a substitute for display advertising. However, search advertising is unlikely to be a viable alternative for those advertisers targeting brand awareness. Overall, based on the evidence set out above and consistent with the conclusion of the Market Study, we provisionally conclude that for most advertisers the distinction between display and search prevails, and that search advertising poses a weak competitive constraint on display advertising.

5.129 The Market Study also noted some differences in the parameters on which suppliers of search and display advertising compete. For example, the desire to target specific audiences effectively means that the use of user data is key for display advertising, significantly more so than for search advertising. Consequently, access to granular user data is a key dimension of competition between display advertising suppliers.[177]

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[172] Market Study, Appendix N, paragraph 67.
[173] Market Study, Appendix N, paragraph 73.
[174] Market Study, Appendix N, paragraphs 66 to 69.
[175] Market Study, Appendix N, paragraphs 66 to 69.
[176] Market Study, 5.120. See discussion of 'Search vs display' in Market Study, Appendix N. Some advertisers and media agencies responding to the CMA's questionnaire noted that search can also sometimes be used as an upper funnel to build brands, and display can sometimes be an effective sales driver. One advertiser stated that, as budgets for search advertising continue to increase, this allows the advertiser to target a higher level of generic keywords and therefore move further up the purchase funnel. Another advertiser stated that search and display can sometimes be substitutable depending on campaign objectives, with another advertiser stating that the benefits of search and display are most similar for when there is a conversion goal as a key objective.
[177] Market Study, 5.120, 5.127, 5.128.

5.130 A further distinction between display and search advertising stems from the fact that suppliers of display advertising face a trade-off in deciding how much inventory to create. A higher ad load may mean greater immediate financial reward. However, this can come at the expense of the consumer experience. Unlike search advertising, which is shown in response to specific consumer queries, display advertising is typically unwanted by consumers. This suggests there may be a greater imperative for suppliers of display advertising to limit the quantity of advertising shown so as not to harm the consumer experience.[178]

Display advertising segments

5.131 The Market Study considered **segmentations within the display advertising sector**, and discussed the following dimensions:

(a) Video and non-video display advertising formats. From the demand side, the Market Study found mixed evidence on the substitutability between these two formats. They convey the advertiser's message in different ways, with decisions on the format being taken early in the planning stages. However, on the supply side, Facebook's interface treats ad formats very similarly.[179]

(b) Owned-and-operated[180] and open display advertising[181] channels. The Market Study found substitutability between these channels as advertisers choose among inventory across either channel depending on how the inventory can meet specific KPIs. The way advertising inventory is sold in these channels is also similar, typically involving real-time auctions or direct deals between advertisers and publishers.[182]

5.132 We have considered the above evidence gathered in the CMA's Market Study. We have not seen any evidence that undermines the findings of the Market Study. We thus **assess the competitive effects of the Merger on the supply of display advertising, including both video and non-video formats, and both owned-and-operated and open display channels**. As regards video and non-video advertising formats, we did not need to conclude on whether these constitute a separate product market, as this would not have

[178] Market Study, 5.129.
[179] Market Study, 5.124-5.126.
[180] Owned-and-operated platforms typically provide social media, which they use to attract consumer attention and create advertising inventory, which in turn they sell to advertisers using proprietary interfaces. They gather data on these consumers to enable advertisers to target specific audiences. (Market Study, 5.115).
[181] Open display is a market where publishers (such as suppliers of news media and app providers) also attract consumer attention through providing content, and serve ads amongst this content. The advertising inventory is sold through a complex chain of intermediaries, typically involving real-time auctions. (Market Study, 5.116).
[182] Market Study, 5.117.

any bearing on the outcome of our competitive assessment. Our competitive assessment also takes into account the various ways in which digital advertising more broadly can constrain Facebook's activities in display advertising.

Display advertising vs traditional advertising

5.133 In the Market Study, the CMA also considered whether **traditional advertising media** (offline advertising) may pose a competitive constraint on display advertising, but found this to be unlikely.[183] According to the evidence gathered in the Market Study, all respondents (including both smaller and larger advertisers) saw online digital advertising as more important than offline advertising and many did not use any offline advertising at all due to this.[184] When deciding how and where to advertise, respondents tended first to think about whether to advertise digitally or offline, which may indicate there is limited substitutability for advertisers between online and offline.[185] Some large advertisers thought that video-on-demand is the next best alternative to Facebook for display.[186] Nevertheless, advertisers may treat offline advertising as a complimentary channel within their campaign to achieve certain KPIs. Of the respondents who did use offline media, reasons for doing so included: a matter of habit, wanting to support local businesses (eg magazines), building local presence (eg local newspapers), and targeting specific streets or postcodes (eg leaflet drops).[187]

5.134 Based on these views of advertisers and their reasons for choosing offline advertising (where they use it at all), and the fact that we have not seen any evidence to the contrary, we provisionally conclude, consistent with the conclusion of the Market Study, that **offline is typically a complementary channel rather than a substitute for online display advertising**.

Advertising offered by GIPHY

5.135 As regards GIPHY, the **advertising offered by GIPHY** pre-Merger involved an advertiser paying GIPHY to make the advertiser's GIF, or a set of GIFs, more prominent in the search results associated with certain search terms, and/or more prominent in the trending GIF feed (Paid Alignment). We have considered the characteristics of this form of advertising and whether it is closer to display advertising, search advertising, or sits between the two.

[183] Market Study, Appendix N, paragraphs 58 to 66.
[184] Market Study, Appendix N, paragraph 59.
[185] Market Study, Appendix N, paragraph 59.
[186] Market Study, Appendix N, paragraph 63.
[187] Market Study, Appendix N, paragraph 65.

5.136 The Parties have submitted that GIPHY should not be seen as a provider of display advertising because it did not use user-level data (to target ads), and, similar to search advertising, its model was dependent on user searches to generate relevance for advertisers.

5.137 The type of advertising offered by GIPHY involves increasing the prominence of sponsored content in the search results. However, the purpose of search in the context of GIFs is different to the typical purpose of search on general search engines such as Google or Bing. Search advertising on general search engines is presented when users use the engine to look up a product or a solution to a problem which they face (for example, someone searching for a gift may consider buying a box of donuts). In contrast, users searching for GIFs are looking for a way of expressing an emotion in messages or other modes of communication with others, and are not looking for a product or a solution to a problem (for example, a user looking to communicate hunger to a friend may use a GIF featuring donuts). Furthermore, individuals who receive a GIF sent to or shared with them by others (eg in their message chat) will have the ad displayed to them without having made any search. Therefore, this modality of advertising (at least in its form at the time of the Merger) is generally less likely to directly prompt a purchase of the product, and more likely to increase the user's brand awareness. This means that the search term in GIPHY's advertising model merely helps to target the sponsored GIFs to specific audiences, rather than to identify an audience which may have an intent to purchase the product behind the sponsored GIF.

5.138 The promotion of branded GIFs within the 'trending feed' appears even more closely aligned to the concept of display (as opposed to search) advertising, since users experience these ads displayed to them without entering any search terms.[188]

5.139 The views of advertisers and GIPHY's internal documents also suggest that Paid Alignment (at least in its current form) primarily serves the purpose of brand awareness, ie reaching out-of-market consumers. For example, one advertiser told us that its campaigns with GIPHY were to organically share its brands into different outlets with the primary goal of increasing brand awareness of its products. Another advertiser likened GIPHY's capability to reach a wide group of consumers very quickly to that of television advertising in previous years. As discussed above, brand awareness is the primary (although not necessarily only) goal of display advertising and contrasts to the

[188] The Parties have noted that the GIF will only appear ultimately because of a specific search and must therefore be relevant to the conversation or interaction in question. In addition, for API services only the initial impression from the user who searched for the GIF would be monetised, ie the receiver of a GIF would not be monetised. [✂]

primary goal of search advertising to convert in-market consumers who are close to the end of their purchase journey (see paragraph 5.126).

5.140 GIPHY's advertising product was novel and did not necessarily fall neatly into any single pre-existing advertising category. However, based on the evidence set out above, we are of the provisional view that **the type of advertising that GIPHY was offering prior to the Merger through its Paid Alignment services is closer, in terms of competitive interaction, to Facebook's display advertising services than to search advertising**. In our competition assessment, we refer for convenience to GIPHY's entry and expansion in display advertising. To be clear, this reflects our view that GIPHY's Paid Alignment service is closer to Facebook's display advertising services than to search advertising, regardless of whether the service should be categorised as 'display advertising'.

5.141 We consider the scope for GIPHY's advertising model to compete against Facebook's display advertising activities in Chapter 7, Horizontal Effects.

Geographic market definition: display advertising

5.142 We consider that advertisers are often interested in targeting users with particular characteristics, including (among others) their location, language and culture. For example, businesses advertising on Facebook can decide the country, city or community in which to run their advertising campaigns.[189] The Parties have submitted that some demand from advertisers is likely to be national. 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 along linguistic borders.[190]

5.143 Therefore, our provisional view is that we should assess the effects of the Merger on competition with Facebook in the **supply of display advertising in the UK**.

Facebook's position in display advertising

5.144 The CMA has analysed the shares of supply of Facebook, Instagram, other major O&O platforms,[191] and the Open Display[192] segment of the UK display

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[189] Facebook advertising targeting options | Facebook for Business.
[190] *Facebook/WhatsApp,* paragraph 83. See also, the Market Study, including Appendix N: understanding advertiser demand for digital advertising.
[191] YouTube, Amazon, LinkedIn, Pinterest, Snapchat, TikTok, and Twitter.
[192] The Open Display segment refers to the many publishers of smaller scale (for example, newspapers and app providers) which sell their inventory to advertisers, typically through a complex chain of intermediaries to auction advertising in real time.

advertising market in 2020. For further details of the methodology used, see Appendix D: Market shares methodology.[193] The results are shown in Table 6.

Table 6: Shares of supply in display advertising (UK), 2020

	Share of supply
Facebook	[✂] [30-40]%
Instagram	[✂] [10-20]%
Facebook Group	[✂] *[40-50]%*
YouTube	[5-10]%
Other O&O*	[5-10]%
Open Display	[30-40]%
Total	100%

Source: CMA analysis based on UK display advertising revenues submitted by Facebook, Instagram, YouTube, Amazon*, LinkedIn*, Pinterest*, Snapchat*, TikTok*, and Twitter*, and data on the number and value of ads served through Google AdManager, Google AdSense, Google AdMob, Taboola, and Freewheel (which together account for the majority of the Open Display segment).

Note: For one component of the Open Display segment, our analysis uses provisional data submitted by Google, which will be updated for the Final Report; we understand these data to be a reasonable proxy and do not expect these findings to change materially.

5.145 Table 6 shows that the two largest O&O platforms are Facebook [30-40%] and Instagram [10-20%], giving the Facebook Group a combined share of [40-50%]. YouTube [5-10%] is the next largest O&O platform, with all the others together accounting for a further [5-10%]. The Open Display segment accounts for the final [30-40%] of the display advertising market.

5.146 We note that the Facebook Group's share is high and has remained so, although there was a slight decline from its share of [50-60%] in 2019 (based on the findings of the Market Study).

5.147 We further note that within the O&O segment, the Facebook Group has a significantly higher share of [70-80%].[194] As with the whole display advertising market, its share in this segment has declined slightly but remains broadly consistent with its share in 2019 (based on the findings of the Market Study).

5.148 The Market Study considered whether the high share of Facebook in display advertising gives rise to market power. The CMA found that the constraints faced by Facebook in display advertising were limited. First, Facebook was found to have significant market power in social media, which means that users have limited choice in social media platforms.[195] Due to significant network effects, Facebook's significant share in social media also means that

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[193] Our methodology is broadly consistent with that used in the Market Study, with a few small differences as discussed in detail in Appendix D: Market shares methodology.
[194] Based on the same sources and calculations as in Table 6, but removing from the denominator the Open Display segment.
[195] Market Study, 5.135-5.136.

advertisers are limited in their choice as no other social media platform offers similar audience reach. Second, the CMA was of a view that as a display advertising platform, Facebook's only significant competitor was Google, which runs Google DV360 (Google's demand-side platform for purchasing advertising in open display), followed by a number of smaller platforms which may pose a weaker constraint.[196] Third, as discussed at paragraphs 5.126 to 5.130 and 5.133 above, the CMA found little evidence of constraints from other forms of advertising outside the display advertising sector (ie search advertising and traditional advertising media).

5.149 Furthermore, Facebook's market power is reinforced by barriers to entry and expansion in display advertising:

(a) *User side barriers*: suppliers of display advertising need to grow, and then maintain their user base in order to gain access to consumer attention and data. To do this, suppliers need to generate an innovative or engaging product or service.[197]

(b) *Advertiser behaviour*: Facebook's platform has a wide reach on the user side and is often the only display advertising platform an advertiser uses. Whilst some larger, more sophisticated advertisers may have little difficulty adding a new display advertising platform to their portfolio, smaller advertisers may find using an additional platform too costly.[198]

(c) *Economies of scale*: significant investments are required to develop an effective display advertising platform. These include technology, such as developing a website/app and back-end functionality to support the platform and technical equipment (eg servers); facilities, such as offices; and equipment and marketing, such as launch and brand awareness campaigns. The investments and fixed costs required to develop and maintain these inputs are likely to give rise to economies of scale.[199]

(d) *Data advantages*: consumer data has a significant value to advertisers in that it allows them to better target audiences. Access to higher quality or more granular data allows for more precise targeting of more specific audiences. Granular data is particularly valuable when combined with high reach among different audience types using the platform, as this allows for relatively large numbers of very specific audiences to be targeted. These factors can allow platforms with better data to sell their advertising inventory at higher prices. This creates a substantial

[196] Market Study, 5.137-5.145.
[197] Market Study, 5.154.
[198] Market Study, 5.156-5.158.
[199] Market Study, 5.159-5.161.

competitive advantage for Facebook and Google, both of which have access to much richer and higher quality datasets and benefit from much greater scale and reach than their rivals.[200]

5.150 We have considered the evidence set out in the Market Study on Facebook's market power. We did not see evidence of significant changes in Facebook's position in the display advertising market (or the O&O segment, or digital advertising more generally) since the publication of the CMA's Market Study. For the purposes of this merger investigation we are thus provisionally of the view that **Facebook has significant market power in display advertising in the UK**.

[200] Market Study, 5.162-5.168.

6. Counterfactual

Introduction

6.1 In this chapter we have set out:

(a) the CMA's framework for assessing the counterfactual;

(b) the Parties' views on the counterfactual;

(c) our assessment of the appropriate counterfactual; and

(d) our provisional conclusion on the counterfactual.

The CMA's framework for assessment of the counterfactual

6.2 The counterfactual is an analytical tool used to help answer the question of whether a merger gives rise to an SLC.[201] It does this by providing the basis for a comparison of the competitive situation on the market with the merger against the likely future competitive situation on the market absent the merger.[202] The latter is called the counterfactual.[203]

6.3 The counterfactual is not, however, intended to be a detailed description of those conditions of competition that would have prevailed absent the merger.[204] The CMA's assessment of those conditions are considered in the competitive assessment.[205] The CMA also seeks to avoid predicting the precise details or circumstances that would have arisen absent the merger.[206]

6.4 The CMA will select the most likely conditions of competition as its counterfactual against which to assess the merger.[207] In its assessment of the counterfactual, the CMA may need to consider multiple possible scenarios, before identifying the relevant counterfactual.[208] As part of this assessment, the CMA will take into account whether any of the possible scenarios make a significant difference to the conditions of competition,[209] and if they do, the

[201] Merger Assessment Guidelines (CMA129), paragraph 3.1.
[202] Merger Assessment Guidelines (CMA129), paragraph 3.1.
[203] Merger Assessment Guidelines (CMA129), paragraph 3.1.
[204] Merger Assessment Guidelines (CMA129), paragraph 3.7.
[205] Merger Assessment Guidelines (CMA129), paragraph 3.7.
[206] Merger Assessment Guidelines (CMA129), paragraph 3.11.
[207] Merger Assessment Guidelines (CMA129), paragraph 3.13.
[208] Merger Assessment Guidelines (CMA129), paragraph 3.13.
[209] Merger Assessment Guidelines (CMA129), paragraph 3.13.

CMA will ultimately select the most likely conditions of competition absent the merger as the relevant counterfactual.[210]

6.5 The CMA recognises that evidence relating to future developments absent the merger may be difficult to obtain.[211] Uncertainty about the future will not in itself lead the CMA to assume the pre-merger situation to be the appropriate counterfactual. As part of its assessment of the counterfactual, the CMA may consider the ability and incentive (including but not limited to evidence of intention) of the merging parties to pursue alternatives to the merger, which may include reviewing evidence of specific plans where available.[212]

6.6 Further, the time horizon considered by the CMA in its assessment of the counterfactual will depend on the context and will be consistent with the time horizon used in the competitive assessment.[213]

6.7 As discussed in detail in this chapter, and having assessed the evidence before us, we provisionally conclude that the most likely counterfactual which would have prevailed in the absence of the Merger is that: (i) Facebook would have continued to procure GIFs from GIPHY, and (ii) GIPHY would have continued to supply GIFs, innovate, develop its products and services, generate revenue and explore (with the financial and commercial support of investors) various options to further monetise its products. This counterfactual would have prevailed regardless of GIPHY's ownership, ie whether under its pre-Merger ownership structure (receiving financial support and commercial expertise from investors) or if it had been sold to an alternative purchaser, possibly another social media platform.

The Parties' views on the counterfactual

6.8 The Parties have submitted that the relevant counterfactual is the pre-merger conditions of competition, taking into account developments which would have resulted from the Coronavirus (COVID-19) pandemic, and that the most likely counterfactual is that GIPHY would have [✂].

6.9 In particular, the Parties submitted that, in the absence of the Merger, GIPHY would not have generated revenue or secured sufficient external investment to maintain or grow its business on the basis that:

(a) GIPHY relied on regular rounds of external funding and whilst its turnover had grown year-on-year, GIPHY had not attained a sustainable level of

[210] Merger Assessment Guidelines (CMA129), paragraph 3.13.
[211] Merger Assessment Guidelines (CMA129), paragraph 3.14.
[212] Merger Assessment Guidelines (CMA129), paragraph 3.14.
[213] Merger Assessment Guidelines (CMA129), paragraph 3.15.

profit at any stage prior to 2020, and was operating at a monthly loss of more than [✂]. Even if GIPHY had been able to secure limited funding from investors, it would have been forced to scale back its plans and make significant redundancies, which would have adversely affected its ability to maintain its products and services in their current form.

(b) GIPHY was reliant on users of third party services, and [✂]% of users that interact with GIPHY do so in a third party environment. As a result, GIPHY had little available advertising inventory that it could use to scale revenue independently, and despite efforts, GIPHY was unable to grow its O&O traffic.

(c) GIPHY could not demonstrate that a revenue-sharing, API-dependent model, which relied on monetising the actions of consumers on third party services, was sustainable. API distribution partners have no reason to share revenue with a third party like GIPHY, or experiment with unproven forms of advertising when they can rely on their own existing proven products.

(d) GIPHY could not provide traditional advertising return on investment audience data and advertising metrics for proof-of-concept to provide a compelling Paid Alignment offering that would enable it to sell hundreds of millions of dollars (or more) of such ads each year.

6.10 Furthermore, the Parties submitted that there was no realistic prospect of an alternative purchaser emerging for GIPHY, given that:

(a) GIPHY contacted many companies about a potential acquisition, but whilst a number of parties indicated their willingness to discuss the opportunity, [✂];

(b) only Facebook signalled a firm interest in exploring the opportunity further and Facebook was the only party with whom discussions progressed to a term sheet stage. Even with confirmed interest from Facebook, [✂] did not seek to pivot existing discussions on a supply agreement to exploring an acquisition; and

(c) Facebook's internal documents (which Facebook claims contain mere speculation of rivals' possible interest in GIPHY and have been mischaracterised by the CMA) are incapable of filling this gap in evidence. The Parties noted that speculation about possible purchasers of GIPHY within Facebook's internal documents cannot be substituted for evidence provided directly by GIPHY to the CMA.

6.11 Finally, in respect of the Coronavirus (COVID-19) pandemic, the Parties submitted that Coronavirus (COVID-19) exacerbated structural weaknesses in GIPHY's revenue model and substantially affected the market for new and unproven advertising products like those GIPHY could offer. This, in turn, caused a significant drop in advertising spend through GIPHY, as commercial partners chose to cancel or delay active campaigns, as well as terminate opportunities in the revenue pipeline. This was coupled with rising infrastructure costs from heightened Coronavirus (COVID-19) internet activity, both of which substantially weakened GIPHY's financial position and cash runway trajectory. The Parties also noted that the Coronavirus (COVID-19) pandemic disrupted financial markets and created a very challenging macroeconomic environment, damaging external investor interest more generally.

Our assessment of the appropriate counterfactual

6.12 As noted above, the counterfactual is an analytical tool that is used in answering the question of whether a merger gives rise to an SLC,[214] and compares the prospects for competition with the merger against the competitive conditions that would have prevailed absent the merger.

6.13 In assessing the appropriate counterfactual in this case, we consider:

(a) How Facebook would have behaved absent the Merger in relation to the procurement of GIFs; and

(b) How GIPHY would have behaved absent the Merger in relation to the supply of GIFs and GIF-based advertising.

Facebook's behaviour absent the Merger in relation to the procurement of GIFs

6.14 In our assessment of the most likely counterfactual, we have considered how Facebook would have behaved absent the Merger in relation to its procurement of GIFs.

6.15 In the context of Facebook's consideration of a potential acquisition of GIPHY, we have seen a number of internal Facebook documents which outlined the options available to Facebook to ensure continued GIF integration across its platforms, noting that the GIF media type was of 'strategic value' to Facebook.

[214] Merger Assessment Guidelines (CMA129), paragraph 3.1.

6.16 We have relied on these internal documents in part to inform our provisional view of how Facebook might have behaved absent the Merger in relation to the procurement of GIFs. Further discussion on GIPHY's behaviour absent the Merger (and our assessment of whether disruption to the supply of GIFs from GIPHY was likely) is outlined below.

6.17 We have considered three possible alternative options identified by Facebook at the time of the Merger. All three options seek to address Facebook's concern that its access to GIPHY's GIFs could have been disrupted absent the Merger.

(a) Pay platform fees to GIPHY. As set out at paragraph 6.57 below, it is possible that GIPHY would have relied, at least in the short-term to see itself through the Coronavirus (COVID-19) pandemic, on a platform/licence fee from some API partners. Whilst Facebook's internal documents noted that this option was [✄],[215] Facebook was concerned that [✄], with Facebook needing to pay a '[✄]'. In the absence of any opportunity to acquire GIPHY, however, Facebook may have explored this option in order to ensure that there was no disruption to its supply of GIFs from GIPHY (on whom Facebook solely relies for the purposes of serving GIFs on the Instagram platform), as shown by the evidence set out at paragraph 6.55 below.

(b) Move off the GIPHY API or dramatically reduce API calls made to GIPHY by relying on other partners. [✄]. We consider in paragraphs 6.21 and 6.22 below whether Facebook would have continued to rely on GIPHY had it been acquired by an alternative purchaser, in particular a social media platform.

(c) Build Facebook's own centralised GIF database. Facebook's internal documents noted that this would [✄] (on whom Facebook solely relies for the purposes of serving GIFs on the Instagram platform) [✄]. Facebook has also submitted that there was no realistic prospect that it would have decided to build its own GIF capability. Whilst we have not seen any evidence to suggest that Facebook would have offered such a GIF library to third parties and the 'build' case appears to have been proposed solely for the purposes of self-supply, we note that Facebook was considering the build option in the context of a '[✄]' strategy. In other words, had there not been the potential to acquire GIPHY, it is possible that

[215] An API call being a request from Facebook to GIPHY's servers in accordance with the API relationship between the Parties.

Facebook may have started to develop its own GIF library, but that this would have taken time (around two years).[216]

6.18 Whilst we also note that Facebook could have explored options to acquire another third party GIF provider, such as Gfycat, Imgur or Vlipsy, rather than just relying on such providers under an arms-length partnership arrangement, Facebook's internal documents do not discuss this as a realistic option, and indicated a need for a GIF provider with 'scale, breadth and content moderation'. Also it is not clear to us whether, [✂] other third party GIF providers would have been open to discussing an acquisition by Facebook at the time of the Merger, or whether Facebook would have considered this to be an attractive option given its concerns about content moderation and available inventory on these third party GIF platforms.[217] Facebook also submitted that it was not actively seeking out acquisition targets active in the same area as GIPHY.

6.19 Facebook has submitted that in the absence of the Merger, it would have continued to source GIF functionality for its services from GIPHY and Tenor. Conversely, however, Facebook has also submitted that it 'could have pulled the plug on its support for GIPHY at any point' if GIPHY had established indirect competition between Facebook and its social media rivals such that these would become even fiercer competitors in display advertising in the UK.

6.20 We note that had Facebook decided to stop procuring GIFs from GIPHY as a result of increased competition, it is likely that Facebook would have needed to rely on an alternative source for its GIFs. As noted above, internal Facebook correspondence shortly prior to the Merger suggested that no other GIF provider had the necessary scale or breadth of products as GIPHY, and Facebook also noted some concerns in extending its relationship with Tenor, given that it is owned by its rival, Google. It is possible that Facebook would have resorted to a build strategy; however, it would have needed to continue to procure GIFs from GIPHY for an interim period of time until it had developed an alternative option to GIPHY. It is possible that Facebook would have stopped relying on GIFs altogether and immediately 'pulled the plug' on GIPHY; however, a key factor of Facebook's rationale in pursuing the Merger was to maintain the user experience across its platforms where there is a high degree of integration of GIPHY's GIFs (see Chapter 2, The Parties, Merger and Rationale). It seems unlikely, therefore, that Facebook would have immediately ceased its reliance on GIPHY, had GIPHY enabled more vigorous competition between Facebook and its social media rivals.

[216] As discussed in Chapter 9, Countervailing Factors.
[217] See Chapter 8, Vertical Effects.

6.21 We have also considered whether, under third party ownership of GIPHY, in particular third party ownership by a social media player, Facebook would have continued to procure GIFs from GIPHY.

6.22 We note that whilst Facebook expressed some reservations about extending its partnership relationship with Tenor, Facebook continues to procure GIFs from Tenor across a number of its platforms today. Therefore, it is likely that Facebook would have continued to procure GIFs from GIPHY in the hands of an alternative purchaser, at least in the short-term.

Provisional conclusion on Facebook's behaviour absent the Merger in relation to the procurement of GIFs

6.23 On the basis that GIPHY would have continued to innovate and develop its products, we consider it likely that Facebook would have continued to procure GIFs from GIPHY absent the Merger (noting that if Facebook were to develop its own GIF library, this was a longer term proposition).

GIPHY's behaviour absent the Merger in relation to the supply of GIFs

6.24 For the purposes of identifying the most likely counterfactual, our provisional view is that GIPHY, absent the Merger, would have continued to supply GIFs to third party social media platforms (including Facebook), and continued to innovate and develop its products and services. This is on the basis that there would be a benefit to GIPHY in maintaining widespread distribution of its products and services in these circumstances.

6.25 Furthermore, for the reasons set out in more detail in Chapter 7, Horizontal Effects, our provisional view is that GIPHY would have continued to supply GIFs, generate revenue and explore various monetisation options with partners and investors, through Paid Alignment and revenue sharing agreements.

6.26 As set out above at paragraph 6.8, the Parties submitted that absent the Merger GIPHY would have [✂]. In respect of GIPHY's revenue generation potential, the Parties submitted that GIPHY's revenue model was flawed. They further submitted that (i) GIPHY would not have generated revenue or secured sufficient external investment (see paragraph 6.9), (ii) there was no realistic prospect of an alternative purchaser emerging for GIPHY (see paragraph 6.10), and (iii) the Coronavirus (COVID-19) pandemic exacerbated structural weaknesses in GIPHY's revenue model.

6.27 In the following sections we discuss:

(a) the impact of the Coronavirus (COVID-19) pandemic on GIPHY's business (see paragraphs 6.28 to 6.38);

(b) GIPHY's Paid Alignment/revenue sharing agreement offering (see paragraphs 6.40 to 6.46);

(c) the possibility of the introduction of a platform fee or commercial agreement with one or more of GIPHY's API partners (see paragraphs 6.50 to 6(c));

(d) whether GIPHY could have secured additional funding either through existing investors, or new investors, to overcome any short term cash flow requirements and fund further expansion (see paragraphs 6.58 to 6.105); and

(e) whether GIPHY could have been sold to an alternative purchaser at the time of the Merger (see paragraphs 6.112 to 6.149).

Coronavirus (COVID-19) pandemic

6.28 As summarised above at paragraph 6.11, the Parties submitted that the Coronavirus (COVID-19) pandemic substantially affected the market for Paid Alignment customers resulting in a 'significant drop' in advertising spend. The Parties submitted that Coronavirus (COVID-19) exacerbated structural weaknesses in GIPHY's revenue model and substantially affected the market for new and unproven advertising products like those GIPHY could offer. A high-level overview of GIPHY's Paid Alignment/revenue sharing agreement model is described in paragraphs 6.40 to 6.46 below, and discussed in more detail in Chapter 7, Horizontal Effects and related Appendix F: GIPHY's Paid Alignment Model.

6.29 The CMA's guidance on merger assessment during the Coronavirus (COVID-19) pandemic 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'.[218] This is particularly the case in connection with theories of harm assessing the loss of future or dynamic competition.

6.30 Having regard to the Coronavirus (COVID-19) Guidance, we have not seen any evidence to demonstrate that Coronavirus (COVID-19) would have had a

[218] Merger assessments during the coronavirus (COVID-19) pandemic (**Coronavirus (COVID-19) Guidance**).

long-term, structural impact on GIPHY's ability to continue to supply GIFs, innovate and generate revenue, and the Parties have not submitted that this was the case.

6.31 Several of GIPHY's investors have expressed views in respect of the impact of the Coronavirus (COVID-19) pandemic on GIPHY. These are described in detail in Appendix E: GIPHY's Timeline. Broadly, investors submitted that:

(a) [✂]

(b) [✂]

(c) Given the impact of Coronavirus (COVID-19) on GIPHY, its revenue trajectory changed quite dramatically by mid-April 2020; and

(d) There were a number of options open to GIPHY, including a potential sale and investment by external third parties including private equity firms and strategic investors.

6.32 [✂]. We also note that whilst Coronavirus (COVID-19) resulted in some campaigns being cancelled and deferred, [✂] in new revenue was booked by GIPHY in Q2 2020. We consider that the (i) deferment, rather than cancellation, of the majority of GIPHY's planned campaigns, and (ii) fact that GIPHY was able to book new campaigns in the midst of the Coronavirus (COVID-19) pandemic indicates that advertisers remained interested in GIPHY's Paid Alignment proposition (see Chapter 7, Horizontal Effects and related Appendix F: GIPHY's Paid Alignment Model).

6.33 As outlined above, the Parties have submitted that GIPHY would have [✂]. However, we have not seen any evidence to suggest that GIPHY was in such financial distress that it would have ceased operations at the time of the Merger. [✂],the evidence indicates that GIPHY had sufficient cash runway to last until Q4 2020 in its 'base case' scenario,[219] and had identified ways of extending its cash runway until January 2022. Furthermore, [✂] (see discussion at paragraph 6.65 below). [✂]. However, as considered later in this chapter, in the absence of the Merger, we consider that GIPHY's investors were likely to have invested further in GIPHY to overcome any short term cash flow requirements (as a result of the Coronavirus (COVID-19) pandemic), and to fund further expansion.

6.34 Overall, whilst GIPHY may have experienced a shortfall in its projected revenues in Q1/Q2 2020 as a result of deferred advertising campaigns

[219] Note however that [✂] refers to GIPHY having sufficient cash runway until Q3 2020.

(brought about by Coronavirus (COVID-19)), we consider that this would have been a short-term effect given that digital advertising rebounded later in 2020.[220]

6.35 The Parties submitted that the CMA should not compare GIPHY to an established digital platform in terms of assessing when advertising revenue would have rebounded later in 2020 given that GIPHY's ad product was new to the market and experimental (as opposed to other platforms which have a demonstrable return on investment-driven product). However, given that GIPHY had already attracted important advertisers to its ad product prior to, and during the Coronavirus (COVID-19) pandemic, the CMA believes that it would have been able to do so again when the digital advertising market rebounded later in 2020.

6.36 Additionally, if GIPHY had been required to operate under a restricted business model as a result of Coronavirus (COVID-19) (as the Parties have submitted, see paragraph 6.33), we have not seen any evidence to suggest that this would have been the case for a sustained period of time given that the demand for digital advertising recovered later in 2020, at which point GIPHY would have returned to its pre-Coronavirus (COVID-19) business model.

6.37 Further, whilst the Parties' submissions on the impact of the Coronavirus (COVID-19) pandemic on GIPHY's business centre on the view that Coronavirus (COVID-19) exacerbated weaknesses in an already flawed business model (see paragraph 6.11), Facebook's internal documents indicate that the decision to cease GIPHY's revenue generating activities was driven by Facebook, rather than GIPHY. Facebook noted that: (i) it would not be hiring GIPHY's revenue team, and (ii) it would terminate GIPHY's current monetisation efforts and the associated revenue.[221]

6.38 Whilst we recognise that the Coronavirus (COVID-19) pandemic may have had an immediate impact on: (i) GIPHY's cash runway, (ii) GIPHY's ability to book new advertising campaigns with customers, and (iii) GIPHY's expected revenue from customers who had already planned advertising campaigns with GIPHY, our provisional view is that the Coronavirus (COVID-19) pandemic would not have resulted in a long-lasting impact on GIPHY's ability to continue

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[220] This article refers to a report commissioned by the International Advertising Bureau (IAB) and conducted by PwC which notes that digital advertising revenues increased by 12.2% in 2020 compared to 2019. The report also states that 'although Q2, year-over-year growth declined by 5.2%, revenues in Q3 and Q4 more than balanced the scales, returning positive year-over-year growth of 11.7% and 28.7%, respectively. In fact, Q4 2020 had the highest revenue on record for digital advertising in more than 20 years'.
[221] See Chapter 2, The Parties, Merger and Rationale for further detail.

to supply GIFs or to continue its revenue generating activities when demand for digital advertising recovered.

6.39 In the sections below, we set out our provisional view on how, absent the Merger, GIPHY would have continued to supply GIFs and generate revenue by exploring various options to further monetise its products, in particular through: (i) GIPHY's Paid Alignment business model and (ii) the introduction of a platform fee as a short-term solution to its cashflow issues, which were exacerbated by the Coronavirus (COVID-19) pandemic. We then consider whether additional funding would have been raised to support such developments.

GIPHY's Paid Alignment and revenue sharing agreements

6.40 The Parties submitted that GIPHY had failed to find a de-risked path to scaled monetisation and even after significant investment and a high level of cash burn, GIPHY was still unable to produce meaningful revenue growth in line with market expectations.

6.41 However, GIPHY's internal documents indicate that GIPHY was optimistic about its monetisation options, envisaging breakeven profitability in 2022 (and potentially even sooner).

6.42 Prior to the Merger, GIPHY was already generating revenue through its Paid Alignment offering[222] (and related revenue sharing agreements).[223] GIPHY had successfully grown its revenue since its Paid Alignments pilot testing was launched in 2017: GIPHY generated [✂] in annual revenue in 2017; this increased to [✂] in 2018 and [✂] in 2019. The Parties have submitted that this is unimpressive for a company in GIPHY's position.

6.43 In an internal GIPHY board document prepared in Q1 2020, GIPHY provides an overview of its FY2019 revenue and key performance indicators. Based on this document, GIPHY booked revenues in 2019 of [✂],[224] which, whilst not in line with its forecast of [✂], represents a substantial [✂] year-on-year growth compared with revenue booked in 2018. The number of advertisers relying on GIPHY's Paid Alignment proposition also increased between 2018 and 2019,

[222] GIPHY entered into agreements with certain advertising partners who paid GIPHY based on the number of impressions served through: (i) promoted GIFs on GIPHY's owned and operated platform (referred to as 'trending feed ads'), and/or (ii) branded GIFs served through third party platforms (such as Facebook) where GIFs are searched by users and branded GIFs are selected based on that particular search term (referred to as 'promoted search ads'. For example, searching for a 'coffee' GIF on WhatsApp which results in a Starbucks branded coffee-related GIF.
[223] GIPHY entered into revenue share agreements with some of its API partners through which GIPHY ran the Paid Alignment offering. The revenue sharing agreements set out a commission which GIPHY paid to the API partner whose users were generating the impressions based on the branded GIFs.
[224] With gross revenues of [✂].

with [✂] active clients and [✂] associated advertising campaigns in 2018, compared with [✂] active clients and [✂] advertising campaigns in 2019. In addition, a key client of GIPHY, [✂], had spent [✂] in advertising through GIPHY's Paid Alignment channels in FY2019. At the Main Party Hearing, GIPHY stated that its relationship with [✂] was 'highly onerous' in the sense that GIPHY had to dedicate a team to creating GIF content for [✂], and offer attractive terms to [✂] which included stock options. On this basis, GIPHY submits that the [✂] arrangement was not scalable (as discussed in Chapter 7, Horizontal Effects, and related Appendix F: GIPHY's Paid Alignment Model).

6.44 In respect of the 2020 pipeline, the same GIPHY board document notes that, as of 21 January 2020, GIPHY had already booked approx. [✂] in target revenue with the likes of [✂]. Although this [✂] revenue represented only [✂] of GIPHY's target revenue for 2020, GIPHY projected to close Q1 2020 '[✂]' 100% of its budgeted revenue forecast of [✂]. As set out in Appendix F: GIPHY's Paid Alignment Model, momentum in GIPHY's advertising sales was picking up in February 2020, with strong advertiser demand linked to the US Super Bowl, and a further pipeline of anticipated revenue under discussion with major brands. Further, GIPHY's revenue plan for 2020 projected a [✂] increase in revenue later in the year, with target revenues of [✂] in Q3 2020 and [✂] in Q4 2020. In Q1 2020 therefore, with booked revenues of [✂], GIPHY was largely operating according to its revenue plan.

6.45 The above shows that GIPHY generated revenue through its Paid Alignment offering prior to both the onset of the Coronavirus (COVID-19) pandemic and the sale of the business to Facebook (and, as noted above, our provisional view is that the pandemic would not have resulted in a long-lasting impact on GIPHY's revenue generating activities).

6.46 Chapter 7, Horizontal Effects, sets out evidence and our provisional assessment of GIPHY's monetisation model, in particular its Paid Alignment and revenue sharing agreement offering, and of the potential growth in this form of monetisation model.

6.47 In view of that evidence, our provisional view is that absent the Merger, in the most likely counterfactual, GIPHY would have continued to supply GIFs, and develop and expand its Paid Alignment offering as an option for generating revenue (subject to having access to funding to do so, which we consider below).

Short term monetisation and fundraising

6.48 In the absence of the option of selling to Facebook, GIPHY would have needed to find short-term arrangements to see it through the Coronavirus (COVID-19) pandemic, and to raise further financing to continue to supply GIFs and to fund the expansion of its Paid Alignment offering.

6.49 For the reasons set out below, our provisional view is that this would have likely been the case on the basis of one or more of the options available to GIPHY, including (i) introducing a platform/licence fee (or other commercial arrangement) with API partners to generate revenue at least in the short term (see paragraphs 6.50 to 6.57 below), (ii) raising additional funds from existing investors (paragraphs 6.61 to 6.89 below), (iii) reaching out to new investors (paragraphs 6.97 to 6.111 below), and (iv) exploring other options for a potential acquisition (paragraphs 6.115 to 6.149 below).

Platform fee

6.50 As explained below, our provisional view is that a platform fee (in particular as a short-term solution to GIPHY's funding issues during the pandemic) was an option that GIPHY and one or more of its API partners would have considered absent the Merger.

6.51 In February 2020, prior to the Merger, GIPHY was exploring a number of potential avenues to monetise its product. Whilst Paid Alignment and revenue sharing agreements were the main avenues being explored (see Chapter 7, Horizontal Effects), another option being considered was a so-called 'platform fee' whereby GIPHY would charge its API partners for access to its product.

6.52 Therefore, in considering how GIPHY would have behaved absent the Merger in relation to the supply of GIFs, we have considered: (i) whether GIPHY would have negotiated platform fee arrangements with one or more of its API partners, (ii) whether such platform fees would have enabled GIPHY to overcome its short-term cashflow issues, and enabled GIPHY to continue to supply GIFs and (iii) whether a platform fee arrangement could have been pursued in parallel to GIPHY's Paid Alignment model.

6.53 GIPHY submitted that a platform fee with Facebook, [✂] and others was never its preferred option given that its business plan relied on an ability to access advertising inventory within these third party platforms. A platform fee would not have allowed GIPHY such access, and it would not have allowed GIPHY to build a scalable economic relationship with its partners.

6.54 However, the evidence shows that, whilst the platform fee option was not GIPHY's preferred method of monetising, this (or some other form of commercial arrangement with API partners) was an option that GIPHY would have considered, especially in the short-term, in order to generate immediate revenue to ensure its survival through the Coronavirus (COVID-19) pandemic.

(a) GIPHY recognised in its submissions to the CMA that whilst a platform fee was a less attractive option from GIPHY's perspective, it was still an option that the company considered. This is evident from both Facebook's and GIPHY's internal documents which show that GIPHY was considering (and actively discussing) a platform fee/commercial agreement with [✂][225] and Facebook. GIPHY's internal documents also suggest that GIPHY had intended to leverage the potential agreements with [✂][226] in its discussions with Facebook in respect of a commercial agreement: '[✂]'.

(b) As noted by GIPHY's CEO Alex Chung in an email to an investor on 6 April 2020, a platform fee arrangement presented a potential short-term solution to GIPHY's funding issues: '[✂].'

(c) The Paid Alignment offering and platform fee model are not mutually exclusive, in the sense that GIPHY could have continued to explore the possibility of a platform fee/commercial agreement model with some of its API partners, and a Paid Alignment and revenue sharing agreement with other API partners, for example charging a platform fee for continued access to GIPHY to those API partners who were unwilling to sign up to a revenue sharing agreement.

6.55 The Parties submitted that: (i) there is considerable evidence available to show that API partners are not willing to pay platform fees, (ii) it is not possible to implement platform fees while Tenor is available as a near-perfect substitute to GIPHY free of charge, and (iii) GIPHY was not able to enter into a single significant platform fee agreement.

6.56 However, the evidence shows that one or more of GIPHY's API partners would have at least considered paying a platform fee.

(a) One of GIPHY's internal documents from March 2020, shortly prior to the Merger, notes: '[✂] - we are currently very close (2 - 4 weeks) to a [✂] (depending on the final amount). [✂] - we are currently ([✂]) to a [✂].

[225] [✂] however, GIPHY's internal documents referenced at footnote **Error! Bookmark not defined.** show that [✂] was indeed considering a platform fee/commercial arrangement with GIPHY in 2020.
[226] The discussions with [✂] pertain to a revenue generating model memorandum of understanding which was being negotiated between [✂] and GIPHY.

This suggests that GIPHY considered that it was making good progress in its negotiations on a platform fee with [✂] and [✂].

(b) The evidence available to us is not conclusive on whether API partners would have ultimately agreed to pay a platform fee to GIPHY. However, it appears that some key API partners such as [✂] and Facebook were willing to at least consider an arrangement, and were actively discussing the terms of a platform fee/commercial arrangement.

(i) GIPHY's internal documents show that in early April 2020, [✂] appeared eager to enter into a commercial arrangement with GIPHY, noting that it could be a 'major win-win' for both parties. [✂] also indicated that it wanted to progress these discussions quickly with the intention to turn the key terms of a commercial arrangement [✂]. Whilst GIPHY viewed the initial commercial terms proposed by [✂], one of GIPHY's investors [✂].GIPHY (Alex Chung) provided further comments in response this on 3 April 2020 explaining [✂] position, namely, [✂], GIPHY had signed a term sheet with Facebook[227] and it is apparent that any further consideration of a platform fee or commercial arrangement with [✂] was quickly overtaken by acquisition discussions with Facebook.

(ii) Facebook appeared [✂], as evidenced by call notes prepared by Alex Chung following a discussion with the Director of Platform Partnerships at Facebook, Konstantinos Papamiltiadis on 5 March 2020: '[✂]' and '[✂].' Facebook was concerned that [✂], but also, in the context of the abovementioned GIPHY/Facebook call notes, there was a concern on behalf of Konstantinos Papamiltiadis that [✂].' It is possible, therefore, that Facebook's position on a platform fee was in part informed by the prospect of a potential minority investment or acquisition of GIPHY. Similarly, we note that Facebook was eager to ensure continued access to GIPHY.[228] If GIPHY had been able to agree a platform fee with [✂] (noting that GIPHY's internal document suggest that [✂] was enthusiastic about this potential arrangement), it is possible that GIPHY could have leveraged this commercial agreement with [✂] in its discussions with Facebook in order to encourage Facebook to enter into a similar platform fee arrangement in the absence of the Merger.

6.57 Even if the continuation of GIPHY's activities, at least in the short-term to see GIPHY through the Coronavirus (COVID-19) pandemic had been (in part)

[227] On 7 April 2020.
[228] See Chapter 2, The Parties, Merger and Rationale, for further detail.

based on the introduction of a platform fee/commercial arrangement with one or more API partners, this would not affect our provisional view that, absent the Merger, the most likely counterfactual scenario involves GIPHY continuing to supply GIFs, innovate, develop its products and services, generate revenue and explore various monetisation options with partners and investors (including through its Paid Alignment and revenue sharing offering).

External fundraising

6.58 As noted above at paragraph 6.8, the Parties submitted that, absent the Merger, it is possible that GIPHY may have secured limited funding from investors, but would have been forced to operate under a restricted business model and would not have attracted sufficient external investment to expand its offering.

6.59 However, the evidence summarised below and set out in detail in Appendix E: GIPHY's Timeline indicates that there were routes for GIPHY to obtain further funding from both its existing and potential new investors in the short-term for the purposes of continuing to supply GIFs, innovate, develop its products and services, generate revenue and explore various monetisation options.

6.60 We also note that GIPHY's internal documents show that GIPHY was looking to some of its API partners (eg Facebook and [✂]) as well as other strategic partners (such as Playtika) for a minority investment in GIPHY in order to ensure its continued operation and to fund further expansion.

Existing investors

6.61 GIPHY has submitted to the CMA that its board members and investors discussed funding GIPHY at a [✂] valuation, which was the [✂]. In GIPHY's view, this demonstrated that those who were incentivised to bet on the long term viability of GIPHY at a drastically reduced price declined to invest, meaning that the investors did not believe that GIPHY was likely to succeed as an independent business.

6.62 [✂]. In such a scenario, GIPHY submitted that most employees would have left the GIPHY business [✂].

6.63 The Parties' submissions on these two points are addressed in the section below.

6.64 [✂].

6.65 A GIPHY internal document indicates that, in mid-March 2020, Alex Chung was positive that GIPHY had the '[✂]' of its investors. [✂]. At the Main Party

Hearing with GIPHY on 15 June 2021, and in response to this specific statement, Alex Chung noted 'It turned out I was wrong on that. I made a bet, I thought the investors would have support. It seemed that they should be financially motivated, [✂], and so I was just wrong there'.

6.66 However, as discussed in more detail below and in Appendix E: GIPHY's Timeline, at the time of the Merger, the evidence suggests that at least two of GIPHY's existing investors had expressed their ongoing support to Alex Chung, investors were considering a further funding round for GIPHY (even after the offer from Facebook had been received), and ultimately, investors merely stated a preference to sell GIPHY to Facebook, rather than there being no appetite on behalf of investors to provide further funding to GIPHY in the absence of the Merger.

- *Betaworks*

6.67 On a call with the CMA, Betaworks described itself as a platform for early-stage consumer applications which builds and incubates companies, and also invests in companies at the early seed stage. Betaworks was an incubator of GIPHY and was its sole investor when the company was created.

6.68 Betaworks submitted that GIPHY was initially a discovery engine for emotion-based media, and GIPHY grew rapidly, quickly surpassing 100 million users. Betaworks held monetisation discussions with GIPHY very early on, partly because the company had grown so quickly, but also because it was costing a lot of money to host and serve GIFs. Betaworks noted that, in respect of funding, there were two options available to GIPHY: (i) raise funding, or (ii) monetise. However, at the time, monetisation was complicated and raising capital was fairly inexpensive. Coupled with the external investor interest in GIPHY, which was generated as a result of having a popular product, GIPHY was well-capitalised, which, as a result, delayed the monetisation process.

6.69 Betaworks submitted that in 2019, GIPHY was making significant progress in terms of its advertising; it was building a strong team and developing advertising relationships. Betaworks considered that GIPHY was innovative, offered a new way to advertise and, in 2019 and 2020, was still in the early stage of its development.

6.70 Betaworks noted that whilst JP Morgan was engaged by GIPHY to run a dual-track process,[229] in December 2019 investors in GIPHY were keen to raise further financing and did not want to sell the business given GIPHY's success.

[229] With an outreach to any party that may be interested in a full acquisition or minority investment in GIPHY.

As a result, pre-Coronavirus (COVID-19), GIPHY was exploring the option of fundraising with external private equity and venture capital investors, strategic investors and also third parties interested in potentially acquiring shares in GIPHY. Betaworks submitted that all of these options were open to GIPHY at the time when the Coronavirus (COVID-19) pandemic occurred.

6.71 As described in detail in Appendix E: GIPHY's Timeline, we asked Betaworks whether, absent the offer from Facebook, later-stage GIPHY investors would have been prepared to put more cash into GIPHY to extend its runway for the next six to twelve months. Betaworks submitted that, in the absence of the Merger, in light of the challenges brought about by Coronavirus (COVID-19) and in the knowledge that there was potentially a much lower offer from another platform, GIPHY's investors would have been prepared to invest further in GIPHY. Betaworks submitted that there were later stage investors who were keen to invest further in GIPHY in such circumstances, asking board members whether they should put in a term sheet. Betaworks also noted that the role of later stage investors is often to assist companies in getting through these kinds of challenges.

- *[✂]*

6.72 [✂]

6.73 [✂]

6.74 [✂]

6.75 [✂]

6.76 As outlined in detail in Appendix E: GIPHY's Timeline, [✂] explained that it did not deliberate on the possibility of providing additional cash to GIPHY (absent the Merger) and given the uncertainty around the Coronavirus (COVID-19) pandemic, [✂] submitted that it is difficult to estimate what decision [✂] would have made. We note that in an email from [✂], to Alex Chung on 29 March 2020, [✂] appeared to express strong support for the GIPHY business and its potential, noting:

(a) [✂]

(b) [✂]

(c) [✂]

6.77 In the absence of the Merger, [✂] may therefore have provided further funding to GIPHY in order to see it through the Coronavirus (COVID-19) pandemic, and to fund further expansion.

- *[✂]*

6.78 [✂]

6.79 [✂]

6.80 In February 2020 in the context of GIPHY's fundraising efforts, we note that GIPHY's internal documents show that [✂] invited Alex Chung to attend the [✂] where Alex Chung would have the opportunity to present GIPHY, as one of [✂] 'high conviction companies', to some of the largest investors in the world who worked closely with [✂]. The aim of such a presentation and attendance by Alex Chung at this event was, as [✂] stated, to 'build strong relationships with a sophisticated group of investors who can be long-term capital partners if needed, both for this round and for future rounds or an IPO.'

6.81 As outlined in Appendix E: GIPHY's Timeline, [✂] submitted that it was [✂] in leading another round of financing of GIPHY and considered that this would need to be led by someone [✂] given that raising funds from [✂] investors for the [✂] funding round was [✂].However, in the context of a private discussion between Alex Chung and a GIPHY investor (see Appendix E: GIPHY's Timeline), on 30 March 2020 Alex Chung appeared to indicate that GIPHY continued to have support from [✂] despite the Coronavirus (COVID-19) challenges: '[✂]'.

6.82 In an email exchange among GIPHY board representatives and other investors on 29 March 2020 in light of Facebook's offer to acquire GIPHY, GIPHY's investors agreed on their response to Facebook on the proposed financial offer for GIPHY, as discussed on their call (see Appendix E: GIPHY's Timeline). The agreed response noted that [✂], there was interest from GIPHY's investors in exploring raising a round of funding, instead of selling GIPHY. Later, on 30 March 2020, [✂] stated that [✂] preferred to pursue the best M&A offer than to seek further financing for GIPHY: '[✂]'. Based on this statement, it appears that [✂] was considering participating in a further funding round for GIPHY up to the point where GIPHY received the offer from Facebook to be acquired for [✂]. In light of the evidence and in the absence of the Merger, or any other credible offer from an alternative purchaser, we consider that it is likely that [✂] would have invested further in GIPHY.

- *[✂]*

6.83 [✂] is a venture capital firm and invested in GIPHY in its [✂] funding rounds.

6.84 As outlined in detail in Appendix E: GIPHY's Timeline, in a GIPHY email exchange from February 2020 following a meeting of the GIPHY board in January 2020, [✂] appeared positive about GIPHY's monetisation ability in 2020 noting that the revenue plan presented was a baseline only, and GIPHY should [✂]. In a private response, [✂] emailed Alex Chung to say '[✂]'.

6.85 Given [✂] positive messages regarding GIPHY's monetisation potential at the start of 2020 and in light of the fact that GIPHY was largely on track with its revenue plan prior to the Coronavirus (COVID-19) pandemic, it is possible that, in the absence of the Merger, [✂] would have invested further in GIPHY.

[✂]

6.86 [✂] is a venture capital firm that invested in GIPHY in the series [✂] and series [✂] funding rounds in [✂]

6.87 In respect of [✂] appetite to invest further in GIPHY, [✂] submitted that, following the conclusion of the series [✂] investment in GIPHY in [✂]. In response to a question raised by the CMA, and while noting that it is impossible to answer a hypothetical question [✂] submitted that in a scenario whereby GIPHY were unable to be acquired by a third party or receive additional capital via an external investor, the GIPHY management team, board and investors would have been left in the difficult situation of either: (i) exploring additional ways to extend GIPHY's cash runway though cost reduction measures, and/or (ii) considering emergency financing options (including a further investment by [✂]).

6.88 [✂] noted that the scale and form of any cost reduction measures and/or emergency financing options, if available, would have needed to be further explored, debated and negotiated by and among GIPHY's management team, board and investors in order to determine the best potential outcome for shareholders and employees.

6.89 Based on [✂] response, the CMA's view is that in the absence of the Merger, [✂] would have at least been open to discussing providing further funding to GIPHY to ensure its continued survival through the pandemic.

- *Staff retention*

6.90 In respect of Alex Chung's concerns on staff retention as a result of issues in raising further funding (see paragraph 6.62 above), the CMA notes that this does indeed appear to have been a concern at the time of the Merger: '[✂]'.

6.91 However, in a private discussion in late March 2020 between Alex Chung and a GIPHY investor on the challenges presented by Coronavirus (COVID-19) and GIPHY's options going forward in light of the proposed Merger, Alex Chung also noted his commitment to, and belief in, GIPHY: '[✂].

6.92 At the Main Party Hearing, Alex Chung indicated that a lower valuation of GIPHY would have resulted in employees quitting GIPHY for start-ups where they could have 'potentially exponential returns' or less risky financial incentives. However, we have not seen any evidence to support this. We also note that the pandemic caused significant disruption to labour markets, and it is not clear to us that GIPHY's employees would have had an incentive to leave GIPHY for other start-ups which would have been facing an uncertain position at the time as regards the impact of Coronavirus (COVID-19) and future funding. Employees would also have forfeited their stock options had they chosen to leave the company. It is therefore unclear that these employees would have been incentivised to leave GIPHY absent the Merger.

6.93 Further comments on staff retention are provided in Chapter 7, Horizontal Effects, in the context of GIPHY's Paid Alignment offering.

- *Provisional view on the possibility of GIPHY raising funds from existing investors*

6.94 The evidence provided by a number of GIPHY's investors suggests that investors did not discuss the question as to whether they would provide further funding to GIPHY absent the Merger. However, Alex Chung noted at the Main Party Hearing with GIPHY that he specifically went to each of GIPHY's investors [✂]. However, the CMA has not been provided with any evidence in GIPHY's internal documents which explain investor views in relation to these discussions with Alex Chung.

6.95 The evidence seen by the CMA suggests that investor views were influenced by the option of a sale of GIPHY to Facebook. Rather than demonstrating that GIPHY's investors declined to invest in GIPHY (as submitted by the Parties, see paragraph 6.61 above), the CMA considers that the evidence demonstrates that existing investors considered participating in a further funding round for GIPHY as an alternative to a sale. They ultimately decided to pursue the Merger in preference to participating in a further funding round.

6.96 However, in the absence of the proposed Merger, it is likely that investors would have looked to raise further funding for GIPHY to see it through the pandemic, and to fund further expansion, given:

(a) positive messages of support and belief in GIPHY's business potential from late stage investors such as [✂] and [✂];

(b) [✂] comments in January 2020 on GIPHY's monetisation potential, notably that GIPHY's revenue projections of [✂] should be considered a baseline only; and

(c) [✂] comments that in the absence of the Merger, GIPHY would need to consider emergency financing options including a further investment by [✂].

New investors

6.97 GIPHY has submitted that it held preliminary talks with new external investors [✂]. As outlined in the analysis above (and in Appendix E: GIPHY's Timeline), the CMA considers that in the absence of the Merger, GIPHY could have received such support from some of its existing investors given positive statements made by existing investors prior to the Merger.

6.98 In a document prepared by JP Morgan dated 14 February 2020 in connection with GIPHY's options for external fundraising, JP Morgan noted that 'it has high confidence a Giphy [✂] to fuel near term organic growth will be broadly well received by the market.' JP Morgan explained that it made this statement on the basis of its extensive experience of fundraising in the tech industry. Its view was reached on the basis that GIPHY was a well-known brand that was used by c.800m people daily. JP Morgan noted, however, that the statement referred to above was not a statement as to the certainty of GIPHY obtaining investment, and that it was made prior to onset of the Coronavirus (COVID-19) pandemic, which had a significant impact on the ability to obtain investment.

- *Playtika*

6.99 Playtika is a large, digital entertainment company, with a market capitalisation of USD9.47 billion[230] that has established an investment fund that provides growth capital and expertise to start-ups, [✂].

[230] PLTK | Playtika Holding Corp. Stock Price & News - WSJ.

6.100 We spoke with representatives of Playtika[231] on 5 May 2021. Playtika explained that it was introduced to GIPHY through a venture capitalist in late January 2020, and engaged in active discussions with GIPHY until the end of April 2020 when Playtika heard that GIPHY had been sold to Facebook.

6.101 Playtika's interest in GIPHY was driven by the fact that GIPHY had a high number of active users and was building an ad product which could be significant if executed well. Playtika noted that GIPHY needed support from investors and that GIPHY still needed to build the platform to turn its business into a significant advertising platform (but that the efforts associated with the build should not be underestimated). Following a review by Playtika of materials shared by GIPHY in the context of a potential investment, Playtika explained that it was clear that GIPHY required assistance to realise and properly execute its monetisation ideas.

6.102 Playtika compared the potential of GIPHY to the likes of Google and Facebook, noting that it had a very high number of active daily users, and its daily search volume was equivalent to 15% of Google's. In Playtika's view, this effectively made GIPHY the third largest search engine in the world (see Chapter 5, Market Definition and Market Power where we compare GIPHY's O&O search volume to other search websites).

6.103 [✄].

6.104 We know from Playtika that it had expressed an interest in investing between USD25 to USD40 million in GIPHY, and that GIPHY was also keen for Playtika to invest. However, Playtika received no further engagement from GIPHY after April 2020, was not invited to perform any due diligence and the opportunity to invest disappeared when the Merger occurred.

6.105 Given that Playtika did not perform any due diligence on GIPHY, it is not clear whether Playtika would have ultimately proceeded with an investment. However, Playtika was interested in exploring a minority investment in GIPHY in the region of USD25 to USD40 million, but received limited engagement from GIPHY once the opportunity for an acquisition of GIPHY by Facebook presented itself.

[231] Playtika explained that it has a broad interest in consumer entertainment industries with the focus of its core business being investments in mobile games and in-app purchases.

- *ByteDance*

6.106 As discussed in more detail below, ByteDance was contacted by JP Morgan as part of the GIPHY sales process in late 2019.

6.107 In its response to a CMA RFI, ByteDance has explained that it discussed a potential investment in GIPHY in late 2019 after it had signed a commercial agreement with GIPHY. However, given that there was an existing licensing agreement between ByteDance and GIPHY [✂], ByteDance considered that the needs of its business were already being substantially met by such agreement.

6.108 As a result, when the investment opportunity was presented to ByteDance by GIPHY, ByteDance had no intention of acquiring a significant percentage of GIPHY and noted that it 'only entertained a modest minority investment'. ByteDance has submitted that it communicated the minority investment idea to GIPHY to gauge its interest before proceeding with any detailed commercial term discussions; however, 'GIPHY did not reply to ByteDance with a confirmation regarding an intention to move forward', and after a period of limited responsiveness from GIPHY, ByteDance was informed that GIPHY was to be acquired by Facebook.

6.109 Based on this evidence, it appears that ByteDance was willing to discuss a minority investment in GIPHY (but it is unclear how much ByteDance would have been willing to invest); however, ByteDance received limited engagement from GIPHY on this offer.

- *Provisional conclusion on the possibility of GIPHY raising funds from new investors*

6.110 The evidence provided by two potential investors (Playtika and ByteDance) suggests that there was some external investor interest in providing funding to/obtaining a minority interest in GIPHY prior to the Merger. As noted above, JP Morgan was also positive about the potential for [✂] given its large user base and the fact that it operated a well-known brand. However, both potential external investors have expressed that they received limited engagement from GIPHY in respect of such discussions. As explained in paragraph 6.122 below, based on the term sheet signed with Facebook on 7 April 2020, it appears that GIPHY was prevented from entertaining any such discussions after this date given the inclusion of a broad 'no-shop' provision in the term sheet.

6.111 The CMA considers that it is possible that external investors would have progressed their discussions with GIPHY in the absence of the Merger, although it is unclear whether external investors would have ultimately proceeded with an investment.

Could GIPHY have been sold to an alternative purchaser?

6.112 The Parties submitted that [✂] that an alternative purchaser would have been found for GIPHY.

6.113 However, several Facebook internal documents suggest that the acquisition of GIPHY was [✂], indicating that Facebook [✂]. A Facebook internal document also expressed Facebook's concerns that the sale of GIPHY could '[✂]'.

6.114 Further, [✂].

- *Sales process*

6.115 As summarised above, the Parties submitted that '[✂]' and 'Facebook was the only company to express a firm interest in acquiring GIPHY, let alone to proceed to exclusive negotiation or sign a term sheet'.

6.116 However, a third party informed us that an enquiry from a large Asian-based messaging platform ([✂]) initiated the M&A interest in GIPHY. Internal Facebook communications in February 2020 confirm that [✂].

6.117 GIPHY engaged JP Morgan in October 2019 to assist in exploring potential options to provide GIPHY with financial support through an equity fundraise or acquisition. JP Morgan explained that it was engaged by GIPHY to reach out to potentially interested parties on the basis that such parties might have an interest or strategic rationale in acquiring GIPHY.

6.118 Throughout November 2019, JP Morgan reached out to a number of companies to gauge their interest in a possible acquisition of GIPHY. After this initial outreach, JP Morgan stated that its role was to register their interest and engage with potential acquirers to assess their interest in meeting with GIPHY's management; however, JP Morgan stated that it did not hold key discussions with these parties and was not privy to specific drivers or the rationale behind each party's respective interest in GIPHY.

6.119 We do know, however, that a number of parties (other than Facebook) progressed with their interest to acquire GIPHY and signed NDAs. [✂]. All these parties also attended management presentations with GIPHY throughout November and December 2019 (with some parties also attending follow-up meetings), indicating a continued interest in a potential acquisition of GIPHY following the initial outreach in November 2019.

6.120 Whilst the Parties submitted that all other potential acquirers had '[✂]' the opportunity to acquire GIPHY, the CMA was unable to identify any internal documents which confirmed that this was indeed the case. GIPHY submitted that the reason for this is that potential acquirers often communicate their intentions verbally rather than in writing to avoid any risk of leaks and causing damage to the possibility of a sale to another party.

6.121 JP Morgan also submitted that it was unable to identify a central record explaining when and why each potential acquirer dropped out of the sales process, but it stated that interested parties withdrew from the process for a variety of reasons, where a reason was given, including: (i) business fit, (ii) potential purchase price, and (iii) a challenging financial climate as a result of the Coronavirus (COVID-19) pandemic. We note however that a majority of the bidders appeared to withdraw from the sales process before the Coronavirus (COVID-19) pandemic started.

6.122 JP Morgan further submitted that, in its view, [✂]. No other party submitted a bid, despite outreach to multiple other parties. Notwithstanding further outreach to [✂] following Facebook's offer, there was still no bid forthcoming. However, following the signing of the term sheet with Facebook on 7 April 2020, it appears that GIPHY was unable to have discussions with any potentially interested parties given that the term sheet contained a broad 'no-shop provision' [✂].

6.123 It is therefore unsurprising that following signing of the Facebook term sheet in early April 2020, no bids were submitted from any other interested parties. The inclusion of such a provision may also help to explain the reason why external investors' discussions with GIPHY stalled in late March/early April 2020 (as discussed in the section above).

6.124 [✂] and therefore we do not agree with the Parties' submission that there was no other bid forthcoming.

6.125 The Parties submitted that the [✂] potential acquirers of GIPHY who had progressed with discussions beyond initial outreach [✂]:

(a) [✂].

(b) [✂].

(c) [✂].

(d) [✂].

(e) [✂].

(f) [✂].

(g) [✂].

6.126 [✂]

- *Twitter*

6.127 JP Morgan has submitted that [✂].

6.128 As noted above, [✂] was engaged in active discussions with GIPHY in November 2019 and attended two in-person meetings with GIPHY. JP Morgan has explained that it did not initially reach out to [✂] as a potential acquirer of GIPHY in November 2019, [✂].

6.129 [✂]

6.130 GIPHY submitted that in January 2020, [✂] indicated that it was not interested in further pursuing an acquisition of GIPHY and expressed concerns that the integration of the GIPHY team within [✂] would result in distraction from other [✂] objectives. [✂].

6.131 In one of GIPHY's internal documents from early April 2020, GIPHY noted that it was waiting on JP Morgan to reach out to [✂] to start a [✂]. Based on GIPHY's internal documents, we infer that the purpose of this final outreach was to allow an opportunity for a counter-offer to the Facebook acquisition offer from the likes of [✂]'.

- *[✂]*

6.132 The Parties submitted that [✂].

6.133 However, GIPHY's internal documents identify [✂] as a 'potential interloper' in the deal being negotiated between GIPHY and Facebook in late March 2020. JP Morgan submitted that [✂] was identified as a potential interloper because it is [✂] with sufficient scale and the potential 'ability to pay'. In JP Morgan's view, [✂]were the only [✂] companies, other than Facebook, with scale and potential ability to integrate GIPHY within their platforms.

6.134 [✂].

6.135 Whilst JP Morgan submitted that [✂] expressed interest in a minority investment in GIPHY (not a full acquisition) which GIPHY ultimately decided not to pursue, [✂].

6.136 [✂]

6.137 [✂]

6.138 [✂] in our assessment of the relevant counterfactual, we have further considered:

(a) GIPHY's estimated valuation at the time of the Merger;

(b) [✂]

(c) Whether GIPHY, at the time of the Merger, would have accepted a lower offer than submitted by Facebook based on GIPHY's estimated valuation.

- *Valuation of GIPHY*

6.139 GIPHY submitted that in the period since January 2017, it did not prepare any internal documents for the purpose of raising additional capital or identifying an acquisition partner, nor did it commission third parties to prepare such materials. [✂]

6.140 We note that the estimated equity value in 2019 of [✂]is broadly in line with the total consideration paid by Facebook of [✂].

6.141 The CMA's analysis of GIPHY's latest series D-1 funding round in early 2019 (where GIPHY raised funds of [✂] at a price of [✂]), indicates a valuation of c. [✂] in early 2019, prior to the onset of the Coronavirus (COVID-19) pandemic. The Parties submitted that before the onset of the Coronavirus (COVID-19) pandemic, '[✂]', which is above the CMA's estimated value based on the share price of the series D-1 funding round.

6.142 At the time when Facebook was pursuing the Merger and seeking internal approval to acquire GIPHY, Facebook noted that GIPHY's valuation was between [✂] and [✂],indicating that GIPHY's value may have increased since the Series D-1 funding round.

- *[✂]*

6.143 [✂], we questioned whether [✂] believed that Facebook's proposed purchase price was above the value of GIPHY at the time of the Merger. [✂] noted that whilst this was a difficult question to answer [✂]. We note that [✂] estimated valuation of [✂].

6.144 [✂].

6.145 Given that the discussions did not progress much further, [✂] submitted that it did not have to definitively decide the maximum amount which it was willing to pay for GIPHY. It is possible, therefore, that [✂] might have increased its offer for GIPHY, but perhaps not to a level which GIPHY's board would have accepted.

- *Would GIPHY have accepted a lower offer from an alternative purchaser at the time of the Merger based on its valuation?*

6.146 The Parties submitted that '[✂].' The purchase price proposed by Facebook (USD315 million [✂]), allowed GIPHY to pay back all of the money raised by GIPHY's investors, and for some investors, offered additional returns (see Table 7 below).

6.147 In a document prepared by JP Morgan in connection with the Facebook acquisition, JP Morgan sets out the return on invested capital for each of GIPHY's key investors based on an assumed purchase price of [✂].

Table 7: Return on invested money based on [✂] valuation

[✂]

Source: [✂].

6.148 The Parties submitted that a combination of the Coronavirus (COVID-19) pandemic and ongoing fundraising challenges presented existential challenges for the GIPHY business in 2020. Further, in GIPHY's view, the [✂]. We have therefore considered whether, absent the Merger and notwithstanding the negative returns for shareholders, GIPHY would have sold to [✂] at a purchase price of [✂] to secure GIPHY's future.

6.149 Given that at the time of the Merger: (i) GIPHY was operating at a monthly average loss of approximately [✂], (ii) [✂] and, (iii) there was a degree of uncertainty in financial markets caused by the Coronavirus (COVID-19) pandemic, it is possible that GIPHY's shareholders would have looked for an exit opportunity and might have accepted a discounted sale. The Parties submitted that GIPHY's revenue-generating business was uncertain, [✂]. However, it seems unlikely that GIPHY's shareholders would have sold to [✂] at a purchase price of [✂] at the time of the Merger given that:

(a) as discussed in more detail in Chapter 7, Horizontal Effects, GIPHY's internal documents indicate [✂] at the start of 2020. Further, the introduction of a platform fee (as discussed at paragraph 6.54 above) may have provided GIPHY with an option for immediate access to capital (to ensure its continued ability to supply GIFs), with further funding being provided by investors later in 2020 to fund further expansion of the Paid Alignment offering when the digital advertising market recovered. The option of a platform fee could have been explored in combination with the

Paid Alignment/revenue sharing agreement monetisation model ie charging those API partners a platform fee if they were unwilling to enter into a revenue share agreement; and

(b) JP Morgan's analysis as outlined in Table 7 above demonstrates that [✂] was far below GIPHY's estimated value at the time of the Series D-1 funding round when GIPHY's shareholders elected to invest further capital in GIPHY. At the time of the Series D-1 funding round, GIPHY's investors would have taken a view on what they estimated GIPHY's potential to be worth and it seems unlikely that GIPHY's shareholders would have been willing to suffer a loss and accept negative returns on their investment by selling GIPHY to [✂] (at the purchase price of [✂] only one year after having invested [✂] in GIPHY. [✂]. As noted above, the evidence indicates that when considering Facebook's offer to acquire GIPHY at a valuation of [✂], GIPHY's investors discussed providing further funding to GIPHY as an alternative to the Merger. It seems unlikely, therefore, that GIPHY's investors would have accepted a sale of GIPHY at a valuation of between USD[✂]. Further, we also note that GIPHY had sufficient cash runway until Q4 2020 which it was looking to extend, and therefore we do not consider that GIPHY was in a position, prior to the Merger, where a fire sale [✂] was necessary. At the time of the Merger therefore, there were a number of options available to GIPHY (as detailed above in this chapter) which would have ensured its survival through the Coronavirus (COVID-19) pandemic, and would have allowed GIPHY to raise further capital to fund revenue growth, eg through expansion of its Paid Alignment offering.

(c) Finally, we note that whilst a sale to a third party, for example a social media platform, would have remained a possibility, such a sale would not have, in principle, affected GIPHY's basic incentives to continue to supply GIFs, innovate, develop its products and services and generate revenues, doing so independently of Facebook.

Provisional conclusion on the counterfactual

6.150 Having assessed the evidence before us, we provisionally conclude that the most likely counterfactual which would have prevailed in the absence of the Merger is that: (i) Facebook would have continued to procure GIFs from GIPHY, and (ii) GIPHY would have continued to supply GIFs, innovate, develop its products and services, generate revenue and explore (with the financial and commercial support of investors) various options to further monetise its products. This counterfactual would have prevailed regardless of GIPHY's ownership, ie whether under its pre-Merger ownership structure (receiving financial support and commercial expertise from investors) or if it had been sold to an alternative purchaser, possibly another social media platform.

7. Horizontal Effects

Introduction

7.1 In this Chapter, we assess whether the Merger has led to a loss of potential competition in display advertising in the UK. As discussed below, this is a theory of harm arising from horizontal unilateral effects.

7.2 GIPHY is a leading provider of video GIFs and GIF stickers, accounting for a substantial share ([✂])[232] of GIF searches, due to the distinctive quality of its content and search algorithm, and its sizeable reach among the major distribution partners.[233] As we discuss in Chapter 8, Vertical Effects, GIFs are popular among social media users and an important engagement tool for social media and other platforms. Prior to the Merger, GIPHY was seeking to build on its success as a GIF provider by monetising through its innovative Paid Alignment service. It had made some progress in attracting advertisers and third-party platforms to this service in the US but had not yet entered the UK market, and was continuing to develop and extend its Paid Alignment offer. As set out in Chapter 5, Market Definition and Market Power, we are of the provisional view that the type of advertising that GIPHY was offering prior to the Merger is closer, in terms of competitive interaction, to Facebook's display advertising services than to search advertising.

7.3 Facebook is, by a significant margin, the largest provider in social media globally and of display advertising in the UK. As set out in Chapter 5, Market Definition and Market Power, we have provisionally found that it holds significant market power in both of these relevant markets. Through the Merger with GIPHY, Facebook has acquired the largest provider of GIFs (both globally and in the UK) in a market with just two major providers, GIPHY and Tenor.

7.4 For the reasons set out below, our provisional view is that the Merger will lead to a **substantial lessening of competition in the supply of display advertising services in the UK arising from a loss of dynamic competition**.

7.5 As set out in Chapter 8, Vertical Effects, the CMA has also reached the provisional conclusion that the Merger has resulted in a substantial lessening of competition in the supply of social media services. Because GIFs are an important driver of user engagement, which in turn drives the amount of time

[232] Chapter 5, Market Definition and Market Power, Table 4.
[233] Chapter 4, Industry Background, paragraph 4.38.

spent on a platform and hence the amount of available advertising inventory, GIFs are also important to social media platforms' ability to fund their business through the supply of display advertising in competition with Facebook. Given the linkages between social media and display advertising markets, the harm to the competitiveness of social media platforms in the supply of social media services set out in Chapter 8 would also translate into a weakening of competition between social media platforms in the market for display advertising. This in turn exacerbates the weakening of the competitive process in the display advertising market arising from the elimination of GIPHY as a potential competitor in display advertising.[234,235]

7.6 The remainder of this Chapter is structured as follows:

(a) We set out the framework for our analysis of a loss of dynamic competition, and address the Parties' comments on this framework.

(b) We consider GIPHY's role absent the Merger as a potential competitor,[236] including:

(i) the importance of GIPHY's efforts to innovate and expand for dynamic competition, and the potential importance of these efforts in the context of Facebook's significant market power in display advertising; and

(ii) the likelihood of GIPHY's successful expansion of its Paid Alignment services and of its entry into the UK market, based on our assessment of the strengths and weaknesses of GIPHY's Paid Alignment model.

(c) We consider the potential impact GIPHY would have had absent the Merger on dynamic competition by other players in the relevant market, in the light of:

(i) the expected closeness of competition between GIPHY's advertising service and Facebook's display advertising services; and

[234] See paragraph 8.153. For the avoidance of doubt, while these effects strengthen the effects on dynamic competition set out in this Chapter 7, Horizontal Effects, the CMA provisionally finds that the loss of dynamic competition arising from the elimination of GIPHY as a potential competitor in the provision of display advertising are sufficient to give rise to an SLC.
[235] As noted in paragraph 5.140, we refer for convenience to GIPHY's entry and expansion in display advertising. To be clear, this reflects our view that GIPHY's Paid Alignment service is closer to Facebook's display advertising services than to search advertising, regardless of whether the service should be categorised as display advertising.
[236] In this assessment of the effects arising from the loss of dynamic competition, we attach the same meaning to the terms 'dynamic competitor' and 'potential competitor'.

(ii) Facebook's likely response to potential competition absent the Merger.

(d) Based on the above assessment, we set out our provisional conclusion on whether potential competition from GIPHY has been lost as a result of the Merger.

Framework for analysis

7.7 Horizontal mergers combine firms that are currently active, or absent the merger would be active in the future, at the same level of the supply chain and compete to supply products that are substitutable for each other.[237] Unilateral effects relate to the Merged Entity being able to profitably and unilaterally[238] raise its prices, worsen its quality or service and non-price factors of competition, or reduce innovation efforts at one or more of the pre-merger businesses.[239]

7.8 An assessment of horizontal unilateral effects arising from a merger essentially relates to the weakening or elimination of a competitive constraint. The competitive constraint eliminated by a merger may be an existing constraint, or a potential or future constraint.[240] As the Merger Assessment Guidelines confirm: 'The CMA's main consideration is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger. Where there are few existing suppliers, the merger firms enjoy a strong position or exert a strong constraint on each other, or the remaining constraints on the merger firms are weak, competition concerns are likely. Furthermore, in markets with a limited likelihood of entry or expansion, any given lessening of competition will give rise to greater competition concerns'.[241]

7.9 Mergers involving a potential entrant can lessen competition in different ways.[242] First, a merger involving a potential entrant may imply a loss of the future competition between the merger firms after the potential entrant would have entered or expanded. Second, existing firms and potential competitors

[237] Merger Assessment Guidelines (CMA129), paragraph 2.15.
[238] As distinct from acting in coordination with other firms in the market.
[239] Merger Assessment Guidelines (CMA129), paragraph 2.17.
[240] Merger Assessment Guidelines (CMA129), paragraph 4.2.
[241] Merger Assessment Guidelines (CMA129), paragraph 4.3.
[242] It is a well-established principle that competition law protects not only actual competition, but also potential competition between undertakings. (See Merger Assessment Guidelines (CMA129), section 5; see also by analogy T-519/09, *Toshiba v Commission* EU:T:2014:263, paragraph 230.) This is because there is competitive interaction between a firm that has the potential to enter or expand in competition with other firms (Merger Assessment Guidelines (CMA129), paragraph 5.1). A potential competitor may exert competitive pressure on the firms in the market '*by reason merely that it exists*' (*C-307/18 Generics (UK) Ltd and Others v CMA*, EU:C:2020:28, paragraph 42).

can interact in an ongoing dynamic competitive process, and a merger could lead to a loss of dynamic competition.[243]

7.10 Losses of future competition and losses of dynamic competition are interrelated, as they both involve the constraint from potential entrants, and both depend on the likelihood of entry or expansion by a potential entrant, and the impact of such entry or expansion on competition.[244]

Competition concern and outline of the competitive assessment

7.11 The question we are considering in this Chapter is whether the Merger has substantially lessened competition or may be expected to do so by removing GIPHY as a potential competitor to Facebook's display advertising offering.

7.12 The importance of GIPHY as a potential competitor in display advertising impacting dynamic competition depends on a range of factors, including the efforts it would have made to expand in the display advertising market, the value of its efforts to innovate, the likelihood of expansion of its monetisation activities,[245] the extent to which it may have been a competitive threat to Facebook, and Facebook's incentives to respond to this threat. While the competitive process of innovation and the development of products by global players such as GIPHY and Facebook takes place at a global level (such that developments will also be reflected in the UK), sales to customers occur at a national level. When assessing the effect of the Merger on the UK display advertising market it is therefore also necessary to consider the likelihood of GIPHY's entry into the UK and its efforts to achieve that goal.

7.13 We note that GIPHY's importance as an input to social media platforms underpins its prospects in display advertising, both in attracting audiences to its advertising service, and in providing a foundation for developing its existing relationships with important social media platforms towards partnerships in the provision of display advertising.

7.14 As part of our assessment, we are considering whether the Merger, by removing a potential competitor, has reduced the potential competitive pressure faced by Facebook in the UK display advertising market, thereby

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[243] Merger Assessment Guidelines (CMA129), paragraph 5.2.
[244] Merger Assessment Guidelines (CMA129), footnote 102.
[245] By 'monetisation' activities we refer to GIPHY's Paid Alignment model and other advertising services it could have sought to develop. As discussed in Chapter 6, Counterfactual, GIPHY also considered the introduction of a platform fee as a short-term solution to its cashflow issues prior to the Merger. Our use of the term 'monetisation' does not include such platform fees.

affecting the ongoing dynamic competitive process.[246] Firms such as GIPHY that are making efforts or investments that may eventually lead to their entry or expansion will do so based on the opportunity to win new sales and profits, which may in part be 'stolen' from the other merger firm, in this case Facebook. Incumbent firms such as Facebook that are making efforts to improve their own competitive offering may do so to mitigate the risk of losing future profits to potential entrants such as GIPHY.[247] This process of dynamic competition can also increase the likelihood of new innovations or products being made available, whether this would have been by GIPHY, Facebook or other firms. Dynamic competition therefore has economic value in the present.[248] Our Merger Assessment Guidelines recognise that the elimination of a dynamic competitor that is making efforts towards entry or expansion may lead to an SLC even where entry by that entrant is unlikely and may ultimately be unsuccessful.[249]

7.15 This is because, where dynamic competition gives customers the chance to benefit from a wider variety of products or a future increase in competition, this represents value to customers even where there is some uncertainty that these products or services will ever ultimately be made available to customers.[250] In addition, existing firms may invest in order to protect future sales from dynamic competitors, and the removal of the threat of entry may lead to a significant reduction in innovation or efforts by other firms.[251]

7.16 The structure of the market, and Facebook's market position, are key elements in assessing the impact of GIPHY as a dynamic competitor. As noted in paragraph 7.3, we are of the provisional view that Facebook has significant market power in display advertising in the UK. The impact of a potential entrant on competition is likely to be more significant when there are few strong existing competitive constraints (including potential entrants providing dynamic competition) and where the other merger party already has significant market power (with greater market power being associated with a greater likelihood of an entrant having a bigger impact on competition). In

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[246] On that basis, we disagree with the Parties' submission that the CMA cannot find an SLC in this context unless it is more likely than not that, absent the Merger, GIPHY would within a reasonable timeframe have evolved into such a meaningful advertising competitor in the UK that its acquisition could substantially lessen competition. There may be a loss of competition even if such an outcome was uncertain.
[247] Merger Assessment Guidelines (CMA129), paragraphs 5.1 – 5.3, and 5.19.
[248] Merger Assessment Guidelines (CMA129), paragraph 5.20.
[249] Merger Assessment Guidelines (CMA129), paragraph 5.23. See also by analogy *C-307/18 Generics (UK) Ltd and Others v CMA,* EU:C:2020:28, paragraph 38.
[250] Merger Assessment Guidelines (CMA129), paragraph 5.20. We note that in this case GIPHY had launched some of the relevant products, although not in the UK.
[251] Merger Assessment Guidelines (CMA129), paragraph 5.23.

such circumstances, even small increments in the market power held by a firm with a strong position in the market may give rise to competition concerns.[252]

7.17 As our Merger Assessment Guidelines note,[253] there may be some uncertainty about the outcome of investments and innovation efforts absent the merger, including whether the investments being made by merger firms would ultimately result in products or services being made available to customers. In the present case, as discussed below, GIPHY faced some challenges to expanding its monetisation activities, and there is necessarily some uncertainty about how its business would have developed absent the Merger. However, uncertainty about the future outcome of a dynamic competitive process does not preclude the CMA from assessing the impact of a merger on that dynamic process – as noted, that dynamic process may have economic value in the present, by increasing the likelihood of new innovations or products being made available in future in response to competitive pressure.

Parties' views on the framework for assessment

7.18 In commenting on a CMA Working Paper relating to this Theory of Harm, the Parties submitted that:

> 'A long and unbroken chain of highly implausible events is required to bring about the hypothetical scenario that the Working Papers consider, where GIPHY would become a successful advertising rival to Facebook in the UK. Even if, as the CMA contends, it is not required to show that each independent step in this hypothetical chain of events is more likely than not to occur, it stands to reason that a counterfactual requiring multiple, sequential events to occur must be strongly supported by the evidence, and the CMA cannot simply disregard highly implausible links in this chain of events in order to reach the conclusion that an SLC is more likely than not to occur'.

7.19 The Parties identified the following 'steps' in the chain: 1. GIPHY would need to have obtained significant external funding. 2. GIPHY's significant API Partners would need to have entered into revenue share agreements, including Facebook. 3. GIPHY would need to have successfully expanded its Paid Alignment services internationally, including into the UK. 4. GIPHY would need to have become a significant player as part of a broader digital advertising frame of reference in the UK. 5. GIPHY would need to have

[252] Merger Assessment Guidelines (CMA129), paragraphs 4.12(a) and 5.15.
[253] Merger Assessment Guidelines (CMA129), paragraph 5.20.

succeeded in monetising messaging with advertising where all others had failed.

7.20 The CMA disagrees with this framework for the assessment of the impact of the Merger on potential competition, as it purports to introduce levels of certainty and foresight, in relation to sequential 'steps', which are neither necessary nor appropriate when determining whether the Merger may be expected to give rise to an SLC as a result of the lessening of potential competition. This is particularly the case with respect to the impact of the Merger on dynamic competition, which considers the ongoing competitive impact of a prospective entrant both before and after its entry.[254]

7.21 Whilst each of the elements identified by the Parties, and the likelihood of each element occurring, may be relevant to this assessment, they are not sequential links in a chain that must each be demonstrated for an SLC on the basis of horizontal unilateral effects due to a loss of dynamic competition. In particular:

(a) These 'steps' are not factually or economically independent of one another. For example, GIPHY becoming a significant player ('step' 4) depends on the attractiveness of GIPHY's Paid Alignment model to advertisers (and hence their willingness to commit revenues to it), which in turn depends on its effectiveness as an advertising tool ('step' 5). From the perspective of API partners, the attractiveness of a revenue sharing agreement ('step' 2) depends, at least in part, on the revenues they can expect to realise from such an agreement, which again depends on advertisers committing revenues to Paid Alignment. With sufficient advertising revenues, GIPHY would have become cash-positive and would not have needed further funding for its ongoing operations ('step' 1).[255]

(b) The 'steps' are not binary in terms of outcome (ie success or failure). For example, it may also not have been necessary for GIPHY to enter into revenue share agreements with all of its significant API partners (including Facebook) for successful expansion ('step' 2). In addition, successful expansion through revenue share agreements with a subset of its API partners (including those with which it already had such agreements) may

[254] As noted by our Merger Assessment Guidelines (CMA129) (see paragraphs 5.4 and 5.20), the uncertainty around the scale and impact of entry and expansion does not, by itself, reduce the likelihood that a merger could give rise to competition concerns, and the presence of some uncertainty therefore does not in itself preclude the CMA from finding competition concerns on the basis of all the available evidence where the CMA is satisfied that the relevant standard of proof is met.
[255] In addition, such an outcome would likely have made it easier for GIPHY to secure further funding as required.

have increased the attractiveness of such agreements from the perspective of other API partners.

Importance to dynamic competition of GIPHY's efforts to innovate and expand

7.22 In Chapter 6, Counterfactual, we provisionally conclude that, under our counterfactual, the prevailing conditions of competition would have seen GIPHY continuing to supply GIFs, innovate, develop its products and services, generate revenue and explore various monetisation options with partners and investors (including through its Paid Alignment and revenue sharing offering).

7.23 In some sectors, including fast-moving technology markets, an important aspect of how firms compete involves efforts or investments aimed at protecting or expanding their profits in the future. This includes efforts that may give firms the ability to compete in entirely new areas (ie to enter), or the ability to compete more effectively in areas where they are already active (ie to expand). Where investment and innovation efforts represent an important part of the competitive process, this can lead to dynamic competitive interactions between existing competitors and potential entrants that are making efforts to enter or expand.[256]

7.24 In this section we assess the extent to which GIPHY was an innovative company and source of dynamic competition, and the importance of GIPHY's efforts to innovate and develop its products in the context of Facebook's significant market power in display advertising.

Importance of GIPHY as an innovator

7.25 Since its launch in 2013, GIPHY has been a pioneer in establishing GIFs as a popular feature of messaging apps. As noted in paragraph 7.2, it has become a leading provider in these services, which are a tool for driving user engagement on social media platforms. GIPHY has developed a powerful GIF search algorithm, assembled a high-calibre creative team, and achieved wide distribution of its API/SDK services across third-party platforms. From the start of 2018, the introduction of GIF stickers, which are particularly popular on Stories features, contributed to [✂].[257]

7.26 Facebook also recognised GIPHY's role as an innovator and saw the creativity of its team as an important driver in its decision to acquire GIPHY. In

[256] Merger Assessment Guidelines (CMA129), paragraphs 5.17 – 5.18.
[257] Chapter 4, Industry Background, Figure 8.

describing Facebook's reasons for acquiring GIPHY, Vishal Shah (VP and Head of Product at Instagram) commented that:[258]

> '…what's easier to find are engineers that can write code. What's hard to find is those who can do that with a creative mindset, who understand how consumers think and can build products that are meaningfully important to consumers, and Giphy had those products. They just weren't some of the core parts of their business. They had this GIF search engine but they also had, creative effects and they had a camera tool. If you look at the Giphy app, they were always experimenting with new ways in which people could share and express themselves in the content. […] over the years that we've been engaging with them they would work with us in hackathons and coming up with creative ideas and new concepts. And it is very, very hard to go and build that culture and to do it in a way that aligns with the way that we think and we build. So this was a product-driven conversation first and foremost. […] But the reason we even went anywhere with this conversation was because I believed in Alex, I believed in his team, and I believed in the culture that they'd built.'

7.27 One of GIPHY's key innovations was a novel form of digital advertising through its 'Paid Alignment' service. GIPHY launched its Paid Alignment service to advertisers in 2017. The service allowed advertisers to ensure the prominence of GIFs which promoted their brands on GIPHY's services. For example, branded GIFs could include product placement within the GIF, celebrity endorsement, and/or the inclusion of a brand logo on the GIF. These GIFs could be 'aligned' with specific search terms, so that when a user searched for that term, the branded GIF would be first or prominent among the search results. Paid Alignment also allowed advertisers to insert their GIFs into GIPHY's 'trending feed' on its O&O sites.[259]

7.28 The Parties described Paid Alignment as follows:

> 'Although all users are able to create and upload GIFs to GIPHY for free, GIPHY generates limited revenues in the U.S. by offering commercial partners (e.g., Pepsi) the ability to promote their GIF content through the trending feed or with popular search terms on a rate card CPM basis. Partners have, for example, sought Paid Alignment to coincide with significant cultural moments that spark conversations. For example, GIPHY has partnered with Pepsi for the Super Bowl for Paid Alignments, as well as Dunkin Donuts for Valentine's Day'.

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[258] Minor edits have been made for clarity.
[259] The GIPHY trending feed shows the latest and most popular GIFs based on service's search algorithms.

7.29 Paid Alignment was initially only available on GIPHY's O&O sites, but in February 2018, GIPHY expanded the service to its API partners. By 2019, GIPHY had also entered into revenue share agreements with [✄], which allowed GIPHY to run Paid Alignment advertising on these partners' inventory in the United States.

7.30 GIPHY's strong creative team was an important element of its Paid Alignment offering. Prior to the launch of Paid Alignment it already had close relationships with 'brand partners' for whom it created GIFs, and its creative team were involved in developing Paid Alignment GIFs:

(a) In an internal Facebook document, Vishal Shah commented '[✄]'.

(b) One advertiser told us that GIPHY had created GIFs for a campaign a number of years ago, and that following the success of that campaign and noting that GIPHY had partnerships with similar brands [✄], the advertiser began to expand the relationship with GIPHY. The advertiser told us it had committed spending to GIPHY in return, among other things, for access to GIPHY's content studio. It noted that GIPHY was the leader in this space in terms of content and relationships and also had the ability to produce GIFs quickly and in a cost-effective way, versus an ad agency producing them.

7.31 While Paid Alignment related to sponsored GIFs, GIPHY also internally considered extending the model to include [✄]. An email from GIPHY's CEO, Alex Chung, to the COO and VP of Revenue Strategy in March 2020 noted '[✄]'. GIPHY's proposed [✄] is discussed in further detail in Appendix F: GIPHY's Paid Alignment Model.

7.32 GIPHY's Paid Alignment service continued to operate until the Merger was finalised in May 2020. Facebook required the termination of all of GIPHY's existing Paid Alignment arrangements and the cessation of all of GIPHY's revenue-generating activities.[260] However, as discussed below at paragraph 7.118 to 7.132, Facebook saw the monetisation of GIFs as a potentially important upside of acquiring GIPHY.

Importance of GIPHY's efforts in the context of Facebook's significant market power

7.33 We provisionally find in Chapter 5, Market Definition and Market Power, that Facebook has significant market power in display advertising in the UK. It is protected by such strong incumbency advantages – including network effects, economies of scale and unmatchable access to user data – that actual and

[260] See Chapter 2, The Parties, the Merger and Rationale for further discussion.

potential rivals can no longer compete on equal terms (see further paragraphs 7.153 to 7.155). Weak competition in digital advertising increases the prices of goods and services across the economy.[261]

7.34 GIPHY's efforts to build and monetise its services were particularly relevant in this context, because:

(a) Investments involved in entering and expanding in the UK display advertising market represent an important part of the competitive process, in particular where Facebook already faces limited actual and potential competitive pressure (as discussed in Chapter 5, Market Definition and Market Power).

(b) Digital platforms operate within an industry where the process of entering and expanding into markets takes place over a long period of time and involves significant costs and risks.[262] Commercial success in digital markets can typically involve building an audience and then developing a way to monetise that audience (for example, through advertising).

(c) Following the Merger, we do not consider that any other potential competitor is playing, or is likely to play, a similar role in the dynamic competitive process as GIPHY would have done absent the Merger. GIPHY had succeeded in building a global and UK audience for its GIFs. No other supplier had reached a material market share in the supply of GIFs apart from Tenor. GIPHY (unlike Tenor) had made substantial progress towards establishing its monetisation model. Any business seeking to enter the market for searchable GIF libraries faces significant barriers to entry in both GIF provision and ability to monetise through display advertising (see Chapter 9, Countervailing Factors).

7.35 In addition, GIPHY's Paid Alignment model was a multi-sided platform serving both advertisers and third-party platforms. As such it was subject to network effects; for example, greater advertiser spend on GIPHY Paid Alignment would make it more attractive to third party platforms, and as more platforms signed up for the service it would have more inventory to sell to advertisers. This had the potential to increase the threat to Facebook, including by strengthening the competitive position of other display advertising providers.

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[261] Market Study, page 5.
[262] Merger Assessment Guidelines (CMA129), paragraph 5.4.

Our provisional view

7.36 GIPHY had achieved significant success in developing its GIF services and was widely recognised as an innovator, including by Facebook. GIPHY had started competing for advertising spend through its innovative Paid Alignment service, and it was continuing to innovate to develop this product, for example by seeking to offer sponsored GIF stickers, and to offer Paid Alignment on GIF stickers. As such, GIPHY was making important contributions to dynamic competition.

7.37 We consider that GIPHY's efforts prior to the Merger increased the likelihood of new innovations or products being made available in future (whether by GIPHY or by stimulating wider innovation by others responding to this competitive pressure).[263] This would give customers the chance to benefit from a wider variety of products and increased competition. We consider recent developments by other participants in the display advertising market in paragraph 7.140 below.

7.38 Third party platforms with revenue share agreements with GIPHY would also have had an incentive to collaborate with GIPHY to further develop GIF monetisation, so that they could increase their advertising revenues (in competition with Facebook).

7.39 GIPHY's efforts were particularly important in the context of Facebook's significant market power in display advertising.

7.40 In the following sections, we consider other aspects of GIPHY's role as a potential competitor (including GIPHY's likelihood of expansion and the closeness of competition between Facebook and GIPHY), and the effects of the Merger on dynamic competition in the display advertising market.

Likelihood of expansion and UK entry by GIPHY

7.41 As noted above, GIPHY was in the early stage of developing its monetisation model and had not started generating advertising revenues in the UK at the time of the Merger (in the context of which its advertising activities were terminated by Facebook). The likelihood of successful entry by GIPHY is relevant to the constraint exerted by it on other firms,[264] although as noted in paragraph 7.14, elimination of a dynamic competitor that is making efforts towards entry or expansion may lead to an SLC even where entry by that entrant is unlikely and may ultimately be unsuccessful. We assess in this

[263] Merger Assessment Guidelines (CMA129), paragraph 5.20.
[264] Merger Assessment Guidelines (CMA129), paragraph 5.23.

section the strengths and weaknesses of GIPHY's monetisation model and the likelihood of GIPHY starting to offer its Paid Alignment services in the UK.

Strengths and weaknesses of GIPHY's Paid Alignment model

7.42 The Parties submitted that GIPHY's Paid Alignment model faced unresolved, existential impediments. In particular, the Parties submitted that:

(a) Because GIPHY lacked a meaningful user base of its own, it could not provide advertisers with the ability to monitor and track return on investment closely, offer 'direct response' ads (eg where the user clicks the ad in order to buy a product), or control third-party app environments where the ad would be seen.

(b) Advertiser demand for Paid Alignment was unproven, and to date had been limited to experimental ad budgets.

(c) GIPHY was dependent on entering into revenue-sharing agreements with larger API partners, and had struggled to sign such agreements.

(d) GIPHY's O&O traffic has stagnated, and even on its O&O products, GIPHY did not collect data about its users which would allow targeting of advertisements.

(e) GIPHY's sales team was inexperienced, [✂].

(f) Brand partners (ie brands who worked with GIPHY to promote their brands via GIFs, including Paid Alignment customers) [✂], and there was no realistic prospect that GIPHY could have expanded its Paid Alignments business into other markets or geographies outside of the US.

7.43 For the reasons set out below, we consider that while GIPHY's model was still developing, and faced challenges and uncertainty, it was attracting interest from large international advertisers and continued to have the support of its investors.

7.44 One of the greatest challenges facing innovative, digital companies is building a sizeable user base for its products and services, which can be monetised subsequently, often through advertising. GIPHY had already built a very large user base by the time of the acquisition by Facebook and anticipated continued strong growth in users and search volumes. The potential future growth of Paid Alignment depends both on how effectively users can be monetised, and also on the future growth of GIF traffic. GIPHY's monthly global searches rose from [✂] at the start of 2018 to [✂][265] as of Q2 2020).[266] In September 2019, GIPHY's forecasts estimated that its 'Global potential inventory (impressions)' would grow from 253 billion in 2018 to 2.35 trillion in 2023 – a ninefold increase.

7.45 In the following, we consider:

(a) Demand for GIPHY's advertising services:

(i) GIPHY's ability to monitor and target advertising;

(ii) Advantages of GIPHY's model from an advertiser perspective;

(iii) Evidence of advertiser demand for GIPHY's services;

(b) Scope for distribution of GIPHY's advertising services:

(i) Revenue share agreements;

(ii) O&O distribution;

(c) GIPHY's potential scale;

(d) Development of GIPHY's leadership/revenue team; and

(e) Investor confidence in GIPHY's monetisation activities.

7.46 Further assessment of these points is also included in Appendix F: GIPHY's Paid Alignment Model.

Demand for GIPHY's advertising services

GIPHY's ability to monitor and target advertising

7.47 The Parties submitted that GIPHY's monetisation model was flawed, because advertisers on digital media wanted to monitor return on investment closely. They said that GIPHY was unable to meet this requirement because:

(a) Paid Alignments did not offer 'direct response' ads, eg where the viewer clicks the ad in order to buy a product.

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[265] See Chapter 4, Industry Background, Figure 7. Its searches fell to around [✂] by March 2021, which may in part have been a result of its acquisition by Facebook, which led to switching away by some API partners.
[266] We understand an impression to be a GIF that is visible to the user – which depends, *inter alia*, on its prominence in the search results, and how far the user scrolls down those results.

(b) Its dependence on third party API distribution meant that GIPHY was unable to supply ‘basic audience data’ or control the user experience such as including the ‘necessary advertising disclosures’.

(c) GIPHY could not collect much data on its O&O users, because most were not registered or logged in.

7.48 In the following, we consider whether GIPHY faced disadvantages in terms of its ability to monitor and target advertising, and offer direct response ads.

7.49 The Market Study noted that KPIs for display advertising tend to be focused on the reach achieved for a specific audience group.[267] This means that the use of data to identify target audiences is key for display advertising. Facebook’s unique data advantages are one fundamental reason for its significant market power in display advertising.

7.50 GIPHY’s business model relied on third party platforms for most of its traffic. When a user searches GIPHY’s library through an API/SDK partner platform, GIPHY is able to identify that the search has occurred, the search term, the IP address (which may indicate the country), and the platform.[268] However, it is typically unable to identify the individual user.

7.51 Given these limitations, GIPHY does not have the ability to target and monitor advertising with the same specificity as Facebook. As a result, it was not in a position to directly replicate the features of Facebook that are the basis of Facebook’s significant market power in display advertising. However, we note that GIPHY had some ability to provide metrics to advertisers, and was taking steps to improve its monitoring of advertising on third party platforms.

7.52 GIPHY was able to mitigate its limited ability to monitor campaigns directly through the use of third-party services. For example, GIPHY carried out a number of ad effectiveness studies in 2017-2019. Figure 17 is an output from some of these studies, from which GIPHY was able to demonstrate a positive impact of its ads on brand metrics. A GIPHY internal document also reports that it has ‘[✄].’ We understand that [✄] is a provider of advertising metrics.

Figure 17: GIPHY advertising effectiveness study results

[✄]

[267] Market Study, paragraph 5.120.
[268] The Parties state that: ‘From GIPHY’s perspective, the most meaningful pieces of data are: (1) the API key that is part of every API call, which uniquely identifies the API partner (eg, “Snap”); (2) the search string (“duck”); and (3) the user’s IP address (eg, “34.123.243.107”).’ As noted in Chapter 8, Vertical Effects, some API/SDK partners implement proxying, which means that GIPHY would see the request as coming from the server of the partner rather than the end-user.

Source: [✂]

7.53 Advertisers who had used GIPHY told us that they had been able to monitor at least some aspects of the effectiveness of their advertising with GIPHY. For example, one advertiser told us [✂]. An advertiser told us it was able to determine the number of impressions and how many of its ads were delivered based on the search terms selected. It was satisfied with this as a metric for measuring the effectiveness of its advertising. Another advertiser confirmed that its partnership with GIPHY was cost-structured for delivery on GIPHY's own platforms because there was no way to measure its impact on third party platforms. It noted it was aware there would be some carry-through to third party platforms, but this was more in the nature of a 'nice to have'. The advertiser noted that the main metric was an agreed upon number of impressions/CPM, although engagement with GIFs was also measured.

7.54 As discussed in Appendix F: GIPHY's Paid Alignment Model, paragraphs 6 to 8, a May 2019 GIPHY strategy document discussed [✂],while a March 2020 document discussed deploying GIPHY's [✂] on third party platforms. In our view, these documents illustrate that GIPHY was taking steps to address its shortcomings in ad targeting and monitoring in the time period leading up to the Merger. In addition, we note that API/SDK partners with whom GIPHY had a revenue share agreement would have been incentivised to maximise their revenues under the agreement, which may have involved working with GIPHY to improve the targeting of its ads on their platforms.

7.55 As described in Appendix F: GIPHY's Paid Alignment Model, 'Monitoring and Tracking' section, GIPHY's investors recognised early on that building a more sophisticated ad tracking system was necessary for success. GIPHY aimed to reach agreements with revenue share and other partners to deploy [✂], to incentivise app publishers towards its SDK, and to make Advertising IDs a [✂] from SDK developers.[269] GIPHY could combine this data with purchased third-party data to provide rich demographic and interest data to provide a more attractive advertising product targeted at certain groups.

7.56 The Parties submitted that GIPHY's Paid Alignment model did not include click-through functionality.[270] This type of functionality is important for campaigns which have a 'conversion' objective (ie an objective in which a customer completes a desired goal, for example making a purchase). However, as noted in Chapter 5, Market Definition and Market Power, the views of advertisers and GIPHY's internal documents suggest that Paid

[269] Appendix F: GIPHY's Paid Alignment Model, 'Monitoring and tracking' section.
[270] 'Paid Alignments did not offer so-called "direct response" ads, whereby a user performs a specific action in response to being shown the ad with the advertiser able to track the tangible economic value of that action (eg, clicks the ad in order to buy a product)'.

Alignment primarily served the objective of promoting brand awareness. The Market Study found that in 2019, awareness campaigns (designed to generate interest in a product or service among consumers to increase the likelihood of a sale) on Facebook accounted for more than 15% of advertising spend,[271] suggesting a significant pool of advertiser demand which GIPHY could in principle have addressed without click-through functionality. In addition, we understand that GIPHY was exploring the development of [✂] to allow for user interaction with ads.

7.57 As noted above at paragraph 7.47, the Parties also submitted that GIPHY was unable to control the user experience or include advertising disclosures on third-party platforms. We have not seen evidence that this is a material obstacle to the success of Paid Alignment services. We note that social media platforms have a strong incentive to provide a high-quality user experience in order to increase user engagement.

Advantages of GIPHY's model from an advertiser perspective

7.58 GIPHY's Paid Alignment model has advantages over other types of advertising, which advertisers could potentially see as compensating for limitations in targeting and monitoring. While display advertising typically appears alongside (or in the way of) content of interest to the user, a Paid Alignment GIF in a message has been selected by the sender to express an idea or emotion to its recipient(s). GIPHY emphasises this difference in an internal document as follows:

> 'GIPHY Ads Work for Marketers…Giphy's ad product is intent-based, non-interruptive, highly visual, personal, and impactful. Brands extend their TV commercials and social videos, or create bespoke "made for Giphy" creatives. Brands use Giphy Ads to become part of the conversation and culturally relevant as celebrities and media partners do on Giphy.
>
> With Giphy, brands literally become language. Giphy Ads generate higher engagement and share rates than any major social ad platform. Because users are sending ads to their friends in conversation, Giphy Ads generate significant brand metrics lift.'

[271] Market Study Appendix N, Figure N9 (page 11). The Market Study also noted (paragraph 5.23) evidence that display advertising, particularly on Facebook, was increasingly being used for conversions.

7.59 Similarly, an advertiser commented that 'Advertising through private messaging comes with an air of credibility because you trust your friends and family.'

7.60 We also heard that an advantage of advertising using GIFs was the fact that they operate on a loop, meaning that one GIF might be seen by users a high number of times. One of GIPHY's investors noted that 'GIFs have an extraordinary re-review rate, way in excess of film and text messages. Users watch GIFs a lot, watching a loop of a GIF 30 times would be totally normal'.

7.61 As we discuss in paragraph 7.134, [✂].

7.62 As noted above and discussed in Appendix F: GIPHY's Paid Alignment Model, GIPHY was also considering plans to offer advertising within [✂]. We consider that advertising within [✂] could potentially have similar advantages to those described above for GIFs.[272]

Evidence of advertiser demand for GIPHY's services

7.63 The Parties submitted that:

> 'In the year immediately prior to the Transaction, four years into its efforts to develop a successful business model, GIPHY had generated [✂] in advertising revenues, all in the US, with no revenues in the UK. [✂]'.

7.64 As the Parties note, [✂]. However, its sales had increased from the previous year, and as set out in Appendix F: GIPHY's Paid Alignment Model, paragraphs 18 and 19, [✂]. By the first week of February 2020, GIPHY had already booked [✂] of its target revenues for the first quarter, and [✂] of its target revenues for the year (Appendix E: GIPHY's Timeline). In addition, in updates to the Board, GIPHY continued to expect, as late as 13 March 2020, that its revenues would grow very strongly over the next five years.

7.65 Previously, in [✂] had noted a [✂] degree of advertiser satisfaction with the outcome of their campaigns with GIPHY, with a [✂] level of [✂] and [✂] on subsequent campaigns.

7.66 GIPHY's larger advertising customers included major brands. Their campaigns with GIPHY to date had been a minor feature of their advertising strategy and represented a very small share of their respective budgets.

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[272] This would depend in part on the nature of the [✂] – for example, they may be more effective as non-intrusive advertising if they were customised to be an intrinsic part of the communication, or less so if they were included as generic advertising (eg a company logo with no specific relevance to the communication).

However, most advertisers we spoke to[273] were positive about their experience working with GIPHY and some of them said they would have been willing to continue exploring this method of advertising. For example:

(a) One advertiser told us that GIPHY's service had been good for it, and that while GIPHY did not have user data for precise targeting, it had a large volume of users of its services. It also noted that GIF usage was changing how (particularly younger) consumers were communicating with one another, and it wanted to be part of that trend. It considered that GIPHY might have had potential to 'unlock' the messaging space.

(b) One advertiser told us that it considered GIPHY to be a 'unique opportunity to reach consumers organically' and was primarily used for brand awareness and to reach a broad audience. It also told us that had GIPHY's Paid Alignment services remained available, it would have continued to use GIPHY, alongside a number of other vendors.

(c) One advertiser told us that it would continue to engage with GIFs as one of its advertising mediums, although GIFs were not a big part of its advertising plans.

(d) One advertiser told us [✂].

7.67 The number of brands served by GIPHY Paid Alignment grew from [✂].[274] Its biggest customers for the year to March 2020 were [✂].

7.68 In early to mid-2020, advertisers continued to express enthusiasm for GIPHY's Paid Alignment service, and disappointment when it was withdrawn. For example:

(a) [✂].

(b) [✂].

(c) [✂].

(d) [✂].

7.69 In addition, as we discuss next, a number of advertisers expressed interest in advertising on GIPHY's international inventory. In our view, while GIPHY's initial revenues from Paid Alignment were below expectations, advertisers

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[273] Paragraph 22, CMA Summary of third party calls. See Appendix C: Published Third Party Summary.
[274] CMA analysis of [✂]. The number of brands in Q1 2020 was lower ([✂]) than in the previous quarter, possibly due to seasonality and Coronavirus (COVID-19) effects, but was higher than Q1 of the previous year ([✂]).

generally appeared to have had a positive experience of running campaigns on GIPHY, the number of advertisers using it had increased, and there was good evidence in early 2020 that advertiser demand could have grown strongly over the year.

Scope for distribution of GIPHY's advertising services

Revenue share agreements

7.70 The Parties submitted that:

> 'GIPHY assumed that its Tier 1 partners (*i.e.,* [✂]) would sign [✂] revenue share agreements by 2020…[✂] was not interested in entering into any form of revenue share agreement with GIPHY (let alone a revenue share agreement that gave GIPHY 50% of the revenues earned), and there is also no evidence that [✂] had any intention of entering into a revenue share agreement, regardless of terms. Together, [✂] accounted for the large majority of GIPHY's third-party user inventory, and therefore GIPHY's boldest revenue forecasts would (at the very least) need to be downgraded by a factor of over 50%. [But even if] [✂] would have entered into revenue share agreements with GIPHY, a high percentage of GIPHY's paid alignment revenues would not have been in competition with Facebook since they would have been generated in partnership on Facebook services'.

7.71 The Parties' arguments are premised on Facebook and Snap being of central importance to GIPHY in developing its Paid Alignment service. However:

(a) As illustrated in Chapter 4, Industry Background, Figure 10, [✂].

(b) [✂].

(c) [✂].

7.72 The volume of global monthly searches for video GIFs among GIPHY's major API/SDK partners grew from [✂] in January 2018 to [✂] in January 2019 and [✂] in March 2020.

7.73 We recognise that securing revenue share agreements with [✂] was a challenge for GIPHY. As discussed in Appendix F: GIPHY's Paid Alignment Model, paragraph 26, Facebook [✂].

7.74 Investors recognised the risk in GIPHY's dependence on its distribution partners.[275] However, investors also noted that (i) achieving revenue sharing agreements with major partners such as [✂] would help to demonstrate the viability of the model and could lead to further agreements with big platforms; and (ii) GIPHY was not totally reliant on Facebook platforms and was diversifying its distribution network.

7.75 We note that if GIPHY's Paid Alignment model had grown to be a significant advertising channel, attracting increasing advertising revenues for those platforms which agreed to carry Paid Alignment, this would have made it more costly (in terms of the risk of foregone revenues) for Facebook to block, or seek to impose unattractive conditions on,[276] GIPHY sponsored GIFs on its platforms.[277]

O&O distribution

7.76 As described in Appendix F: GIPHY's Paid Alignment Model, GIPHY had ambitious plans for its O&O platforms. In September 2019 it forecast that these would account for [✂] in advertising revenues by 2023, out of a total [✂].At that time, its estimated revenues from O&O in 2019 were [✂]. However, GIPHY achieved O&O revenues of only [✂] in 2019 (suggesting GIPHY expected a large proportion of its O&O revenues to occur late in the year, and then experienced a [✂]).

7.77 In March 2020, GIPHY produced a substantially revised five-year forecast for O&O revenues, of [✂], rather than [✂]. However, its forecasts continued to be of total gross revenues of [✂] in five years, but with a greater reliance on revenues from third-party platforms.

7.78 As shown in Chapter 4, Industry Background, Figure 12, O&O traffic grew [✂]. However, GIPHY told us that it struggled to attract high-quality, monetisable traffic to its O&O sites and that there is a high degree of 'bounce' (users who are referred through to GIPHY's website/app, but leave very quickly). As noted in Chapter 4, Industry Background, GIPHY's O&O sites have a [✂] DAU-to-MAU[278] ratio, which may be indicative of [✂].

7.79 Some of GIPHY's and Facebook's internal documents note the [✂]. However, this [✂] and the change in projected O&O revenues does not emerge as an

[275] See Appendix F: GIPHY's Paid Alignment Model, paragraph 34, for further discussion.
[276] Eg Facebook taking control of GIPHY's ad inventory.
[277] As to the Parties' argument that a high percentage of GIPHY's Paid Alignment revenues would have been generated in partnership on Facebook services, we note that Facebook could in principle have an incentive both to carry GIPHY Paid Alignment (as this would allow it to win some revenue from other platforms), but also to seek to compete by improving its display advertising offer (possibly including GIF monetisation).
[278] Daily average user to monthly average user.

important theme in GIPHY internal documents, or discussions with investors, over this time.

7.80 Taking the evidence in the round, we consider that the revenue performance of the O&O platform was [✂], and GIPHY clearly faced a particular challenge in monetising these platforms through Paid Alignment. However, the key challenge which GIPHY had identified to making a success of Paid Alignment was that of demonstrating the effectiveness of the model over third-party platforms. We have seen no evidence that the [✂] O&O growth undermined GIPHY's confidence in its overall business model.

GIPHY's potential scale

7.81 The Parties have commented that 'even if GIPHY's boldest (and highly implausible) revenue forecasts were met, GIPHY's share of "display advertising" in the UK would be [✂], using the CMA's own numbers. This cannot be considered material under any definition'.

7.82 The Parties further submitted that 'There are several precedent cases where the CMA has cleared a transaction, including at Phase 1, as a consequence of a small actual increment on a significant share…'. The Parties cited four previous CMA decisions and three European Commission decisions in support of their submission.

7.83 As our Merger Assessment Guidelines note,[279] the acquisition of a potential competitor by a firm with market power may be concerning even if that potential entrant is expected to be small. As we have discussed, our concerns are informed by Facebook's significant market power in display advertising. This makes it very difficult for platforms offering innovative new services to enter and compete.[280] In this context, we consider that the loss of GIPHY is particularly concerning, given its importance to the dynamic competitive process (see above paragraphs 7.22 to 7.40).

7.84 In addition, we note that:

(a) The Parties' calculations appear to be incorrect on their own terms – in particular, the GIPHY forecast on which they are based relates only to US revenues, so it is not correct to allocate a proportion of these revenues to the UK based on share of search. In addition, the Parties take the last

[279] Merger Assessment Guidelines (CMA129), paragraph 5.15.
[280] Market Study, page 211.

forecast in a rapidly growing trend without making any allowance for the possibility of future growth.

(b) Our Merger Assessment Guidelines state that the CMA will 'consider each merger with due regard to the particular circumstances of the case',[281] and cite the Competition Appeal Tribunal[282] as stating that 'merger decisions of the CMA do not constitute precedents and it is axiomatic that each case turns on its own facts and that the characteristics of one market may be very different from those of another. Consistency is achieved by the CMA applying its statutory guidance…'.[283] In addition, we consider that the Parties' account of the past cases they cite is inaccurate – for example, one was cleared on *de minimis* grounds rather than because of a small increment, while in others the small increment was considered alongside other evidence in reaching a clearance decision.[284]

7.85 For the reasons given above, we do not consider that the Parties' submissions on GIPHY's potential scale reflect its importance to the dynamic competitive process. As we have discussed above, GIPHY was a leading provider of an important complementary service to social media platforms, and had a large volume of traffic which it was seeking to monetise through Paid Alignment. In this context, we consider that its efforts to reach scale as an advertiser were important to dynamic competition.

Development of GIPHY's leadership/revenue team

7.86 The Parties have told us that GIPHY faced challenges in staffing its revenue team and key leadership roles, [✂].[285] In a third party call, one of GIPHY's main investors told the CMA that, [✂].

7.87 In respect of the two successive VPs of Revenue who departed the company, GIPHY has submitted that Alex Magnin (VP of Revenue since June 2017, whose role was to lead GIPHY's revenue strategy) departed in October 2019 to '[✂]'. His replacement, Alexis Berger, was in post until January 2020, at

281 Merger Assessment Guidelines (CMA129), Paragraph 1.12.
282 *Ecolab Inc. v Competition and Markets Authority* [2020] CAT 12, paragraph 93.
283 Merger Assessment Guidelines (CMA129), Footnote 13.
284 In *Tattersalls/Brightwells*, the CMA stated (paragraph 14) that it could not rule out that the merger would result in the realistic prospect of an SLC as a result of unilateral horizontal effects (the merger was cleared on *de minimus* grounds, particularly in view of the market size). It is therefore incorrect for the Parties to state that this case was cleared as a consequence of a small increment in market share. Tattersalls - Brightwells decision (publishing.service.gov.uk). In clearing the *Roper/CliniSys* merger, the CMA noted the small increase in market share of the merged entity. However, the decision was also informed by evidence of limited competition between the parties and a lack of third party concerns. Similarly, when clearing the *Henry Schein/Plandent* merger, while the CMA stated that there would be a minor increment as a result of the merger, it also considered the limited competitive constraints between the Parties.
285 At the GIPHY Main Party Hearing, Alex Chung highlighted the departures of the following key staff during 2019 and early 2020: [✂].

which time she decided to leave the company as (according to GIPHY's submission) '[✂]'. GIPHY was not able to provide further detail or documentary evidence in relation to these departures.[286]

7.88 Further evidence concerning GIPHY's hiring developments is set out in Appendix 7: GIPHY's Paid Alignment model. We consider this evidence shows that, over the period 2019 to 2020, GIPHY faced challenges in hiring for its revenue team; in particular, it was still searching for a Chief Revenue Officer as of March 2020 (a search which had commenced prior to January 2019). However, GIPHY reported ongoing progress in adding key sales staff, including in a number of senior roles. As of December 2019, it described its revenue team as '[✂]', and (pre-Merger) had been [✂]. As of March 2020, GIPHY was anticipating hiring for the Chief Revenue Officer role ([✂]). [✂], and in neither case is there evidence that the employees left because they foresaw a fundamental impediment to GIPHY's success.

7.89 In our view, appointing the right sales team and leadership was one of the challenges GIPHY faced. However, the evidence indicates that GIPHY was making progress in building its sales team.

Investor confidence in GIPHY's monetisation activities

7.90 In the following section we consider evidence as to whether GIPHY's investors were confident in GIPHY's monetisation plans prior to the Merger. As we set out below, the Parties have submitted that the actions of GIPHY's investors are evidence that its monetisation plan was not likely to succeed in monetising at scale. Further discussion of investors' views on GIPHY's monetisation plans is contained in Chapter 6, Counterfactual and Appendix E: GIPHY's Timeline.

The Parties' submissions

7.91 The Parties submitted that: '[I]t is clear from the evidence given at the Hearing that the scenarios presented were the best possible potential scenarios that could potentially be put to investors, rather than central forecasts. Moreover, the view expressed in these documents that GIPHY would be successful is in direct contradiction with actual evidence from the market. [✂] clearly demonstrates that the market did not believe that there was a realistic

[286] GIPHY additionally submitted that its Chief Technology Officer departed the company in February 2020, and its Chief Operations Officer and VP Business and Corporate Development both departed on 15 May 2020 (the date of the acquisition). GIPHY submitted that the latter two employees' departures were not related to the acquisition and both had previously decided to leave, although it did not provide documentary or other evidence to substantiate this point.

prospect of GIPHY successfully growing its advertising business in the manner suggested by the CMA – let alone it being "more likely than not"'.

7.92 The Parties have not stated which evidence, scenarios or documents they are referencing. In the GIPHY Main Party Hearing, in the context of a question about a September 2019 slide pack in which GIPHY forecast revenues of [✂] by 2023, Alex Chung commented 'So, that was our high end projection. So, again, within the context of pitching to investors and salesmanship … this was our internal projections for the top, most possible in all possible worlds, the best case scenario that could possibly happen if every -- if all the stars aligned.'[287]

7.93 The Parties submitted a paper setting out their view that GIPHY had been unable to convince investors that it could effectively scale its monetisation model. This was because, according to the Parties, this model was unproven, and because GIPHY faced challenges including its reliance on third-party services and an inability to demonstrate value to advertisers. The Parties submitted *inter alia* that:

(a) GIPHY's 2019 revenue results 'were disappointing and called into question GIPHY's ability to scale its monetisation'.

(b) 'After three years of seeking to overcome structural obstacles to stand-alone growth, GIPHY's management resolved to pursue an exit through sale…GIPHY had not proven a business model capable of supporting its activities on a standalone basis'.

7.94 The Parties also submitted that:

> 'GIPHY in early 2019 achieved a [✂] in a Series D1 round; the amount raised was smaller than GIPHY's Series C round, in early 2016, and [✂].'
>
> [✂] . Consequently, based on the record before the CMA, it is not rational to conclude that GIPHY could have raised funds sufficient to

[287] We understand the Parties' reference to 'evidence given at the Hearing' to be to this and similar statements by GIPHY made during the Main Party Hearing. GIPHY did not present evidence in support of Mr Chung's comments about the nature of this forecast.

enable it to continue meaningful operations, much less thrive and transform itself into a meaningful advertising player.'

COVID-19 exacerbated structural weaknesses in the GIPHY business; structural weaknesses that would ultimately have obstructed GIPHY's independent growth regardless of COVID-19.

GIPHY was sold for $315 million. No company with serious advertising prospects, let alone a company that had finally solved the significant challenge of how to monetize direct messaging, would have been sold so cheaply. The purchase price shows that all of GIPHY's existing and potential investors had concluded -- independently -- that GIPHY was not likely to become a meaningful advertising player.

Evidence

7.95 GIPHY ran pilot tests of its Paid Alignment service in 2017. In 2018, it commenced offering Paid Alignment on its O&O sites, earning [✂] in revenue. In December 2018, GIPHY projected that it would achieve [✂] in 2019, increasing to [✂] in 2022. In 2019, its revenues were [✂]. In September 2019, GIPHY presented revised revenue projections. While it continued to project rapid growth, it now projected that it would have revenues of [✂] by 2023, rather than [✂] by 2022.

7.96 We note that while these revenue projections were highly ambitious, GIPHY's plans were based on an aspiration that GIPHY would be able to take advantage of its very large (albeit largely indirect) user base and traffic in building its revenues.

7.97 As set out in Appendix E: GIPHY's Timeline:

(a) Internal documents from investors and GIPHY indicate that [✂]. The Series D1 round appears to have attracted the required investment from existing investors, while also raising almost USD 20 million from new investors. It was successful in the sense of providing GIPHY with the capital it needed to develop its business up to 2020, at which point it hoped to be cash positive. [✂] said that obtaining funds from [✂] investors for the [✂] round had been [✂]. However, [✂] told us that the round attracted interest from investors who could potentially have funded the full round, but that the CEO and existing investors were reluctant to give a board seat to such an investor.

(b) Towards the end of 2019, GIPHY's monetisation business had grown more slowly than expected but was getting closer to its target growth rate. While GIPHY had begun contemplating an M&A route, it was also looking

at raising funds to continue developing monetisation independently (and instructed JP Morgan accordingly).[288] It also considered that its monetisation was a potential aspect of value for an acquirer.[289] At this stage, Alex Chung appeared confident in the longer-term prospects of the business model, and was focused on communicating a credible growth plan to current and prospective investors, and not on cutting costs.[290]

(c) GIPHY’s monetisation model was developing positively in early 2020. In addition, in updates to the Board, GIPHY continued to forecast very strong growth over the next five years.

(d) The view from investors was that GIPHY had made a strong start to 2020, capitalising on the efforts it had made to monetise in 2019. At the start of the year, GIPHY was still actively considering the two options: (i) M&A, and (ii) raising sufficient funding (potentially in the form of platform fees from larger social media API/SDK partners) in order to continue developing its monetisation business independently.[291]

(e) Coronavirus (COVID-19) had a sudden and severe impact on GIPHY's short-term commercial prospects.[292] However, even when it received a proposal for an acquisition by Facebook, GIPHY’s board continued to explore the option of a fund raise in order to allow GIPHY to continue as an independent business, both from existing investors and from a commercial deal with Facebook, [✂].[293]

(f) GIPHY's investors appeared to see the acquisition - and the final price - as a positive outcome.[294] However, this was in the context of the challenges presented by Coronavirus (COVID-19).

Our assessment

7.98 As regards the Parties’ submission that the USD 315 million purchase price shows that investors had concluded that GIPHY was not likely to become a meaningful advertising player, we note that:

(a) At the point of the Merger, GIPHY had not yet demonstrated that its Paid Alignment model would be successful at scale. From an investor

[288] As described in Appendix E: GIPHY’s Timeline one of the reasons it chose not to use Allen & Co for this purpose was GIPHY’s internal view that Allen & Co favoured an M&A approach rather than keeping both options open.
[289] Appendix E: GIPHY’s Timeline, paragraph 25.
[290] Appendix E: GIPHY’s Timeline, paragraph 29.
[291] Appendix E: GIPHY’s Timeline, paragraphs 32-43.
[292] Appendix E: GIPHY’s Timeline, paragraphs 47-49.
[293] Appendix E: GIPHY’s Timeline, paragraphs 52-56; 60.
[294] Appendix E: GIPHY’s Timeline, paragraphs 64-66.

perspective, the valuation of the company would have reflected both expected future profits and the risk profile of the company.

(b) The circumstances created by the Coronavirus (COVID-19) crisis increased the business risk associated with GIPHY, as it needed to secure additional funding during 2021 and advertisers were cancelling or postponing ad spend.

(c) In addition, the Coronavirus (COVID-19) crisis had an impact on the investment climate, making investors more risk-averse in the short term.

(d) In spite of this, the existing GIPHY investors, after receiving a substantial offer from Facebook, continued to actively consider a further internal funding round to extend GIPHY's cash runway.

(e) We have seen no internal documentation indicating that any investor had concluded that GIPHY would not become a meaningful advertising player.

7.99 As outlined in Chapter 6, Counterfactual, we consider that there were routes for GIPHY to obtain further funding from both its existing and potential new investors. Accordingly, our provisional view is that, absent the Merger, GIPHY would have continued to innovate and develop its products and services, generate revenue and explore various monetisation options with partners and investors for the foreseeable future.

7.100 As a new entrant into display advertising, with an innovative advertising model, GIPHY unsurprisingly faced risks and challenges.[295] However, we consider that, prior to the Merger, GIPHY had the support of its investors to continue to develop and expand its Paid Alignment business.

Our provisional view on the strengths and weaknesses of GIPHY's monetisation model

7.101 Based on the evidence set out above, our provisional view is that:

(a) GIPHY faced some limitations in its ability to offer ad functionality including monitoring and tracking. However, it was taking steps to develop its capabilities in this area, both via third-party services and through closer integration with platforms.

(b) GIPHY's advertising model had important advantages over existing display advertising formats.

[295] Coronavirus (COVID-19) was a further source of business uncertainty at the time of the acquisition.

(c) Advertisers appeared to recognise these advantages, based on the evidence of repeat sales, growing demand for Paid Alignment, and positive comments about the service in internal documents and in our discussions with advertisers, and advertisers' responses to the termination of Paid Alignment.

(d) Securing revenue share agreements with [✄] was a challenge for GIPHY. However, it had secured agreements with Samsung, Kika and smaller social media platforms, and GIPHY's investors considered that it was in a position to demonstrate the viability of its model on third-party platforms.

(e) While revenue growth on GIPHY's O&O platforms was [✄], we have seen no evidence that this undermined GIPHY's confidence in its overall business model.

(f) GIPHY also faced a challenge in appointing the right sales team and leadership. However, GIPHY was making progress in building its sales team in early 2020.

(g) Prior to the Merger, GIPHY had the support of its investors to continue to develop and expand its Paid Alignment business.

7.102 We also consider that evidence from Facebook relating to the acquisition of GIPHY, and its subsequent testing of a monetisation model with some similarities to GIPHY's Paid Alignment, show that Facebook recognised the potential to monetise GIFs (see discussion below at paragraphs 7.122 to 7.139).

7.103 GIPHY was seeking to establish itself and expand in the display advertising market, which has significant entry barriers, on the basis of an innovative business model (see above paragraphs 7.22 to 7.40). It faced a number of challenges to demonstrating the effectiveness of its model, both to advertisers and the third-party platforms on which it relied, and there was necessarily uncertainty about how it would develop in future. However, GIPHY had already been successful in establishing itself as the leading supplier of GIFs with a large user-base, and had made substantial progress in improving and expanding its model to monetise its user-base, and it had the support of its key investors for its Paid Alignment monetisation activities. We consider that GIPHY's success to date, and further efforts, to monetise GIFs materially increased the likelihood of new innovations or products being made available in display advertising[296] (whether by GIPHY or by stimulating wider innovation by other existing providers of digital advertising, such as Facebook,

[296] Merger Assessment Guidelines (CMA129), paragraph 5.20.

responding to GIPHY's activities to protect their future sales from increased competition).[297] As such, whilst the likelihood of successful expansion by GIPHY was necessarily uncertain at the time of the Merger, our provisional view is that its ongoing efforts to innovate and expand would have driven dynamic competition in the display advertising market.

Expansion into the UK

7.104 The Parties submitted that 'GIPHY has never sold a single ad in the UK (or anywhere else outside of the US) [✂]. As noted above, the Parties previously submitted that GIPHY's brand partners had little appetite to explore international opportunities, that GIPHY had suspended its efforts to explore international opportunities, and there was no realistic prospect that GIPHY could have expanded its Paid Alignments business into other markets or geographies outside of the US.

7.105 As noted in paragraph 7.12, the competitive process over innovation and the development of products by global players such as GIPHY and Facebook takes place at a global level, while sales to customers occur at a national level. Therefore, when assessing the effect of the Merger, it is necessary to consider the likelihood of GIPHY's entry into the UK, and its efforts towards achieving that goal. As set out in Appendix F: GIPHY's Paid Alignment Model, GIPHY's internal documents indicate that in late 2019 and early 2020, it was actively discussing a number of international monetisation possibilities, which it appeared to consider as a means of diversifying its revenue streams.[298]

7.106 Between December and February 2020, GIPHY's revenue team was developing an 'International Ads Delivery' plan (which staff considered would require only a two-week period to implement from an engineering perspective), and sought internal approval to move ahead with operationalising it. It appears this plan was developed in response to significant interest from advertisers regarding international opportunities that GIPHY was fielding in the months prior to the onset of the Coronavirus (COVID-19) pandemic. For example, one internal email notes that '[✂]' – demand was identified from major brands such as [✂], among others.

7.107 The UK appears to have represented an important component of these international plans. GIPHY highlighted the UK as one of [✂] in which to service international brand campaigns, due to its substantial share of total GIF

[297] Merger Assessment Guidelines (CMA129), paragraph 5.18.
[298] For further detail, see Appendix F: GIPHY's Paid Alignment Model. [✂].

inventory (ie potential ad impressions). In late 2019, staff suggested a trip to the UK to explore market appetite.

7.108 There was also some interest from UK-based advertisers. In February 2020, GIPHY reported internally that [✄] was interested in expanding the [✄] US campaign into the UK. As of April 2020 (ie after the onset of the Coronavirus (COVID-19) pandemic), GIPHY was in discussions with an advertising company in the UK ([✄]),which reported interest in GIPHY's advertising model from UK-based brands including [✄] (excerpts below). These discussions appear to have been halted from GIPHY's side as a result of the Merger.

[✄]

7.109 We consider that, absent the Merger, GIPHY was likely to have entered into the supply of Paid Alignment in the UK. This is supported by (i) GIPHY's position as a global market leader in the supply of GIF services, including in the UK; (ii) internal GIPHY documents expressing an interest in international expansion of Paid Alignment, including to the UK, (iii) internal GIPHY documents indicating that the effort required for such entry for GIPHY would be relatively low, and (iv) evidence of advertiser demand for Paid Alignment campaigns in the UK.

Expected closeness of competition between Paid Alignment and Facebook's display advertising services

7.110 The constraint exerted by a dynamic competitor on other firms depends in part on the expected closeness of competition between those other firms and the dynamic competitor.[299] If successful entry by an innovative firm is likely to bring it into direct competition with an incumbent, this will tend to strengthen the incentive of the incumbent to make efforts to protect itself from entry. We therefore assess in this section the expected closeness of competition between Facebook and GIPHY.

7.111 The Parties submitted that GIPHY could only be seen as a competitor to Facebook within a broad digital advertising market (in which, the Parties submit, Facebook does not have market power) and not within a display advertising market:

> 'Facebook's advertising services consist of offering brands and customers space to display their ads, often customised to the end-user.

[299] Merger Assessment Guidelines (CMA129), paragraph 5.23.

By contrast, GIPHY's paid alignment offering gives Brand Partners the possibility of aligning their GIF content with one or multiple search terms and/or pinning it to the "trending" feed on GIPHY's website. Facebook's and GIPHY's activities are further differentiated in that they serve different purposes: advertisers would consider running ad campaigns on Facebook to raise brand awareness, introduce new products and features, raise exposure to a discount campaign, etc., with the ultimate goal of boosting traffic and sales. Indeed, virtually all ads on Facebook contain a click-through link to the advertisers' website or web-shop. By contrast, GIPHY's paid alignments do not fit the description of the CMA's own display advertising frame of reference. It does generally not contain any product features, descriptions, and indeed no invitation to buy or a link to the advertiser's website or web shop'.

7.112 As set out in Chapter 5, Market Definition and Market Power, our view is that the type of advertising that GIPHY was offering prior to the Merger through its Paid Alignment services currently is, and is expected to further become, closer in terms of competitive interaction to Facebook's display advertising services than to search advertising.

7.113 Specifically, as set out in more detail in Chapter 5, Market Definition and Market Power, GIPHY's Paid Alignment services are closer to display advertising activities than to search advertising in that:

(a) At least in its current form at the time of the Merger, GIPHY Paid Alignment is generally less likely to directly prompt a purchase of the product (compared to search advertising), and more likely to increase the user's brand awareness (as with display advertising) (see paragraph 5.126).

(b) Ads in GIPHY's trending feed of currently popular GIFs are not generated by search terms as is the case with search advertising: users experience these ads selected for and displayed to them by GIPHY without entering any search terms (see paragraph 5.138 and footnote 53 of Chapter 4 Industry Background).

(c) The views of advertisers and GIPHY's internal documents also suggest that Paid Alignment (at least in its current form) primarily serves the purpose of brand awareness, which is also the primary (although not necessarily only) goal of display advertising (see paragraph 5.139)

7.114 We have also considered whether GIPHY may be a particularly close competitor to Facebook's display advertising. We note that:

(a) Given the extent of Facebook's presence in the supply of display advertising in the UK, and the limited competition within that market, we would expect GIPHY to have been closely in competition with Facebook for at least part of companies' display advertising budgets following its entry.[300,301] For example, [✂] one of GIPHY's largest customers, told us that Facebook/Instagram is one of its bigger advertising partners.

(b) In light of GIPHY's presence on a range of social media platforms, we consider its Paid Alignment service to be closer to the 'O&O' segment of the display advertising market (see Chapter 5, Market Definition and Market Power) in which Facebook accounts for [70-80%] ([✂]) share than to the 'open display' segment in which Google largely operates. In particular, audiences for Paid Alignment ads on a social media platform, and for other display advertising on that platform, are both by definition users of that platform. While media agencies saw the two segments as substitutable,[302] we note that some advertisers may have a particular interest in advertising within communications between users – ie through social media and messaging. For example, one advertiser told us that it wanted to be part of the explosion in GIFs usage at that time, which was changing how consumers, particularly younger consumers, were communicating with each other. [✂].

7.115 In addition, we note that Facebook's [✂] suggests this closeness of competition could have increased further. We consider this development in paragraphs 7.134 to 7.138 below. As set out there, while the Parties have pointed out differences between GIPHY's Paid Alignment model and [✂], both offer advertisers a way of advertising within personal communications. As such we consider the two may have some similarities from an advertiser perspective. In addition, as noted in 7.31, GIPHY also considered extending its Paid Alignment model to include [✂].

7.116 Accordingly, we consider that GIPHY's launch of a display advertising offering in the UK, following its entry, would have been in close competition with Facebook's current display advertising offering in the UK.

[300] In practice, this competition could have been in the form of advertisers diverting some of their spend from Facebook to GIPHY, leading to Facebook achieving lower CPMs for its advertising.
[301] The Market Study notes (paragraph 5.18) that '[A]dvertising campaigns are typically planned by first defining the business's objectives (for example, to increase sales or raise awareness) and available budget to achieve these objectives'.
[302] Market Study, paragraph 5.23.

Assessment of Facebook's likely response to potential competition absent the Merger

7.117 In this section we consider Facebook's likely response to GIPHY's ongoing efforts to innovate and develop its products absent the Merger. We take into account:

(a) Facebook's views on the potential for monetisation of GIFs and GIF stickers;

(b) The commercial activities of Facebook and third parties in relation to monetisation via GIFs and related social media features; and

(c) Other evidence on Facebook's incentive to respond to potential competition from GIPHY.

Facebook's views on the potential for monetisation of GIFs and GIF stickers

7.118 Facebook's views on the potential monetisation of GIFs and GIF stickers are relevant to understanding how Facebook might be expected to react to GIPHY's ongoing efforts to develop and expand its Paid Alignment services.

7.119 Facebook closed down GIPHY's Paid Alignment service after the Merger.[303] Facebook told us that this was because GIPHY's Paid Alignment was based on third party engagement, and Facebook had no interest in this. However, as we discuss below, Facebook internal documents discussing the acquisition of GIPHY consider the possible monetisation of GIPHY's services on Facebook platforms.

7.120 The Parties have commented on the potential value of monetising messaging:

(a) The Parties have commented that 'No one disputes that a company successfully monetizing direct messaging at scale would be capable of attracting advertisers... [✄].

(b) Similarly, the Parties submitted that 'GIPHY was sold for only USD 315 million and if there were any prospect of it being the key to monetising messaging at scale one would have expected a valuation likely in the billions, or tens of billions, thereby reflecting its value as the unicorn company finally capable of solving this conundrum'.[304]

[303] See Chapter 2, The Parties, the Merger and Rationale for further detail.
[304] We consider the Parties' arguments about GIPHY's purchase price in paragraph 7.98.

(c) In an internal email exchange in March 2020, Nir Blumberger, in the context of questioning the case for a minority investment in GIPHY, comments that '[✂]'. In our view, this comment indicates a concern that monetising via GIFs could become sufficiently important to Facebook that its reliance on GIPHY (and the impact of losing access to it) for this activity would be an increased risk to Facebook.

7.121 In view of this evidence, we consider that Facebook appears to recognise the importance of monetising messaging and the potential for GIPHY to enable this form of monetisation.

Facebook's assessment of monetisation of GIPHY's services

7.122 We set out below evidence relating to Facebook's assessment of the prospect of monetisation of GIPHY's services, which informs (i) our assessment of the strengths and weaknesses of GIPHY's monetisation model (see paragraph 7.41); and (ii) our assessment of the impact of GIPHY's continued innovation and expansion (absent the Merger) on Facebook's conduct and therefore on dynamic competition in display advertising.

7.123 On 1 April 2020, Nir Blumberger emailed Mark Zuckerberg, Sheryl Sandberg and David Wehner to request approval of the acquisition, and commented *inter alia* that:

> [✂]

7.124 This possibility is further discussed in a detailed 'Value Analysis' paper prepared by Facebook ahead of the Merger as '[✂].

> [✂]

7.125 The paper then cites a GIPHY estimate of [✂].[305] It comments that:

> [✂]

7.126 Facebook then presents its own estimate of revenue from monetisation of GIPHY's GIFs, [✂].

7.127 Nir Blumberger discussed the acquisition in a March 2020 exchange with John P Poffenberger (Finance Director, Instagram, Messenger, WhatsApp). Mr Blumberger noted that:

[305] This is calculated by multiplying average monthly impressions on Instagram in 2019 by an assumed USD10 CPM.

(a) '[✂].

(b) '[✂]'.

7.128 Mr Poffenberger comments: [✂]

7.129 A number of points emerge from these documents:

(a) The possibility of substantial monetisation of GIFs formed part of the request for approval of the acquisition, and is the only benefit from the acquisition which is quantified in monetary terms in this request for approval.

(b) Facebook's assessment of the opportunity is based on a model that [✂]:

(i) [✂].[306]

(ii) [✂].

(iii) [✂].

7.130 As noted in Chapter 2, The Parties, the Merger and Rationale, the opportunity to monetise GIFs is mentioned frequently throughout Facebook's internal correspondence between various individuals involved in the review and analysis of the Merger.

7.131 In the light of the above evidence, we consider that Facebook saw monetisation of GIFs as a potentially important upside of acquiring GIPHY, and this is further demonstrated by Facebook's [✂], as discussed below. In our view Facebook's interest in monetising GIFs is relevant in that (i) it is further evidence that GIFs are an important area of potential monetisation, (ii) the greater Facebook's interest in monetising GIFs the more likely it would be, absent the Merger, to develop services that would compete against GIPHY's Paid Alignment and the more likely it would be to see expansion by an independent GIPHY as a potential threat.

7.132 We note that:

(a) Facebook had the advantage of direct access to a user base. However, as noted in paragraph 7.38 above, third party platforms partnering with GIPHY through revenue share agreements would have had an incentive

[306] 'Marketing funnel' typically refers to an advertising budget allocation framework. At the top of the funnel, KPIs relate to improving the awareness of consumers that are 'out-of-market' and are not currently aware of the product or service. At the bottom of the funnel, KPIs relate to selling to those customers who are 'in-market', in that they may have expressed some preference for the product or service but have not yet bought it. See paragraph 5.19 and Figure 5.1 in the Market Study.

to collaborate with GIPHY to develop GIPHY's Paid Alignment service on their platforms. One example of this would have been through the use of user data to improve advertiser metrics.

(b) [✄]. In any case, the potential to monetise GIPHY on Facebook platforms was part of the decision-making process, and was communicated to the decision makers without qualifications as to its likelihood.

Commercial activities of Facebook and third parties in relation to monetisation via GIFs and related social media features

7.133 The efforts of Facebook and third parties to monetise GIFs and related social media features are also relevant to understanding how Facebook might be expected to react to GIPHY's ongoing efforts to develop and expand its Paid Alignment services.

Recent developments in monetisation by Facebook

7.134 [✄].

7.135 Under the plan, creators (ie users posting Stories) would have the option of adding stickers, including GIF stickers, which carry advertising, in return for which the creator earns a share of advertising revenue. Facebook's current focus for its plans to monetise Stories through stickers appears to be aimed at incentivising creators of Instagram Stories – through a share of revenues – to create more Stories, leading to wide user engagement. Attracting creators appears to be an area of significant focus for Facebook.[307]

7.136 The proposals note that '[✄]'.

7.137 Facebook submitted that these sticker options 'differ fundamentally from GIPHY's Paid Alignment GIFs' because:

(a) [✄].

(b) [✄].

(c) [✄].

7.138 Despite the differences identified by the Parties, both GIPHY's Paid Alignment model and Facebook's sticker option [✄]. As such we consider the two may have some similarities from an advertiser perspective. In addition, we note that GIPHY was considering ways to create [✄], and that it was considering

[307] https://www.cnbc.com/2021/07/14/facebook-to-pay-creators-1-billion-through-2022.html.

extending its Paid Alignment offer to [✂]. See paragraphs 7.150 for further discussion of GIPHY's expansion into [✂] and other innovations.

7.139 Again, Facebook's [✂] GIF sticker monetisation is further evidence (i) that GIFs are an important area of potential monetisation, and (ii) of the possibility that Facebook would, absent the Merger, have developed services that would compete against GIPHY's Paid Alignment, in which case it would be more likely to see expansion by an independent GIPHY as a potential threat.

Monetisation by other providers

7.140 Other GIF providers have also offered, or considered offering, sponsored GIF services. [✂].

7.141 [✂].

7.142 [✂]

7.143 [✂]

7.144 [✂]

7.145 [✂]

7.146 [✂]

7.147 While some of these documents suggest an increase in competition following the Merger, we note that:

(a) It is not clear that the views expressed in these documents are aligned with [✂] overall view of the market. In particular, their proposals do not appear to have been adopted - in response to further questioning, [✂].

(b) In any case, we consider that, despite this possible consequence of the Merger, the Merger would have represented a strengthening of Facebook's competitive position in the market, and specifically we consider that the Merger would have decreased the competitive pressure faced by Facebook as it will no longer face competition from GIPHY and [✂] efforts to expand appear to be materially less developed than GIPHY's (see also paragraph 7.34 above, paragraph 7.160 below, and Chapter 9, Countervailing Factors).

7.148 In addition to these developments, we note that there is some evidence of monetisation by Holler, a smaller content provider.[308] We understand that Holler offers an SDK[309] (free of charge) and an API (for a fee) and monetises through branded stickers integrated into selected platforms (including Venmo, a payment app, and keyboards and dating platforms).[310] However, as noted in Chapter 5, Market Definition and Market Power, the Parties' internal documents do not suggest that Holler currently competes with GIPHY in any meaningful way. See Chapter 9, Countervailing Factors for further discussion of potential expansion by Holler.

7.149 We consider that these developments by third parties are further evidence that GIFs are an important area of potential monetisation, and hence of the importance to dynamic competition of GIPHY's efforts to innovate and expand.

Importance of GIPHY in driving dynamic competition

7.150 As noted, we consider that the efforts of Facebook and third parties to monetise GIFs are evidence of the potential commercial viability of monetising GIFs. In addition, absent the Merger, we expect that Facebook, [✂], would have made efforts to monetise GIFs, and these efforts would have been part of a dynamic competitive process which included GIPHY's efforts to develop and expand its Paid Alignment service. In turn, had Facebook developed such services, it would have been more likely to see expansion by an independent GIPHY as a potential threat (see paragraph 7.139).

7.151 In considering the importance of GIPHY within this process, we consider that, absent the Merger, GIPHY would have been well-placed to play an important part in the dynamic competitive process relating to the use and development of GIFs as a feature in the display advertising market:

(a) GIPHY's Paid Alignment model was an innovative approach to monetising messaging (and potentially other features via [✂]).

(b) Paid Alignment was built on GIPHY's strengths as a business, which it had developed over a number of years.

(i) GIPHY is seen by many market participants (including Facebook) as one of only two effective GIF providers, particularly in view of the

[308] The CMA has not been able to contact Holler to discuss its monetisation activities and plans.
[309] As noted in Chapter 5, Market Definition and Market Power, evidence suggests that certain types of data collected by Holler as part of its SDK terms of service appear more extensive and invasive than those collected by GIPHY.
[310] Marketers (holler.io). [✂].

quality of its sourcing, moderating and hosting of GIFs, the sophistication of its search engine, and its extensive distribution across API/SDK partners.[311] It also had a widely-recognised and award-winning creative team who were working closely with advertisers as part of the Paid Alignment service.

(ii) GIPHY had a leading presence in the market, accounting for the majority ([✂]) of GIF searches. It also had a well-known brand and strong relationships with the major companies who were its brand partners.

(c) GIPHY (pre-Merger) was considerably more advanced in its GIF monetisation activities than other market participants. Its advertising revenues had grown from 2018 to 2019, and it had seen positive signs of strong growth in 2020 prior to the Coronavirus (COVID-19) crisis.

(d) In addition, GIPHY had a strong incentive to make a success of sponsored GIFs, as it had no other clear route to large-scale revenue generation[312] (in particular from monetising the value it delivers to social media platforms) and, as an independent player, it faced no risk of cannibalising existing advertising revenue streams.

7.152 We consider this evidence supports the view that GIPHY was an important player in a potentially growing segment of the display advertising market, and as such a part of a dynamic competitive process with Facebook and others.

Other evidence on Facebook's incentive to respond to potential competition from GIPHY

7.153 In the following, we consider other evidence on Facebook's incentives, absent the Merger, to respond to potential competition from GIPHY.

7.154 The extent of Facebook's incentive to respond to a dynamic threat of competition from GIPHY is likely to depend in part on the structure of the market in which Facebook operates. As found in the Market Study, two-sided platforms such as Facebook present general features that support a 'winner-takes-most' dynamic (see Box 2.2 Market Study), which contributes to the significant market power held by Facebook on both side of its platforms. In particular:

[311] See Chapter 5, Market Definition and Market Power.
[312] As noted in Chapter 6, Counterfactual, GIPHY was considering platform fees as a short-term solution to its cashflow issues.

(a) Social media platforms are characterised by strong network effects, which means that the value of a service to existing users of a platform increases as the total number of users increases. Having a large network of connected users also attracts developers and content providers to the platform - which in turn further increases its value to users.[313] As more users are attracted to the platform, and as they spend more time on the platform, demand for advertising space on the platform increases, leading to more ad revenue for the platform operator. As noted above, network effects could also apply to GIPHY's Paid Alignment model, in that having a wide and prominent presence on third-party platforms makes it more attractive to advertisers, while increased advertising revenue makes it more attractive to platforms.

(b) Network effects can lead to a 'winner takes most' dynamic, in which platforms compete for market leadership. The self-reinforcing effect on the growth of a platform resulting from strong network effects may lead to a 'tipping point', where the scale achieved by one platform confers on it a strong or unassailable incumbency advantage and its rivals find it difficult to expand.[314]

(c) This also underlines the importance of the first-mover advantage, ie once a business reaches such a tipping point and establishes itself as the reference supplier for a given service, it becomes difficult for others to supplant that business or exert any material competitive constraint on it.[315]

(d) Facebook Blue reached such a tipping point in social media around 2012, displacing MySpace as the market leader. Since then, the incumbency advantage has worked in its favour. However, Facebook's actions, particularly in acquiring Instagram and WhatsApp, and responding aggressively to social media entrants such as Google+, indicate that it is highly alert to the risk of entry.

7.155 The Market Study noted that one of the defining features of Facebook's business is that it has built a large 'ecosystem' of complementary products

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[313] Market Study, paragraph 28.
[314] Merger Assessment Guidelines (CMA129), paragraph 5.4.
[315] Facebook also recognises the importance of first-mover advantage. Facebook's CEO, Mark Zuckerberg, in discussing the reasons for the Instagram acquisition, expressed the view that '[O]nce someone wins at a specific mechanic [ie a social media feature] it's difficult for others to supplant them without doing something different…what we're really buying is time. Even if some new competitors spring […] up, buying Instagram, Path, Foursquare, etc now will give us a year or more to integrate their dynamics before anyone can get close to their scale again. Within that time, if we incorporate the social mechanics they were using, those new products won't get much traction'. (Cited in paragraph 14, FTC (13 January 2021) 'Complaint for Injunctive and Other Equitable Relief', Case No.: 1:20-cv-03590).

and services around its core service.[316] From its origins as a social network, Facebook has expanded into messaging, devices, gaming and retail. In a broader sense, the Facebook 'ecosystem' includes all other providers and services with which it interacts, including advertisers, complementary services, providers who rely on Facebook's platforms for access to consumers, and the makers of devices and operating systems.

7.156 In this context, we consider that any dynamic competitive threat from GIPHY's efforts to monetise its business has the potential to be amplified by these structural elements of the market (ie network effects leading to a 'winner takes most' dynamic, first mover advantage, and potential tipping points). In particular:

(a) As set out in paragraph 7.35, effective monetisation of GIPHY's GIFs would potentially make it more attractive to third-party platforms. [✂]. In turn, increased presence on third-party platforms would help GIPHY to further grow its monetisation.

(b) GIPHY would have had scope to continue to innovate in partnership with larger platforms, including social media platforms which already compete with Facebook for users and display advertising revenue.

(c) GIPHY monetisation, in partnership with social media platforms, would also enhance the ability of its social media platform partners to generate revenues from their current users, and increase their incentive to invest in increasing user engagement and expanding their user base. In turn, this would create the scope for further monetisation by GIPHY on those platforms. More generally any such growth in user engagement or base would increase their strength as display advertisers in competition with Facebook.

(d) GIPHY's strengths as a leading GIF provider, and the progress it had made in developing its Paid Alignment business meant that it potentially had a degree of first-mover advantage in monetising GIFs.

7.157 To date, we have not identified evidence from Facebook's internal documents that it perceived GIPHY as a potential competitive threat in display advertising, despite its close relationship with GIPHY. However, we consider that as GIPHY's monetisation plans developed, there would have been an increasing prospect of it being seen as a material competitive threat by Facebook, leading to greater dynamic competition in the form of efforts by

[316] Market Study, Appendix E: ecosystems of Google and Facebook.

Facebook to respond to the possibility of competition from GIPHY, and/or other social media platforms in partnership with GIPHY.

7.158 As discussed in paragraphs 7.134 to 7.138, [✂]. We consider that Facebook's efforts illustrate that it sees potential in monetising this space. In addition, in our provisional view Facebook's efforts to develop this part of its business would, absent the Merger, have interacted dynamically with those of GIPHY:

(a) From an advertiser perspective, Facebook Stickers and GIPHY Paid Alignment would potentially have similar advantages in the sense of making advertising intrinsic to communications between social media users.

(b) In addition, GIPHY was considering [✂] and could – for example – have partnered with a rival social media platform to provide a [✂]. This could have enabled that social media platform to compete against Facebook for display advertising and as part of this, potentially to competing for engagement by the creators [✂].

7.159 In summary, we consider that absent the Merger, as GIPHY continued to develop its GIF and [✂] advertising products, Facebook would have had an incentive to respond to a dynamic threat of competition from GIPHY. That incentive would have increased if GIPHY had expanded its Paid Alignment services in partnership with those rival social media platforms who already compete with Facebook for display advertising revenues.

7.160 In contrast, Facebook's incentives to develop its own services in this space – including [✂] – depend on whether the possible upsides from doing so[317] outweigh any cannibalisation of Facebook's existing display advertising business. Following the Merger, the upsides to Facebook from developing its own service no longer include any response to competitive pressure from GIPHY. We note that while Facebook's internal documents consider the possibility of using GIPHY to monetise GIFs in future, Facebook immediately shut down GIPHY's Paid Alignment service following the Merger, including cancelling some upcoming campaigns, suggesting it did not see an urgency to monetising GIFs in the absence of competition.

Loss of dynamic competition arising from the Merger

7.161 As noted in paragraph 7.10, when assessing the impact of a loss of dynamic competition it is necessary to consider the likelihood of entry or expansion by

[317] [✂].

the potential entrant, and the impact of such entry or expansion on competition. However, a substantial loss of dynamic competition does not require that, absent the Merger, GIPHY would have become a meaningful competitor to Facebook in the future – as noted in paragraph 7.14 and 7.15, the elimination of a dynamic competitor that is making efforts towards entry or expansion may lead to an SLC even where entry by that entrant is unlikely and may ultimately be unsuccessful.

7.162 In the light of the evidence set out in this Chapter, we consider that the loss of GIPHY as a potential competitor in display advertising is substantial. In particular, we consider that:

(a) As discussed in paragraphs 7.3 and 7.16, we are of the provisional view that Facebook has significant market power in display advertising in the UK. The impact of GIPHY on dynamic competition is likely to be more significant in the absence of strong existing competitive constraints to Facebook.

(b) GIPHY's pre-Merger activities were valuable to the dynamic competitive process in themselves and in driving other competitors' efforts (paragraphs 7.22 to 7.40) in that:

(i) GIPHY is an innovative and leading provider of GIFs, which are an important tool for user engagement on social media platforms. Its position is supported by a high-quality service, a strong creative team, and a presence on major social media platforms.

(ii) Building on its existing strengths, and in particular the large audience which it had already established, GIPHY had made concerted efforts in recent years to monetise its services, by means of an innovative advertising model, which had the potential to compete against Facebook for display advertising revenues if it entered the UK market. GIPHY had been making significant progress in winning advertising business, securing revenue share agreements with social media platforms, and otherwise improving and developing its Paid Alignment business.

(iii) If GIPHY had extended its presence on third-party platforms (and its advertising revenues), those platforms would then have had an incentive to collaborate with GIPHY to further develop GIF monetisation, so that they could increase their advertising revenues in competition with Facebook.

(c) GIPHY was seeking to enter a market with significant entry barriers, on the basis of an innovative business model. GIPHY's efforts to monetise

GIFs increased the likelihood of new innovations or products being made available, and of existing providers of display advertising, including Facebook, making efforts to protect their future sales from increased competition (paragraphs 7.41 to 7.103).

(d) Absent the Merger, GIPHY was likely to have entered into the supply of Paid Alignment in the UK. This is supported by (i) GIPHY's position as a global market leader in the supply of GIF services, including in the UK; (ii) internal GIPHY documents expressing a strong interest in international expansion of Paid Alignment, including to the UK; (iii) internal GIPHY documents indicating that the efforts of such entry would be relatively low, and (iv) evidence of advertiser demand for Paid Alignment campaigns in the UK (paragraphs 7.104 to 7.109).

(e) Absent the Merger, GIPHY would have had a significant impact on dynamic competition by Facebook and other players in the relevant market. In particular, we consider that:

(i) GIPHY's Paid Alignment had the potential to become an important alternative to Facebook for at least some advertisers' display advertising budgets (paragraphs 7.110 to 7.116).

(ii) GIPHY's efforts were focused on monetisation of messaging and Stories, an area of potential revenue growth for display advertising, which Facebook and others have shown interest in developing. We consider this evidence supports the view that GIPHY was an important player in a potentially growing segment of the display advertising market (paragraphs 7.117 to 7.152).

(iii) Absent the Merger, as GIPHY continued to develop its GIF monetisation, Facebook would increasingly have had incentive to respond to a dynamic threat of competition from GIPHY, in particular arising from GIPHY's partnership with those rival social media platforms who already compete with Facebook for display advertising revenues (paragraphs 7.153 to 7.160).

Provisional conclusion on horizontal unilateral effects

7.163 On the basis of the above assessment, our provisional view is that the Merger will lead to a substantial lessening of competition in the supply of display advertising services in the UK arising from a loss of dynamic competition. The effects on dynamic competition in display advertising arising from the elimination of GIPHY as a potential competitor are exacerbated by the weakening of competition between social media platforms as set out in Chapter 8, Vertical Effects.

8. Vertical Effects

Introduction

8.1 This chapter analyses the Merger's effects on competition in the supply of social media services arising from input foreclosure. Facebook currently competes in the supply of social media services and GIPHY provides inputs to Facebook and other social media platforms in the form of video GIFs and GIF stickers.

8.2 The concern under the input foreclosure theory of harm is that the Merger may lead to Facebook foreclosing access to GIPHY's services to rival social media platforms in order to harm its rivals' current and future ability to compete in social media and, as a result, in display advertising. Specifically, we consider whether Facebook could harm its rivals' competitiveness by ceasing to supply GIPHY's GIFs via GIPHY's API/SDK integrations (total foreclosure), by worsening the terms of GIPHY's current GIF supply to rivals, by reprioritising innovation and development of GIPHY's API/SDK services towards the requirements of Facebook's own social media services over those of rival social media platforms, or by requiring rivals to provide data as a condition for access to GIPHY (partial foreclosure).

8.3 Social media platforms are multi-sided: in order to fund their business through the supply of digital advertising, they compete for user attention by offering innovative features to attract interesting content creators and users.[318]

8.4 We consider that the evidence set out in this chapter and in Chapter 5, Market Definition and Market Power, shows that social media platforms see GIFs as an important feature for facilitating and augmenting user expression, and for driving user engagement. In turn, this means that access by social media platforms to higher quality GIFs, such as those offered by GIPHY, may contribute to greater user engagement. And since user engagement drives the amount of time spent on a platform, access to higher quality GIFs by social media platforms may be also important to their ability to generate revenue from advertising.

8.5 On the basis of the evidence set out in Chapter 5, Market Definition and Market Power, we have provisionally found that GIPHY has market power in the supply of GIFs. Specifically, social media platforms cannot easily switch away from GIPHY to a range of effective alternative suppliers, for the following

[318] For a further discussion of the parameters of competition between social media platforms, see Market Study, paragraph 3.158.

reasons: (i) the distinctive quality of its content, and its reach among the major distribution partners; and (ii) the fact that Tenor, the second largest GIF provider, is GIPHY's only sizeable and close competitor. Aside from Tenor, no other GIF providers appear to be able to meet the requirements of large social media platforms at present.

8.6 Given GIPHY is the leading provider of GIFs with a high quality GIF offering, whose only close competitor is Tenor, we consider that access to GIPHY's GIFs, and to any future product development or improvement in its GIF-related services, is valuable to users and therefore important to the social media platforms' current and future competitiveness.

8.7 In our assessment of whether Facebook may harm its rivals' ability to compete in social media services by denying or worsening their access to GIPHY's GIFs we follow the framework set out in the Merger Assessment Guidelines[319] for assessing input foreclosure theories of harm. We consider whether three cumulative conditions are satisfied:[320]

(a) Would the Merged Entity have the **ability** to use its control of inputs to harm the competitiveness of its downstream rivals?

(b) Would it have the **incentive** to actually do so, ie would it be profitable?

(c) **Effects** of foreclosure: would the foreclosure of these rivals substantially lessen overall competition between social media platforms?

8.8 We consider these in turn in the remainder of this Chapter. For the reasons set out below, our provisional conclusion is that the Merged Entity will have both the ability and incentive to foreclose its social media rivals in this way, thus having the effect of further strengthening Facebook's significant market power in social media. On that basis we provisionally conclude that the Merger has resulted, or may be expected to result, in a **substantial lessening of competition in the supply of social media services**.

Ability to foreclose

8.9 The CMA's Merger Assessment Guidelines note that:

> 'The CMA may consider a wide range of mechanisms through which the merged entity could potentially harm its rivals when supplying inputs. These may include, for example: refusing or

[319] Merger Assessment Guidelines (CMA129), paragraphs 7.9-7.22.
[320] Merger Assessment Guidelines (CMA129), paragraph 7.9.

restricting supply, increasing prices, reducing quality or service levels, deteriorating product interoperability, slowing the rollout of upgrades, restricting licensing of intellectual property, shutting down APIs, […] reprioritising R&D spending, or limiting access to data. The CMA's focus will be on understanding if collectively these would allow the merged entity to foreclose its rivals, not on predicting the precise actions it would take'.[321]

8.10 In this case, we consider that Facebook could adopt a range of mechanisms to foreclose its rivals from GIPHY's GIFs, including:

(a) **Total foreclosure** by refusing to supply GIPHY's GIFs to rival platforms;

(b) **Partial foreclosure** by degrading the quality of GIPHY's service to rivals, including:

(i) **By worsening the terms of supply of GIPHY's API/SDK services**, which could include Facebook requiring rival social media platforms to accept GIFs with advertising content as a condition for continued access to GIPHY's library (potentially without offering revenue sharing as GIPHY would have done pre-Merger), or otherwise degrading the quality of GIPHY's current service to third parties (eg slower API/SDK responses, degrading the search function, reducing the range of content supplied, or requiring platforms to pay fees for API/SDK access).

(ii) By reprioritising innovation and development of GIPHY's API/SDK services going forward towards the requirements of Facebook's own social media services over those of other social media platforms. Post-Merger, the balance of GIPHY's incentives (eg in determining innovation and product development priorities or availability of the API/SDK services) will change in favour of Facebook's commercial interests. In other words, these incentives will reflect the strategic priorities of Facebook's social media services, and the specific requirements of its own products, rather than product developments that may better suit the interests, priorities and requirements of other social media platforms. In addition, rival social media platforms no longer have the option to partner with an independent GIPHY in order to compete against Facebook by developing new GIF-related user experience features.

[321] Merger Assessment Guidelines (CMA129), paragraph 7.13.

(c) Partial foreclosure by making access to GIPHY's GIFs conditional on the API/SDK partner providing data about their users or aggregate trends to Facebook, in a way that puts the partner at a competitive disadvantage to Facebook (**data foreclosure**). In the event that the partner is unwilling to supply such data and decides to not use GIPHY at all, such a mechanism would lead to total foreclosure.

8.11 The foreclosure strategies could target both existing rival platforms and future new entrants in social media. They could also be used in combination and could be used to selectively target individual rivals.

8.12 Facebook's ability to engage in these types of actions and foreclose its rivals depends on the following:

(a) **The extent to which rival social media platforms can substitute GIPHY with a range of effective alternative GIF providers** (ie the degree of the Merged Entity's market power in the input market). We find that Facebook's rivals do not have a range of effective alternatives to switch to, other than Tenor, and that GIPHY is uniquely placed to compete and innovate in GIF provision in the future.

(b) **Whether GIFs are sufficiently important as an input into social media services** such that rival social media platforms' competitive positions can be harmed when the input is not available, or available on worse terms, or development of GIF products changes to favour Facebook's commercial interest. We find that GIFs are considered by Facebook itself, and by some of its main rivals, as important drivers of user engagement.

(c) The extent to which GIPHY collects, or may be able to collect, data from third party platforms that would place Facebook's rivals at a competitive disadvantage. Our assessment suggests that although GIPHY's user-level data is potentially incrementally small compared to Facebook's existing data capabilities, GIPHY's aggregate data has the potential to improve and refine Facebook's ability to identify trends and spot competitive threats, particularly in areas where its existing market intelligence is incomplete (eg certain geographic markets or specialised social media services).

8.13 The three questions above are discussed in turn in the rest of this section. We then discuss the contractual restrictions to the Merged Entity's ability to foreclose.

Availability of effective alternatives to GIPHY

8.14 In this section we consider the extent to which rival social media platforms could mitigate or avoid any harm from a foreclosure strategy by switching away from GIPHY to another GIF supplier. The assessment is structured as follows:

(a) First, we consider closeness of competition in the upstream market. The fewer close substitutes to GIPHY there are, the greater Facebook's ability to foreclose.

(b) Second, we assess the extent to which the availability of Tenor impacts Facebook's ability to foreclose.

(c) Third, we consider the ease of replicability of GIPHY, either by a social media platform building self-supply or by a GIF supplier entering or expanding in the market.

(d) Finally, we summarise our provisional view on the ability of social media platforms to substitute GIPHY.

Availability of substitutes to GIPHY

8.15 The Merger Assessment Guidelines state that if 'downstream rivals can easily switch away from the upstream party to a range of effective alternative suppliers, then they will be less likely to suffer harm than if the Merged Entity occupies an important position upstream'.[322] In this section we consider whether there are a range of effective alternative GIF suppliers to social media platforms.

8.16 The Parties submitted that, alongside Tenor, there are numerous alternatives to GIPHY, including Imgur, Gifbin, Gfycat, Vlipsy, and Holler.

8.17 However, Facebook's internal documents suggest that Facebook [✂]. As discussed in Chapter 5, Market Definition and Market Power, in internal correspondence, Nir Blumberger (Facebook's Head of EMEA Corporate Development) stated, '[✂]'.

8.18 As set out in Chapter 5, Market Definition and Market Power, our assessment of the evidence gathered in this investigation has found a lack of effective alternatives to GIPHY, other than Tenor:

[322] Merger Assessment Guidelines (CMA129), paragraphs 7.14(a).

(a) The evidence highlights that GIPHY’s and Tenor’s offerings are distinctive from that of other GIF providers in that they maintain an attractive and current content library, a sophisticated search algorithm, and a wide distribution network of API/SDK partners including, *inter alia*, many major social media and messaging platforms.

(b) Although third party views as to how GIPHY and Tenor compare in terms of the quality of their offerings vary to an extent, with different third parties placing different weight on the various features and services offered by each supplier, on balance this evidence indicates that GIPHY is consistently viewed as the market leader, with Tenor offering a broadly similar service. No other GIF provider currently offers a service of a comparable quality to GIPHY and Tenor.

(c) Facebook’s own stated rationale for the Merger, driven by a concern about losing access to GIPHY and the resulting harm to its business, is in our view not consistent with a range of alternative providers being adequate substitutes.[323]

(d) GIPHY accounts for over [✂] of global API/SDK searches, with Tenor accounting for [✂]. No other GIF supplier is comparable in scale to GIPHY and Tenor.

8.19 We are thus of the view that there is not a range of effective alternative suppliers to GIPHY, but only one such alternative, Tenor.

Assessment of Tenor as a substitute

8.20 The Parties submitted that ‘it is clear that Tenor is a perfect substitute to GIPHY that is widely used by social media services and other partners, including Facebook, and that no SLC finding is possible unless it is shown that existing alternatives to GIPHY’s GIFs -- including Tenor, a drop-in substitute for GIPHY -- are inadequate or unavailable to competing ‘social media’ services. Tenor’s library attracted approximately 10 billion monthly searches and 330 million daily searches in 2018, and its popularity has since only increased’.

8.21 According to data submitted by Tenor to the CMA, [✂] (see Chapter 4, Industry Background, Figure 9). [✂]

8.22 The Parties submitted an analysis showing that, following a loss of access to GIPHY for two days in June 2020, ‘there was almost perfect substitution with

[323] See Chapter 2, The Parties, Merger and Rationale and Chapter 5, Market Definition and Market Power.

Tenor GIFs', with no discernible reduction in user engagement with GIFs.[324] We do not consider this evidence to be informative of the impact on user engagement of switching from GIPHY to Tenor, because user responses to a two-day change in the GIF provider are not necessarily indicative of the effect of such a change over the longer term. This is particularly the case in platforms with strong network effects, such as messaging platforms, where switching requires users to coordinate with one another, and may not be seen as worthwhile in the face of only a temporary dip in the quality of the platform.

8.23 Facebook submitted that 'attempted foreclosure would likely drive users towards Tenor and/or other providers… Any impact on rivals' negotiating power could at most worsen the terms between API partners and GIF providers such as Tenor, but would not impact the quality of service faced by users, therefore there would be no benefit to Facebook'.

8.24 We accept that Tenor presents a reasonable alternative to at least some platforms. We also note that:

(a) Google's incentives to develop Tenor may be different from Facebook, as Google is not a social media platform. However, [✄].

(b) [✄], suggesting the acquisition has not necessarily made Tenor less effective from the perspective of third parties.

(c) [✄] (see Chapter 5, Market Definition and Market Power).

8.25 However, our provisional view is that the availability of Tenor does not in itself preclude an SLC based on foreclosure, for the following reasons.

8.26 First, we consider that the availability of only one, rather than a range of effective alternatives, increases the likelihood that any attempt at foreclosure (total or partial) would lessen the competitive constraint on the only remaining effective alternative, Tenor, reducing its incentive to compete. Tenor itself would then be more likely to offer a service of lesser quality, including by requesting more data, worsening the terms of supply of its current service, prioritising innovation and product development to benefit Google's own commercial interests and product requirements over those of social media platforms, or, should Tenor successfully launch an advertising model, insisting on monetising GIFs without sharing the revenue with the platform or sharing it on worse terms.

[324] In other words, while users did not intentionally substitute to Tenor, when the available option switched from GIPHY to Tenor, users did not reduce their GIF usage.

8.27 Second, as Google and Tenor's services evolve, it is possible that Google will no longer see Tenor's availability to third parties as a priority, [✂] The uncertainty over Tenor's availability to third parties in the future is also evidenced by the following:

(a) Nir Blumberger commented that a reason for Facebook acquiring GIPHY was that '[✂]'.

(b) [✂].

(c) Alex Chung, in an internal e-mail to GIPHY employees commenting on the Google acquisition of Tenor, commented that, '[✂]'.

8.28 Third, some social media platforms (including Facebook) multi-home, that is, use two or more GIF providers.[325] For such platforms, even if Tenor was an effective substitute to GIPHY, Tenor alone would not enable them to multi-home.[326]

8.29 Finally, GIPHY [✂]) and is distinctive in terms of the quality of its content library. Given the varied nature of social media platforms, Tenor may not be perceived as a close substitute by all such platforms.[327]

8.30 In the following, we set out further evidence from Facebook and third parties which demonstrates that many social media platforms consider themselves to be reliant on GIPHY despite the availability of Tenor.

Evidence on the reliance of social media platforms on GIPHY

8.31 The evidence below shows that GIPHY plays an important role in shaping social media competition and is uniquely placed to compete and innovate in GIF provision in the future to the benefit of a range of social media platforms.

8.32 Facebook, in discussing the acquisition of GIPHY, [✂].

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325 Chapter 5, Market Definition and Market Power. Platforms have told us that the aim of multi-homing is primarily to mitigate the impact of GIF supply outages on the user experience on these platforms.

326 The Parties argued that 'there is evidence to suggest that multi-homing is not important. <…> many API partners including Instagram and TikTok use only one provider, and some such as Viber and Telegram use only Tenor. Similarly, there is evidence of other services – such as [✂] and Apple - multi-homing with providers other than GIPHY and Tenor.' We agree that not all platforms multi-home or see that as necessary. However, some of the largest social media platforms, including Facebook, do so, with GIPHY and Tenor, as set out in Chapter 5, Market Definition and Market Power.

327 As noted in Chapter 5, Market Definition and Market Power, one third party (that integrates with both providers) told us that while Tenor and GIPHY have similar libraries in terms of size and quality, it regards GIPHY as superior, particularly in regard to its content moderation. One third party (which uses GIPHY but not Tenor) considered that the volume and quality of Tenor's sticker offering was relatively on par with GIPHY's, but not quite as good. Another third party stated that it previously tested Tenor and another smaller GIF provider in one of its apps but had chosen to use GIPHY because it offered a more comprehensive library with better content to stimulate user conversation.

8.33 The importance of access to GIPHY for competition between social media platforms is also evidenced by Facebook's concerns that a rival would acquire GIPHY and prevent Facebook from accessing GIPHY's content. A number of internal Facebook documents indicate such a concern:

(a) One document notes that while a partnership with GIPHY would address some concerns, Facebook would '[✂]';

(b) An internal chat comments that there is '[✂]'; and

(c) Another internal chat noted that '[✂]'.

8.34 Despite the availability of Tenor (and smaller GIF providers), Facebook itself considered the loss of access to GIPHY as a serious risk.

(a) Facebook noted that moving off GIPHY's API or reducing its dependency on GIPHY in favour of other partners had the disadvantage that [✂].

(b) In requesting approval for the acquisition, Nir Blumberger (Head of EMEA Corporate Development) notes that [✂].

8.35 Overall, we consider that both Facebook's internal documents set out above and third party views (set out in Chapter 5, Market Definition and Market Power) evidence the reliance of social media platforms on GIPHY. This is further supported by third party reactions to the Merger:

(a) In response to the Merger, [✂]. [✂] has expressed concerns that it may be foreclosed from GIPHY as a result of the Merger, [✂]. Concerns about losing access to GIPHY post-Merger are also articulated in [✂] internal documents, referring to the risk as 'non-trivial'.

(b) [✂].

(c) [✂]. The third party continues to use both GIPHY and Tenor as it considers it important to have two providers to combat technical challenges such as outages.

8.36 Facebook commented that 'none of Facebook's rivals expressed any firm willingness to buy GIPHY, which suggests that they would not experience loss of user engagement to any material degree', [✂] implies that they did not think GIFs were a critical asset and/or that alternatives to GIPHY's GIFs were available and adequate.

8.37 We note that a decision not to bid does not imply that the platform is not reliant on GIPHY and that there is no harm from losing access to it, particularly if the platform knew or anticipated that it would have to compete against Facebook to acquire GIPHY. In considering whether to bid for GIPHY, a rival social network platform would have had to weigh (i) the value to that platform derived from removing the risk of losing access to GIPHY's services plus (ii) any revenue upside from the acquisition on the one hand, against the higher between (iii) the expected valuation of rival bidders (including Facebook), and (iv) the valuation of GIPHY as an independent company on the other hand. If a platform expected the sum of (i) and (ii) to be lower than either (iii) or (iv), then it may consider its chances of its bid getting accepted to be too low and therefore it may decide not to bid. Furthermore, third party platforms gave various reasons for not pursuing the transaction that do not necessarily indicate a lack of concern. These included other priorities ([✂]) or regulatory concerns ([✂]). The sale was also taking place against the backdrop of Coronavirus (COVID-19), which was adversely affecting advertising demand and negatively impacting all of these platforms.

8.38 [✂].

8.39 In our view, [✂] are consistent with it being reliant on GIPHY and thus seeing the acquisition of GIPHY by Facebook as a threat to its business.

Ease of replicating GIPHY

8.40 In the context of assessing Facebook's ability to foreclose rivals and in the absence of existing effective alternative GIF suppliers to GIPHY other than Tenor, we consider whether foreclosed social media platforms would be able (and, if so, likely) to easily replicate GIPHY's services either via self-supply, or if smaller GIF suppliers would be able (and likely) to easily expand and offer a service comparable to GIPHY. If this was the case, Facebook's ability to foreclose its rivals could be mitigated. We set out below the evidence related to the ease of replicability of GIPHY's GIF offering.

8.41 The Parties submitted that GIFs have become a commodity and that GIPHY's library is available everywhere, such that GIPHY's only differentiating factor is the brand image. They also argued that 'less than 1% of GIPHY's content is exclusive to GIPHY, which means that suppliers of GIF libraries have access to the same content', and that 'GIPHY partners and users often upload exactly the same content on other services in order to expand their reach'.

8.42 However, as set out in Chapter 9, Countervailing Factors, there are multiple requirements for replicating the GIPHY service, such that entry (including via self-supply) or expansion is unlikely to be easy. These are a moderated, high-quality large content library, a sophisticated search algorithm, scale and brand, a monetisation strategy, and capital.[328] As evidenced above (see paragraph 8.32), Facebook was also of the view that [✂]. Such creative talent is unlikely to be easily replicable.

8.43 Facebook estimated that it would require '[✂]' and noted that at the time of the Merger, GIPHY employed considerably fewer staff than that. The lower headcount of GIPHY, compared to Facebook's estimate, was due to the fact that Facebook's estimate was for replicating GIPHY, which had been developed over several years, over a short period of time. This suggests that replicating GIPHY with more limited resources (similar to the staff count of GIPHY pre-Merger) would take longer than [✂]. Further internal documents from Facebook also demonstrate that recreating the GIFs in GIPHY's library would not be sufficient to replicate the level of quality of service provided by GIPHY (see Chapter 9, Countervailing Factors). Thus, even if copying (ie 'scraping') GIFs off publicly available libraries may be easy, this is unlikely to replicate GIPHY's services.

8.44 It also appears unlikely that expansion of existing smaller GIF providers would be easy, as existing smaller providers are nowhere near the scale of GIPHY (see Chapter 5, Market Definition and Market Power). In internal Facebook correspondence, Nir Blumberger commented that using Gfycat, the largest GIF supplier after GIPHY and Tenor, with 6 people and [✂] percent coverage to Facebook's knowledge at the time, would be '[✂]'.

8.45 Given the above, we are of the view that GIPHY is not easily replicable by entry (including self-supply) or expansion, as it would require a significant resource and time commitment.

Provisional view on availability of substitutes

8.46 We have provisionally found a lack of a range of effective alternatives to GIPHY, with only Tenor offering a comparable service and other GIF providers not seen by social media platforms as an effective substitute to GIPHY. Given GIPHY's scale and creative talent, it appears uniquely placed to compete and innovate in GIF provision in the future and GIPHY's offering is not easily replicable.

8.47 Although Tenor appears to be a close alternative, this does not preclude foreclosure. The lack of a wider range of close alternatives reduces incentives for Tenor to compete aggressively in the event of foreclosure, and Facebook and some of its rivals have expressed a perceived risk relating to the

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[328] Chapter 9, Countervailing Factors.

uncertainty over the future availability of Tenor to third parties, given its strategic incentives are aligned with those of Google.

8.48 Our provisional view is therefore that social media platforms could not easily substitute away from GIPHY to a range of effective alternative suppliers in response to foreclosure and hence would likely face a lower quality GIF offering, and reduced GIF-related innovation and product development, if they were to switch to an alternative GIF provider (including Tenor) as a result of total or partial foreclosure. We also consider that a GIF service that is of a lower quality than the pre-Merger quality of GIPHY could degrade platforms' ability to compete, given their current reliance on GIPHY (evidenced above in 8.31-8.39) despite the availability of Tenor and smaller (lower quality) suppliers.

The importance of GIFs as an input into social media services

8.49 The Merged Entity could only harm the competitiveness of its rivals if the input it supplies plays an important role in shaping downstream competition.[329] The Merger Assessment Guidelines state that in assessing the importance of an input the CMA:

> 'will have regard to all foreclosure mechanisms, so will consider not only the proportion of rivals' costs that the input accounts for, but also for example the role it plays as a determinant of product quality or the rate of innovation. Its focus will be not on predicting the precise impact of each possible deterioration on rivals' businesses, but on the overall question of whether in aggregate they could be foreclosed'.[330]

8.50 The overall importance of GIFs as an input impacts Facebook's ability to employ any of the foreclosure mechanisms identified above (see paragraph 8.10). The more popular GIFs are as a feature, the more likely it is that by refusing or worsening a rival social media platform's access to GIPHY's GIFs Facebook could harm the ability of that platform to compete for user attention (and thus advertising revenue), now or in the future. As further discussed in paragraphs 8.122 to 8.124, the role that GIFs play in attracting user attention creates an incentive for Facebook to strategically foreclose social media rival's access to GIPHY in order to limit or slow down the emergence of competitive threats.

[329] *Tobii AB v Competition and Markets Authority* [2020] CAT 1, paragraph 426.
[330] Merger Assessment Guidelines (CMA129), 7.14.

8.51 As set out in Chapter 5, Market Definition and Market Power, the term 'social media' covers a wide variety of platforms, which are differentiated in, for example:

(a) Their purpose or what they are typically used for, eg communicating and sharing content with friends and family, sharing ideas and content with other users anonymously, professional networking, and so on.

(b) Their formats or popular features, eg messaging (WhatsApp), photos (Snapchat), videos (TikTok).

(c) Their target audience, and/or the demographics which adopt them.

8.52 The relevance of GIFs within the platform's format, their popularity among users, and the impact of switching to a lower-quality GIF provider, will also vary across platforms.

8.53 In the following we discuss:

(a) Evidence on the importance of GIFs to Facebook's platforms based on the extent of usage of GIFs on Facebook platforms, and Facebook's internal documents discussing the importance of GIPHY to its platforms in driving engagement (paragraphs 8.55 to 8.64);

(b) Facebook's empirical analysis, submitted in the context of this investigation, assessing the impact of GIFs on user engagement (paragraphs 8.65 to 8.71); and

(c) Evidence on the importance of GIFs to other social media platforms (paragraphs 8.72 to 8.80).

8.54 We consider that the evidence on the importance of GIFs to Facebook's platforms is indicative of the importance of GIFs more generally to social media platforms, and in particular to platforms that are trying to compete with Facebook for its users.

The importance of GIFs to Facebook's platforms

8.55 First we set out our views on the evidence on the importance of GIFs to Facebook.

8.56 Figure 18 below shows the proportion of users posting content during [✂].

Figure 18: Proportion of users posting during one week that have used a GIF
[✂]

Source: CMA analysis [✂].

Note: [✂].

8.57 Facebook told us that 'GIFs are used across Facebook's products and help to drive user engagement on the Instagram service in particular'. Facebook also said that GIFs are 'consumed by users and in turn may help to drive advertising revenues on these [social media] services'.

8.58 Facebook's internal documents also confirm that GIFs are important for user engagement. In making the case for the acquisition, Facebook noted that:

[✂]

8.59 In discussing internally the case for acquiring GIPHY, Vishal Shah (Vice President of Product for Instagram) commented that:

[✂]

8.60 A 2018 study commissioned by Facebook to gauge user views on features of Messenger asked participants how they feel about a product's features, what they expect and what delights them. The study identified [✂]. The figure reproduced below shows the proportion of participants considering each feature as 'must have' or 'performance' (two categories encompassing responses where the service was disliked when the feature was unavailable, and liked or at least no not disliked when the feature was available). As Figure 19 shows, [✂].

Figure 19: Ranking of Messenger features in terms of priority identified by a 2018 study by Facebook

[✂]

Source: [✂]

8.61 A number of further internal documents evidence Facebook's perception of GIFs as driving a meaningful amount of engagement:

[✂]

8.62 [✂]

8.63 The Parties commented that in these documents, '[✂]'.

8.64 We note that the effect would be greater as a proportion of Instagram's revenues than of Facebook's total revenues. Such a loss would represent around [✂] of Instagram's revenues, or [✂] at Facebook's most conservative estimate. Facebook appeared to consider that the financial loss from even a much smaller reduction in Instagram Stories than the full [✂] (cited above at paragraph 8.59) was nevertheless significant: in an internal exchange discussing the impact of Instagram losing access to GIPHY, Nir Blumberger comments that, '[✂]'.

Facebook's empirical analysis

8.65 Facebook submitted that only a very small minority of content posted on Facebook surfaces contains a GIF: on average, [✂] of content posted across all Facebook surfaces, falling to [✂] for younger users.

8.66 Our representation of the proportions referred to in Facebook's submission is shown in the figure below. The percentages refer to the volume of the respective type of content (for example, comments) including a GIF, as a proportion of the total volume of that type of content.

Figure 20: Proportion of content that contains a GIF, by Facebook surface

[✂]

Source: CMA analysis [✂].
Note: [✂].

8.67 The figure shows that [✂].

8.68 Facebook further argued that:

(a) Even [✂] of Instagram Stories is 'very low' and even so, Stories represent less than [✂] of the content posted on Instagram. Overall, only [✂] of all content on Instagram contains a GIF.

(b) GIFs are used consistently less frequently than other engagement drivers and that therefore GIFs are 'at best of marginal importance to users'.[331] Facebook added that 'The availability of new and increasingly more popular types of content will naturally mean that the user and financial impact of foreclosure of GIFs will be reduced. Users come to Facebook and other services for multiple reasons, of which GIFs are an extremely small part.'

8.69 In our provisional view:

[331] Specifically, the Parties submit that 'GIFs are only one among myriad different types of content supplied to these downstream offerings. Indeed, GIPHY's API partners can choose between (for example) videos (e.g., from YouTube), live videos, music, news, market data, influencer content, micro-games, animations, emojis, animojis, infographics, memes, etc.'

(a) On the first point above, we note that Facebook's description of these proportions is in contradiction to how similar proportions are evaluated in internal documents, [✂]. Further internal documents set out above all point to Facebook's perception of GIFs as an important feature driving a meaningful amount of engagement and revenue. We also note that [✂] (see paragraph 8.56 above). Thus, in our provisional view the evidence demonstrates that these levels of GIF usage are material and important to Facebook.

(b) With respect to the second point, we note that other engagement drivers being shared more than GIFs on Facebook's services, or GIF users sharing content other than GIFs, do not in themselves mean that GIFs are not an important input for user engagement. First, as set out in Chapter 5, Market Definition and Market Power, other user expression features have different characteristics and purposes and are unlikely to be substitutable with GIFs. To illustrate, an internal Facebook presentation summarising research on WhatsApp user expression features suggests that, compared to stickers, GIFs '[✂]. Whether or not other formats of user expression are used more frequently in volume does not necessarily indicate the relative satisfaction extracted by users from these formats. Second, as set out in Chapter 4, Industry Background, the Parties' internal documents and our analysis of GIPHY's and other GIF providers' data suggest that there has been a long term growth in GIF usage. Although GIPHY's data suggest that the overall growth may have slowed in 2020 (see Chapter 4, Industry Background, Figure 9), the evidence set out above demonstrates that GIFs continue to be an important input to social media platforms. As set out below in paragraph 8.124, we consider the evidence to suggest that GIFs will continue to be an important input to social media competition going forward.

8.70 Facebook also presented an analysis showing that when its Messenger Kids service experienced a two-day loss of service from GIPHY in May 2020, this did not lead to a discernible impact on the number of messages sent on the service. The Parties claim that this confirms that GIFs are not an important input from the user perspective.[332]

8.71 We do not consider this analysis to be informative of the likely importance of GIFs to third-party platforms. In particular:

(a) While users may not respond to a two-day loss of access to a feature, the loss or degraded quality of the feature for a longer period of time could

[332] White paper on Vertical Foreclosure Analysis.

have an impact on user habits, such as through friend groups migrating to or favouring other platforms, or new users being slower to engage with the platform.

(b) Messenger Kids is an app aimed at children aged 6-12 which requires parents to authorise the creation of an account and allows parents to monitor contacts (both via the parent's Facebook account).[333] The Parties have not demonstrated that this user group is representative of the broader social media user population, for example in their extent of multi-homing and switching across social media platforms. Messenger Kids appears to be aimed at meeting a demand by users who are too young to use other social media apps.[334] For example, Facebook Blue, Instagram, Snapchat and TikTok all have a minimum age of 13 or higher.[335] Thus, it is not clear that the reaction of Messenger Kids users can be indicative of the possible reaction of older users on Facebook's other platforms or rival platforms.

(c) The paper only considers the immediate (2020) impact of losing GIFs. In a dynamic context (i) the use of GIFs may continue to grow,[336] and (ii) in a foreclosure scenario, the revenue impact on a social media platform of losing GIFs could be greater if it meant being at a competitive disadvantage to rivals (eg Instagram) who still had access to GIFs. That is, in addition to the platform losing some user engagement that would otherwise have occurred had the user accessed GIFs, over time users of the platform affected by foreclosure may switch (partially or totally) to rival platforms if they find the experience on the platform without GIFs (or with inferior GIFs) to be less satisfactory.[337] Such switching could be amplified further by network effects.

The importance of GIFs to other social media platforms

8.72 Next, we consider third party evidence on the importance of GIFs to competition in the supply of social media services.

8.73 We note that GIFs are used widely across social media, with over half of GIPHY's API/SDK search traffic arising from non-Facebook apps (see Figure 10 in Chapter 4, Industry Background). GIFs appear important enough that

[333] https://messengerkids.com/
[334] As evidenced by Facebook's own presentation of the app on its official website: 'Made for children. Controlled by parents.' (Messenger Kids | The messaging app for kids (facebook.com), accessed 15 July 2021)
[335] Age Restrictions on Social Media Services | Safer Internet Centre, accessed by the CMA on 22 July 2021.
[336] See Chapter 4, Industry Background, Figures 7 and 8 and paragraph 8.124 below.
[337] We note that Facebook considered the risk of GIPHY being acquired by a rival social media platform. However, it is not clear that this scenario informed its estimates of the cost of losing access to GIPHY.

some of Facebook’s main competitors in social media took immediate steps to mitigate the possible impact of the Merger on their access to GIPHY’s GIFs (see paragraph 8.35).

8.74 Most platforms said that it was difficult to precisely quantify the importance of GIFs to the engagement of end-users. However, the evidence available suggests that they contribute meaningfully to the ability of at least some of Facebook’s biggest competitors to compete for user engagement.

8.75 One platform ([✄]) explained that GIFs are very important for user expression on its platform, as they are a concise and globally recognised form of communicating emotions, with the ability to add humour and flavour in ways that other content cannot. This platform noted that, due to competing platforms offering GIFs, there was an incentive for it to also continue offering them. [✄].[✄].

8.76 One platform ([✄]) commented that creative tools (including, but not limited to, GIFs and GIF stickers) were a base requirement to provide a competitive messaging product, and that removing GIPHY would unavoidably degrade its user experience. Approximately 65 million users of this platform use GIPHY each month, [✄]. An internal document commenting on the reliance on GIPHY refers to losing access to GIPHY as ‘non-trivial’. [✄]commented that GIPHY's key competitive advantage was in delivering customer satisfaction, and that if searches do not reflect a specific cultural reference or interest the user is looking for, the user would be unlikely to select a GIF. Users may then associate their frustration of being unable find a particular GIF with that platform and switch to a different platform.

8.77 This platform also considered that the impact of foreclosure from GIPHY ‘would materialise over time rather than occurring overnight’, as it would expect ‘to see slow leakage of users heading to rival applications as they realise the poorer functionality of [✄] offering’, and considered that the impact would be significant.

8.78 Two other platforms ([✄]) characterised GIFs as ‘nice to have’ but not critical or foundational to their growth or user engagement. A ByteDance internal document indicates that [✄]of global video creates ([✄] in absolute volume), an estimated [✄] of video views ([✄]), and [✄] of global messages ([✄]) include a GIPHY GIF sticker.

8.79 On the other hand, the Parties submitted that ‘GIFs are only one among myriad different types of content supplied to these downstream offerings [ie social media platforms]’. The Parties cited examples including live videos, ‘music, news, market data, influencer content, micro-games, animations, emojis, animojis, infographics, memes, etc'. The Parties submitted that all types of content were 'interchangeable for downstream services in driving user engagement'.

8.80 We note that a number of the other engagement tools identified by the Parties, such as news, market data and micro-games, are typically used to improve user engagement in general, rather than specifically being used to enhance the expressiveness of communications between users, and this is likely to limit their interchangeability with GIFs (see Chapter 5, Market Definition and Market Power). In addition, the engagement tools listed by the Parties are widely available across social media platforms. A higher-quality GIF service may help a platform to distinguish itself from rivals which also offer a range of engagement tools, driving user engagement and advertising revenues. For example, if a user who is choosing whether to share content with friends on Instagram or Snapchat prefers to use the service that (in their perception) offers a higher quality GIF service, this will increase engagement with that platform (by both the sender and the receiver of the message).

Provisional view on the importance of GIFs to other social media platforms

8.81 Given the above, we are of the provisional view that GIFs are an important input to compete in the supply of social media services. As social media platforms differentiate themselves, the role and importance of GIFs varies; however, we note that Facebook faces only limited constraints in social media, [✄] competitors ([✄]) consider that GIFs are very important. Therefore, we are of the provisional view that access to GIFs impacts the competitiveness of at least some of Facebook's main rivals.

Ability to foreclose by requiring more data

8.82 In the Market Study, the CMA found that successful social media platforms use user data to personalise the experience on that platform for the user. 'By providing better recommendation and personalisation functionalities, platforms may become more appealing to consumers and lead them to spend more time on the platform'. Whilst smaller platforms source the vast majority of their data from their user interactions with the platform, Facebook has the ability to source data from a range of third-party providers, in addition to data from its own platforms.[338] The CMA found that Facebook possesses a significant data advantage over smaller platforms and publishers and that this data advantage both increases the value of Facebook's advertising inventory and creates

[338] Market Study, paragraphs 3.236-3.239.

barriers for its competitors to overcome.[339] 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.[340]

8.83 We consider whether Facebook would have the ability to disadvantage its rivals by using its provision of GIPHY's services to rival platforms as a means of acquiring data on user behaviour or wider trends on these platforms, thereby further weakening its competitors' ability to compete in social media and digital advertising and further raising barriers to entry (due to the differential in access to data). Facebook could, in principle, require apps to return more data to GIPHY as a condition of supply, or otherwise require that the apps do not stop supplying or hide the data already being provided to GIPHY via their integrations pre-Merger. As set out in Appendix G: GIPHY's data, the data acquired could include:

(a) User-level data on user behaviour on rival social media platforms; and/or

(b) Aggregate data on the usage of rival social media platforms.

8.84 To assess whether this data could be utilised as a mechanism of foreclosure we consider the likely value to Facebook of these two types of data collected by GIPHY, and the ways in which this data could be used to disadvantage rivals.

8.85 The Parties submitted that gaining access to new data did not form part of the rationale of the Merger. 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, as articulated by the Parties:

(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[341] or searches for parts of words), further undermining their usefulness.

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[339] Market Study, page 211.
[340] Market Study, paragraph 5.165.
[341] GIPHY's integration partners can pre-load some searches and GIFs that appear when the user opens the integration.

(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, 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 servers[342] and content caching servers[343] to prevent GIPHY from accessing user-level data.

8.86 The Parties further submitted that 'requiring data from API partners would not affect the user experience on competitors' apps or websites therefore if Facebook did require more data and API partners accepted these terms, there would be no foreclosing effect.'

8.87 In contrast, three platforms ([✂]) expressed concerns over the data advantage to Facebook:

(a) [✂].

(b) [✂].

(c) [✂] was concerned that 'relying on a Facebook-owned GIPHY would allow Facebook to collect more unique data from [✂] users and leverage that data in the [✂] market. For example, GIF data would allow Facebook to know what [✂].' [✂] was also of a view that Facebook had already gathered significant quantities of data through the Facebook Login feature and that Facebook had been unwilling to negotiate the terms of using this feature.

8.88 Our assessment of Facebook's ability to use GIPHY's data to disadvantage its rivals is structured as follows. First, we summarise our view on the value of GIPHY data. Second, we set out our assessment on whether ownership of this type of data could enable Facebook to weaken its rivals' ability to compete.

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[342] These are server applications or appliances that act as intermediaries for requests from the users seeking GIFs from GIPHY or other GIF providers.
[343] 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.

The value of GIPHY's data

8.89 Facebook submitted that the Merger 'does not materially add to or enhance these existing sources of information on users' interests, behaviour or trends', noting 'GIPHY data relate to a narrow set of user actions' and that 'Facebook users account for the majority of GIPHY traffic'.

8.90 We note that the fact that Facebook's usage of GIPHY accounts for the majority of GIPHY's traffic (see Chapter 4, Industry Background, Figure 11) is merely reflective of Facebook platforms' significant share of social media (see Chapter 5, Market Definition and Market Power, Table 5). Regardless of the share of Facebook in GIPHY's traffic, many social media platforms, including some of Facebook's largest competitors, use GIFs and rely on GIPHY to supply them; therefore, data derived from GIPHY's traffic covers a significant number of Facebook's rivals. This wide coverage of rivals makes it potentially valuable to Facebook.

8.91 Based on our review of the Parties' submissions regarding GIPHY's data capabilities, and Facebook's internal documents, as set out in Appendix G: GIPHY's data, we are of the view that:

(a) GIPHY's **user-level data**, where obtainable via user-level identifiers, may provide information on users' interests in popular culture or brands, and/or user moods and sentiments in real time. The Parties submitted that such user-level data is currently available to GIPHY in only a limited set of circumstances, most notable from SDK integrations rather than from API partners.[344] However, Facebook could require larger partners, that currently do not return user-level identifiers to GIPHY, to request such data as a condition of supply. We understand that this would likely be an incrementally small amount of data compared to the richness of data Facebook already collects both within its own ecosystem and across the wider web and app ecosystem through its existing tools. That said, any value from such data would post-Merger be captured solely by Facebook.

(b) Facebook already has significant amounts of **aggregate data** on usage of competitor apps (see discussion in paragraphs 27-32 of Appendix G: GIPHY's data). However, evidence suggests that there are gaps and inaccuracies in these data (see paragraph 31 in Appendix G: GIPHY's data). We understand that GIPHY's data on the volume of GIF-related traffic on third party apps may serve as an additional tool to improve and refine Facebook's existing efforts to infer competitor activity. This view is

[344] However, as set out in paragraph 9 of Appendix G: GIPHY's data, [✄].

confirmed by an internal communication between Facebook employees, where an employee suggests that inferences about trends for other platform users could be made using GIPHY's data.[345]

Facebook's ability to use GIPHY's data to disadvantage competitors

8.92 The Merger Assessment Guidelines state:

> 'The data held by many digital market firms allow them to hone, improve and personalise their products and services, and this may be difficult for an entrant to replicate in a timely manner. Early mover advantages may be strengthened by the combination of the merger firms'.[346]

8.93 We next consider whether Facebook's possession of GIPHY's data would place its rivals at a competitive disadvantage. The harm to rivals could take two forms:

(a) As the Merger Assessment Guidelines suggest, Facebook's rivals that continue to use GIPHY post-Merger could be placed at a competitive disadvantage vis-à-vis Facebook if, for example, Facebook could use the data to analyse activity on rival apps in such a way that would allow it to identify competitive threats or react to emerging market trends before other rivals are able to. Data on competitor trends may also enable Facebook to target its efforts in certain narrow areas (where it identifies stronger rivalry) such that overall innovation (and competition) in other areas (where rivals are weak) would be reduced. Facebook may also be able to use the data collected through GIPHY from third party apps to develop its targeted advertising offering in a way that rival apps could not match. Our assessment in Appendix G: GIPHY's data suggests that user-level GIPHY data appears to be incrementally small compared to Facebook's existing databases, and GIPHY's aggregate data may at best refine Facebook's existing market intelligence sources rather than serve as a standalone source of intelligence. However, given Facebook's significant and enduring market power in social media and display advertising, and its existing significant data advantages, even a small data increment further strengthens its ability to limit competitive threats.

(b) Regardless of whether GIPHY's data could be used by Facebook to disadvantage rivals, rival platforms may be unwilling to share such data with Facebook. Facebook's requirement to share this data would thus be

[345] See paragraphs 33-34 in Appendix G: GIPHY's Data.
[346] Merger Assessment Guidelines (CMA129), 8.41.

equivalent to raising the price of GIPHY's services to third parties.[347] Such platforms would have the option to stop using GIPHY and either remove the GIF facility altogether, or switch to another provider (ie Tenor or a smaller GIF provider). In the former case, the result would equate to total foreclosure, and our assessment of the incentives and effect of total foreclosure apply. In the latter case, the lack of a range of effective alternatives, as evidenced above (paragraphs 8.14 to 8.48), means that the platform would face a lower quality service in case of switching to an alternative GIF provider, including Tenor (see paragraph 8.48).

8.94 With respect to the second point above, we are aware of at least one third party platform that chose to switch away from GIPHY to a different provider following the Merger as a result of the perceived risk of Facebook collecting more data on its users. A second third party platform told us that it would 'very likely switch' away from GIPHY in response to a hypothetical scenario in which GIPHY required it to provide more user data, and that instead of paying for additional measures to prevent 'data leakage' (ie the transfer of user data to Facebook), it would rather stop using GIPHY's service altogether.

8.95 We note that although API/SDK partners could use proxying and/or caching to attempt to hide their data from GIPHY, Facebook could potentially prevent such activities as a condition of supply, or as a requirement to supply GIFs at the same level of quality as they are supplied to Facebook. In addition, some API/SDK partners may be unaware of, or individually unconcerned about, the use Facebook may be making of this data, or, [✄], may lack the engineering resources to proxy searches. This would be particularly true for smaller apps that are at an early stage of trying to enter the market.

8.96 On that basis, our provisional view is that GIPHY's data enables an additional mechanism of foreclosure. Post-Merger, Facebook may use this mechanism in combination with other foreclosure mechanisms set out in paragraph 8.10. The different mechanisms could be used selectively depending on the level of perceived competitive threat to Facebook from the rival platform, and the role GIFs play on that platform.

Contractual restrictions to the Merged Entity's ability to foreclose

8.97 Facebook submitted that it 'has signed agreements with Snap which continue to allow Snap to use proxying and caching (which limit data available to GIPHY) and do not include any requirements for additional data provision'. Facebook also submitted that breaking this contractual agreement would incur

[347] Data provision as a form of price for receiving a service is discussed in the CMA's Merger Assessment Guidelines in footnotes 16 and 90.

costs, and that it has made other commitments to keep GIPHY available to other services.

8.98 The Merger Assessment Guidelines state that:[348]

> 'The CMA's assessment of the ability of the merged entity to foreclose its rivals is unlikely to place material weight on contractual protections, for example, to continue supplying both the current version and future upgrades of the input. In practice, such contracts may not completely remove a firm's ability to harm its rivals, given that certain rivals might not be covered by these contracts, the contracts might not protect all ways in which the competitiveness of rivals could be harmed, and the contracts may be of limited duration. Moreover, over time contracts may be renegotiated or terminated, and firms may waive their rights to enforce any breaches in light of their overall bargaining position (reflecting the change in market structure brought about by a merger). However, the CMA may consider any financial or reputational costs of terminating contracts in its assessment of foreclosure incentives.'

8.99 In our provisional view, these considerations apply to the present case. The provision of GIFs involves ongoing cooperation between the provider and the API/SDK partner, as evidenced by the close engagement between Instagram and GIPHY prior to acquisition. As the service, and the needs of social media platforms, evolve over time there is a risk that important quality aspects of GIF provision will not be covered by contractual terms. In addition, litigating against Facebook for a breach of contract would be resource intensive and third parties' concerns about a risk of retaliation by Facebook (whether real or perceived) could further dampen their incentives to pursue litigation.

Provisional view on the Merged Entity's ability to foreclose

8.100 In our provisional view, the evidence set out above shows that post-Merger Facebook has the ability to foreclose its rivals in social media:

(a) **Facebook's rivals do not have a range of effective alternative GIF providers to switch to in the event of foreclosure, which means that they would face a lower quality GIF offering relative to our counterfactual if they were to switch to an alternative GIF provider, including Tenor**. Tenor is the only close substitute to GIPHY and the

348 Merger Assessment Guidelines (CMA129), paragraph 7.15.

absence of a wider range of close alternatives means that post-Merger the incentives for Tenor to compete (including through innovation), in the event of foreclosure of platforms from GIPHY, are reduced.

(b) **GIFs are an important driver of user engagement for Facebook**[349] **and some of its main rivals.** This is evidenced by Facebook's internal documents, views of third parties and their internal documents, and third party reactions to the Merger. A social media platform that is unable to access GIFs, or is accessing GIFs at a lower quality or where development of the GIF product and GIF-related innovations favour Facebook's commercial incentives, would have a weakened ability to compete for user attention. Given the finding above on the distinctiveness of GIPHY as a GIF provider, it follows that GIPHY's GIFs are an important input to social media platforms.

8.101 We consider that **a range of foreclosure mechanisms are available to Facebook**, including complete refusal of supply, degrading the terms of supply of current API/SDK services, reprioritising innovation and development of GIPHY's API/SDK services towards the requirements of Facebook's own social media services over those of other social media platforms, and requiring data as a condition of supply (see paragraph 8.10 for a description of the different mechanisms). These mechanisms could be used alone or in combination, and could be targeted at individual rival platforms (for example, depending on the type of perceived competitive threat to Facebook from a rival platform, and the role GIFs play on that platform).

Incentive to foreclose

8.102 The Merger Assessment Guidelines state that 'The CMA will […] consider whether the Merged Entity would have the incentive to pursue a foreclosure strategy, in particular through a consideration of the magnitude and likelihood of the costs and benefits'.[350]

8.103 In the present case, the likely benefits of foreclosure involve Facebook gaining user engagement (and therefore potential ad inventory) from its rivals, while the likely costs of foreclosure are primarily incurred by GIPHY losing some advantages associated with its scale, in the case that a total foreclosure strategy is adopted.

[349] The importance of GIFs to Facebook itself is also indicative of the likely importance of GIFs to platforms that compete with Facebook.
[350] Merger Assessment Guidelines (CMA129), paragraph 7.16.

8.104 We consider the following in turn:

(a) Cost of foreclosure to Facebook;

(b) Direct benefits of foreclosure to Facebook;

(c) Strategic benefits of foreclosure to Facebook; and

(d) Evidence from internal documents on Facebook's intentions to foreclose.

Cost of foreclosure

8.105 An input foreclosure strategy typically entails a cost for the foreclosing party due to the loss of revenue from sale of the input to third parties, which must be weighed against any benefit from foreclosure. In contrast, in the present case GIPHY's services are provided free of charge to third parties, so there is no direct negative revenue impact to Facebook of withdrawing the service.

8.106 Facebook submitted that:

> '[✄].'

8.107 Facebook also submitted that breaking its commitment to provide GIPHY to third parties, and its contract with Snap, would incur a cost.

8.108 We agree that, as the Parties suggest, there is a benefit to the GIPHY service in maintaining widespread distribution of the service, as this makes it attractive for brand partners and other content creators. Evidence shows that GIPHY enjoys network effect advantages over its rival GIF suppliers due in part to its widespread adoption across platforms (see Chapter 5, Market Definition and Market Power), and therefore there would be a cost in losing these advantages should a total foreclosure strategy be adopted. Further costs associated with reduced distribution of GIPHY's GIFs could include a reduction of data collected from GIPHY's traffic (the value of which is discussed in paragraphs 8.89-8.91 above), and a reduced possibility to monetise GIFs should Facebook attempt to do so.

8.109 On the other hand, Facebook's platforms are by far the most widely used social media platforms, and they make up for around half of GIPHY's searches (see Figure 11 in Chapter 4, Industry Background). Even if GIPHY were withdrawn from all other platforms apart from Facebook, it would still be very prominent and attractive to content creators (or advertisers), and potentially more so than any other GIF provider – particularly as Facebook could increase GIPHY's user reach by extending the use of GIPHY on its own platforms, at the expense of Tenor. We understand that to date Facebook has chosen not to do so, and continues to use both GIPHY and Tenor extensively. However, an internal communication between Facebook employees suggests that [✂].[351]

8.110 Moreover:

(a) Facebook would have the option of withdrawing access to GIPHY only to some platforms – for example those it viewed as a particular competitive threat, those which it considered likely to be particularly vulnerable to a loss of user engagement as a result of foreclosure, or those which declined to provide Facebook with access to user data. This would significantly reduce any cost of foreclosure to Facebook compared to a complete withdrawal of the service from all third parties.

(b) The cost of foreclosure would also be significantly reduced if a partial foreclosure strategy is adopted, in which case the audience reach (and thus attractiveness to content creators) could be maintained to a greater extent.

Direct benefits of foreclosure

8.111 If a loss of access to GIPHY made a social media platform less attractive to some of its users, this may lead to a reduction in user engagement (ie time spent on the platform), as set out above (see paragraphs 8.49 to 8.81). This was Facebook's concern about the loss of Instagram's access to GIPHY, and it expected the result to be a significant impact on revenues.

8.112 We expect that such a reduction in user engagement would be further amplified by network effects. For example, if a celebrity or popular contributor to a platform decides to switch to another platform with better features, their followers may also switch their attention to the new platform. Similarly, if a group of users of a private messaging app decide to switch to another app, their friends are also more likely to switch, even if they do not use GIFs.

8.113 When user engagement declines on a platform it is likely that at least some, and potentially a substantial proportion, of that engagement will switch to other social media platforms (rather than users choosing to spend less time on social media).[352]

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[351] In a 20 July 2020 exchange between Samuel Wu and Chia-Hua Li of Facebook about ongoing use of Tenor following the Merger, Mr Wu comments that: '[✂]'.
[352] As set out in Chapter 5, Market Definition and Market Power, although a broad range of services seek to capture user attention, the closest competitive constraints on Facebook are imposed by other social media providers.

8.114 Other things being equal, users switching away from a social media platform as a result of foreclosure might be expected to switch to other platforms in proportion to the relative market shares of those platforms. In addition, most users of other platforms are also regular users of Facebook platforms (see Chapter 5, Market Definition and Market Power), which makes switching their time to Facebook even easier. Given Facebook platforms' large market share in social media, and its existing user relationships, Facebook is uniquely well-placed to benefit from such switching.

8.115 Facebook is very effective at monetising its platform users, as reflected in its high profitability.[353] As a result, it is highly incentivised to increase the time spent on its platforms by users. The US House of Representatives Subcommittee reports a former Facebook employee as saying that as a product manager at Facebook, 'your only job is to get an extra minute. […]. They can monetize a minute of activity at a certain rate. So the only metric is getting another minute.'[354]

8.116 Finally, we note that there is likely to be a cost saving associated with foreclosure, as providing GIFs to API/SDK partners appears to have been a significant cost to GIPHY. In a Facebook internal document from February 2020, Vishal Shah comments that: '[✂]'. Thus, in the case of total foreclosure of some or all third party platforms, Facebook could recoup some of the costs associated with serving this traffic.

8.117 In our provisional view, if Facebook is able to reduce user engagement on rivals' platforms it will likely benefit from doing so, as this would increase user engagement, and hence advertising revenues, on Facebook's own platforms.

Strategic benefits of foreclosure

8.118 In addition to any benefit Facebook might achieve from diverting some of its rivals' users' time towards its own platforms to generate higher revenues, we have also considered whether there is a strategic benefit to Facebook from foreclosure using GIPHY.

8.119 The importance of GIPHY to competition between social media platforms is evidenced by Facebook's internal discussions leading to the acquisition. A March 2020 email exchange among Facebook and Instagram executives raises the prospect of an acquisition of GIPHY. [✂]. However, the exchange

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[353] In the Market Study, the CMA found that Facebook had a ROCE of 51% globally in 2018 with an estimated WACC of around 9%; see Market Study Appendix D.
[354] US House of Representatives Subcommittee on Antitrust, Commercial and Administrative Law (2020). Investigation of Competition in Digital Markets: Majority Staff Report and Recommendations, page 135.

also refers to the '[✂]'. In addition, the 'pros' of an acquisition compared to other options include '[✂]'.

8.120 This email exchange is consistent with a Merger rationale of ensuring access to GIPHY's services for the purpose of maintaining user experience, and of acquiring talent. However, it also indicates that Facebook saw the acquisition as strategic, in the sense that it saw the acquisition of GIPHY by a social media competitor as a risk to its competitive position.

8.121 We consider that by harming rival social media platforms' or emerging competitors' ability to innovate, grow and develop, Facebook could prevent or slow down the emergence of competitive threats and thus protect and further strengthen its significant market power in social media. In what follows we discuss three ways in which these strategic benefits could occur:

(a) Given the importance of GIPHY's GIFs to social media platforms' competitiveness, the Merged Entity could harm rival social media platforms' competitiveness by foreclosing them from GIPHY's GIFs where these may be needed as an input to their future innovations and development of new features;

(b) Given GIPHY's unique position to further innovate and develop GIF-related user expression products, the Merged Entity could harm rival social media platforms' competitiveness by reprioritising GIPHY's future innovations in user expression to benefit only Facebook; and

(c) The Merged Entity could use GIPHY's data to identify and react to emerging competitive threats to Facebook before they become material.

GIPHY's GIFs as an input to innovation of new features by social media platforms

8.122 Social media platforms compete for user attention by offering a wide range of features. As an example of competition on features, Snapchat was first to invent Stories (visual content disappearing after a day), followed by Instagram and other Facebook platforms, and more recently by Twitter with a product called Fleets. Instagram appears to have been first to introduce GIF stickers to allow its users to augment Stories, followed by Snapchat in an attempt to keep up.[355]

8.123 Third party evidence suggests that social media platforms continue to add GIF functionality into existing or new features:

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[355] Snapchat adds Giphy's GIF stickers to liven up your Stories | Engadget (accessed by the CMA on 15 July 2021).

(a) Twitter launched Fleets in November 2020, and integrated GIFs into that product.[356]

(b) [✂].

(c) An internal document provided by [✂] mentions plans to 'double down' on the GIF/sticker feature.

8.124 Facebook's internal documents also suggest that GIFs, and user expression tools more widely, are an important dimension of competition as it evolves. An internal Facebook presentation estimates that GIFs usage in messaging [✂] in 2020 (compared to 0% growth in text). The same presentation notes that '[✂]', giving examples of Viber with custom GIFs, Snapchat with video cameos, WeChat and Apple and Hikemoji with custom stickers, and others.

8.125 The fact that GIFs are only one of a range of features does not necessarily mean that the threat from rivals' innovations is not impaired or delayed by foreclosure of those rivals from GIPHY. An internal Facebook email about competitive threats to WhatsApp notes how historically there have been 'inflection' points for messaging apps (ie one app winning over another) and that in each of those scenarios Facebook had to 'identify the **main** growth driver' (emphasis in original). As an example, in [✂]. We consider this to show that one (or a small number of) features have the potential to tip the market.

8.126 Given the above, we expect that access to GIFs is not only important for user engagement in the shorter term, but also as an input for innovation and strategic development of platforms. By gaining control of a popular user expression feature and its future development, Facebook reduces the likelihood of its competitors developing innovation that may strengthen their competitiveness vis-à-vis Facebook in social media and therefore also in display advertising.

8.127 In the past Facebook has reacted strongly to the emergence of rival social media platforms. For example, internal documents now in the public domain show that Facebook has identified some platforms as a threat to its core business, and has used its market position to undermine these rival platforms, in particular Google+, Vine, Circle and Path.[357]

8.128 Facebook is likely to be particularly threatened by rival services which replicate and/or improve on the features of its core social media platforms,

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[356] Twitter informed us that the Fleets product was withdrawn in August 2021.
[357] FTC (13 January 2021) 'Complaint for Injunctive and Other Equitable Relief', Case No.: 1:20-cv-03590. See for example paragraphs 140, 153-156.

such as messaging on Messenger and WhatsApp, or photo and video content on Instagram. As text messaging and visual content are an important element of these services, and video GIFs and GIF stickers are increasingly important to the respective platforms, GIFs may also be important to any new entrant, or innovations by existing rivals, which threatened Facebook's business.

8.129 Therefore we consider that beyond the shorter term possibility to attract some user attention away from rival social media platforms, foreclosure has strategic benefits in that it can reduce the longer term competitive threats by limiting the ability of rivals to replicate Facebook's offering or to innovate in new features. This can include features that drive user engagement and therefore capacity to compete for display advertising, as well as features directly aimed at competing for display advertising (see discussion in Chapter 7, Horizontal Effects).

GIPHY's future innovations

8.130 Prior to the Merger, the independent GIPHY had incentives to develop its service in ways that would make it more valuable to a range of social media platforms (including Facebook and Facebook's rivals), for example by developing a range of solutions, related to user expression or digital advertising, that adapt to the different needs of each of these platforms (including for improving this feature on their core social media service).[358]

8.131 In contrast, post-Merger Facebook would not have an incentive to innovate or develop GIPHY's API/SDK services in a way that does not benefit Facebook, and services that give the possibility to a rival social media platform (eg by partnering with GIPHY to develop its service) to compete strongly against Facebook on certain user experience features. For example, in considering whether to monetise GIFs on third party platforms (as GIPHY planned to do pre-Merger), we would expect Facebook to take account of the possibility that doing so would offer a new revenue stream to its rivals, which they could invest in improving their social media services, and potentially cannibalise Facebook's display advertising revenues.

Strategic value of GIPHY's data

8.132 Internal documents now in the public domain suggest that Facebook has in the past seen the threat from new rivals as time-critical, in that by delaying the growth of such a rival it can potentially develop its own versions of the

[358] For example, GIPHY introduced the GIF sticker offering which was particularly suited to video-based communication features such as Stories on Instagram and Snap.

features that make the rival distinctive.[359] The timeliness of launching new social media products or features and responding to competitive threats can thus determine how competition between social media platforms will evolve in the future.

8.133 As we have considered above (see paragraphs 8.89-8.96), Facebook may be able to use GIPHY's data on traffic from third party apps as a means of improving its ability to identify the emergence of competitive threats, such as new social media platforms, or features within those platforms. Acting on this data would have the benefit of Facebook reacting to these threats earlier or faster, thus limiting the ability of these competitors to achieve the network effects necessary to establish themselves in the market as a material competitor to Facebook.

8.134 We therefore consider that by using GIPHY's data to improve its ability to identify emerging competitive threats Facebook could further protect its significant market power in social media, and therefore in display advertising.

Evidence from internal documents

8.135 The Parties submitted that if foreclosure 'was indeed an important (or even peripheral) part of Facebook's plans for the Transaction then one would expect to see this mentioned in the Parties' internal documents. The fact that the CMA has been unable to find any internal documents supporting this speculative concern speaks volumes about the lack of incentives that Facebook has in pursuing foreclosure strategies.'

8.136 Facebook commented in its internal documents that '[✂].' It also commented that '[✂]'.

8.137 As our Merger Assessment Guidelines indicate, evidence of an intention to restrict competition through an acquisition can be a corroborating factor in the assessment of the effects of a merger. However, it is not a necessary factor. Even where a party to a merger has such intent, we would not expect that party to set it out in writing, particularly in the case of sophisticated businesses familiar with merger control.

[359] In an email to a colleague Mr.Zuckerberg explains, '[O]ne way of looking at this is that what we're really buying is time. Even if some new competitors spring[] up, buying Instagram, Path, Foursquare, etc now will give us a year or more to integrate their dynamics before anyone can get close to their scale again. Within that time, if we incorporate the social mechanics they were using, those new products won't get much traction since we'll already have their mechanics deployed at scale'. See paragraph 14 of FTC (13 January 2021) 'Complaint for Injunctive and Other Equitable Relief'. Case No.: 1:20-cv-03590.

8.138 This appears to be supported by an exchange between Samuel Wu and Chia-Hua Li of Facebook about ongoing use of Tenor following the Merger. Mr Wu comments that: '[✂].'

Provisional view on the Merged Entity's incentive to foreclose

8.139 In our provisional view, the potential benefits of foreclosure of Facebook's rivals from GIPHY outweigh the expected costs of doing so.

(a) The direct benefit of foreclosure to Facebook is the potential for it to gain users, or user time, away from rival platforms. Given Facebook's existing significant market power in social media, users dissatisfied with their experience on rival social media platforms are most likely to substitute to Facebook. In the longer term, Facebook can also disadvantage its rivals strategically as it limits the ability of existing or emerging rivals to innovate with GIPHY's GIFs as an input, and thus reduce the likelihood of competitive threats having an impact on its share.

(b) The costs of foreclosure are limited, and are significantly reduced if a partial foreclosure strategy is adopted. The primary cost is that of losing the advantages associated with the scale of GIPHY's distribution, that is, the attractiveness of GIPHY as an outlet to brands and GIF content creators, and the potential from monetising and/or collecting user data from this traffic. However, due to its size Facebook alone enables GIPHY to maintain a significant scale, and could grow GIPHY's traffic on Facebook further by reducing the use of Tenor (see 9.109). Moreover, a range of foreclosure mechanisms are available to Facebook, which would enable Facebook to adopt a strategy which minimises these costs.

8.140 Our provisional view therefore is that post-Merger Facebook has a strong incentive to foreclose its rivals from GIPHY.

Effect of foreclosure on competition

8.141 The Merger Assessment Guidelines state that 'the CMA will consider whether the harm to competitors it has identified will result in substantial harm to overall competition in the downstream market. This will include through raising barriers to entry for potential entrants, where the negative impact on customers may take some time to materialise',[360] and 'Competition concerns may be particularly likely to arise if one of the merger firms has a degree of

[360] Merger Assessment Guidelines (CMA129), 7.20.

pre-existing market power in the downstream market, and already faced limited competitive constraints pre-merger'.[361]

8.142 As set out in our assessment above, we consider that post-Merger Facebook has both the ability and incentive to foreclose its rivals.

8.143 The Parties argued that the impact of an attempt to foreclose Facebook's rivals can be quantified, and proposed a formula whereby the expected loss of engagement by a rival is estimated as a function of the (i) share of content affected, (ii) the expected change in quality given a switch to another GIF provider, and (iii) the resulting degree of switching away from the affected platform. The Parties argued that (i) is very low because only a small percentage of content on Facebook includes a GIF, (ii) is zero or close to zero because Tenor is a perfect substitute to GIPHY, and (iii) is also zero or close to zero because users would not switch away even when GIFs were completely unavailable (as they did not switch during the two-day GIPHY outage on Messenger Kids). The Parties then suggested that by multiplying these low proportions, the effect of a foreclosure strategy on the foreclosed platform's user engagement is essentially zero.

8.144 We consider that this proposed analysis is overly simplistic and does not reflect the way social media services are consumed and the way platforms compete for user attention. In particular:

(a) The methodology proposed by the Parties assumes that the harm to the foreclosed platform's competitiveness can be quantified as the proportion of content that would be lost if some content switched to other platforms in the event of reduced quality of GIFs. However, social media services are ever evolving and, as set out above (paragraphs 8.118-8.134), we consider that Facebook's control of GIPHY gives it another tool to disadvantage its existing or emerging rivals in social media, such that rival platforms would not just lose some content in the shorter term but may become less able to innovate and compete in the longer term. This is further amplified by the linkage between a platform's competitiveness in social media and in display advertising.

(b) Even if the broad methodology were appropriate (which we do not consider to be the case), the Parties' proposed assumptions to populate the formula are contradicted by the evidence reviewed in this chapter:

(i) The Parties argue that only a small proportion of content (the first element (i) of the Parties' formula) involves GIFs and thus would be

[361] Merger Assessment Guidelines (CMA129), 7.22.

affected by switching. However, social media platforms are characterised by significant network effects. Along with content that includes GIFs, dissatisfied users may switch more or all of their activities beyond those directly using GIFs. This would be further amplified as at least some of their friends and followers could switch too.[362] In any event, we note that Facebook's internal documents demonstrate that Facebook considers even small proportions of its content as material (see paragraphs 8.55-8.64).

(ii) As regards the Parties' assumption (ii), the expected change in quality of GIF provision, we refer to our discussion above (see paragraphs 8.20-8.39). Whilst pre-Merger, Tenor may have been a close substitute to GIPHY, GIPHY remains the largest GIF provider and is preferred by at least some of Facebook's rivals in social media. In any event, post-Merger and in the event of foreclosure, Tenor would face less incentives to compete. We thus expect that the quality of service of GIF provision would be lowered overall.

(iii) With respect to the term (iii) in the Parties' calculation as described above, the assumption that only a proportion of user time related to content with GIFs would switch again ignores the significant network effects characterising social media platforms.

8.145 We thus consider that the quantification exercise proposed by the Parties is not appropriate.

8.146 As set out in Chapter 5, Market Definition and Market Power, Facebook's market power in social media has been sustained over time and reinforced through high barriers to entry. Our assessment set out above suggests that by foreclosing its rivals from GIPHY, Facebook could:

(a) Further weaken the already limited competition it faces from rivals, by degrading their functionalities and features that currently use GIFs;

(b) Limit the opportunities for rivals to improve existing platform functions that do not yet integrate GIFs, or innovate with new functions that could benefit from GIFs;

(c) Deprive rival social media platforms from the possibility to benefit from any future innovations by GIPHY. Given GIPHY's leading market position

[362] To illustrate, consider that the GIF sticker facility is no longer satisfactory to a Stories user on Instagram. If the user usually posts multiple related Stories in succession in one session, it appears likely that a decision to switch to another platform would involve switching the full set of Stories, rather than just one.

and creative team, it is well placed to innovate in the area of user expression; and

(d) Use GIPHY's data to improve its ability to identify emerging trends on rival apps and/or identify emerging competitive threats, further disadvantaging rivals and narrowing Facebook's own innovation efforts to areas of perceived competitive threats.

8.147 The above would have the effect of weakening Facebook's existing and future rivals in the supply of social media services, thus further reducing the competitive constraints it faces and further strengthening its already significant market power in that market.

8.148 Because GIFs are an important driver of user engagement, which in turn drives the amount of time spent on a platform and hence the amount of available advertising space, GIFs are also important to social media platforms' ability to fund their business through the supply of display advertising in competition with Facebook. Therefore, given the linkages between social media and display advertising markets, the harm to the competitiveness of social media platforms in the supply of social media services set out in this Chapter would also translate into a weakening of competition between social media platforms in the market for display advertising. This is particularly concerning given that, as set out in Chapter 5, Market Definition and Market Power, Facebook already holds significant market power in display advertising.

Provisional conclusion on input foreclosure

8.149 We provisionally consider that post-Merger Facebook has the ability to foreclose its rivals:

(a) Social media platforms do not have a choice of a range of effective GIF suppliers, which means that they would face a lower quality GIF offering if they were to switch to an alternative GIF provider, including Tenor. The only alternative to GIPHY of a similar quality appears to be Tenor. In the scenario where GIPHY is unavailable to platforms, or is available at worse terms or lower quality, Tenor itself would face weaker incentives to compete (including on innovation). Therefore, the possibility of switching to Tenor does not sufficiently weaken Facebook's ability to foreclose.

(b) GIFs are an important driver of user engagement on social media platforms, and GIPHY had an incentive to develop its service in ways that would make it more valuable to a range of social media platforms (not just Facebook). Without GIFs provided by GIPHY (independent from

Facebook) at least some social media platforms would have a weakened ability to compete for user attention (and thus ad revenue), relative to Facebook.

(c) Post-Merger, Facebook would have a range of mechanisms it could utilise to foreclose rivals. These include total foreclosure (refusing supply), or partial foreclosure through worsened terms of supply of GIPHY's current API/SDK services, reprioritisation of innovation and development of GIPHY's API/SDK services going forward towards the requirements of Facebook's own social media services over those of other social media platforms, or by requiring data as a condition of supply. The mechanisms could be used in combination, and selectively depending on the level of competitive threat from each rival.

8.150 Furthermore, we provisionally consider that whilst the costs of foreclosure to Facebook are limited (especially if a partial foreclosure strategy is used), the benefits of foreclosure include both direct switching of users or user time from rivals to Facebook, and an overall increased strategic ability of Facebook to protect its pre-existing significant market power (see Chapter 5, Market Definition and Market Power). We are of the provisional view that this creates an incentive for Facebook to foreclose rivals.

8.151 Our provisional view is that the effect of such foreclosure would be the weakening of the competitive constraints exerted by Facebook's existing and future rivals in the supply of social media services, thus further strengthening Facebook's already significant market power in the supply of social media services.

8.152 On that basis, we provisionally conclude that the Merger has resulted, or may be expected to result, in a **substantial lessening of competition in the supply of social media services**.

8.153 A lessening of competition in the supply of social media services also has an effect on competition in the supply of display advertising. Since user engagement drives the amount of time spent on a platform and hence the amount of available advertising inventory, Facebook's strengthened control over a user engagement feature for which competing platforms have limited alternatives, and which has a role in the development of these platforms in the future, also strengthens its position in competition for display advertising revenues (a market in which it holds a significant market power – see Chapter 5, Market Definition and Market Power). It follows that the effects discussed in this Chapter also exacerbate the effects on competition in display advertising arising from the loss of potential competition set out in Chapter 7, Horizontal Effects.

9. Countervailing Factors

9.1 The CMA's Merger Assessment Guidelines indicate that, in some instances, there may be countervailing factors that prevent or mitigate any SLC arising from a merger. There are two main ways in which this could happen, though in the CMA's experience it is uncommon for a merger to be cleared on the basis of countervailing factors alone:

(a) entry and/or expansion of third parties in reaction to the effects of a merger; and

(b) merger efficiencies.[363]

Entry and expansion

9.2 As part of the assessment of the effects of a merger on competition we examine whether, in the event of increasing price or worsening non-price terms to customers and/or suppliers, entry or expansion by third parties would be timely, likely and sufficient to mitigate or prevent an SLC from arising.[364]

9.3 Our provisional view, as set out below, is that the barriers to entry and expansion prior to the Merger were high, and the effect of the Merger heightens the impact of the pre-existing barriers for potential expansion and/or entry in relation to GIF provision.

Parties' views on entry and expansion

9.4 The Parties submitted that barriers to entry in the supply of GIFs and stickers are low because:

(a) 'development costs of creating GIF library…are low and it is relatively straightforward to develop the software/code';

(b) 'the rise of cloud-computing platforms…has dramatically decreased the time and capital necessary to start and scale…';

(c) 'the majority of the content on GIF libraries is not created by the GIF library providers themselves but by content partners and users…new and existing entrants can gain access to a wide range of content for their libraries';

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[363] Merger Assessment Guidelines (CMA129), paragraph 8.1.
[364] Merger Assessment Guidelines (CMA129), paragraph 8.31.

(d) ‘other inputs for entry can be purchased or developed in-house…’; and

(e) ‘network effects do not provide a significant barrier to entry or expansion because the costs of integrating a GIF provider via API are very low, switching GIF providers is very straightforward for downstream apps and many downstream apps multi-home between GIF providers.’

9.5 The Parties also submitted that the ‘GIF segment is relatively new and is still developing; GIFs only became widely popular in the 2010s and some of the most well-known GIF suppliers were founded in the last 5-10 years…As a result the market is still at a stage where significant growth and developments can be expected, use cases and business models are still evolving and hence there is a very significant risk of potential entry and expansion by new and existing players in this segment (particularly if post-acquisition Facebook were to attempt to deteriorate GIPHY’s offering)’.

9.6 The Parties concluded that ‘[a]ll of this means that there are minimal costs involved for downstream players to switch to new GIF providers, particularly as they do not need to switch away from existing GIF providers to do so’.

9.7 The CMA did not receive any specific views in relation to potential entry from adjacent markets and the Parties were not able to provide an exhaustive list of entry, exit and significant expansion of all relevant competitors in respect of this segment, which they submitted was due to the continuously evolving nature of the landscape that GIPHY operates in.

Principal barriers to entry and expansion

9.8 Barriers to entry and expansion are specific features of a market that give incumbent firms advantages over potential competitors. Where such barriers are low, the merged firm is more likely to be constrained by entry; conversely, this is less likely where barriers are high.[365]

9.9 Based on the evidence gathered from Parties’ submissions, the Parties’ internal documents and the evidence submitted by the third parties, we consider that there are at least five key requirements that are needed to effectively compete in the provision of GIFs. These are:

(a) A large, high-quality content library;

(b) A sophisticated search algorithm;

[365] Merger Assessment Guidelines (CMA129), paragraph 8.40.

(c) Scale and brand;

(d) A viable monetisation model; and

(e) Capital.

9.10 These five requirements are explained in further detail below and are also discussed in Chapter 4, Industry Background, and Chapter 5, Market Definition and Market Power.

A large, high-quality content library

9.11 The evidence gathered during our investigation indicates that there are five important characteristics of a GIF library that would need to be met by a new entrant looking to provide GIFs at scale or by a smaller provider looking to expand:[366]

(a) An extensive library of GIFs;

(b) The GIFs should be current and culturally relevant;

(c) GIFs included in the search index need to be moderated to exclude any offensive, abusive or discriminatory content;

(d) The library should contain branded and original GIFs; and

(e) Content from brands should have relevant intellectual property rights obtained through the official channels.

9.12 GIPHY's internal assessment of its library in comparison with its competitors highlights these features, demonstrating the superiority of GIPHY's library when compared to those of its competitors (Figure 21).

Figure 21: GIPHY internal analysis (2019) of its content compared to its competitors.

[✄]

Source: [✄]

9.13 We consider that in order to provide users with content that is relevant to a particular search term, it is important that GIF providers maintain an extensive library. Indeed, in Chapter 5, Market Definition and Market Power, we discuss how third parties considered it to be an advantage that GIPHY has a large

[366] Further detail on the core activities of a GIF provider, including sourcing, moderating, and hosting a library of GIF content is provided at Chapter 4, Industry Background.

inventory and in Chapter 8, Vertical Effects, we discuss the challenges to replicating GIPHY, including in developing a sizeable GIF library.[367]

9.14 While having an extensive library of GIFs is clearly an important characteristic of GIF providers, we consider that this may present a considerable challenge when entering or expanding. [✂]. GIPHY's investor documents also demonstrate the amount of time required to build a large content library; [✂].

Evidence obtained during our investigation has also indicated the importance of GIFs being **current and culturally relevant**. Although not included in Figure 21 above, cultural relevance is clearly viewed as important by GIPHY's
9.15 API partners, along with the speed with which current content is made available to users by GIPHY.[368] As noted in Chapter 8, Vertical Effects, [✂]. As noted in Chapter 2, The Parties, Merger and Rationale, one of Facebook's stated reasons for the Merger related to GIPHY's creative team, who Facebook considered could 'accelerate Facebook's efforts around other creative expression use cases across its services'. For these reasons we also consider the cultural relevance of GIFs to an important feature for new entrants or those looking to expand to offer.

One of the features assessed in Figure 21 is the providers' 'moderation tech and team'. As discussed in Chapter 4, Industry Background, **well-moderated** content is important to social media platforms, including those who partner
9.16 with GIPHY, as offensive content would degrade the user experience, and may cause reputational damage to the social media platform and expose it to legal liability. Various parties (including Facebook) have told us that they placed importance on the library being well-moderated to remove inappropriate content.[369] In order to attract distribution partners, we therefore consider that moderation is an important feature of the provision of GIFs.

In relation to the source of a GIF library's content, our investigation has indicated that it is important to have both **original and branded GIFs**. One API partner that we spoke to stated that GIPHY's library contained a large

9.17

[367] See the section on GIPHY's competitors and substitutability in Chapter 5, Market Definition and Market Power and the section on Ease of replicating GIPHY in Chapter 8, Vertical Effects.

[369] For example, the Parties have submitted that one dimension in which GIF providers compete is by ensuring that their content is appropriately moderated. [✂] noted that it considers GIPHY able to do a better job than competitors of screening out objectionable, controversial content. Gfycat told us that one advantage of GIPHY's library (over its own) is that it is largely free from offensive content, which makes it easier to publish on partner platforms without internal filtering/moderation, [✂] See further discussion below in section 'GIPHY's position in the supply of searchable GIF libraries'.

number of branded and professionally produced content in its searchable library which made its GIFs more commercial from a monetisation perspective. In particular, GIPHY's GIFs contain brand content that is in line with the terms that a user may search on a platform, increasing their monetisation potential.[370]

9.18 Additionally, availability of content from a variety of sources has been raised as an important aspect of GIF-provision, and a distinguishing feature of GIPHY. This is discussed further in Chapter 4, Industry Background and highlights the importance of the volume required by the users to find a GIF library attractive, as well as the variety of sources of GIFs (user-generated, branded, professionally created by artists or an in-house team). For example, TikTok told us that it believes that a balance between professional-quality branded content (for example, from studios and media providers) and user-generated content helps to enhance its users' experience.[371] This implies a co-dependency, and cross-side network effects between the size of the library and the scale that a GIF provider has to reach in order to be attractive to users, API partners, brands and advertisers.

9.19 Finally, in relation to the need for GIF providers to own the relevant **intellectual property rights**, an internal memo of one of GIPHY's investors stated that GIPHY's official licences held for its content were a strong barrier to entry and expansion as it was recognised that in some cases it had taken GIPHY over [✂] to secure them.

9.20 GIPHY presented an alternative view that content rights are not required to enter or compete in the GIF provision service and noted that it had initially spent a lot of time and money obtaining content rights. The Parties have submitted that GIPHY was incorrect to believe that there was a gap in the market for high-quality, licensed GIFs, and that there is little appetite from brand partners to enforce licence exclusivity as it is not in their interests to do so, instead focusing on ensuring that their content is available as widely as possible.

9.21 However, during the course of our investigation, a number of third parties have mentioned content rights as an important factor for some platforms in being willing to partner with GIPHY. For example, one third party told us that many GIFs contain intellectual property that is owned by others, which meant GIF providers are not able to easily copy each other's content without taking on significant legal risk. Chapter 4, Industry Background contains further discussion of licensing rights to content.

A sophisticated search algorithm

9.22 The Parties submitted that the search functionality used by a GIF provider is relatively straightforward and can be easily replicated. In particular, GIPHY noted that the technical behind GIPHY had become 'commoditised' and had only taken one week to develop.

9.23 However, according to one of GIPHY's internal documents, determining the intent of the search term is much more complex in the context of a GIF than the intent that a user may have when using a search engine such as Google or Bing. GIFs are a method of expression and a GIF provider's search algorithm has to cater for a myriad of possible meanings of what the search term may represent which requires sophisticated search algorithms.

9.24 Another of GIPHY's internal documents sets out GIPHY-specific innovations in relation to the ranking of search terms, as well as the utilisation of behavioural models and image feature models that require large datasets, engineering time and cost to develop in addition to the readily available search programmes.

9.25 This point is further reflected in [✂].

9.26 As set out in more detail in Chapter 4, Industry Background, we have also heard from third parties that search algorithms are a particularly important aspect of GIF provision:

(a) Viber noted that the search element of GIF provision is just as important as the quality of the library.

(b) One social media platform described conducting tests on its users' preference of GIFs and stickers provided by one provider compared to another. In such tests, the users preferred GIPHY's suggested outputs to those provided by the alternative providers. We consider that this further confirms the importance of the search algorithm in the provision of GIFs and GIF stickers.

9.27 Therefore, we consider that a sophisticated search algorithm is necessary to compete effectively in the supply of GIFs, and the availability of off-the-shelf search algorithms or pre-existing datasets used for other types of search does not facilitate an entry into the provision of GIFs to an adequate quality standard.

Scale and brand

9.28 In addition to the importance of scale to the GIF provider's ability to train its search algorithms, the scale at which a GIF provider operates has been identified as one of the critical features of GIF provision. Scale relates to the size of the user base, which is determined by the distribution networks (eg social media platforms) through which the content is served. As discussed in Chapter 4, Industry Background, the dependence of content on the amount of user traffic and vice versa may give rise to cross-side network effects which create a barrier for smaller GIF providers to grow and gain access to large API partners.

9.29 One GIF provider's internal documents, [✄].

9.30 [✄] expressed the views that GIPHY's reach through its distribution network is by far the largest, making it difficult for an entrant to replicate. [✄].

9.31 One GIF provider stated it is currently difficult to form relationships with third party platforms as there is little willingness among platforms to allow new, smaller, GIF suppliers to distribute their GIFs through those platforms and so, to compete with the larger GIF suppliers.

9.32 Currently, only [✄] and Apple appear to source their GIFs and stickers from more than two providers. The ability of smaller GIF providers to secure these partnerships in the future and at scale is uncertain as the majority of the existing large social media and messaging platforms appear to already have at least one GIF supplier and these are often with the largest GIF providers (Tenor and GIPHY).[372]

9.33 This view was also supported by one of GIPHY's existing investors, noting there are few natural barriers but GIPHY's scale enabled it to create a strong barrier against its potential competitors. [✄].

9.34 Facebook itself estimates that replicating the relationships with GIPHY's existing API partners would take two years. However, this estimate excluded the time it would have taken for GIPHY to build its relationships with Facebook's family of apps which significantly underestimates the time required to build such relationships, especially as Facebook's applications represent around 50% of GIPHY's API traffic.

9.35 As noted in Chapter 8, Vertical Effects, GIPHY's prominence on social media platforms offers GIPHY brand recognition with potential brand partners, end

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[372] Further detail on characteristics and trends in GIF supply and usage is provided in Chapter 4, Industry Background.

users for its O&O channel as well as prospective employees, which reinforces GIPHY's position in GIF provision and allows GIPHY to continue to improve its services to ensure its prominence across social media platforms.

9.36 From a technical perspective, a GIPHY internal note on the assessment of barriers to entry presents the interdependence created when GIPHY's GIFs are integrated into more than one feature on the API partner's platform as follows:

[✂]

9.37 This demonstrates the additional costs, time and technical expertise requirements for both the GIF providers' and the API partners' perspectives when providing multiple points of integration, which can act to some extent as a barrier to switching.

Viable monetisation model

9.38 In addition to creating the components required in the provision and distribution of a searchable GIF library, a new entrant or an existing player would also need to formulate a viable monetisation model. Currently, we have identified three possible routes which a GIF provider could take to sustain themselves, though this is not exhaustive:

(a) Vertical integration/acquisition;

(b) Monetisation through advertising; or

(c) Other (such as a 'platform fee' model).

9.39 Chapter 6, Counterfactual discusses GIPHY's own consideration of these options. However, contrary to the assessment of the counterfactual, when considering whether entry or expansion by third parties would be timely, likely and sufficient to mitigate or prevent an SLC from arising, we are considering the post-Merger world, in which Facebook has acquired GIPHY. Any new entrant or smaller provider looking to expand would be doing so in an environment where there are already two large existing players offering GIFs to third parties free of charge (absent any foreclosure strategies as considered at Chapter 8, Vertical Effects). Such new entrants would therefore likely face considerably greater barriers to monetisation and viability more generally than those experienced by GIPHY prior to the Merger, as they would lack GIPHY's advantages in relation to scale, distribution relationships, and relationships with brands and advertisers, as has been discussed earlier in this chapter. Further detail on GIPHY's market power and the replicability of GIPHY is set out in Chapter 5, Market Definition and Market Power and Chapter 8, Vertical Effects.

9.40 Recent acquisitions of the main GIF providers by large online platforms (eg Facebook's acquisition of GIPHY and Google's acquisition of Tenor [✂]) indicates that vertical integration with an online platform is an option for GIF providers to secure the resources required for its operations while providing what is perceived as an important input for social and messaging platforms.

9.41 In relation to monetisation through advertising, the challenges encountered by GIPHY with its Paid Alignment model (as discussed in more detail in Chapter 7, Horizonal Effects) would be more acute for existing competitors looking to enter similar relationships and commence monetising their content, or for those looking to enter the GIF provision service by generating revenue through digital advertising. In particular, a new entrant will need to focus on developing their monetisation strategy in parallel to scaling the business. If the monetisation model involves entry into the display advertising market (see Chapter 5, Market Definition and Market Power for further detail), in our view, the entrant and/or existing smaller player would have to:

(a) develop the relationships with the brands and intermediaries (in addition to the development of the relationships with the API partners, and content providers);

(b) gain brands' trust in a new method of advertising and compete for a portion of the digital advertising budget; and

(c) scale the number of advertisers to grow revenue (rather than growing revenue with individual advertisers).[373]

9.42 The challenges of monetisation faced by GIF providers are reflected in the Parties' submissions as set out at paragraph 9.5 above, which referred to GIF 'use cases and business models are still evolving' demonstrating the nascence of GIF providers' ability to generate revenue from monetising the provision and distribution of GIFs and stickers.

9.43 In relation to other routes to revenue generation for GIF providers, GIPHY itself considered the option of introducing a platform fee for API partners (see Chapter 6, Counterfactual for further detail). Although GIPHY submitted that it did not pursue this revenue stream for a number of reasons (as discussed further at paragraph 6.53 above), including because of its focus on the Paid

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373 GIPHY established a good relationship with [✂] who since 2017 have spent [✂] with GIPHY. [✂]

Alignment model and its view that [✂], Imgur charges a fee for commercial use of its API.[374]

Capital

9.44 One of GIPHY's competitors explained that GIPHY's early access to capital enabled it to gain scale quickly through the funding it obtained, in comparison to its competitors.

9.45 A new entrant would need to have access to a similar source of internal and/or external funding to facilitate its growth and scale up its operations while potentially incurring losses. [✂]. However, access to capital would also be dependent on expected returns, and the presence of other large GIF providers such as GIPHY and Tenor may influence investor confidence. The preceding discussion on the need for scale and the requirement for a viable model of monetisation indicates a particular challenge for new entrants or smaller providers looking to expand, in that investors may be less willing to fund a GIF business now, in comparison to when GIPHY and Tenor were new to the market, as the expected returns would be smaller when divided amongst the existing large players.

9.46 The capital required to replicate the size of GIPHY's library would be large. By way of example, one third party submitted that the cost of developing GIF stickers can vary and on average can cost between USD 150 and USD 350 per sticker. GIPHY's existing library of GIF stickers contains [✂] stickers which would imply an average cost to replicate the library of around USD [✂].[375]

9.47 As noted in Chapter 4, Industry Background, GIPHY submitted that content is regularly scraped/copied by competitors implying that a new entrant can easily copy the content from the existing GIF providers. However, GIPHY's API partners have noted the importance of working with a GIF provider that has the required licences for the content included in its searchable library which minimises the legal risks for these partners and makes the GIF providers more attractive to work with.

9.48 Although GIPHY noted the risk of enforcement of licences is low, GIF providers must also take into account their attractiveness to content creators who use their tools and library to publish content.

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[374] See Chapter 5, Market Definition and Market Power.
[375] [✂].

9.49 The long list of required attributes required by a GIF provider discussed above demonstrates the existence of high barriers to entry and expansion. This is consistent with the views of one social media platform, that, when presented with a list of parameters that a GIF provider should possess, such as: large quantity of content, varied sources of GIFs and GIF stickers (from brands, celebrities, artists, originally created), large scale/distribution, moderation of content, cultural relevance, relationship with brands, ownership of IP, search algorithm and brand recognition, replied 'All of the above mentioned features are important for a GIF/sticker provider, and a GIF/sticker provider could not be successful unless it excelled in many of these areas'.

Evidence of recent entry or expansion

9.50 We now consider whether there have been any examples of entry or expansion in recent years which may indicate whether this may be likely in the event of increasing price or worsening non-price terms to customers and/or suppliers.

Evidence of recent entry

9.51 The Parties provided three examples of recent entries in relation to the provision of GIFs, namely:

(a) Gfycat,[376] which launched in 2015;

(b) Vlipsy,[377] which launched in 2017 and reportedly raised USD661k in its latest funding round in 2019;[378] and

(c) Holler, which the Parties submitted entered the market in 2018 and recently raised USD36m of external funding.[379]

9.52 As set out in Chapter 5, Market Definition and Market Power, our investigation has indicated that these providers are not of the same size, scale or quality as GIPHY and Tenor.

9.53 Facebook's internal assessment of smaller players, as set out in its internal documents, suggests that [✄] GIF and sticker inventory is of a lower standard than that of GIPHY and that [✄] would not be able to replace GIPHY on its

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[376] Gfycat.com Gfycat describes itself as a platform which offers faster speed of GIFs, ability to create larger GIFs or video sizes and unique features for creating GIFs and videos.
[377] Vlipsy.com Vlipsy describes itself as a search engine that enables users to search the internet for trending video clips which then can be shared by the users.
[378] Pitchbook.com.
[379] Techcrunch.com. We note that online sources in fact suggest that Holler entered the market earlier than 2018 with a focus on news and video content before shifting emphasis to messaging in 2016.

own. It also described [✂] reported limitations as relating to its lack of existing integration with Facebook products and limited investments in content moderation. [✂] did not feature in Facebook's internal assessment of alternative providers.

9.54 The Parties also submitted a list of much smaller-scale GIF providers[380] such as Reaction GIFs, GIFBin, Imgflip, Anmimoto, Sticker Mania and Stipop. The competitive constraints on GIPHY are discussed in more detail in Chapter 5, Market Definition and Market Power, which concludes, based on third party evidence and the Parties' submissions, that smaller GIF suppliers do not have the required scale or quality of content that is expected by the distribution partners who utilise GIFs on their platforms.

9.55 In addition, the Parties provided examples of new entrants in the provision of GIF creation tools that are available to users through iOS and Android app stores, such as GifYou,[381] GIF Maker by Momento[382] and GIF Maker – GIF Editor.[383]

9.56 We recognise that although these GIF creation tool providers offer one of the services that GIPHY provides (namely, the ability to create GIFs), they do not supply and distribute a library of GIFs and GIF stickers or serve as a repository to share or retrieve the GIFs and stickers (as set out in Chapter 4, Industry Background). Therefore, they do not impose a significant, if any, competitive constraint on GIPHY, Tenor and Gfycat and are unlikely to do so soon.

9.57 Further, despite the Parties' submission on recent entrants, we have seen evidence from the Parties' internal documentation of the perceived lack of existing competition within GIF provision when compared to the situation five years ago.

9.58 In addition, we saw no evidence of existing social media platforms planning or intending to enter into GIF provision through self-supply:

(a) Facebook itself considered self-supplying GIFs as an alternative to the Merger but discounted the option (further detail is provided in Chapter 6, Counterfactual).

[380] These players are categorised as small-scale due to the Parties inability to provide any information on the size of the library, daily or monthly active users and the volume of GIFs searched and delivered.
[381] GifYou was launched in 2019 and describes itself as an animated sticker maker (available for download through mobile phones).
[382] GIF Maker by Momento was launched in 2016 and can be accessed via a mobile phone only.
[383] GIF Maker – GIF Editor launched in 2018 and is also a mobile app which offers GIF maker tools, GIF editing and video making tools.

(b) [✂] Facebook has publicly confirmed[384] that intends to make GIPHY available on the same terms for that duration (see Chapter 8, Vertical Effects for further detail).

(c) [✂]

9.59 Overall, while there has been some evidence of entry and expansion into the supply of searchable GIF libraries in recent years, our investigation has indicated that these providers are not of the same size, scale or quality as GIPHY and Tenor. This is discussed in further detail in Chapter 5, Market Definition and Market Power.

Evidence of expansion

9.60 We have also seen limited evidence of any recent expansion in the provision of searchable GIF libraries.

9.61 [✂].

9.62 Holler, a smaller GIF provider, raised USD36 million of external funding in 2021. This provides evidence of investor appetite for this type of content format and is of particular interest given that Holler does not appear to have a proven monetisation model, and that most large API partners already have GIF provision, with limited appetite from API partners to multi-source GIFs.[385] However, as noted at paragraph 9.46 above, it is unclear whether this level of funding would be sufficient to enable timely expansion at the scale required.

9.63 [✂]. Although Holler's intention to expand is evident [✂] we are not able to determine the proposed timeframe for Holler's expansion efforts. It is also restricted by its current library content, which does not appear to be comparable to that of GIPHY's as previously discussed in Chapter 5, Market Definition and Market Power. We also consider that Holler's expansion efforts may be limited by its business model. We understand from discussions with third parties and from Holler's published Terms of Service (though have not been able to contact Holler to verify these statements) that Holler's SDK (which is available free of charge) collects a relatively extensive amount of data; whereas its API (for which is has more minimal data requirements) charges a monthly subscription fee, potentially making it less attractive to API partners than the models of GIF provision offered by other providers.[386]

[384] About.fb.com.
[385] Techcrunch.com. Multi-homing and switching is considered further at Chapter 5, Market Definition and Market Power.
[386] Further discussion is contained at Chapter 5, Market Definition and Market Power.

9.64 Thus, we consider that any potential expansion by Holler in the supply of searchable GIF libraries would be neither timely nor sufficient to prevent any SLC from arising.

9.65 We have also seen some limited evidence of GIF providers looking to expand into the provision of advertising through GIFs (for example, with formats similar to GIPHY's Paid Alignment model). However, as GIPHY has been making efforts to expand in this area since 2017 (and has faced considerable barriers to doing so, as set out above) we consider that these other providers are likely to be some way behind GIPHY's position at the time of the Merger. Further discussion is contained in Chapter 7, Horizontal Effects:

(a) One of GIPHY's Paid Alignment customers, told the CMA that Holler [✄].The CMA was unable to contact Holler to verify the statement.

(b) [✄].

9.66 Overall, we have seen limited evidence of expansion in the supply of searchable GIF libraries. While Gfycat and Holler both appear to be making efforts to expand, and indeed Holler has recently raised external funding, the timeliness and sufficiency of such expansion is not clear, particularly in the context of the challenges to entry and expansion set out earlier in this chapter.

9.67 We have also seen some evidence of potential expansion into the provision of advertising through GIFs. However, based on the evidence available, we consider that this expansion is unlikely to be sufficiently timely to mitigate or prevent any SLC from arising. Further detail on the nature of this potential expansion and how it compares to GIPHY's Paid Alignment model of advertising is contained in Chapter 7, Horizontal Effects.

Incentives to enter post-Merger

9.68 As noted in Chapter 4, Industry Background, there has been long-term growth in GIPHY's search traffic. The general long-term growth in GIF usage can be (at least partly) explained by the GIF format becoming more popular among users, which could encourage new entry and provide scope for existing players to expand.

9.69 Recent acquisitions of the main GIF providers by large platforms[387] could decrease the incentive for new entrants to enter, since the possible route for

[387] Tenor acquisition by Google (2018), Facebook's acquisition of GIPHY (2020).

exit through a sale is diminished, as well as the ability to secure a distribution relationship with these large platforms becoming more challenging.

9.70 Furthermore, at Chapter 5, Market Definition and Market Power, we provisionally found that Facebook has significant market power in both display advertising and social media. This was also in line with a finding in the CMA's Market Study that both Google and Facebook have significant market power in their respective fields, supported by their large ecosystems that increase barriers to entry in multiple markets that they operate in on a global basis.[388] The Market Study also found that the presence of incumbents which have been found to have significant market power or have been known to respond strongly to new entrants can further deter and/or postpone entry by new players.[389]

9.71 Chapter 8, Vertical Effects provisionally concludes that the only effective alternative to GIPHY pre-Merger was Tenor. We consider that, post-Merger, the likelihood of an existing smaller GIF provider expanding to be able to compete with GIPHY and Tenor sufficiently is unlikely. Similarly, new entry post-Merger is likely to prove less attractive based on the existing barriers to entry that have been set out above, as well as the recent vertical integration between digital platforms and GIF providers.

Our assessment

9.72 We have considered whether entry or expansion in the supply of searchable GIF libraries, and the supply of a GIF-based advertising model, by third parties would be timely, likely and sufficient to mitigate or prevent any SLC from arising.

Entry or expansion into the provision of searchable GIF libraries

9.73 We have considered the timeliness, likelihood and sufficiency of any entry and expansion from existing players and third parties into the provision of searchable GIF libraries following the Merger, and the extent to which this

[388] Market Study, Appendix E: ecosystems of Google and Facebook: 'An important characteristic of an ecosystem is the presence of complementarities and interdependencies between economic activities. In a platform ecosystem, these interdependencies can be heightened as the platform owner sets the architectural design of interfaces which determine how other products and services can interconnect. The platform firm also sets rules for participation in the ecosystem by third parties such as app developers, device manufacturers, advertisers and publishers, and decides how its design evolves over time. This position can enable the platform to expand into related markets, which can give rise to potential efficiencies, as well as concerns such as insulating its most profitable products from competition'.
[389] Market Study, paragraph 71 – 72, 2.84, 6.10.

could mitigate or reduce the SLC identified at Chapter 8, Vertical Effects, above.

9.74 In relation to likelihood, historical evidence of numerous small-scale entries may indicate that it is possible that further future entries at a similarly small scale would occur. However, in our provisional view, in addition to the high barriers to entry relating to the supply of searchable GIF libraries, as discussed above, there are also factors which make entry and expansion less likely.

(a) Following the Merger, the largest social media and messaging platforms would own their own GIF providers, or otherwise have long-standing relationships with GIF providers. While multi-homing may be possible, this vertical integration would reduce the size of the opportunity for a new entrant or an existing player looking to expand to gain necessary scale, and therefore may deter such entry and expansion.

(b) The significant market power of Facebook in social media and display advertising markets (as set out in Chapter 5, Market Definition and Market Power) may intensify the impact of already high barriers to potential entrants in relation to GIF provision, unless these entrants already have significant scale and user base which can match that of Facebook's family of apps.

9.75 In terms of timeliness of entry and expansion, our provisional view is that the high barriers to entry and expansion, taken together with the integration and market power issues set out in paragraph 9.74 above, do not allow for the development of a GIF library of the size and quality of GIPHYs to mitigate or remove any SLC identified in Chapter 8, Vertical Effects.

9.76 [✂]

9.77 We also note Holler's recent fundraising efforts; however, the timeliness of any expansion as a result of this increased funding, or indeed what this expansion would look like (and hence its sufficiency to prevent any SLC from arising), is not clear, particularly in the context of the challenges to entry and expansion set out earlier in this chapter.

9.78 It has taken each of Tenor and GIPHY six years to reach their current scale. There are no current smaller competitors that have been identified by the CMA as having the potential to grow to Tenor's or GIPHY's size in terms of distribution network, user base, or size and quality of their library in the near future. As noted in Chapter 5, Market Definition and Market Power, as yet, other than Tenor and Gfycat, the alternative providers mentioned by the Parties have not been able to reach a size, scale or level of quality to compete meaningfully with GIPHY. Due to the barriers to entry and expansion set out above, we consider it unlikely that any of them will be able to do so at sufficient scale to prevent or mitigate any SLC from arising.

9.79 On the basis of the evidence set out above and elsewhere in these Provisional Findings, our provisional view is that it is not likely that entry or expansion of sufficient scale into the provision of searchable GIF libraries would occur in a timely manner in order to prevent or reduce the impact of any SLC from arising as a result of the Merger.

Entry or expansion into Paid Alignment utilising GIFs ads or GIF sticker ads

9.80 We have also considered the possibility of entry and expansion into some form of GIF-based advertising model, similar to GIPHY's Paid Alignment offering, and the extent that this would be timely, likely and sufficient to mitigate or prevent any SLC identified at Chapter 7, Horizontal Effects from arising.

9.81 Although there is some limited evidence that [✂], this appears to be at early stage and with limited success to date. We are not aware of any entry plans by any other third party into Paid Alignment advertising in the UK or globally utilising GIFs ads or GIF sticker ads.

9.82 With regards to monetisation, the challenges faced by GIF providers is reflected in the Parties' submissions, as set out in paragraph 9.5 which refers to the fact that GIF 'use cases and business models are still evolving' demonstrating the nascence of GIF providers' ability to generate revenue from the provision and distribution of GIFs and stickers. We therefore consider it unlikely that existing GIF providers would be able to expand into the provision of GIF-based advertising in a timely manner in order to prevent any SLC identified in Chapter 7, Horizontal Effects from arising.

9.83 Lastly, one of GIPHY's investors noted that [✂].Our investigation has otherwise not seen any discussion of such a model by the Parties or potential entrants.

9.84 The likelihood of new entry to mitigate or prevent the effects considered in Chapter 7, Horizontal Effects from arising is low, based on the significant barriers to entry outlined above in both GIF provision and ability to monetise through display advertising. Expansion from existing players is more likely and as noted above has been explored by two existing GIF providers in the last 12 to 18 months, although both appeared to be at early stages.

9.85 On the basis of the evidence set out above and elsewhere in these Provisional Findings, our provisional view is that it is not likely that entry or expansion of sufficient scale would occur in a timely manner in order to prevent or reduce the impact of any SLC from arising as a result of the Merger.

Efficiencies

9.86 Efficiencies arising from a merger may enhance rivalry with the result that the merger does not give rise to an SLC. In order for us to take efficiencies into account, they must:

(a) Enhance rivalry in the supply of those products where an SLC may otherwise arise;

(b) Be timely, likely and sufficient to prevent an SLC from arising;

(c) Be merger-specific; and

(d) Benefit customers in the UK.[390]

9.87 In this case, the Parties submitted that following the acquisition of GIPHY, Facebook could enhance user experience by significantly investing in additional GIPHY services and by pursuing further integration of GIPHY's library into Facebook's services, thereby allowing Facebook to offer more innovative products to users.

9.88 However, the Parties have not made any further representations that the Merger is likely to lead to rivalry-enhancing efficiencies. We have not seen any evidence that there will be such efficiencies as a direct result of the Merger. Our provisional conclusion therefore that it is not likely that rivalry enhancing efficiencies arise from the Merger to prevent any SLC from arising.

[390] Merger Assessment Guidelines (CMA129), paragraph 8.8.

10. Provisional decision

10.1 As a result of our assessment, we have provisionally concluded that the completed acquisition by Facebook of GIPHY has resulted in the creation of a relevant merger situation.

10.2 We have also provisionally concluded that the creation of this relevant merger situation has resulted or may be expected to result in a substantial lessening of competition:

(a) in the supply of display advertising in the UK due to horizontal unilateral effects arising from a loss of dynamic competition, and

(b) in the supply of social media services worldwide (including in the UK) due to vertical effects resulting from input foreclosure.

10.3 As set out in Chapter 8, Vertical Effects, a lessening of competition in the supply of social media services also has effects on dynamic competition between social media platforms in the supply of display advertising in the UK. These effects exacerbate the effects on the dynamic competitive process in display advertising in the UK arising from the elimination of a potential competitor.

Completed acquisition by Facebook, Inc of Giphy, Inc

Appendices and Glossary to the Provisional Findings report

A: Reference

B: Conduct of Inquiry

C: Third Party Summary

D: Market shares methodology

E: GIPHY’s Timeline

F: GIPHY’s Paid Alignment Model

G: GIPHY’s data

Glossary

Appendix A: Terms of reference

1. In exercise of its duty under section 22(1) of the Enterprise Act 2002 (the **Act**) the Competition and Markets Authority (**CMA**) believes that it is or may be the case that:

   (a) a relevant merger situation has been created, in that:

   (i) enterprises carried on by Facebook, Inc. have ceased to be distinct from enterprises carried on by GIPHY, Inc.; and

   (ii) the condition specified in section 23(2)(b) of the Act is satisfied; and

   (b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within a market or markets in the United Kingdom for goods or services, including in the market for display advertising, and in the market for social media

2. Therefore, in exercise of its duty under section 22(1) of the Act, the CMA hereby makes a reference to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 in order that the group may investigate and report, within a period ending on 15 September 2021, on the following questions in accordance with section 35(1) of the Act:

   (a) whether a relevant merger situation has been created; and

   (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.

Andrea Gomes da Silva
Executive Director, Markets and Mergers
Competition and Markets Authority
1 April 2021

Appendix B: Conduct of the Inquiry

1. We published the biographies of the members of the inquiry group conducting the Phase 2 inquiry on our webpage on 1 April 2021 and an administrative timetable for the inquiry was published on 20 April 2021. At commencement of the inquiry, the statutory deadline was 15 September 2021.

2. On 27 April and 6 May 2021 members of the inquiry group, accompanied by CMA staff, attended virtual 'site visits' held via video conference with the Parties and their advisers . These arrangements were made because of the Coronavirus (COVID-19) pandemic and in accordance with the Government's associated guidelines.

3. On 5 May 2021, the CMA published an Issues Statement on the inquiry webpage setting out the areas which the Phase 2 inquiry would focus on.

4. We received written evidence from the Parties in the form of submissions and responses to information requests. A non-confidential version of the Parties initial phase 2 submission was published on the inquiry webpage on 11 June 2021. We also held separate hearings with each of the Parties on 15 and 16 June 2021.

5. Prior to the hearings, we sent the Parties a number of working papers (including non-confidential third party evidence) for comment. We also provided the Parties and third parties with extracts from our working papers for comments on accuracy and confidentiality. The Parties were also sent an annotated issues statement, which outlined our thinking. The Parties provided comments on those papers on 25 June 2021.

6. We invited a wide range of interested parties to comment on the Merger, including social media and messaging platforms, keyboard apps, and GIF providers, investors and potential investors in GIPHY, advertising companies and brands familiar with GIPHY's 'Paid Alignment' advertising services. A number of third parties provided us with information by telephone or video conference hearings as well as by responding to supplementary written questions. We published a summary of third party calls on the inquiry webpage on 30 June 2021. Evidence was also obtained from third parties using written requests. Evidence submitted during Phase 1 was also considered at Phase 2.

7. Due to Facebook's delayed response to a section 109 notice requesting information, we paused the statutory timetable on 7 June 2021, pending receipt of the information sought. A notice of extension was published on the inquiry webpage. Following receipt of the outstanding information, we re-started the statutory timetable on 29 June 2021 and a termination of extension was published on the inquiry webpage. The timetable was stopped for a total of 21 days, extending the statutory deadline to 6 October 2021. An updated administrative timetable was published on the inquiry webpage on 30 June 2021 to reflect this extension.

8. The Initial Enforcement Order issued in Phase 1 continued in force and derogations were granted under it.

9. A non-confidential version of our provisional findings report has been published on the inquiry webpage. As we have provisionally concluded that the completed merger has resulted in the creation of a relevant merger situation, and that the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition, a notice of possible remedies has also been published on the inquiry webpage. Interested parties are invited to comment on both of these documents.

10. We would like to thank all those who have assisted our inquiry so far.

Appendix C: Summary of Third Party Calls

Introduction

1. The Competition and Markets Authority (**CMA**) is investigating the completed acquisition by Facebook, Inc. (**Facebook**) of GIPHY, Inc. (**GIPHY**) (the **Merger**) under the merger control provisions of the Enterprise Act 2002.

2. In relation to the Merger, the CMA held telephone calls with twenty-one third parties during April and May 2021.

3. In particular, the CMA spoke to the following four categories of third parties:

   (a) Social media and messaging platforms and keyboard apps (**Platforms**);

   (b) GIF providers;

   (c) Investors and potential investors in GIPHY; and

   (d) Advertising companies and brands familiar with GIPHY's Paid Alignment services

4. The primary purposes of the CMA's calls with third parties was to understand:

   (a) The third party's relationship with GIPHY and any other GIF library providers (and, if relevant, with Facebook);

   (b) Whether the third party had ever considered acquiring or investing in GIPHY or any other GIF library provider, reasons for doing so or not doing so, and views on GIPHY's business prospects;

   (c) The third party's views on the possibility for monetisation of GIF services, including any future plans to enter into advertising of any form, and the views of GIF providers on their current and potential revenue generation strategies;

   (d) The third party's views on the importance of GIFs for the engagement of end-users on social media and messaging platforms, and any advantages and disadvantages of GIPHY in comparison to other providers;

   (e) The competitive landscape for the provision of GIF libraries, including any barriers to entry or expansion;

(f) The potential ability of GIF providers to access data about third party platforms (aggregated data) and end-users (individual data);

(g) The third party's views on the 'Paid Alignment' (or sponsored GIFs) model as an advertising channel, its role within brands' marketing strategy and its success to date or expectations of success; and

(h) The third party's views about the Merger.

5. This document provides an overview of comments made by third parties relating to the following key themes of the CMA's Inquiry:

(a) The competitive landscape in GIF supply;

(b) The importance of GIFs for user engagement;

(c) Data; and

(d) The GIF advertising model.

6. The third parties were also asked for their views on the Merger.

Competitive landscape in GIF supply

7. Market participants identified three mutually reinforcing pillars that are focal points of competition in GIF supply: (i) distribution (the network of partners through whose platforms the content is shared); (ii) content (a high-quality library that is growing and evolving in response to user requirements); and (iii) search (a sophisticated search algorithm to be able to serve the most relevant content to users). With respect to the second of these, the content, a small number of third parties considered that, in order to maintain a fresh and relevant library, it was important to have a balance between user-generated content and professional content from entertainment and media companies.

8. Most third parties characterised GIPHY as either being the market leader or having a very strong position (roughly on a par with its closest competitor, Tenor).

9. Platforms in particular identified the following as key competitive advantages of GIPHY:

(a) Its large and comprehensive repository of high-quality, branded content;

(b) The fact that GIPHY has secured extensive rights to distribute the content; and *(c)* Its strong content moderation capability.

10. Most platforms were not aware of any competitors to GIPHY other than Tenor and, in a few instances, Gfycat. A small number of platforms named one or more smaller creative content providers, some of which do not provide GIFs, and none of which were characterised by those third parties as significant competitors to GIPHY.[1]

11. A small number of third parties described GIPHY as superior (in one or more respects) to Tenor, for reasons including GIPHY's more comprehensive and engaging content (including GIF stickers) and better content moderation capability. Some third parties also described GIPHY and Tenor as very similar, variously mentioning their comparable library size and quality, and licensing of intellectual property rights. Another market participant viewed GIPHY and Tenor as similar in terms of content and distribution network, but regarded Tenor as having a superior search capability.

12. By contrast, no platform described Gfycat as a good alternative or close competitor to GIPHY. A small number of platforms told us that Gfycat is inferior in terms of the quality and/or volume of its library (particularly due to the fact that Gfycat is more reliant on user-generated content, whereas GIPHY has access to professional-quality branded content through its content partnerships), or due to the fact that Gfycat does not hold the same extensive licensing of intellectual property rights. Similarly, another market participant highlighted three key distinctions between GIPHY and user-generated content ("UGC") platforms such as Imgur or Gfycat: (i) GIPHY has a team of employees who create and upload content, whereas UGC platforms focus just on user-generated content; (ii) GIPHY has many more brand partnerships with entities such as movie studios; and (iii) GIPHY has a much more extensive network of distribution partners.

Switching between GIF providers

13. One third party commented that barriers to switching are low; most of its contracts are non-exclusive, and many platforms are integrated with more than one provider. Overall, most third parties that discussed ability to switch described it as quick and straightforward. However, one noted that it would require some technical resources to do so, and another noted that there would be some contractual and engineering costs, but it was unable to estimate their magnitude.

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[1] The smaller content providers they identified were: RightGIF, Emoji, Bitmoji, and Songclip.

Barriers to entry

14. One third party noted that there was constant innovation in services relating to GIFs, stickers, and other creative content, and that it is possible for start-ups in this industry to come up with new and different ideas. However, another third party said that it would now be difficult for a start-up company to gain traction against the established GIF providers and that, currently, there do not seem to be any innovations on the horizon.

15. One third party told us that it would be viable for third party platforms to self-supply, given sufficient time, resources, and commitment. Platforms generally regarded self-supplying at a scale and quality similar to that of GIPHY as a major endeavour, which would require considerable financial resources, human resources, and time (in the order of several years). None of the platforms that the CMA spoke to had seriously considered self-supplying.

Importance of GIFs for user engagement

16. Most platforms said that it was difficult to precisely quantity the importance of GIFs to the engagement of end-users. However, one platform explained that GIFs are very important for user expression, as they are a concise and globally recognised form of communicating emotions, with the ability to add humour and flavour in ways that other content cannot. This platform noted that, due to competing platforms offering GIFs, there was an incentive for it to also continue offering them. Another platform commented that creative tools (including, but not limited to, GIFs and GIF stickers) were a base requirement to provide a competitive messaging product, and that removing its current GIFs would degrade its user experience. A small number of platforms also characterised GIFs as ‘nice to have’ but not critical or foundational to their growth or user engagement. One market participant described access to GIFs as a ‘core utility’ for today’s communications platforms.

Data

17. Most platforms understood GIPHY to receive minimal data through their API integration, in most cases limited to the search query (ie keyword(s) or search term(s)) and IP address of the users. One platform told us that it was possible to implement proxying[2] but noted that some platforms may lack the engineering resources required to implement this.

[2] Whereby the request is shown as originating from the server of the platform such that the IP address of the individual user is not revealed.

18. A small number of platforms expressed concerns regarding the incremental aggregate data to which Facebook would have access via GIPHY's API/SDK integrations as a consequence of the Merger. They explained that these aggregate data could give Facebook unique insights into user and content trends (eg what search terms and cultural reference points are popular). One of these platforms was concerned that such data could also provide Facebook with an early signal of the growth trends of current and emerging rival platforms, which could be used to guide Facebook's strategic acquisitions.

GIF advertising model

19. In relation to GIPHY's Paid Alignment advertising services (promoted GIFs), third parties, including advertisers and investors, noted several distinctive and appealing features:

(a) The ability to reach consumers in a messaging context, which is a space that is difficult for advertisers to access. Relatedly, one advertiser described GIFs as a more 'organic' form of advertising, stating that private messaging comes with an air of credibility.

(b) GIFs' unique 'niche' as a creative and consumer-based means of communication embedded in social media.

(c) Wide-scale and rapid distribution of content (considered by one advertiser to be better than that of television), meaning that advertisers can reach a large number of consumers in a short period of time.

(d) The perceived ability to target a younger audience (compared to some traditional media).[3]

(e) The looping nature of GIFs and their high 're-review rate', meaning that the content sticks in consumers' minds.

20. However, third parties also identified a number of challenges with this model:

(a) Finding staff who understand both the technical and advertising aspects of the business.

(b) Facing a 'learning curve' in establishing this new form of advertising, for example, determining its value to advertisers, and building relationships with them.

[3] However, one advertiser told us that GIFs are suitable for reaching a broad demographic, rather than targeting the youth segment specifically.

(c) Finding a way for advertisers to get their messages into GIFs, given that users do not anticipate seeing adverts within their private messages, and ensuring that the content is sufficiently creative.

(d) Developing an advertising platform (including greater use of automated technologies), allowing for a smooth interface with advertisers and taking the model to scale.

(e) Enabling advertisers to measure their return on investment

21. One third party stated that GIPHY's monetisation approach (the Paid Alignment model) had been demonstrated to work. Another third party considered that GIPHY had an advertising product that could be very significant if executed well; however, this third party also considered it was clear that GIPHY was not yet close to a 'breakthrough' with its advertising model. No third party characterised the Paid Alignment model as fundamentally flawed, although most recognised some substantial challenges with achieving success at scale (as described above).

22. The majority of advertisers were positive about their experience working with GIPHY and would have been willing to continue exploring this method of advertising. However, one advertiser described it as a concept that never took off, lacking interest from consumers, leading it to end its partnership with GIPHY. Advertisers stated that their campaigns with GIPHY to date were a minor feature of their advertising strategy and represented a very small share of their budget. Advertisers were able to monitor key metrics such as number of impressions and cost-per-mille (CPM);[4] however, attribution (eg linking GIF views to brand-related actions or purchases) was not possible. Advertisers generally viewed GIPHY as the only or leading provider of GIF-based advertising services. A few advertisers mentioned alternative GIF providers they believed may be offering advertising services, including Tenor, Holler, Inmoji and Bitmoji; in all cases, the advertiser had not partnered or seriously engaged with these potential alternatives.

23. In relation to GIPHY's plans to grow its advertising services by placing promoted GIFs on third party platforms, a small number of platforms told us they either had previously entered into, or would be amenable to exploring in future, revenue sharing agreements. Another platform mentioned that, while it is not currently looking to add new revenue lines into its business, it may be willing to consider such a proposal in the future.

[4] CPM refers to cost per thousand impressions.

Views on the Merger

24. Most third parties did not have particular views on the competitive effects of the Merger. However, a small number of third parties explicitly highlighted they had concerns regarding ongoing access to GIPHY and Facebook's access to data.

Appendix D: Market shares methodology

Introduction

1. This appendix explains the methodology and sources of data used to calculate shares of supply in each of the three markets: (i) supply of searchable GIF libraries (worldwide); (ii) social media (in the UK); and (iii) online display advertising (in the UK), and discusses their limitations.

2. In relation to social media and display advertising, we have taken a similar approach to calculating shares of supply as in the CMA's Online Platforms and Digital Advertising Market Study (the **Market Study**), as this provides the most robust methodology, given data availability.[1]

Supply of searchable GIF libraries

Methodology and source of data

3. We calculated shares of supply in the supply of searchable GIF libraries on the basis of average monthly API/SDK searches in 2020. Searches are a highly relevant measure of user engagement levels and are a key metric used by the GIF providers themselves to monitor how usage of their network is growing.[2]

4. We obtained from each of the larger GIF providers (GIPHY, Tenor, Gfycat) internal data on the number of monthly GIF searches conducted via third party platforms integrated through API/SDK, and summed them to estimate overall volume of global API/SDK searches of GIFs. Each provider's share was then calculated on the basis of this total.

Limitations

5. The size of the market based on API/SDK searches may be slightly under-estimated (by excluding some providers, beyond the three listed above, that may offer API/SDK integration). However, we believe that any excluded providers are very small and that their inclusion would have no material impact on GIPHY's share. As discussed further in the main report, third parties generally considered that Tenor is GIPHY's closest competitor and the only other alternative mentioned frequently was Gfycat.

[1] For further detail, the Market Study, Appendix C.
[2] GIPHY cited number of search requests as one of its key performance indicators (**KPIs**) regularly reviewed by its Board and Management. GIPHY also used monthly search volumes in presentations to potential investors.

6. We also note that search volume may be artificially inflated or deflated by several factors outside of the control of the GIF provider, including:

(a) *Caching*: whereby copies of data (the most popular GIFs, for example) are stored (or 'cached') in another location (e.g. on a server operated by the third party platform), rather than collected from the original source (the GIF provider's server) each time they are requested.[3] The cached content needs to be refreshed (pulled through from the GIF provider's servers) only periodically, and therefore the GIF provider will not have a full record of all searches. While we know that some larger platforms do implement caching, others do not.[4] It has not been possible for us to determine how prevalent caching is or what impact it may have on the search volumes. In terms of calculating shares, we note that caching would only be an issue insofar as it affects different GIF providers to different degrees (and therefore biases the results).

(b) *Proxying*: whereby third party platforms use their own server to make the API request to the GIF provider, on behalf of the end users' request (and then feed the results back through to the end user). This issue should not materially affect shares of supply calculated on a global basis because the request is still counted by the GIF provider (albeit coming from a different server/location), although we note that it would reduce the accuracy of UK-specific shares of supply (since the servers of most major third party platforms are located outside of the UK).

(c) *How a single 'search' is defined*: we understand that how a single search is measured may differ across third party platforms. For example, on some platforms, one search would be represented by a user entering the term 'happy', whereas on other platforms, multiple searches may be sent through in real-time while the user is typing 'hap', 'happ', 'happy'. As with caching, it is not possible to determine how prevalent such differences are or what material impact (if any) they may have on shares of supply by search volume.

7. We considered several alternative metrics, including:

(a) *Amount of content served* (ie returned by GIF providers on the basis of API search requests).[5] [✂] We consider that this metric may be

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[3] The rationale for caching is that the third party can send fewer requests to the API, with a reduced flow of data through their systems, which provides for faster loading and less risk of bottlenecks and outages.

[4] [✂]

[5] Each third party platform can specify in its API integration with GIPHY how many GIFs it wants returned for searches. For example, the Facebook API may request a search of the term "Simpsons"; in the API it can specify how many GIFs they want returned, up to a maximum of 5,000.

somewhat useful insofar as it indicates the maximum amount of content that could potentially be returned to users following each API search (and, as such, may be more closely linked to the concept of potential advertising inventory in the context of exposure to sponsored/promoted GIFs). However, content served by the GIF provider does not necessarily have a relation to how many GIFs the users actually saw or were served in the partner's application.[6] Furthermore, we regard this metric as providing only a slight increment to the information provided by number of searches. The two metrics appear to be highly correlated (according to data submitted by GIPHY, for instance, [✂]).[7] To the extent that the two metrics are *not* correlated, this is likely to be due to technical factors (eg how many items of content third parties specify in their APIs) that are not connected with user engagement. Content served is also likely to be artificially deflated by the practices of caching and proxying, in a similar way to search volumes.

(b) *Number of GIFs actually selected/clicked*. We consider that this metric may be useful insofar as it offers an alternative view of user engagement (ie which provider's GIFs actually go on to be selected/clicked on by the user and therefore could be considered more engaging or relevant).[8] However, the data available to GIPHY on this metric [✂].[9] Furthermore, GIPHY has submitted that even where [✂], they may not be reliable. In addition, Gfycat submitted that it does not maintain data on this metric.

(c) *Number of GIFs posted/shared by users on third party platforms*. We consider that this metric may be somewhat useful insofar as it offers an alternative view of user engagement (ie which provider's GIFs actually go on to be shared by the user with others and therefore could be considered more engaging or relevant). As explained in the main report, we were not able to collect this data for the market as a whole. However, we were able to explore this metric in a limited way for GIPHY's and Tenor's relative shares[10] of GIFs posted/shared on Facebook and Messenger during the period February to April 2021, based on data supplied to us by Facebook. We summed the total number of GIFs posted/shared on each of Facebook and Messenger during this period and calculated each

[6] This is because the number of search results displayed depends on a number of other factors such as the design of the user interface on each particular app/platform and how far down the user chooses to scroll.
[7] The CMA is not aware of the reason for this, but it appears to be due to a change in the way in which Instagram and some other partners began accessing the API (whereby they began to receive a higher number of GIF served per search than was previously the case).
[8] As described in the main paper, on a qualitative basis, we heard consistently from third parties that the quality and relevance of GIPHY's content is very strong.
[9] API partners for whom GIPHY could not provide reliable clicks data include Baidu, Design Keybord, Discord, Facebook, GroupMe, Handcent, Instagram, Microsoft, Outlook, Samsung, Signal, Skype, Slack, Snapchat, Textra, Tinder, Twitter, WhatsApp, and Yellotalk.
[10] GIPHY and Tenor are the only two GIF providers with which Facebook currently integrates.

provider's share of the total. As noted in the main report, the results suggest that GIPHY's share by searches (compared to Tenor's) may be over-estimated.

(d) *Size of library available to UK users (unique GIFs)*. We obtained from each of the larger GIF providers (GIPHY, Tenor, Gfycat) data on the size of their libraries, as at April 2021. We place less weight on these figures as we do not consider this metric to be particularly informative for the purposes of the competitive assessment. While some third parties referred to the size of each provider as a differentiating factor (GIPHY was often mentioned as the largest), we understood such comments to refer more to the amount of high-quality content (including branded GIFs from major content producers) and also the scale of reach with major third party platforms than to the absolute number of GIFs in the library.

Social media

8. In line with our market definition for social media, we have included 10 of the largest social media and messaging platforms in our shares of supply calculations: Facebook (including Messenger), Instagram, LinkedIn, Pinterest, Reddit, Snapchat, TikTok, Tumblr,[11] Twitter, and WhatsApp.

9. In line with the approach taken in the Market Study, YouTube is not included in this analysis. This is because a range of evidence (presented in the Market Study) indicated that YouTube does not impose a strong competitive constraint on Facebook, not least because there are important distinctions in how and why consumers use the respective platforms.[12]

10. The 'zero-price' nature of the services offered to consumers by social media platforms means we cannot calculate shares of supply on the basis of providers' direct revenues from users. We consider that the time spent on a platform is the most appropriate metric for calculating shares amongst social media and messaging platforms as we believe it most accurately represents consumers' engagement with a platform's service. Given the high degree of consumer multi-homing between platforms, share of total user time spent is

[11] The CMA did not have access to Comscore data on Tumblr for the period March 2020 to March 2021; we have therefore used data for equivalent months from 2019 as a proxy.
[12] The Market Study found that users accessed YouTube principally to watch videos (especially entertainment and 'how-to' videos), whereas they accessed Facebook principally to keep in touch with friends and family. It found that user-generated content is a key feature of many social media platforms, whereas YouTube also provides access to a wider range of content, including through its paid-for 'premium' music and video streaming services. Social media platforms seemed to view YouTube as a competitor in its capacity as a provider of content rather than as a provider of the wider communication services offered by social media platforms. Finally, YouTube does not have a 'social graph', unlike platforms such as Facebook and Instagram that can recommend content to users based on their connections. See Market Study paragraphs 3.184 to 3.188.

also a more useful measure for calculating shares than sheer number of unique visitors and the 'reach' of platforms.[13]

Source of data

11. We have calculated each platform's share of total time spent using data supplied to us by Facebook sourced from the Comscore MMX Multi-Platform, which provides a uniquely comprehensive dataset that is measured in a consistent way across different online platforms.

12. Comscore delivers online audience measurement across different devices (desktop, tablet, smartphone) for different types of content (including page content, apps, video). Comscore is endorsed by UKOM, the body that sets and governs the UK standard for the online digital measurement industry.

13. Comscore uses a 'hybrid approach' known as 'Unified Digital Measurement' (UDM), combining both 'panel' and 'census' data, where:

    (a) the panel data consists of recruited respondents who install metered software on their devices. Comscore's UK panel consists of roughly 130,000 users, including 66 thousand users for desktop and over 12 thousand users for mobile (tablet and smartphone); and

    (b) the census data is measured by Comscore 'tags' that media owners apply to their content.

    These two sets of data are unified by Comscore and de-duplicated, to create an overall view of individual consumer behaviour online.

Limitations

14. In the Market Study, the CMA identified several potential limitations in Comscore's methodology, namely:

    (a) Comscore's methodology is complex and involves a combination of modelling and direct measurement. Comscore's modelling relies on assumptions, based on insights from panel and enumeration data

[13] However, as noted in the Market Study, these measures do also give an indication of platforms' competitive strength, particularly given the importance of network effects in this market. As of March 2021, Facebook appears to have the largest number of unique monthly active users and 'reach' (defined as the ratio between Unique Visitors for a given entity and the total online audience) among the major social media platforms, except for YouTube. The limitations of other potential metrics, such as number of page views, are explained more fully in Appendix C of the Market Study.

sources. This modelling is likely to be less robust than direct measurement.

(b) Comscore's panel methodology could suffer from the same issues that affect online panels generally, ie the results generated from Comscore's panel may not be representative of the wider population as online panellists tend to be heavier internet or technology users.

(c) As media owners may choose which of their web pages/apps/videos to tag, not all web entities are measured using the census data. Additionally, because the tags are applied at the discretion of the publisher, direct comparisons between sites is difficult.[14]

15. In the Market Study, the CMA noted that Comscore's previous response to us addressed some of these limitations.[15]

16. An alternative method would be to collect this data from each platform individually. In doing so during the course of the Market Study, the CMA found that different platforms measured time spent by their users in different ways, and thus Comscore's data provided a more internally consistent and accurate picture of the market. However, it noted that for parties whose methodology was deemed accurate, the user time spent related in their submissions was generally consistent with the values sourced from Comscore (Market Study Appendix C, paragraph 64).

17. In the course of this Merger Investigation, we have been able to compare internal data on total time spent by users submitted to us by [✂] to the equivalent data produced by Comscore for the period February 2020 to March 2021. [✂].

18. The Parties submitted that Comscore's dataset understates the significance of some services that compete with Facebook. For example, Comscore has limited data collection on Apple applications (eg no data is collected on Apple's iMessage, which the Parties submitted to be a significant competitor of Facebook).

19. We acknowledge that the data presented in the main report do not provide a fully comprehensive picture of the social media market. However, in our view, the largest and most important competitors within the market, in line with the market definition, are well represented. Notwithstanding any remaining concerns we have relating to these limitations, we believe Comscore to be the

[14] See Comscore's response explained in full in Market Study Appendix C, para. 7.
[15] See Market Study Appendix C, para. 8.

most comprehensive and accurate source of data on consumer behaviour online available to us.[16]

20. We did not have access to Comscore's data on Tumblr for the period March 2020 to March 2021; we have therefore used data for equivalent months from 2019 as a proxy. We tested an alternative approach of using the most recent data point available to us (February 2020). However, this made only a very small difference to Tumblr's shares (ie changing them from [0-5%] to [0-5%], with no material difference to the overall picture of the market, given Tumblr's very small size relative to the other social media platforms).

Display advertising

Methodology and sources of data

21. As noted above, we have taken a similar approach to calculating shares of supply in display advertising as in the Market Study. We have calculated each party's share of total advertising expenditure (rather than Parties' revenues) in order to make like-for-like comparisons between the 'owned and operated' (O&O) segment and the open display segment.[17] We conducted this analysis on an annual basis for 2020.[18]

22. To estimate the total size of the display advertising market, we took the following steps:

    (a) We estimated the size of the 'owned and operated' (O&O) segment, based on revenues generated by each platform from the sale of display advertising on its own properties. These revenue data were gathered directly from each of the largest O&O platforms: Amazon, Facebook, Instagram, YouTube, LinkedIn, Pinterest, Snapchat, TikTok, and Twitter.

    (b) We estimated the size of the open display segment, based on the number and price of display adverts flowing through five of the largest ad servers (that together account for the large majority of the open display segment): Google AdManager, Google AdMob, Google AdSense, Taboola, and FreeWheel. The CMA gathered data on the number of ads (and for

[16] Comscore is widely used both within the industries we are examining and by other government bodies.
[17] 'Owned and operated' (**O&O**) platforms are vertically integrated in the sense that they run integrated sales functions for the sale of their own advertising inventory. In contrast, in the open display market, publishers and other content providers compete to sell advertising inventory using a wide variety of third-party intermediaries and exchanges. Using total advertising expenditure has the effect of including the fees charged by intermediaries in the open display channel for services that are similar to those provided in-house by owned and operated platforms. For O&O platforms, advertisers' expenditure and platforms' revenues are equivalent, as, by definition, no intermediaries are involved.
[18] The data in the Market Study covered the period to the end of 2019. We thought it important to analyse data for 2020, given the unusual circumstances of the past year and potential impacts on the advertising industry.

Google programmatic ads, their total value) directly from these companies. For ads for which the companies did not know the value (non-Google programmatic, Taboola, and FreeWheel), the CMA multiplied the number of ads by an estimate of price per ad to estimate total value of this sub-segment (see further explanation below).[19]

(c) We then added together the O&O and open display segments to estimate total market size.

23. The shares of Facebook, Instagram, and other major O&O platforms were then calculated using the revenue from the sale of display advertising on their own properties (ie their input into part (a) above) as the numerator and the combined total in part (c) above as the denominator.

24. In estimating the size of the open display segment described in part (b) above, we made several further calculations and needed to rely on certain assumptions.

25. First, this was necessary because Google is able to observe the price *only* of 'Google programmatic' ads and *not* the price of 'non-Google programmatic' ads.[20] Likewise, neither Taboola nor FreeWheel are able to observe the price of most ads flowing through their servers.

(a) We therefore needed to make an assumption about the average price of these ads. We assumed the average price (on the basis of cost per thousand impressions [CPM]) is £1.96.

(b) To reach this estimate, we separately examined the weighted average price of all display ads purchased by seven of the largest demand-side platforms (DSPs) during 2020.[21] Whilst there is considerable variation in

[19] Non-Google programmatic ads are those that have arrived at Google ad servers from other routes, including via header bidding or directly from third-party ad networks or SSPs, and 'direct reservations', ie deals arranged directly between advertisers and content publishers. For the Provisional Findings, the CMA was not able to reliably ascertain the number of non-Google programmatic ads served by AdManager in 2020. As the best available proxy, we used the 2019 value (as obtained by the CMA in the course of the Market Study) and checked the robustness of our findings by applying a sensitivity test (see further below in 'Limitations' section).
[20] Non-Google programmatic ads are those that have arrived at Google ad servers from other routes, including via header bidding or directly from third-party ad networks or SSPs, and 'direct reservations', ie deals arranged directly between advertisers and content publishers.
[21] Demand-side platforms (DSPs) provide a platform that allows advertisers and media agencies to buy advertising inventory from many sources. DSPs bid on impressions based on the buyer's objectives and on data about the final user. For further detail about the digital advertising supply chain and the role of intermediaries such as DSPs, see Chapter 5 of the Market Study. The seven DSPs we included were: Xandr (previously known as AppNexus), Verizon, Beexwax, Adform, Adobe, TTD, and MediaMath. The CMA was unable to obtain updated data from the remaining three DSPs included in the market shares analysis of the Market Study. However, those seven from which we did obtain updated data accounted for 79% of the total value of ads purchased by the group of 10 in 2019, and we are therefore confident that our estimated CPM of £1.96 is robust, particularly as it is very close to the result obtained in the Market Study.

the average CPM across DSPs, the weighted average CPM has remained relatively stable over time.[22]

(c) We then multiplied the total number of non-Google programmatic ads and those served by Taboola and FreeWheel by the average CPM (£1.96) to estimate the total value of this sub-segment of open display.[23]

26. Second, it was necessary because Google programmatic ads incur fees by other intermediaries before entering the Google programmatic auctions (which Google has no visibility of and is therefore unable to provide data on). We have therefore made an upward adjustment to the ad values to reflect typical charges made by demand and supply-side intermediaries likely to have been deducted from the ad value before it reaches the Google ecosystem:

(a) For expenditure related to ads sold through AdManager, we have assumed that they will have incurred a DSP fee and other buy-side fees (such as fees from media agencies, data providers and ad verifications service providers) prior to entering the Google ecosystem. Based on the analysis of adtech fees undertaken in the Market Study, we have assumed this to be 20% of total advertising spend.

(b) For expenditure related to ads sold though AdSense and AdMob, we have assumed they incur other buy-side fees (such as fees from media agencies, data providers and ad verifications service providers), but not DSP fees, prior to entering the Google ecosystem. Based on the analysis of adtech fees undertaken in the Market Study, we have assumed this to be 5% of total advertising spend.

(c) For expenditure related to ads sold through Open Bidding we have assumed that they have incurred both buy and sell-side fees before entering the Google ecosystem. Based on the analysis of adtech fees undertaken in the Market Study, we have assumed this to be 35% of total advertising spend.[24]

---

22 The Market Study analysis found it to be approximately £2 in real terms for both 2018 and 2019.
23 The CMA understands that Taboola ads are likely to be lower-value than this average; therefore applying this estimate will likely over-estimate Taboola's share and hence under-estimate Facebook and Instagram's shares.
24 For further details about how each of these values were calculated, see analysis of fees in the adtech stack conducted in the Market Study, Appendix R. It was not proportionate to re-estimate these values during this Merger investigation, as the exercise entails collecting and analysing data from a large additional number of intermediaries. We do not believe that these revenue shares would have materially changed between 2019 and 2020. Furthermore, the results of our sensitivity test suggest that a substantial increase or decrease in each of these values would not materially affect the findings.

Limitations

27. The main limitation of our analysis is that we rely on several assumptions (described above in paragraphs 24 to 26) derived from data relating to 2019: the upward adjustment values (to account for intermediary fees) and the number of non-Google programmatic ads served through Google AdManager.

28. To check the robustness of our results with respect to the upward adjustments described at paragraph 26 above, we applied a sensitivity test. The results are shown in Table 1. The base case applied the percentages described in paragraph 26, resulting in a share for the Open Display segment of 36%. The minimum case applied no upward adjustment, resulting in a share of 33%; the maximum case applied 1.5 times the upward adjustment value, resulting in a share of 37%. The resulting shares for Facebook and Instagram (combined) range from 45% to 48% (around a base case of 46%). We consider that applying either the minimum or maximum estimate would not materially change our conclusions.

Table 1: Results of sensitivity test for upward adjustments

	Base case	**Minimum (no upward adjustment)**	**Maximum (1.5 times the base adjustment value)**
Share of Open Display segment	36%	33%	37%
Market share of Facebook Group	46%	48%	45%

Source: CMA analysis

29. To check the robustness of our use of the 2019 value as a proxy for the number of non-Google programmatic ads served through Google AdManager in 2020, we applied a sensitivity test. The results are shown in Table 2. The base case assumed that the absolute number of these ads was the same in 2020 as in 2019, resulting in a share for the Open Display segment of 36%. The minimum case assumed that the number of these ads had reduced by 50%, resulting in a share of 30%; the maximum case assumed that the number of these ads had increased by 50%, resulting in a share of 41%. The resulting shares for Facebook and Instagram (combined) range from 42% to 50% (around a base case of 46%). We consider that applying either the minimum or maximum estimate would not materially change our conclusions.

Table 2: Results of sensitivity test for Google AdManager

	Base case	Minimum (reduction by 50%)	Maximum (increase by 50%)
Share of Open Display segment	36%	30%	41%
Market share of Facebook Group	46%	50%	42%

Source: CMA analysis

30. While the data we have gathered include ads flowing through the largest O&O platforms and ad servers representing the large majority of the open display segment, we recognise that they do not provide a total picture of the market.

31. The advertising revenue data we analysed pertains to the UK. In line with the approach taken in the Market Study, wherever possible, we identified UK-specific revenues based on the location of the end users (consumers viewing the ads). However, in a few cases, firms provided the data on an alternative basis: LinkedIn and Twitter (advertiser location); Amazon (a combination of UK domains for displayed ads, user IP addresses, and location of the seller of record for the advertising space); and the three Google ad servers (publisher billing address).

32. Despite these limitations, we believe that this is the most robust way to assess shares of supply in UK display advertising. In particular, there is no other comparable data source suitable for our purposes. The IAB's 'Adspend' data, which is the industry standard, has two significant limitations: (i) it does not provide a breakdown by individual platform (thus we could not identify the share of Facebook's O&O platforms); and (ii) it does not use actual revenue data for several major platforms – including Facebook and Google – but rather relies on modelled estimates.[25] Nevertheless, our estimate of the total market size (£7.2 billion) is reasonably similar to those arrived at by IAB in its 2020 Digital Adspend Study (£6.3 billion).[26]

33. Our conclusion that the Facebook Group has retained a very substantial share in the UK display advertising market is further bolstered by the IAB's finding that social display is the fastest-growing ad format in the UK, up 19% between 2019 and 2020, whereas non-social display (including standard display banners) fell by 2% over the same period.[27]

[25] See IAB (2018) 'Digital Adspend Study', p. 8.
[26] IAB (2021) '2020 Digital Adspend Study'.
[27] IAB (2021) '2020 Digital Adspend Study'.

Appendix E: GIPHY's Timeline

Introduction

1. In the following, we consider how GIPHY's business model developed from 2013 up to the point of the Merger, focusing on the period from January 2019.

Pre-2019

2. GIPHY was launched and raised seed capital in 2013, and from 2014 to 2016, saw a significant rise in its valuation over four funding rounds (Series A to D). Over this period, and subsequently, GIPHY focused on building its brand and user base. In a January 2019 presentation, GIPHY describes itself as the 'Scaled Market Leader with Massive User Base', the '#1 GIF provider globally', and the '#8 top visited website in the US', and notes that '65% of 13-35 year olds in US know GIPHY' (GIPHY has also noted that 72% of Americans age 13-34 send or receive a GIF at least weekly).

3. A slide from the January 2019 presentation (Figure 1) illustrates GIPHY's rapid traffic growth from 2015 to 2019.

Figure 1: GIPHY reported growth

[✂]

Source: [✂]

4. GIPHY ran pilot tests of its Paid Alignment service in 2017. In 2018, it commenced offering Paid Alignment on its owned and operated (O&O) sites, earning [✂] in revenue.

January and February 2019

5. In early 2019, [✂] led a Series D1 fund raise for GIPHY. Below, we provide an overview of investor views of GIPHY around the time of the Series D1 fund raise, and then the circumstances of the fund raise.

Investor comments on GIPHY around the Series D1 round

6. In [✂], a GIPHY Series [✂] Investment Memo from [✂] summarised GIPHY's position, as shown in Figure 1, it recognised GIPHY's leadership and

scale and noted that the ability to monetise remained a key question. In particular it noted that:

(a) [✂]

(b) [✂]

(c) [✂]

(d) [✂]

(e) [✂]

Figure 1: [✂]

7. [✂] also commented more broadly on GIPHY's business model at this time, [1] noting *inter alia*:

(a) GIPHY's market leadership and exclusive partnerships with Snap, Instagram, Tinder, Outlook, Slack and others.

(b) Demand by partner platforms to monetize messaging.

(c) Its view that dependence on Facebook is not a hurdle, as GIPHY can reach scale with other platforms.

(d) Challenges to new entrants competing against GIPHY in monetisation.

(e) The suitability of Paid Alignment for brand building advertising, the size of this market, and GIPHY's potential to enable clicking of sponsored GIFs.

Circumstances of the Series D1 fund raise

8. The Parties reported that the 2019 Series D1 round raised [✂], and submitted that:

> 'The amount raised was smaller than GIPHY's Series C round, in early 2016, and [✂]. Moreover, the Series D1 share price, [✂].'

9. [✂] commented in a [✂] internal memo that 'In order to buy [✂] of additional [✂] to demonstrate the company's ability [✂] is [✂] an extension of the [✂] round at [✂] per share ([✂]) with [✂]. Other [✂] insiders are also doing their

[1] [✂]. [✂] told us that with reference to the its internal documents cited in this Appendix that: 'This information reflects the limited knowledge of [✂] about the business at the time of the investment. If we were to write an investment memo now, we would add some nuances to the wording we used at the time, as our understanding had evolved since our investment.'

[✂] of the [✂] for a total of [✂]. We anticipate this termsheet catalyzing up to another [✂] of demand from [✂].'

10. In January 2019, [✂] described the upcoming funding round as follows:

> 'Alex is now looking to raise a [✂] round to give one year of additional runway for the Company and demonstrate its monetization potential. After leading the Series B and C, [✂] is offering to lead the current round with an additional [✂] investment. Almost all existing investors are expected to participate leaving [✂] for new investors.'
>
> 'Giphy has received interest from other investors to participate in the upcoming round. The name of [✂] was mentioned. These investors have relatively high minimum investment size requirements and could potentially take the full round. In this case, they would also require a board seat, but the CEO and other existing investors are reluctant to give a board seat for the small ownership post-transaction involved. As an alternative, [✂] has submitted a term sheet offering an extension of the Series D round.'

11. [✂] told us that it spoke to GIPHY's CEO, Alex Chung, in November/October 2018 but that '[✂] quickly determined that GIPHY was not going to generate a minimum return on investment.' [✂] noted in particular GIPHY's 'high burn rate, and the high execution risk associated with an immature business model.'

12. Alex Chung discussed the Series D1 funding round in an email exchange with [✂] at GV, commenting:

    (a) 14 December 2018: '[✂].'

    (b) 28 January 2019: '[✂].'

    (c) 15 February 2019: '[✂].'

13. Alex Chung described the GIPHY 2019 funding strategy in a 5 February 2019 email to executives, stating: '[✂]' Mr Chung also explains that GIPHY has a high valuation for 'venture' investors, and will need to monetise around [✂] in order to appeal to 'growth' investors (see Figure 2).

Figure 2: Alex Chung discussion of investors, 5 February 2019

[✂]

14. We note that the internal documents set out above from [✂], [✂] and GIPHY [✂]. The Series D1 funding round appears to have attracted the required investment from existing investors, while also raising almost USD 20 million

from new investors. It was successful in the sense of providing GIPHY with the capital it needed to develop its business up to 2020, at which point it hoped to be cash positive. However, [✂] told us that ‘Raising funds from the [✂] investors for the [✂] round was [✂]’.

Investors’ positions following the Series D1 fund raise

15. We asked larger GIPHY investors for details of discussions they have had with GIPHY about providing additional financing subsequent to the Series D1 fund raise (specifically since 1 July 2019). Several investors told us that they had not discussed providing any further funding to GIPHY, although we note their comments suggest that this did not necessarily reflect a lack of confidence in GIPHY’s prospects.

  a. Betaworks told us that ‘Betaworks is an early stage investor. We primarily invest in companies at the pre-seed and seed stages and occasionally in series A, as well as founding companies. From time to time, when informal discussions of the possibility of Betaworks providing additional financing to Giphy in any form occurred, since 1 July 2019, Betaworks would be invited to participate but we would generally abstain from participating in such financings due to the early stage investment focus of Betaworks.’

  b. [✂] told us that it ‘conveyed that it was [✂] in leading another round of financing of GIPHY….it was clear at the time that any additional financing would need to be priced and led by someone [✂].’

  c. [✂] said that from July 2019 ‘we were not able to invest more into GIPHY from our then current fund (at which point the fund had very limited available commitment).’

  d. General Catalyst (**GC**) told us that ‘[✂]’.

  e. [✂] that it has not had any discussions, formal or informal, with GIPHY or other investors in GIPHY, regarding the possibility of [✂] providing additional financing to GIPHY in any form since 1 July 2019.

  f. [✂] submitted that, following the conclusion of the [✂] in GIPHY in [✂], [✂]. Further comments in respect of [✂] providing further funding to GIPHY absent the Merger are outlined in paragraph 51 below.

  g. [✂] told us that, in terms of its appetite to invest further in GIPHY, it did not issue any term sheets or hold any formal discussions with GIPHY since 1 July 2019 regarding the possibility of [✂] leading any additional financings for GIPHY.

Our view

16. We consider that, overall, leading investors appeared to be optimistic about the success of GIPHY's monetisation in early 2019, while recognising the risks. Their reasons for being positive about GIPHY's prospects included:

    a. Its strong growth and market position.

    b. Challenges to others entering in competition with GIPHY.

    c. Advantages of Paid Alignment from an advertiser and platform perspective.

    d. Evidence of demand from advertisers.

17. The risks identified by investors included:

    a. That effective monetisation had not yet been demonstrated at scale.

    b. Dependence on API partners, particularly Facebook.

    c. Possible competition from Tenor.

    d. GIPHY's high valuation.

18. The Series [✂] round raised sufficient [✂] for GIPHY to continue to develop its [✂] plans over [✂] and [✂]. [✂] comments (paragraph 10 above) suggest that this may have been because existing investors preferred a limited round, rather than going to larger investors. In any case, GIPHY appears to have reached a point where it needed to demonstrate its monetisation model with API partners.

May to December 2019

19. From mid-to-late 2019, GIPHY and its investors considered the options of a sale of GIPHY, or a further fund raise. Below, we describe the discussions around future funding, and the relevance of monetisation to this funding. We also describe internal documents discussing GIPHY's commercial performance at this time.

M&A and fund raise options

20. A May 2019 discussion paper prepared for GIPHY by Lazard asks '[✂]'. The paper considers 'precedent case studies' including Google's acquisition of Tenor, and notes that post-transaction this is 'Not yet significantly monetized', but also that Tenor 'Sold sponsored GIFs to Dunkin Donuts, Domino's, Warner Bros. etc for \$100K - \$500K each'.

21. An August 2019 discussion paper, prepared for GIPHY by Allen & Co, notes that '[✂]'. In considering the acquisition rationale for different companies, monetisation appears to be an important aspect of some potential acquisitions:

(a) [✂]

(b) [✂]

(c) [✂]

(d) [✂]

22. A September 2019 email exchange between Alex Chung, [✂] and [✂] discussed a recent (unsuccessful) sales pitch from Allen & Co to lead GIPHY's M&A process, and considered the alternatives of M&A and a fund raise.

23. Mr [✂] commented 'Flag is that they [Allen & Co] won't run a hybrid process (sale and raise). While the goal is M&A, having the ability to seamlessly slide into a strategic raise is important and might be something we might decide we need'. Mr [✂] commented 'I share the concern about them being unwilling to do a dual track process if the m&a doesn't work out.' Alex Chung commented: 'Perhaps we could explore M&A then switch to raise later. I do worry about not focusing on m&a and trying to dual track at the same time versus a dual phase. If we aren't able to find a good home with the m&a markets as they are now a large raise is going to be tough.'

24. GIPHY subsequently 'engaged with an investment banking deal team at JP Morgan to conduct a formal evaluation of its opportunities to raise financial capital through an external raise, external (debt) financing, a commercial partnership deal, or M&A opportunities (i.e., acquisition by a third party).'

Importance of monetisation for funding

25. Internal documents indicate that at this point, GIPHY considered that the prospect of monetising GIFs could be potentially an important aspect of its value to an acquirer or investor (consistent with the comments from Lazard and Allen & Co in paragraphs 20 and 21 above). In particular: A November 2019 'buyer outreach' document from GIPHY includes 'buyer-specific rationales' for twelve companies. Those for [✂]:

(a) [✂]

(b) [✂]

26. We note that in the [✂] rationale set out above, GIPHY [✂]. In the [✂] rationale, [✂].

27. In addition, an October 2019 email exchange suggests that GIPHY considered its ability to monetise with [✂] as a relevant consideration for potential acquirers. [✂] emailed Alex Chung to report on a conversation with [✂]. Mr Chung forwarded the email to Brad Zeff, and to [✂] at JP Morgan who comments '[✂].'

GIPHY commercial performance and prospects

28. In an 11 November 2019 revenue update, Peter Phillips (GIPHY COO) noted that October revenues were [✂],[2] but added that '[✂].'

29. In a 19 December 2019 email exchange with GIPHY CFO Whit Richards, Alex Chung discusses a number of issues relating to GIPHY's future. While the discussion is wide-ranging, the following points from Mr Chung are of note:

   (a) [✂]

   (b) A faster growth story is credible, and may secure for GIPHY the support it needs to become net positive in revenue:

   [✂]

   (c) GIPHY's business and longer-term prospects are strong:

   [✂]

   (d) Cost reduction carries risks at this stage.

   [✂]

30. In the Main Party Hearing (Transcript page 32) Alex Chung commented on Mr Richards that: '…he was very pessimistic about any kind of prospects for large revenue gains, and I would -- and my job was to show him the one path that we could possibly do and let's focus on those, because that is the one path that will get investment and do all these things'. We consider that this document overall shows a frank exchange of views, as one might expect between Mr Chung and his CFO. Moreover, Mr Chung's comments to us do not appear inconsistent with his comments from the document quoted above

[2] This was an improvement on September 2019, which had been about [✂].

– he was setting out a path to success, but not one that was evidently without credibility.

Our view

31. Towards the end of 2019, GIPHY's monetisation business had grown more slowly than expected but was getting closer to target growth. While GIPHY had begun contemplating an M&A route, it was also looking at raising funds to continue developing monetisation independently (and instructed JP Morgan accordingly). It also considered that its monetisation was a potential aspect of value for an acquirer. At this stage, Alex Chung appeared confident in the longer-term prospects of GIPHY's business model, and was focused on communicating a credible growth plan to current and prospective investors, and not on cutting costs.

January to early March 2020

32. Following GIPHY's 23 January 2020 board meeting, an investor ([✂]) commented in an email:

> 'based on what we heard at the board meeting last week, it seems like the [✂] for 2020 is really a "baseline" or "core revenue" plan. It's focused on delivering growth through our direct selling efforts. In addition to that core (or baseline) plan, I'm wondering if we should incorporate some expectation for:
>
> > [✂]
> >
> > - platform relationships with some of our strategic distribution partners ([✂].) that brings multi-year bookings and rev share opportunities to Giphy.
>
> It seems like we've become an important and valued media network for our large distribution partners, with tremendous audience reach and strong engagement. We've been footing the bill in order to get in a position to monetize our content network and our audience, so this is the year where we should start to realize the fruits of those labors with some of our distribution partners. It seems short-sighted to not include some expectations for (1) and (2) in our 2020 plan. If we don't create the expectation and start executing toward that goal, it will never happen.'

33. In a private response to this email, [✂].

34. In a 3 February 2020 email exchange, John Toomey of GIPHY commented on GIPHY's success in generating revenue from [✄], and noted: (i) that [✄], and (ii) the success of [✄] relative its other sales categories of [✄] and [✄]. Alex Chung forwarded the message to investors Lightspeed, DFJ and Betaworks with the comment '[✄]'.

35. An internal GIPHY email from Peter Philips (COO) to larger investors from 7 February 2020 notes that:

> [✄]

36. In a 22 February 2020 email exchange with Vishal Shah at Facebook, Alex Chung sets out three options for a commercial agreement with Facebook, of [✄].

37. In February 2020, [✄] invited Alex Chung to attend and present at the [✄] which was scheduled to take place on 10 March 2020. In this email, [✄]: '[✄].'

38. As part of this invite, [✄] noted that at the event, it would be 'featuring [✄] of our high conviction companies' and it considered that the event would be a '[✄].'

39. An internal GIPHY email from Peter Philips to the Board from 4 March 2020 comments that:

    (a) '[✄]

    (b) 'Risks:

        (i) Hiring: […]

        (ii) Coronavirus: this concern has been magnified in the last 24-48 hours…

        (iii) Stickers: Alex and Brad are deftly managing our corporate partnership opportunities, but [✄]

        (iv) Revenue Diversification: […]

    (c) Opportunities

        (i) Hiring: the right CRO can open new doors and step-change our revenue trajectory.[3]

[3] [✄] had previously commented on the need to find a Chief Revenue Officer (see Figure 1).

(ii) Events: where there is risk there is also opportunity. We built an aggressive event and conference strategy for 2020 and remain bullish that even if it is delayed [by COVID-19], we will continue to capture the attention of current and potential clients as soon as is feasible...

(iii) MediaLink: … We recently … refocused the work solely on revenue and refreshed the working team to one that will spend almost all of its time opening more doors for our sellers.

(iv) Incentivizing internal teams: [✂].

(d) I remain very optimistic about 2020…'

40. General Catalyst (GC) submitted that on 8 March 2020, its lead investor, [✂] updated the GC investment team as follows:

'[✂].'

41. We note that while [✂] had some reservations about GIPHY and the risks it faced, he saw its commercial performance as positive in early 2020.

42. A 12 March 2020 email from Alex Chung to Cameron Smith (VP Revenue Strategy at GIPHY) and Peter Phillips (GIPHY COO) discusses the company's business trajectory, including its goal to [✂]. The exchange does not discuss Coronavirus (COVID-19), although in a follow-up email, Mr Phillips comments that '…the current environment may alter the timelines but […] we want to push as hard as possible in order to maintain our momentum.'

43. A 13 March 2020 GIPHY slide pack, 'GIPHY Board update call materials' includes 'COVID-19 Update' as an agenda item, and refers to 'Macro environment (COVID-19)' as a risk. However, it does not appear that the impact of Coronavirus (COVID-19) is fully reflected in GIPHY's financial projections at this point. The slide pack estimates gross revenues for 2020 at [✂], while the five-year forecast is to reach revenues of [✂].

44. Over this period, GIPHY had been talking to Facebook, [✂] and [✂] about funding options to secure its future viability (see paragraph 59b below). From 1 March 2020 to 3 March 2020, Facebook executives considered options including [✂]. Nir Blumberger of Facebook subsequently told his colleagues (on 3 March 2020) that:

[✂]

Our view

45. We consider that the internal documents indicate that GIPHY's monetisation model was developing positively in early 2020, with strong revenue growth having been achieved in the first two months of the year. In addition, at Board level, GIPHY continued to expect, as late as 13 March 2020, that it would grow very strongly over the next five years.

46. Nir Blumberger's account of Facebook's communication with GIPHY at this time suggests that GIPHY's seeking financing to continue independently was just an 'official angle' while its preference was for an acquisition. However, it is unclear: (i) whether this was in fact Alex Chung's and/or Brad Zeff's preference at this time, (ii) if so, whether this was also the preference of GIPHY's board, or (iii) the extent to which any such preference reflected early Coronavirus (COVID-19)-related market turbulence rather than GIPHY's underlying business prospects.

March to May 2020 (Coronavirus (COVID-19) to acquisition)

47. Among Coronavirus (COVID-19) developments in the US in mid-March 2020:

    a. On 9 March 2020, the S&P 500 fell 7% at its opening, while the Dow Jones Industrial Average fell 7.8% over the day.

    b. On 12 March 2020, most major US sports leagues, including the NFL, suspended their seasons. While the Dow Jones Industrial Average closed down an additional 10%, the NASDAQ Composite was down 9.4%, and the S&P 500 was down 9.5%.

    c. On 13 March 2020, President Trump declared a national emergency, and the House of Representatives passed an aid package for affected workers and individuals.

    d. On 15 March 2020, the US Centre for Disease Control and Prevention issued guidance recommending against any gathering of 50 or more people.

    e. On 16 March 2020, President Trump issued guidelines urging people to avoid social gatherings of more than ten people and to restrict discretionary travel.

48. [✂] commented that as a result of the Coronavirus (COVID-19) pandemic, there was greater hesitation from potential investors to contribute to GIPHY through rounds of funding. [✂] also submitted that no draft term sheets were discussed or prepared in respect of [✂] providing additional financing to GIPHY after 1 July 2019. [✂].

49. [✂], submitted that following the onset of the Coronavirus (COVID-19) pandemic, GIPHY experienced a significant impact on its [✂]. [✂]. This resulted in a [✂]. [✂] also submitted that the pandemic resulted in [✂] investor interest in GIPHY. In a follow-up submission, [✂] stated that GIPHY's efforts to raise financing which began in [✂] '…became [✂] when the COVID-19 pandemic hit. The pandemic led to a marked increase in [✂], increasing GIPHY's [✂] costs. It also saw both cancellations of [✂] (much of which was tied to events such as [✂] etc that were also cancelled) as well as a freeze on conversations for [✂].'

50. Betaworks submitted that, following the onset of the Coronavirus (COVID-19) pandemic, advertising budgets were tightened, and discretionary advertising budgets were cut back significantly. As a result of this Coronavirus (COVID-19) effect, GIPHY's revenue trajectory changed quite dramatically by mid-April 2020, compared with mid-February 2020. Further, Betaworks commented that some investors were nervous about investing further capital given the uncertainty caused by the pandemic. However, it said that at the time when the Coronavirus (COVID-19) pandemic started, there were a number of options open to GIPHY, including a potential sale or investment by external third parties, including private equity firms and strategic investors. We asked Betaworks whether, absent the offer from Facebook, later-stage investors would have been prepared to put more cash into GIPHY to extend its runway for the next six to twelve months. Betaworks commented that: 'Yes, I do [think that]. I think that there were certain later stage investors I know who were keen to do that. One was going around board members and saying, 'Why do we not put in a term sheet?' Part of the job of these later stage investors is, when companies hit speed bumps, to help them get through.

51. [✂] submitted that, following the conclusion of the series [✂] investment in GIPHY in [✂], it informed GIPHY that it would not have provided additional funding to GIPHY absent the presence of a strong external investor. However, [✂] stated that in a scenario whereby GIPHY were unable to be acquired by a third party or receive additional capital via an external investor, the GIPHY management team, board and investors would have been left in the difficult situation of either (i) exploring additional ways to extend GIPHY's cash runway though cost reduction measures, and/or (ii) considering emergency financing options (including a further investment by [✂]). [✂] noted that the scale and form of any cost reduction measures and/or emergency financing options, if available, would have needed to be further explored, debated and negotiated by and among GIPHY's management team, board and investors in order to determine the best potential outcome for shareholders and employees.

52. On 27 March 2020, Alex Chung emailed larger investors to say: 'Brad and I had a long call with FB Thursday afternoon and have an update that we need to discuss and get input from the board by Monday evening.' [✂]. Following a meeting on 29 March 2020, [✂] emailed attendees[4] to set out the plan which they had agreed during that meeting:

a. Task JP Morgan to explore M&A and investment from [✂] and others over the course of the following week;

b. Messaging to Facebook as below (subject to JP Morgan's advice); and

c. Convene a board meeting the following weekend to discuss options.

53. The final version of the agreed messaging[5] to Facebook stated that:

> 'We briefed the board this morning on your offer at [✂]
>
> [✂]'

54. In a subsequent email in the chain, Mr [✂] also commented: '[✂].' [✂] of GC responded with his support for this approach.

55. In an email to Alex Chung on 29 March 2020, [an investment manager] [✂], appeared to express strong support for the GIPHY business and its potential, noting: '[✂]'.

56. In the same email exchange, Alex Chung appears to indicate that GIPHY continued to have support from [✂] despite the Coronavirus (COVID-19) challenges: '[✂]'.

57. [✂]

58. As explained in detail in Chapter 6, The Counterfactual, GIPHY signed a term sheet with Facebook on 7 April 2020. Following signing of the term sheet, GIPHY was subject to a 'no-shop' provision which prevented GIPHY from pursuing any acquisition or investment discussions with any other party.

59. The Parties submitted that an April 2020 GIPHY board pack shows that, in light of Coronavirus (COVID-19), GIPHY was considering cutting up to 100% of its revenue team. The Parties commented that 'This is not a context which suggests GIPHY was set for major international growth'.

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[4] In a subsequent email, Mr [✂] updated this to: '[✂].

[5] An earlier draft was revised in part to avoid sounding too negative towards the proposed acquisition.

60. A slide from the pack estimates the cost savings of a 25%, 50% and 100% cut in the revenue team, along with cuts in other areas. [✂].[6] The slide pack does not indicate whether shutting down the revenue team was a recommended option. In other slides, it notes that:

(a) '[✂].

(b) Pre-Coronavirus (COVID-19), [✂].'

(c) '[✂]'.

(d) [✂]

61. Glynn Capital spoke to Alex Chung on 17 April 2020. Glynn Capital submitted that Alex Chung had commented as follows:

(a) [✂]

(b) [✂]

(c) [✂]

(d) [✂]

62. On 29 April 2020 the [✂] Board signed a resolution approving the acquisition of GIPHY by Facebook, and noted that:

(a) '…the cash resources of GIPHY are running low and revenue generation is directly affected following the Covid 19 pandemic which is pushing advertisers to delay or cancel their marketing campaigns.'

(b) '… GIPHY is struggling to raise additional financing from outside investors but received an acquisition offer from a leading internet company […]. Given the terms of the offer, existing investors are currently favoring the acquisition offer over putting additional money in the business.'

63. In a call on 8 May 2020, Alex Chung informed the Glynn Capital team of the acquisition of GIPHY by Facebook, reportedly commenting:

(a) '[✂].'

(b) '[✂].'

[6] In addition, cutting the revenue team by 100% would not have addressed GIPHY's ongoing losses of [✂] per month.

(c) ‘[✄].’

64. Also on [✄] referring to the acquisition and commented that:

[✄]

65. On [✄] commenting:

[✄]

66. A slide for a 12 May 2020 meeting of the Betaworks board of managers summarised the GIPHY situation as:

(a) [✄]

(b) [✄]

(c) [✄]

(d) [✄]

(e) [✄]

(f) [✄]

(g) [✄]

Our view

67. The view from investors was that GIPHY had made a strong start to 2020, capitalising on the efforts it had made to monetise in 2019. At the start of 2020, GIPHY was actively considering two options (i) M&A, and (ii) raising sufficient investor funding in order to continue developing its monetisation business independently.

68. Coronavirus (COVID-19) had a sudden and severe impact on GIPHY’s short-term commercial prospects. However, even when it received a proposal for an acquisition by Facebook, GIPHY’s board continued to explore the option of a fundraise, by means of investment from existing investors and from a commercial deal with Facebook, [✄] or [✄], in order to continue GIPHY as an independent business.

69. It is possible that GIPHY’s board may have sought to keep open the option of a fundraise as a means to strengthen GIPHY’s bargaining position with Facebook. However, it is also possible that GIPHY’s board would have rejected a materially less attractive offer from Facebook in favour of raising a further round of funding. The internal documents from 29 and 30 March 2020

indicate that investors actively explored further financing options before deciding that they preferred the best M&A offer they could get (at which point they already had a [✂] offer from Facebook). We also note that investor views on whether they would have ultimately provided further funding to GIPHY appear to be influenced by the possibility of a sale of GIPHY to Facebook. However, in the absence of an opportunity to sell to Facebook, or any other purchaser, it is likely that investors would have looked to raise further funding for GIPHY to see it through the pandemic and to fund further expansion.

70. We consider that the April 2020 Board slide pack[7] noted by the Parties indicates that GIPHY was seeing positive results to monetisation at the start of 2020, and that it was planning to respond to Coronavirus (COVID-19) by driving its revenue growth where possible GIPHY was also planning international expansion of elements of its monetisation (see Chapter 7, Horizontal Effects).

71. GIPHY's investors appeared to see the acquisition of GIPHY by Facebook – and the final price – as a positive outcome. However, this was in the context of the challenges presented by Coronavirus (COVID-19), and does not appear to have been driven by a sense that GIPHY's monetisation model had proved unworkable.

[7] The Parties have submitted that the April 2020 board deck was never shared with or presented to the GIPHY board (paragraph 40.1 of the Parties' response to CMA RFI dated 13 August 2020).

Appendix F - GIPHY's Paid Alignment model

Introduction

1. This Appendix considers the following aspects of the development and prospects of GIPHY's Paid Alignment model:

   (a) Implications of GIPHY's capabilities (and limitations thereof) in monitoring and tracking its ads.

   (b) Advertiser demand for GIPHY's Paid Alignment services.

   (c) Prospects of achieving revenue sharing agreements with third party distribution partners.

   (d) Success of GIPHY's O&O sites and their prospect as part of GIPHY's revenue generation strategy.

   (e) GIPHY's sales/revenue team (including ongoing challenges in hiring a Chief Revenue Officer).

   (f) [✄].

   (g) Risk of rivals or entrants replicating GIPHY's monetisation model.

   (h) International expansion (advertising opportunities outside of the US), including expansion into the UK.

Monitoring and tracking

2. The Parties submitted that GIPHY's monetisation model was flawed, because advertisers on digital media wanted to monitor return on investment closely. The Parties submitted that:

   > 'GIPHY could not provide traditional advertising return on investment ("ROI"), audience data and advertising metrics for proof-of-concept. Furthermore, because GIPHY lacked a meaningful user base of its own, it was unable to provide the recognizable constituent elements of a robust digital advertising business. Advertisers on digital media monitor closely the ROI from specific advertising opportunities. GIPHY's paid alignment products (whether existing on its O&O products or on its API partners' services) did not demonstrate traditional digital advertiser ROI'.

‘First, paid alignments did not offer so-called “*direct response*” ads, whereby a user performs a specific action in response to being shown the ad with the advertiser able to track the tangible economic value of that action (e.g., the user clicks the ad in order to buy a product).

Second, GIPHY’s third party API ensured that it could provide a GIF search engine, not an advertising service. As a result, it was unable to supply basic audience data (which other services that own their inventory are capable of supplying) and, critically, it was unable to control third-party app environments and user experiences where promoted GIF content could run (since this would have to be implemented by its API partners on their services, not GIPHY’s).

Finally, even on its O&O products, GIPHY did not collect the most basic data about its users to target advertisements in any way, which was becoming problematic as GIPHY sought to secure bigger advertising budgets.’

3. Below we present evidence concerning GIPHY’s, and its investors’, views about the implications of GIPHY’s capabilities (and limitations thereof) in monitoring and tracking its ads for its prospects for monetisation at scale.

4. A [✂] memo [✂] sets out the need for GIPHY to build more sophisticated tracking capabilities [✂]:

‘[✂].’

5. A similar point regarding the importance of ad measurement and analytics was made [✂]:

‘[✂]’.

‘[✂]’.

6. A May 2019 GIPHY document discussing ‘Ad tracking and Audience measurement in the O&O’ notes that:

‘[✂]

[✂].’

7. The document describes Ad ID as ‘[✂]’ and indicates that [✂]:

‘[✂]’.

8. In a discussion of the analysis, which forms part of this same (above) ‘[✂]’ Later, [✂].

9. In March 2020, David Rosenberg (GIPHY's VP of Business and Corporate Development) listed seven priorities for GIPHY's business development in 2020. One of these was deploying [✂] to key partners, aiming for agreements with [✂], as well as 'some version of yes with [✂]'. He also identified 'closing a big SDK partner' as an objective.

10. We consider this evidence to show that GIPHY's investors recognised early on that building a more sophisticated ad tracking system was necessary for success. Advertising IDs[1] were a critical part of facilitating such a system – GIPHY was able to track these for all users[2] of its O&O app and platforms integrated via SDK (although not those integrated via API, which accounts for the large majority of traffic[3]). GIPHY aimed to reach agreements with Revenue Share and other partners to deploy [✂], to incentivise app publishers towards its SDK, and to make these IDs a [✂] from SDK developers.[4] GIPHY also recognised that it could combine this data with purchased third-party data to provide rich demographic and interest data to provide a more attractive advertising product targeted at certain groups.

Advertiser demand

11. In its Site Visit presentation, GIPHY noted that, '[✂]'. In the 'GIPHY Story in Context' submission, the Parties state that:

> 'In 2017, GIPHY generated just USD [✂] in annual revenue, deriving from early pilot tests. The following year, GIPHY commenced Paid Alignment services on its O&O products made available to users in the US. [✂]. Almost one-third of these revenues (27%) were attributable to a single advertiser, [✂] (for its [✂] products). Much of the remaining revenues derived from advertisers testing GIPHY as an experimental source of advertising revenue.'
>
> '[✂].'

12. The Parties have commented on GIPHY's 2019 ad revenues of [✂] that:

> [✂]

[1] The Google Advertising ID (**GAID**) and the Identifier for Advertisers (**IDFA**) are anonymised device identifiers used by Android and iOS respectively that that allow advertisers and developers to track and identify a specific device, which is used as a close proxy for an individual. GIPHY was able to track GAID and IDFA for user interactions relating to GIPHY content, in terms of both users of GIPHY's app or users on platforms integrated with GIPHY via the Software Development Kit (**SDK**), but not via API. Note that individual users are able to 'opt out' of being tracked by these IDs.
[2] Users would not be required to be registered with GIPHY. However, individual users can 'opt out' of being tracked by Advertising IDs in general – these would not be able to be tracked.
[3] The only major partner that presently integrates with GIPHY via SDK is [✂].
[4] Pre-merger, GIPHY allowed SDK developers to opt out of sharing the IDFA/GAID value.

13. According to notes from a [✂]:

> '[✂]' .

14. A [✂] investment memo (from [✂] for the Series [✂] round) refers to the fact that advertisers (over the past year since monetisation started) were happy with their campaigns and that [✂] campaigns were [✂]:

> 'Importantly, Giphy began monetizing in [✂]. The company sold [✂] in advertising at an average deal size of [✂] and with a [✂] close rate, including [✂] deals with [✂]. Advertisers were happy with the campaigns with a [✂] in-year rebuy rate, [✂] of [✂] campaigns being rebuys and repeat buyers spending on average [✂]. Clickthrough rates on sponsored gifs was [✂] than typical social media click through rates. Giphy won 3 Cannes Lion awards for its ad campaigns and showed strong brand lift against control and against other social media'.

15. Correspondence from a representative of [✂], an ad agency representing [✂], noted her clients' enthusiasm for working with GIPHY:

> '…[✂]'
>
> '[✂].'

16. In its investment confirmation memo of January 2019, [✂]commented that, 'Several campaigns of large brands from a diverse range of sectors prove that there is significant demand to advertise through GIF ads.'

17. In relation to the concern that GIPHY's ads cannot achieve click-through to the brand's website or a direct purchase opportunity, [✂] (in the same January 2019 memo) commented that this was not necessary for brand awareness-type advertising:

> 'There is no need to redirect users to a website in brand building advertising. Brand building advertising campaigns simply aim to capture the consumer's attention and lift brand perception. As such, there is no need to click on these advertisements. Also, the brand building advertising market is sufficiently large given that US advertisers spend around ~$70bn on tv ads, which also lacks the "click-factor". To compare with other forms of non-click ads: US offline magazines are able to demand a CPM in the range of $8-20, which is higher than our $7.5CPM forecast. Lastly, Giphy could enable clicking of sponsored GIFs through actions such as a double-tap or triple-tap.'

18. Shortly before the full impact of the COVID-19 pandemic became apparent, in early February 2020, Peter Philips (COO) and Alex Chung sent updates to the Board and investors stating that [✂]. See further detail regarding these exchanges in Appendix E: GIPHY Timeline.

19. As noted in Chapter 7, Horizontal effects, a number of brands including [✂] expressed concern or disappointment about GIPHY's Paid Alignment business being closed.

20. We consider that this evidence suggests GIPHY and its investors believed that major brands were interested in GIPHY's Paid Alignment services (see also the section on 'GIF advertising model' in Appendix C: Third Party Summary,[5] and also the section below on advertisers actively inquiring about international opportunities). In the months prior to the pandemic, GIPHY regarded ad sales momentum as growing, particularly with respect to search content (ads that are served in response to searches, as opposed to presented in the 'trending' content). Investors saw GIPHY's ads as suitable for building brand awareness, which was a sufficiently large market to be attractive to them.

Prospect of achieving revenue share agreements

21. The Parties have submitted that:

> 'GIPHY could not demonstrate that a revenue-sharing API-dependent model was sustainable. Without its own user base, GIPHY's only prospect for generating meaningful revenues was to find a way of splitting revenue with the third-party services on which it was dependent. … Since the overwhelming majority of GIPHY traffic existed on its API partners' services, GIPHY's revenue-generating strategy effectively relied on monetising the actions of consumers of third-party services.'

> 'Allowing an outside vendor like GIPHY to control any form of advertising within their services, in a way that generates significant revenue, is largely unprecedented among the large services GIPHY relied on for the large majority of its API distribution. Such partners have no reason to share revenue with a third party or experiment with unproven forms of advertising when the service has the ability to keep 100% of revenue from its existing and proven products. Revenue generation for GIPHY was simply not the value-add to GIPHY's larger API partners.'

[5] This summarises the views of all advertisers with whom the CMA held calls during the Phase 2 inquiry, in which we note that the majority of advertisers were positive about their experience working with GIPHY and would have been willing to continue exploring this method of advertising.

‘GIPHY would have been dependent on entering into revenue-sharing agreements with significant API partners to build a sellable ad-inventory. In reality, however, GIPHY struggled to sign any important revenue-sharing agreements. GIPHY’s biggest partners, including Facebook, [✂].’

22. A [✂] memo [✂] (an investor in GIPHY) sets out GIPHY’s reliance on distribution partners, including Facebook, as a key risk:

‘[✂].’

23. In notes from a [✂] call between [✂] and Facebook’s Strategic Partnerships team ([✂]),the Facebook representative commented that:

‘[✂]’.

24. By 2019, GIPHY had entered into revenue share agreements with [✂], which allowed GIPHY to run Paid Alignment advertising on these partners’ inventory in the United States. [✂] alone accounted for [✂] in the months prior to acquisition.

25. In January 2020, Alex Chung met with Vishal Shah and Robby Stein at Instagram, and discussed (*inter alia*) monetisation possibilities. The meeting notes circulated by Mr Chung to GIPHY colleagues after the meeting comment that there was ‘[✂]:

‘[✂]’

26. In February 2020, these discussions were continued. [✂]:

‘[✂]’.

27. In a March 2020 internal Facebook email to Vishal Shah and others, Konstantinos Papamiltiadis (Vice President of Platform Partnerships at Facebook) noted that [✂]. In the same exchange, Nir Blumberger commented that ‘[✂]’.

28. [✂].

29. A GIPHY investment memo (from [✂] for the Series [✂] round) notes that securing initial revenue share agreements with the likes of [✂] should help with securing agreements with [✂] such as [✂]:

‘Giphy has its first few agreements with [✂] (notably with [✂]) and is beginning to traffic [✂] with partner inventory in [✂]. We anticipate that making those initial campaigns successful will lead to Giphy laddering up to similar agreements with the bigger [✂] ([✂]) to also be able to sell their inventory.'

30. In its January 2019 confirmation memo, [✂] notes that:

(a) As Giphy's leadership increases, the Company intends to leverage its position to negotiate exclusivity with partners. Giphy already negotiated exclusive partnerships with Snap, Instagram, Tinder, Outlook, Slack and many others.

(b) '[T]here is clear demand by partner platforms to monetize messaging because (i) users spend significant time on this activity and (ii) it allows [them] to continue top-line growth through alternative ways of advertising as core apps are now approaching the ad load maximum. For example, Facebook has warned investors that ad load in the core app is at maximum. We believe that Giphy can solve this problem by offering a new way of monetization through GIF ads.'

(c) 'Partner concentration is sufficiently dispersed for Giphy to meet our base case even without monetizing the largest partner platforms. While the Facebook Group indeed accounts for a significant portion of API traffic, there is still ~50% accounted for by other platforms. Considering that Giphy only needs to have monetization partnerships for ~27% of API traffic to achieve our base case, the exposure to Facebook is not a hurdle.' Indeed, this document shows that, in its base case for investment, [✂] assumed that no traffic with Facebook platforms would be monetizable, and that GIPHY would monetize only 20% of traffic from Tier 1 partners (equivalent to signing an agreement with Snap).

31. Correspondence between GIPHY and [✂] (a keyboard app with whom GIPHY had a revenue sharing agreement) in February 2020 included a conversation regarding [✂], in which [✂] asked:

'[✂].'

32. In March 2020, GIPHY developed an 'illustrative Q&A', apparently for discussion with potential acquirers, which comments that:

'[✂]'

Our view

33. We note that while the leading social media platforms (Facebook, Snapchat and TikTok) sell their own advertising inventory, many digital publishers use

intermediaries to sell their inventory to advertisers – with Google being the largest such intermediary in the UK.[6]

34. We consider that the evidence set out above demonstrates that investors recognised a risk inherent in GIPHY's dependence on its distribution partners to achieve mass reach. This risk was characterised as relating to the dependence of GIPHY's revenue stream on its distribution partners, noting that these partners could simply decide to stop partnering with GIPHY, rather than a concern that distribution partners were, or would not be, interested in GIPHY's advertising proposition. However, investors also noted that (i) achieving revenue sharing agreements with major partners such as [✄] would help to demonstrate the viability of the model and could lead to further agreements with big platforms; and (ii) GIPHY was not totally reliant on Facebook Group platforms and was diversifying its distribution network (eg [✄] base case for investment did not require a revenue sharing agreement to be made with any Facebook Group platforms). [✄] – one of these alternative platforms, with whom GIPHY had successfully established a revenue sharing agreement – regarded it as lucrative and appears to have been keen to expand further to stickers.[7]

35. As regards the prospect of entering a revenue share agreement with Facebook or Instagram, the evidence is mixed. Facebook's internal documents indicate that it was aware of the potential opportunity in monetisation. However, in the context of agreeing to share revenue with GIPHY as a third party (pre-Merger), this opportunity was in tension with Facebook's desire to [✄]. Shortly before the Merger, Alex Chung reported holding promising discussions with Instagram's leadership in which they were considered '[✄]' to these ideas. However, we note that (as of February 2020) Vishal Shah remained [✄].

O&O

36. The Parties submitted that: 'GIPHY allocated substantial capital and resources, for example, to products aimed at making its O&O products an entertainment destination. None of these attempts had successfully scaled, and since 2018 GIPHY's O&O traffic has stagnated, despite substantial team-wide efforts to grow O&O products.'

37. The Parties also submitted that '…even on its O&O products, GIPHY did not collect the most basic data about its users to target advertisements in any

[6] Market Study, paragraph 63.
[7] This is consistent with comments made to us by [✄], in which [✄] noted it was disappointed when GIPHY terminated the revenue share agreement due to the Merger.

way, which was becoming problematic as GIPHY sought to secure bigger advertising budgets.'

38. A December 2018 investor slide pack from GIPHY projects O&O revenues at least doubling each year to [✂] in 2020 (Figure 1).

Figure 1: GIPHY projected revenues, O&O and API, December 2018

[✂]

39. In a January 2019 Confirmation Note, [✂] carried out its own modelling of GIPHY's O&O growth, as shown in Figure 2. We note that this is considerably less ambitious than GIPHY's projections in September of that year (see below). Nevertheless, [✂] note concludes that '…our analysis exhibits attractive returns to compensate the risks involved', suggesting that it did not consider its relatively less ambitious projection of O&O growth to weaken the case for investment in GIPHY.

Figure 2: [✂] projection of GIPHY O&O growth, January 2019

[✂]

40. In September 2019, GIPHY presented even more ambitious O&O projections to its board than it had used in December 2018 (Figure 3). Under these assumptions, its O&O properties would account for USD [✂] – [✂] of its gross revenues – in 2023, while continuing to represent a [✂] of GIPHY's traffic.[8]

Figure 3: GIPHY O&O revenue projections, September 2019

[✂]

41. In a December 2019 email exchange with GIPHY CFO Whit Richards, Alex Chung discusses a number of issues relating to GIPHY's future. [✂], the exchange also suggests that O&O growth remains a possibility, particularly through international expansion:

(a) Mr Chung: [✂].'

(b) Mr Richards: [✂]

[8] In 2020, O&O properties accounted for [✂] of GIPHY's total searches. Similarly, GIPHY estimates that O&O will account for [✂] of its US inventory (impressions) in 2023 ([✂]– see page 6 of the slide pack).

42. GIPHY's slides for a 13 March 2020 Board call (ie shortly prior to the acquisition) showed O&O revenues for 2019 at USD [✂], i.e. [✂]which GIPHY had forecast in September 2019 (Figure 4).

Figure 4: GIPHY achieved O&O revenues

[✂]

43. In the same slide deck, GIPHY presented forecasts for its O&O revenues in 2020 which were considerably scaled back from six months previously (i.e. September 2019) (Figure 5). At the same time, GIPHY assumed stronger API growth than in September 2019, so that its total gross revenue reaches USD [✂] in five years (albeit in 2024, rather than 2023). We note that at this point GIPHY's forecast growth for 2023 was around half of the level forecast by [✂] in January 2019, and GIPHY did not expect a large increase in 2024.

Figure 5: GIPHY O&O forecast revenues, March 2020

[✂]

44. [✂].

45. In a 1 March 2020 email considering options to ensure GIPHY's viability, Konstantinos Papamiltiadis of Facebook notes that '[✂]'.

46. Taking this evidence in the round:

    (a) [✂], after which it substantially reduced its longer-term forecasts of O&O revenues. [✂] is supported by Facebook's comment (which appears to be informed by discussions between Facebook and GIPHY).

    (b) [✂]. We also note that GIPHY was still thinking about ways to grow its O&O traffic in future, such as through international growth.

Sales/leadership team

47. The Parties' written submissions have not commented in detail on any challenges GIPHY faced in building its sales team, although they noted that GIPHY acknowledged its sales team was inexperienced. In the Main Party Hearing, Alex Chung stated that, '[✂]. This was before … COVID had happened at all. [✂].' In a third party call, [✂] (one of GIPHY's main investors) told the CMA that, '[✂].'

48. According to GIPHY's submission to the CMA, Alex Magnin (VP of Revenue since June 2017, whose role was to lead GIPHY's revenue strategy) departed in October 2019 to '[✂]'. His replacement, Alexis Berger, was in post until January 2020, at which time she decided to leave the company as (according

to GIPHY's submission) '[✂]'. While GIPHY was not able to provide further detail or documentary evidence in relation to these departures, we note that in neither case is there evidence that the employee left due to foreseeing a fundamental impediment to GIPHY's success.[9]

49. An investment memo for [✂] from [✂] comments that GIPHY had recently appointed a Chief Financial Officer (CFO) but was still searching for a Chief Revenue Officer (CRO) and Chief Operations Officer (COO), [✂]. Similarly, a memo by investor [✂] from January 2019 notes that 'Giphy has been slow in adding to its exec team and is currently searching for a CRO and COO. The cofounder and President of the Company left last year. Giphy recently added a CFO and existing investors are helping with the recruitment of key members.'

50. In its Q3 2019 Board Update, GIPHY described its plan to continue '[✂]', noting several recent hires in the revenue team, including a new Head of National Sales, Client Leads, and an AdOps Manager, among others. In October 2019, Peter Philips (appointed as COO during 2019) noted in an update to the Board that GIPHY had added three key hires to the revenue team: Director, Revenue Marketing; Director, Creative Strategy; and Senior Client Lead, East.

51. In an internal GIPHY email exchange dated December 2019, Whit Richards (CFO) comments to Alex Chung that he and Peter (Philips, COO) have built '[✂]'.

52. Shortly after the departure of the VP of Revenue (in March 2020 – see paragraph 48 above), GIPHY was anticipating hiring a Chief Revenue Officer, according to an internal GIPHY email from Peter Philips (COO) to the Board. This email suggested that GIPHY has been making some progress in developing its sales team, including engaging a senior sales consultant who intended to apply for the CRO role:

> '[✂]'.

53. GIPHY's Board Update as of 13 March 2020 indicates its plan to add [✂].

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[9] We note that GIPHY also submitted that its Chief Technology Officer departed the company in February 2020, and its Chief Operations Officer and VP Business and Corporate Development both departed on 15 May 2020 (the date of the acquisition). GIPHY submitted that the latter two employees' departures were not related to the acquisition and both had previously decided to leave, although it did not provide documentary or other evidence to substantiate this point.

54. Also in March 2020, [✂] listed seven priorities for GIPHY's business development in 2020. One of these was to '[✂]', ideally someone with experience building a 'partner focused growth strategy'.

55. We consider this evidence shows that, over the period 2019 to 2020, GIPHY faced challenges in hiring for its revenue team; in particular, it was still searching for a Chief Revenue Officer as of March 2020 (a search which had commenced prior to January 2019). However, GIPHY reported ongoing progress in adding key sales staff, including in a number of senior roles. As of December 2019, it described its revenue team as '[✂]', and (pre-Merger) had been positive about the prospect of filling out a substantial sales force of 21 staff during the course of 2020. As of March 2020, GIPHY was anticipating hiring for the Chief Revenue Officer role (potentially hiring into this role an individual who had been performing well hitherto as a senior sales consultant). While two VPs of Revenue departed the company in 2019 and 2020 respectively, the reasons for their departure are not clear, and in neither case is there evidence that the employee left because they foresaw a fundamental impediment to GIPHY's success.

[✂]

56. GIPHY was considering [✂] from at least 2018. For example, in an internal document titled 'Q4 Revenue Push', GIPHY states:

> '[✂].'

57. In a May 2019 email exchange between GIPHY and [✂] (a digital strategy agency), Alexis Berger (then VP of Revenue at GIPHY) noted: '[✂]' A June 2019 internal document titled '[✂]'. [✂].

58. In August 2019, GIPHY was discussing internally a small-scale roll-out (in 'beta' capacity) of a '[✂]'. Internal emails indicate that GIPHY was targeting a small number of large brands, such as [✂].

59. In January and February 2020, [✂] contacted GIPHY several times to discuss [✂], commenting: '[✂]. [✂].

60. In a March 2020 internal GIPHY email exchange, Alex Chung noted that,

> '[✂]'

61. Mr Chung suggested that addressing [✂] concerns was particularly important at that point, given the possibility of agreeing platform fees which would support GIPHY's future funding: '[✂].'

62. In a response, Cameron Smith commented that,

‘[✂]’.

63. In May 2020 (following the Merger), GIPHY staff discussed in an internal email exchange potential ways Facebook could approach continuing GIPHY’s monetisation. They listed one possibility for an improved user experience as ‘[✂]’, with a colleague replying, ‘[✂]’.

64. In our view, the evidence indicates that GIPHY had developed (at least an initial) [✂] advertising strategy and was keen to bring [✂] ad products to market as soon as possible, and that [✂] and [✂] appeared to be interested in the proposition.

Risk of rivals or entrants replicating GIPHY's monetisation model

65. Some investors commented on whether rival entry was a business risk to GIPHY's monetisation plans. In assessing this risk, they had regard to GIPHY's leading position as a GIF provider; therefore, some of the material discussed below is also relevant to the broader question of replicability of GIPHY as a GIF provider. For a fuller analysis of the evidence relating to this broader question, see analysis of GIPHY’s competitive position in Chapter 5, Market definition and Market power and barriers to entry and expansion in Chapter 9, Countervailing factors.

66. The Parties have not made a submission regarding replicability or the prospect of rival entry specifically in terms of the supply of advertising services by a GIF provider. Regarding substitutes in terms of GIF supply to third party platforms, the Parties have submitted that ‘Google’s Tenor is a perfect substitute to GIPHY’ and ‘there are a number of other GIF providers, including Imgur, Gfycat, Gifbin, Vlipsy, and Holler, all of whom offer a similar service to GIPHY (they all supply GIFs to third parties; they all have searchable libraries) and are free to use.’

67. In its investment memo of December 2018, [✂] articulates what differentiates GIPHY from other providers, and why its capabilities would be ‘complex to develop and replicate for new entrants’, emphasising the timeliness and cultural relevance of GIPHY’s content (fostered through partnerships with major content providers and the in-house ‘live team’), as well as high-quality regulation and quality control:

[✂]

68. Similarly, [✂] notes in a memo of January 2019 that:

‘It is difficult to develop a GIF platform from scratch and offer the same volume and quality of GIFs as Giphy. Their GIF library is fully licensed and it took over 5 years to secure all official licenses. Both Google and FB have told that this would be cost prohibitive for them to secure. … Furthermore, with Giphy increasingly closing exclusive platform partnerships, it will be difficult for new entrants to generate API traffic from high volume platforms Giphy has already partnered with. Additionally, Giphy’s recommendation engine has been finetuned over time and replicating this will take time.’[10]

69. A [✂] memo [✂] (another of GIPHY’s investors) likewise notes the importance of GIPHY’s early growth and market leading position in building partnerships with content providers, distribution partners, and brands/advertisers, in erecting barriers to entry/expansion for newer rivals:

‘[✂]’.

70. [✂]

71. In our view, this evidence demonstrates that:

(a) Investors regarded entry/expansion into the supply of GIFs as relatively easy at a technical level (ie cloning GIPHY’s content library and building a basic search engine). However, they believed that it would be difficult for an entrant to achieve scale comparable to that of GIPHY, due to GIPHY’s already strong position in the market (including its extensive relationships with brand partners and third party distribution partners).

(b) Investors regarded GIPHY’s offering as having several important and distinctive elements, including high-quality content forged through brand partnerships and its in-house creative team (allowing rapid reaction to timely cultural events), superior quality-control capabilities and licensing agreements, and a fine-tuned recommendation engine, all of which would require substantial time and cost to try to replicate.

International (including UK) expansion

72. The Parties have submitted that:

[10] The report further states: ‘One expert who was at Twitter when it partnered with Giphy underlined that Twitter couldn’t build a content library fast enough. Especially the licensing of all content would be particularly time consuming. Additionally, the inhouse development would require scarce resources from other departments (i.e. engineering) which were needed for higher priorities related to the core business.’

> ‘[T]he discussions that GIPHY held with Brand Partners (or customers) revealed that [✂]’
>
> ‘Given the [✂], and the impact of COVID-19 on GIPHY’s ability to obtain finance and on advertising markets more generally, there is [✂]’

73. GIPHY’s internal documents indicate that in late 2019 and early 2020, GIPHY was discussing a number of international monetisation possibilities. GIPHY’s Board Deck for Q1 2020 notes that [✂].

74. Below we set out evidence relating to GIPHY’s plans and prospects for expanding monetisation internationally (including specifically in the UK), including views of brands and advertising agencies/platforms with whom GIPHY or its representatives had engaged in initial outreach.

Paid Alignment

75. In December 2019, GIPHY’s staff discussed international distribution of potential inventory (ad impressions), noting that the majority of international distribution was in 10 countries, of which the UK was one. One email noted that the UK accounted for [✂] of GIPHY’s total GIF inventory and was highlighted as one of six priority markets in which to service brands’ international campaigns:

> ‘[✂]
>
> Scenario #1 - servicing brand partners in the states that want to run Int'l campaigns - [✂].’

76. Also in December 2019, in another email exchange, GIPHY’s staff suggested a trip to the UK to explore market appetite:

> ‘[✂]’

77. In January 2020, GIPHY’s Sales team asked internally for approval to deploy a strategy to operationalise International Ads Delivery (ie capitalising on Paid Alignment ads already being run in the US and which content was available internationally but without being monetised). They noted that:

> ‘[✂]’.

78. This same email lists numerous major brands that had made such inquiries, including [✂], among others.

79. The document suggested that this expansion would be a ‘low engineering lift’ and require only two weeks.[11]

80. Following on from this, in February 2020, GIPHY’s employees had an internal exchange in which they developed text for an international outreach message, indicating that Britain was regarded as one of the top five regions (in terms of available inventory) and signalling their intentions to come to the UK to begin a partnership:

‘[✂]’.’

81. One of the brands that had apparently expressed an interest in expanding its existing (US-based) campaign into the UK was [✂], according to a GIPHY internal email exchange in February 2020:

‘[✂]

82. In April 2020, GIPHY was in discussions with an advertising company in the UK ([✂]), which reported interest in GIPHY’s advertising model from UK-based brands including [✂]. These discussions appear to have been halted from GIPHY’s side as a result of the Merger.[12]

‘[✂]’

83. In the Hearing with GIPHY on 15 June 2021, Brad Zeff noted that this interest from advertisers was ‘preliminary’ and that it was ‘difficult to expand monetisation into territories that you're, you're not active in, all right. We're a US company. We had no presence in, in the UK or anywhere else internationally…. it was just premature to think about entering into any other international market’.

Banner advertising on O&O

84. In an internal GIPHY email exchange dated December 2019, Whit Richards (CFO) commented to Alex Chung that ‘[✂]’. He also noted that, ‘[✂]’.

85. In March 2020, GIPHY was in discussions with a European native advertising platform ([✂]) regarding options to monetise GIPHY’s O&O sites internationally. In an email to GIPHY in March 2020, [✂] stated (in regard to creating native and stories advertisement placements on giphy.com), ‘[✂]’.

[11] As long as GIPHY was paid in USD by US-based entities, without staff physically present in international markets, and without dedicated servers.

[12] On 24 April 2020, Cameron Smith (GIPHY employee) noted in an internal email exchange that ‘Brad blocked it like all of the other INTL initiatives until after DD’.

Appendix G: GIPHY's data

Introduction

1. This Appendix summarises the data GIPHY is able to collect from its API/SDK partners. We summarise both the user-level and aggregate data available to GIPHY. Our summary is based on the Parties' submissions as well as our review of GIPHY's internal documents.

2. The Appendix is structured as follows:

   (a) We describe the data that GIPHY collects (or is technically able to collect);

   (b) We assess the advantage that GIPHY's data may bring to Facebook.

What data GIPHY collects

3. The overwhelming majority of GIPHY's traffic comes from the following sources: (i) GIPHY's website, (ii) GIPHY's mobile app / keyboard, (iii) partner API integrations, and (iv) partner SDK integrations.

4. GIPHY's API is a programmatic interface for partners to request GIPHY content. GIPHY's SDK (Software Development Kit) is a richer set of development tools. The SDK utilises the API to provide some functionality such as searching for GIFs however it also provides broader functionality such as customisable User Interface templates and optimised loading.[1] [✂] integrate via API, others integrate via SDK. We understand that most major partners use API ([✂]). In general, SDKs allow more detailed, richer data collection, as set out below.

GIPHY's user-level data

5. Regarding individual level data that can be used to provide personalisation, either exactly or probabilistically, GIPHY captured the following pieces of information pre-merger in some or all its traffic, for all users.

6. **GAID / IDFA**: The Google Advertising ID (GAID, also known as Android advertising ID or AAID) and Identifier for Advertisers (IDFA) are anonymised device identifiers used by Android and iOS respectively that allow advertisers and developers to track and identify a specific device, which is used as a close proxy for an individual. It is analogous to a 'cookie' that is tied to a

[1] https://developers.giphy.com/docs/sdk.

device. This is used by advertisers to target and measure effectiveness of user-level advertising.[2] GIPHY's tracking capability using GAID / IDFA was only for user interactions with GIPHY's content, and only through the GIPHY app or an SDK integration. GIPHY was not able to use a GAID / IDFA to track activity in other apps that is unrelated to the GIPHY content. We note that, post-Merger, GIPHY discontinued the collection of GAID / IDFA values in its app and SDKs.

7. **IP Address / User Agent**: An IP address is a numerical label assigned to a device connected to a network. The user agent is a non-personal value containing information about the browser, operating system and device being used.[3] IP address alone cannot be used to precisely identify a specific user as it can be obfuscated by proxying (in which the true information is replaced by different information), it can change over time, and it can be the case that multiple users on the same network can share an IP address. Despite this, it is often considered personal data[4] and in the absence of proxying does provide capability to offer some personalised and location-based services.

8. GIPHY have stated in RFI responses that IP addresses are 'a very poor mechanism for identifying individuals' that 'do not support associations with high levels of probability'. However:

   (a) an internal GIPHY analytics report notes that [✂].

   (b) It also appears reliable enough to have been used by GIPHY in some [✂], and

   (c) In response to a question in an internal document regarding being 'able to monetize O&O and SDK traffic in a defensible manner', a GIPHY employee notes '[✂]'.[5] In this context, we acknowledge that the collection of useragent + IP address may also be valuable for identifying 'automated' traffic (also known as 'bot' traffic), and separating this from 'genuine' individuals.

9. We understand the ability to approximately identify individuals using the useragent and IP likely varies by API partner depending on the degree to which partners use proxying, for example, we understand that Snap, Signal and Twitter all limit the data shared with GIPHY through the use of proxies

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[2] This is currently evolving with Google's and Apple's making OS changes around whether such identifiers are shared with apps on a default opt-in or opt-out basis.
[3] An example user-agent field value, for Safari on iPad: 'Mozilla/5.0 (iPad; U; CPU OS 3_2_1 like Mac OS X; en-us) AppleWebKit/531.21.10 (KHTML, like Gecko) Mobile/7B405'.
[4] https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/key-definitions/what-is-personal-data/.
[5] GIPHY were using a third-party analytics platform '[✂]' for measurement and tracking of the advertising performance.

and caching (discussed in further detail below). However, an internal Facebook communication discussing the Merger suggests that, [✂].

10. **Cookies**: '[✂].

11. GIPHY **'Random ID'**: [✂],[✂].

12. There are other forms of tracking mentioned in various documents, such as GIPHY's 'Analytics ID' or 'SessionID', however it appears that these may be inferior options for personal level tracking compared to any of the above capabilities, and we have not assessed these further.

13. In addition, for users who had a registered GIPHY account, GIPHY also captured information such as email addresses. [✂].

14. To summarise the above, the following table outlines, for the major sources of traffic, where key personal identifiers were stored by GIPHY pre-merger.

Table 1: Overview of personal identifiers collected by GIPHY pre-merger, by source of traffic
[✂]

Source: CMA analysis of the Parties' submissions. [✂]

15. As the table shows, [✂]. Whilst the SDK volume is lower, it represents a material volume of traffic at [✂] monthly searches.

GIPHY's aggregate data

16. GIPHY's data can provide some insights on overall usage statistics for each API/SDK partner. In particular, even in the absence of individual user identifiers, GIPHY may be able to observe the overall volume of GIF-related activity on the third party app, such as the volume of search requests, and requests for a GIF to be returned.

17. In the instance of APIs (the integration method used by most large partners), partners can obfuscate their users' activity. They can do this via two methods:

    (a) **Proxying**. This allows the partner to obfuscate the IP address and any other relevant personal information of the end user. This does not distort aggregate usage statistics, it only protects the privacy of the users of the partner service.

    (b) **Caching**. This is a mechanism by which API partners store their own copies of content provided by GIPHY's API. Caching 'memorises' previous results to speed up answers to future search queries. It largely provides benefits but also comes with some possible downsides; for

example, caching would not be effective if search results were personalised, or would need to be managed carefully if results changed often (eg if a particular GIF begins to suddenly trend). Implementing caching requires the storing, serving and maintenance of the content in liaison with the partner application, and is not straightforward to implement. GIPHY's pre-merger API terms allow content caching. We understand that implementing caching requires investment of material resources by the API partner and is more complex than not using caching at all. It follows that caching is more likely to be implemented by a larger partner that has the resources and incentives to do so. In contrast to proxying, caching would obfuscate the partner's usage statistics. GIPHY note: 'GIPHY does not have information on which of its API partners use content caching servers'.

18. Partners that use GIPHY's SDK have more limited options available to obfuscate activity. There are technically feasible solutions to perform proxying and caching, however they are more complex and we have not seen evidence to suggest that these are used by their SDK partners. Furthermore, a list of API/SDK partners provided by GIPHY suggests that apps using the SDK (as opposed to API) are significantly both more numerous and smaller companies. Therefore, we consider that smaller applications, particularly those using SDK, may be less likely or able to implement tools to obfuscate the data.

19. Through aggregate API and SDK traffic, GIPHY (and, post-merger, Facebook) may be able monitor usage trends on individual apps use of GIPHY content. For example:

(a) If a messaging app that uses GIPHY experiences growth, this may translate to a corresponding growth in GIPHY traffic.

(b) If a social media platform introduces a new feature that uses GIPHY GIFs, GIPHY may be able to use the volume of GIPHY traffic to estimate the growth in the popularity of this feature.

20. As an illustration, the following chart from GIPHY's board deck illustrates the type of aggregate information GIPHY API/SDK traffic data can provide.

Figure 1: GIPHY's aggregate data on third party apps

[✄]

21. The figure suggests that using the GIPHY API request data Facebook might be able to observe in real time the relative usage trends of certain competitor

apps and/or features of apps to the extent that these have a GIPHY integration (note for example [✂]).

22. However, such aggregate metrics can be imprecise for reasons beyond caching. For example, if an API or SDK partner fundamentally changes how they integrate with GIPHY (eg they add or remove a GIF related feature from their application, or increase the number of queries sent to GIPHY as the user types the search term), then usage will change materially even though the 'popularity' of the partner application may remain unchanged.

Data advantage to Facebook

23. Given the above, we consider whether Facebook may gain an advantage vis-à-vis its competitors in either one or both of the following ways:

(a) User-level data advantage. Would GIPHY's data enable Facebook to augment its existing user profiles?

(b) Aggregate data advantage. Would GIPHY's aggregate GIF traffic data add to Facebook's existing data sources used for competitor intelligence?

User-level data advantage

24. In the Market Study the CMA found that 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.[6] 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.[7]

25. 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.[8]

26. In principle, GIPHY's user-level data, where obtainable via user-level identifiers described above, may provide information on users' interests in popular culture or brands, and/or user moods and sentiments in real time. We are of the view that this is potentially an incrementally small amount compared to the richness of data Facebook collects both within its own ecosystem and

[6] Market Study, Appendix F.
[7] Market Study, paragraph 5.308.
[8] Market Study, Appendix F.

across the wider web and app ecosystem through its own ad-tracking pixels and SDKs.

Aggregate data advantage

27. Our review of a selection of Facebook's internal market intelligence reports suggests that Facebook's analyses of competitor activity are sophisticated, detailed, and draw on a number of data sources. [✂].

28. Facebook's internal market intelligence reports quote MINT as the source of such analyses. We understand MINT to be an internal data tool that [✂].

29. References in older market intelligence reports suggest that until 2019, MINT relied heavily on [✂]. Onavo was shut down in 2019 following pressure from Apple regarding user privacy. A similar scheme still appears to exist known as Facebook Study, where 'registered participants have agreed to share their apps usage data with Facebook and they are rewarded for taking part in the program'.[9] This captures data on user activity on apps, such as time spent, features used, advertising networks, demographic data and more.[10]

30. In more recent reports that we have seen, AppAnnie (a third party data provider) appears to be a primary third-party source of market intelligence data on competing messaging apps (as well the broader app ecosystem).

31. The intelligence reports we have seen often label data series extracted from MINT [✂].

32. In addition to third party sources such as AppAnnie, we understand Facebook may in principle have some internal sources of data on other app usage. In particular, Facebook's own SDKs have broad reach across the mobile ecosystem, as the Facebook login function is used by apps to allow users to log in without registering. Research commissioned for the ACCC's Sep. 2020 'Digital Platform Services Inquiry' found that Facebook's advertising and analytics SDKs were in 61% of the 1,000 most popular Android apps in Australia.[11]

33. We have found no indication in Facebook's internal documents of the value of GIPHY's SDK or API data to the MINT team specifically. However, an internal communication between Facebook employees discussing the public

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[9] https://www.facebook.com/facebookstudy.
[10] https://www.facebook.com/facebookstudy.
[11] ACCC Digital Platforms Service Inquiry, September 2020 – Interim Report.

communication of the Merger suggests that Facebook could use GIPHY's data to its advantage. An employee comments:

'[✂].

34. As an example, the employee gives the possibility to infer how many 15 to 21 year olds in Egypt are using Snap and the growth rate of such usage. The employee further explains that such inferences could be possible even if platforms use proxying, unless the platform is able to engineer highly sophisticated mechanisms to obfuscate the data, but also notes that there are easier ways to perform analyses like this.

35. On the one hand, the assessment above suggests that the GIPHY data may be of some value in understanding trends in the usage of apps or certain functionalities of those apps. This may help Facebook refine its existing estimates of competitor trends, particularly if GIPHY traffic data is available for apps where Facebook's existing data has low precision.

36. However, the GIPHY data is limited:

(a) It does not track time spent in apps;

(b) It will not give a reliable estimate of total users, as not all users of an app will engage with content provided by the API/SDK;

(c) The coverage of the GIPHY data is limited compared to sources such as AppAnnie that cover the entire ecosystem.

37. In summary, all of the above suggests that Facebook already has significant amounts of data on competitor apps. However, there are gaps and inaccuracies in these data. GIPHY's data on the volume of GIF-related traffic on third party apps may serve as an additional tool to improve and refine Facebook's existing estimates of competitor activity. As discussed in Chapter 8, Vertical Effects, Facebook could also require rivals to provide data as a condition for access to GIPHY.

Glossary of terms

API	Application Programming Interface
ARPU	Average Revenue Per User
CMA	Competition and Markets Authority
CPM	Cost-per-mille
DAU	Daily Active Users
Facebook	Facebook, Inc.
FMN	Final Merger Notice, as submitted to the CMA by the Parties in January 2021
GIFs	refers to both video GIFs and GIF stickers
GIPHY	GIPHY, Inc.
KPI	Key Performance Indicator
Market Study	CMA's Market Study into Online Platforms and Digital Advertising
MAU	Monthly Active Users
Merged Entity	Facebook and GIPHY post-Merger
Merger	Completed acquisition by Facebook of GIPHY
O&O	Owned and operated
Paid Alignment	An advertising model offered by GIPHY which gives brands and advertisers the ability to align their GIFs with popular search terms, or to insert their GIFs into GIPHY's 'trending feed' on its O&O channel, in exchange for a fee
Parties	Facebook and GIPHY
Provisional Findings	The provisional findings document notified on 12 August 2021, together with its appendices
RMS	Relevant Merger Situation
ROCE	Return On Capital Employed

SDK	Software Development Kit
SLC	Substantial Lessening of Competition
The Act	The Enterprise Act 2002
UGC	User Generated Content
WACC	Weighted Average Cost of Capital