



## AMERICANS for TAX REFORM

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The Americans for Tax Reform (ATR) is an organization dedicated to the education and protection of American taxpayers in the United States and around the world and advocates for free-market policies in the United States and internationally.

The Open Competition Center (OCC) is a special project of Americans for Tax Reform and advocates for a rule-of-law, consumer-based approach to antitrust regulation. OCC supports open competition among companies, labor, and at the ballot box.

We appreciate the opportunity to provide comments on the Facebook, Inc / Giphy, Inc merger inquiry. The following comments summarize our position:

Perhaps no industry in history is as dynamic and as innovative as today's tech industry. Digital markets are constantly evolving to deliver products and services to consumers—often at no cost to users. In the current ongoing global pandemic, users are relying on these products and services, even more to stay informed and stay connected to colleagues, family, and friends.

In recent years, American technology companies have been exclusively targeted and discriminated against by several countries with digital taxes, new "reforms" of antitrust laws, and antitrust investigations. These efforts are part of an increasingly global campaign to limit American technology companies to compete, restrict their market access, and further erect barriers to free markets. The CMA's investigation into the Facebook, Inc / Giphy, Inc merger is, unfortunately, no exception.

Giphy is an online database that allows users to share so-called GIFs and stickers and animated text, emojis, and some short-form videos in various messaging or social media apps such as Twitter, Snapchat, iMessage, WhatsApp, etc. In the provisional findings, the CMA stated that Facebook's control over Giphy could allow it to cut off other social media sites' access to Giphy's images and their database.

It is essential to point out that Facebook always committed, and announced publicly numerous times, to keep GIPHY [fully open and accessible](#) to API partners. Users will still be able to upload new Gifs, developers and API partners will continue to have the same access to Giphy's APIs, and Giphy's creative community will still be able to create their content.

One of the potential concerns that the CMA has investigated is whether the merger could lead to horizontal, unilateral effects because of loss of potential competition. The CMA's horizontal theory, alleging direct competition between Facebook and Giphy, is unworkable. Giphy is neither an actual competitor nor a likely potential competitor to Facebook as Facebook does not

have its own GIF database or GIF search engine, and there are numerous real competitors to Giphy, such as Tenor, a company that was recently acquired by Google. The CMA has not demonstrated that Giphy is unique in any way. But even if we follow the CMA's assumption that Giphy is a competitor to Facebook, so are thousands of other startup companies, and Facebook's acquisition of Giphy does nothing to harm that competition. The CMA's opinion that Giphy would grow enough to expand into digital advertising is highly speculative and unsupported by common sense evidence. Giphy would have needed to take many steps to achieve that expansion, such as raising additional funding, enter into revenue share agreements with API partners (including Facebook), expand its paid alignment services, and significant growth.

Even the CMA acknowledged that Giphy operated at a monthly loss going into the merger and fails to convincingly show that Giphy either would have found a way to become profitable or secured additional funds.<sup>[1]</sup> Despite approaching numerous potential acquirers, Giphy was unable to generate interest aside from Facebook.

The CMA's vertical theories regarding supply and service relationships are also flawed and do not survive scrutiny in theory. Again, Facebook's commitments completely resolve whatever theoretical harm the CMA has alleged as Facebook committed, and announced publicly numerous times to keep GIPHY [fully open and accessible](#). But even if we – for a theoretical exercise- choose to ignore Facebook's commitments, competitors can access gifs and gif search engines outside of Giphy. There are many competitors that offer similar services and products, including Tenor, which is a perfect substitute for Giphy. Furthermore, it is crucial to point out that Facebook would not profit from cutting off the supply of GIPHY's library to other social media applications and partners and simply has no incentive to do so. Again, Facebook's commitments resolve any questions of this theory.

**The Competition and Markets Authority's mandate is to "promote competition for the benefit of consumers, both within and outside the UK."**

The self-described goal of the CMA is to promote competition for the benefit of consumers, both within and outside the UK. This is yet another example of weaponized antitrust agencies that target American companies. These actions do not promote competition or benefit consumers. Overenforcement of antitrust laws can lead to serious negative consequences for investment, innovation, and employment in the UK and around the world. Businesses who wish to attract investments in order to continue growing need to show investors that they have the ability to operate profitably and join the public markets, or that they have a reasonably viable path to scale and quick time to navigate through M&A. If M&A becomes highly restricted and difficult in the UK, we will see investors shift their strategies to exclude entrepreneurs and technologies that could benefit consumers and businesses of the United Kingdom. In a scenario like that, a business that can't find a way to monetize for standalone technology is doomed to shelve it indefinitely, at a loss of everyone involved. The CMA's investigation into the Facebook / Giphy merger is the exact type of discriminatory overenforcement that leads to capital flight, depresses economic growth, and harms innovation now and in the future. The CMA's actions are ungrounded from legal or economic principles and are therefore discriminatory. Regulators like the CMA should conduct investigations and enforce laws evenly and without bias – ad hominem attacks against unpopular companies further exacerbate the weaponization and politicization of antitrust policy in the UK and around the world. It is also another striking

example of government waste, as exercises like these are public time and resources that are exceptionally poorly spent.

This investigation is another unfortunate development in a growing movement of antitrust weaponization across the globe. In the United States, Federal Trade Commission Chair Lina Khan is working overtime to smash long-held bipartisan limits on the agency's antitrust enforcement authority. President Joe Biden issued an executive order containing 72 new government mandates to "encourage competition," including expanded antitrust harassment of leading American industries. A package of antitrust bills recently reported out of the House Judiciary Committee would enact a whole host of new antitrust regulations on companies above a government-determined size, including banning *all* M&A activity and breaking up companies that operate a business line that a bureaucrat deems a "conflict of interest." Tormenting industries with frivolous antitrust lawsuits is the wrong approach to competition policy as the global economy attempts to emerge from a pandemic-induced recession.

Finally, CMA's Facebook / Giphy investigation forebodes future hostility, unfairness towards M&A untethered to competition, existing antitrust laws or economic principles, and deeply misguided. The CMA needs to immediately stop weaponizing its investigation and concentrate on economic and judicial facts.

Respectfully Submitted,

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