

Anticipated acquisition by Facebook, Inc. of Kustomer, Inc.

Decision on relevant merger situation and substantial lessening of competition

ME/6920/20

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 27 September 2021.

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

SUMMARY

1. The Competition and Markets Authority (**CMA**) has found that the anticipated acquisition by Facebook, Inc. (**Facebook**) of Kustomer, Inc. (**Kustomer**) does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) in any market in the UK. Facebook and Kustomer are together referred to as the **Parties**, and for statements referring to the future, as the **Merged Entity**.
2. Facebook agreed to acquire Kustomer on [X] (the **Merger**) for a purchase price of \$[X] million, an amount that represents a very substantial multiple of Kustomer's 2020 global revenues of £[X] million.
3. Facebook is a global technology company offering a range of services to consumers and businesses, including social media platforms, messaging channels (Messenger, WhatsApp and Instagram Messaging), digital advertising and a range of business tools. Facebook's primary revenue-generating activity is offering ads space and related services. Facebook anticipates that it may generate significant revenues in future through its messaging channels.
4. Kustomer was founded in New York in 2015 and offers a software as a service (**SaaS**) customer relationship management (**CRM**) software

specialised in customer service and support. This software is designed to help agents in a company's customer service function manage communications with consumers. Kustomer's CRM software integrates with a range of communication channels that can be used for communications between business and consumers (**B2C**), including phone, email, webchat, SMS, Messenger, WhatsApp, Instagram and Twitter. As part of its CRM software, Kustomer offers a proprietary live webchat communication channel to its CRM customers.

5. The CMA has jurisdiction to review a merger where either (a) the target company generates more than £70 million of turnover in the UK (the turnover test); or (b) the merger results in the Parties having a share of supply of goods or services of any description in the UK of 25% or more (the share of supply test). Kustomer's revenues do not meet the turnover test; however, the CMA has concluded that the Parties together (Facebook's messaging channels and Kustomer's proprietary webchat channel) have a share of more than 25% in the supply of B2C messaging channels. The CMA notes that its analysis is not affected by the relatively small size of the increment resulting from the Merger: Facebook has a very significant share of the B2C messaging segment, and it will typically be the case that the increment resulting from the acquisition of a nascent player will be small. The share of supply test considers the total combined share of the Parties, not the individual share of each merging party.
6. In assessing whether there is a realistic prospect that the Merger would result in a substantial lessening of competition (**SLC**) in any market in the UK, the CMA considered specifically:
 - (a) whether the Merger would raise barriers to entry and expansion by increasing Facebook's data advantage in online display advertising, leading to reduced competition in that market;
 - (b) whether Facebook could harm the competitiveness of other customer service and support CRM software providers by limiting or degrading their access to Facebook's messaging channels;
 - (c) whether Facebook could reduce the competitiveness of other suppliers of B2C messaging services by preventing them from integrating their services with Kustomer; and
 - (d) whether, following the Merger, Facebook could rely on cross subsidisation from its online display advertising business to offer Kustomer on a free or freemium basis making it difficult for other suppliers of CRM services to compete.

7. The CMA has carefully considered how the Merger might affect competition in the markets in which the Parties operate, taking into account current competition in those markets, anticipated future developments, and the Parties' business strategies. Facebook's acquisition of Kustomer is part of its strategy to grow its B2C messaging business and the CMA considered how the Merger could affect competition in the markets for online display advertising, customer service CRM, and B2C messaging.
8. Where a supplier has significant existing market power, as Facebook does in online display advertising, the CMA's concern about any given level of constraint removed or reduced by a merger will be greater than in a scenario where a supplier does not have market power. The CMA has, therefore, carefully considered how the Merger may affect Facebook's existing significant market power.
9. In the course of its detailed Phase 1 review, the CMA received input from a wide range of third parties, used its compulsory powers for information gathering, and received more than 25,000 internal documents from the merging parties.

Theory of Harm 1: whether the Merger would raise barriers to entry and expansion by increasing Facebook's data advantage in online display advertising, leading to reduced competition in that market

10. The CMA considered whether the Merger would increase Facebook's data advantage in a way that would raise barriers to entry in online display advertising, making it more difficult for other suppliers to compete with Facebook.
11. In its recent Online Platforms and Digital Advertising Market Study, the CMA found that Facebook has significant market power in online display advertising and is by far the largest supplier of online display advertising in the UK, accounting for more than half of online display advertising expenditure. The CMA also found that Facebook's superior access to data gives it a significant competitive advantage in advertising targeting and acts as a barrier to entry and expansion to actual or potential rivals. The evidence gathered by the CMA in the course of its merger investigation supported the conclusions in the market study, both that Facebook has significant market power in online display advertising and that Facebook's access to data gives it a competitive advantage in advertising targeting.
12. Based on a review of Facebook's documents relating to the acquisition of Kustomer and input from third parties, the CMA found that the Merger would increase the data available to Facebook. First, Kustomer's business

customers may opt to give Facebook access to the data about their end customers they store in Kustomer's software. Second, Facebook expects that it will be able to use Kustomer to increase the use of its B2C messaging services and 'click to message' (**CTM**) ads, and Facebook gathers data from both these sources.

13. The CMA notes that B2C messaging is growing and is expected to continue to grow absent the Merger, which will likely increase Facebook's data advantage. In reviewing a merger, the CMA considers only effects that result from the merger itself. The CMA considers that the current size of Kustomer, even considering its future potential growth, means that the additional data Facebook gains as a result of the Merger would not be expected to raise barriers to entry in online display advertising. Furthermore, the CMA found evidence that Facebook's rivals will be able to access some data similar to the data Facebook can obtain through Kustomer, and most advertising competitors did not express concerns about the Merger.
14. As a result, the CMA believes that there is no realistic prospect that the Merger will result in an SLC as a result of raising barriers to entry by increasing Facebook's data advantage in online display advertising.

Theory of Harm 2: whether Facebook could harm the competitiveness of other customer service and support CRM software providers by limiting or degrading their access to Facebook's messaging channels

15. The CMA considered whether, after the Merger, Facebook could foreclose customer service and support CRM suppliers that compete with Kustomer by restricting or degrading their access to Facebook's messaging channels; that is, whether Facebook could make it more difficult for these companies to compete to win business customers. CRM providers rely on Facebook APIs to connect to Facebook's messaging channels and to integrate them into their software. Business customers of the CRM providers then rely on the CRM's software to connect to Facebook's messaging channels. Some CRM suppliers connect directly to Facebook's APIs and others rely on a communication platform as a service (**CPaaS**) supplier that connects them to multiple messaging channels.
16. The CMA first considered whether Facebook would have the ability to restrict or degrade access to Facebook's messaging APIs in order to harm the competitiveness of CRM rivals. While B2C messaging is still at an early stage of adoption, it is growing quickly and Facebook's messaging channels are by far the largest B2C messaging channels in the UK today. CRM suppliers and business customers confirmed to the CMA that access to Facebook's messaging channels is important to businesses, and CRM providers told the

CMA that they would likely lose customers if their access to Facebook's messaging channels was restricted or degraded. The CMA also concluded that it would be possible for Facebook to restrict or degrade access to its APIs using either technological or contractual means: where a CRM connects directly to Facebook's API, Facebook could deny them access or use technological means to degrade their access; where a CRM connects to Facebook's messaging channels through a CPaaS, Facebook could rely on contractual terms with the CPaaS to restrict the CRM's access.

17. The CMA then considered whether Facebook would have the incentive to restrict or degrade access to Facebook's messaging APIs in order to harm the competitiveness of CRM rivals. The CMA considered Facebook's overall business strategy when assessing its incentive. Facebook generates the large majority of its revenues today through its advertising business. Facebook is seeking to grow its B2C messaging business and considers that this could be a significant source of revenue in the future. Facebook anticipates generating limited revenues through CRM licensing fees, but it will further benefit from business customers using its CRM services through increased access to data, expected increased use of Facebook's B2C messaging channels and CTM ads, and keeping businesses in the Facebook ecosystem for a greater range of activities.
18. In assessing Facebook's incentive to restrict or degrade API access for its CRM rivals, the CMA has considered whether the gains Facebook would generate from businesses that switch to Kustomer would exceed the losses Facebook would incur in connection with those businesses that keep using foreclosed CRM providers. Where businesses keep using a foreclosed CRM provider, Facebook would likely see reduced usage of its messaging channels and CTM ads, and potentially of its other services, resulting in reduced access to data from those business and likely reduced revenue. Limiting or degrading API access could also damage Facebook's reputation among its messaging partners, which could lead them to focus on other suppliers.
19. The CMA found that a number of CRM suppliers focus on serving the same types of business customers as Kustomer – small and medium-sized businesses. There are also larger CRM suppliers, such as Salesforce and Oracle, that serve a broad range of customers, from very large business through to small and medium sized businesses. The CMA found evidence that partnering with CRM suppliers is an important avenue for Facebook to grow its B2C messaging business. Kustomer is not designed to support the needs of large businesses. As such, Facebook is unlikely to limit or degrade access for those CRM suppliers that serve large businesses since doing so would limit Facebook's ability to supply its B2C messaging channels to those large businesses.

20. If Facebook were to restrict or degrade API access to its messaging channels for CRM suppliers that focus on serving small and medium-sized businesses, the CMA expects that some business customers would switch away from those CRM providers. Kustomer is a relatively small provider of CRM services, even to these small and medium-sized businesses, and while some businesses would likely switch to Kustomer, a larger proportion would be expected to switch to competing CRM suppliers, including suppliers such as Salesforce and Oracle that serve both large business and small and medium sized businesses. Given that Kustomer would be unlikely to capture a large proportion of switching businesses, the CMA considers that the gains to Facebook from a foreclosure strategy would be unlikely to exceed the losses. As such, the CMA does not consider that Facebook would have an incentive to pursue such a foreclosure strategy.
21. On that basis, the CMA found that there was no realistic prospect that the Merger would result in an SLC as a result of Facebook foreclosing customer service and support CRM suppliers that compete with Kustomer by restricting or degrading their access to Facebook's messaging channels.

Theory of Harm 3: whether Facebook could reduce the competitiveness of other suppliers of B2C messaging services by preventing them from integrating their services with Kustomer

22. As explained above, Facebook sees integration with CRM suppliers as an important avenue to grow its B2C messaging business. The CMA has considered whether Facebook could harm its B2C messaging rivals, and reduce competition in B2C messaging, by restricting the ability of other B2C messaging channels to integrate with Kustomer's CRM software.
23. The CMA received input from other B2C messaging providers and most of them indicated that they have avenues other than CRM integration to reach business customers.
24. The CMA also considered the significance of Kustomer as a CRM provider. Kustomer is a very small provider of CRM software today. While Kustomer is expected to grow, even if it grew substantially larger than Facebook has forecast in its internal documents, Kustomer would remain a small provider of CRM software. As such, even for B2C messaging rivals that seek to promote their services through CRM connections, many alternatives would remain following the Merger.
25. As such, the CMA found that there is no realistic prospect that the Merger would result in an SLC as a result of Facebook foreclosing its B2C messaging rivals by restricting their ability to integrate with Kustomer's CRM software.

Theory of Harm 4: whether Facebook could rely on cross subsidisation from its online display advertising business to offer Kustomer on a free or freemium basis making it difficult for other suppliers of customer service and support CRM software to compete

26. Advertising on Facebook properties is common among businesses serving consumers. Moreover, Facebook expects that businesses adopting Kustomer CRM software would increase their advertising spend on Facebook. This may give Facebook the ability and incentive to cross-subsidise Kustomer software with advertising revenues, for example by offering it for free. The concern under this theory of harm is that such a strategy may increase barriers to entry and expansion in customer service and support CRM software to such an extent that other providers, who would not be able to generate additional revenues from advertising spend to the same extent as Facebook can, are substantially harmed. This would reduce competition in the market in the medium term.
27. The Parties submitted that the strategy described above would represent price reductions associated with a marginal cost reduction for Facebook, not a cross-subsidy, and that it would be highly beneficial to businesses purchasing CRM software. The CMA agrees that the Merged Entity's incentive to offer Kustomer software on a free or freemium basis would result from merger efficiencies and that, at least in the short term, businesses would benefit from the lower price of Kustomer software. However, the CMA considers that, when one of the merging parties already has significant market power, the presence of large merger-specific efficiencies may result in a reduction of competition in the longer term that more than offsets the short-term customer benefits. The CMA therefore considered whether there is a realistic prospect of this happening in the context of the Merger.
28. The CMA considers that Facebook would have an incentive to cross-subsidise Kustomer, as losses on the provision of CRM software would be compensated by higher revenues from online display advertising and, in the longer term, further services to businesses. The CMA also notes that offering a CRM service on a free or freemium basis would be consistent with Facebook's overall business model, which is based on offering free services and generating revenues through advertising. Furthermore, Facebook's internal documents show [REDACTED].
29. In order for this strategy to result in a reduction of competition, rival CRM providers (either existing or future entrants) would need to be placed at such a disadvantage that their ability to compete would be substantially limited. The reduction in competition needs to be significant enough that the long-term impact on price, quality and innovation in customer service and support CRM

software more than offsets the short-term customer benefits from the lower price of Kustomer software.

30. The CMA considers that those conditions are not met in the context of the Merger. The CRM market is characterised by the presence of large and established competitors, and Kustomer is currently a very small supplier. If Kustomer's software were offered at a lower price, that would tend to increase the competitive constraint on larger providers.
31. The CMA needs to consider the effect of a merger on competition in the market rather than on individual competitors. The CMA considers that, even if some competitors would struggle to respond to Facebook offering Kustomer on a free or freemium basis, sufficient competitive constraints would remain. For example, the CMA considers that the largest providers may be in a position to adopt a freemium model, or to develop a basic low-price CRM product targeted at small businesses, with the expectation that CRM revenues would increase as businesses' needs grew. Most importantly, it is not necessary for other CRM providers to replicate the Merged Entity's strategy in order to remain competitive. While price is certainly an important dimension of competition, there are several other dimensions along which CRM providers could compete against the Merged Entity.
32. As a result, the CMA found that the Merger would not give rise to a realistic prospect of an SLC as a result of a cross-subsidisation strategy leading to increased barriers to entry and expansion in customer service and support CRM software.
33. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

34. Facebook is a publicly traded company listed on NASDAQ, with headquarters in California. Facebook offers consumers a variety of social media and other products and services, including the 'Facebook' branded website and mobile app and its three main messaging channels: Messenger, WhatsApp and Instagram Messaging.¹
35. Facebook offers businesses services including digital advertising, messaging (also through its three main messaging channels – Messenger, WhatsApp and Instagram Messaging) and a range of business tools.
36. Facebook's primary revenue-generating activity is offering ads space and related services (such as tools for designing targeted ads campaigns and measuring the effectiveness of those campaigns) to businesses, which currently accounts for the vast majority (approximately [X]%) of its annual revenues globally.²
37. Facebook's total turnover in FY20 was GBP 67,027 million, of which approximately GBP [X] was generated in the UK.³
38. Kustomer was founded in 2015 and is headquartered in New York, United States. Kustomer offers a software as a service (**SaaS**) customer relationship management (**CRM**) software specialised in customer service.⁴ This software is designed to help agents in a company's customer service function manage communications with consumers, eg when a consumer contacts the business with a product enquiry, in connection with a late delivery or a faulty product or return. Kustomer's CRM software integrates with a range of business to consumer (**B2C**)⁵ communication channels, including phone, email, webchat, SMS, Messenger, WhatsApp, Instagram (comments and messages) and Twitter (tweets and messages). As part of its CRM software, Kustomer offers a proprietary live webchat communication channel to its CRM customers.⁶ Kustomer currently licenses its CRM software for USD 89-139 per user per month (plus various optional add-ons).⁷

¹ Final Merger Notice, submitted on 28 July 2021 (**FMN**), paragraphs 2.6 and 3.2. Facebook's other products and services include Oculus, Portal and Workplace (FMN, paragraph 3.3).

² FMN, paragraph 3.4.

³ FMN, table 6.1.

⁴ FMN, paragraph 3.6.

⁵ B2C refers to 'business to consumer' as well as 'consumer to business'.

⁶ FMN, paragraph 3.6(ii) and 3.6(iii).

⁷ FMN, paragraph 3.7.

39. Kustomer's total turnover in FY20 was GBP [X], of which GBP [X] was generated in the UK.⁸
40. Facebook and Kustomer are together referred to as the **Parties**, and for statements referring to the future, as the **Merged Entity**.

Transaction

41. The Merger relates to the proposed acquisition by Facebook of the whole of the issued share capital of Kustomer for USD [X] in cash pursuant to an agreement entered into between the Parties on [X]. A number of Kustomer personnel who elect to move to [X]. Following the Merger, Kustomer will become a wholly owned subsidiary of Facebook.⁹
42. The Parties informed the CMA that the Merger was notified to [X], the Australian Competition and Consumer Commission and the Austrian Federal Competition Authority.¹⁰ In addition, the Bundeskartellamt in Germany has announced that it has initiated a proceeding to assess whether the Merger falls under the scope of German merger control.

Procedure

43. The Merger was considered at a Case Review Meeting.¹¹
44. As part of its investigation, the CMA issued eleven requests for information from the Parties and [X] to third parties using the CMA's statutory information gathering powers. The CMA received over 25,000 internal documents from the merging parties, reviewed a subset of those documents based on key word searches, and gathered evidence from a wide range of third parties, including customers and competitors in, and adjacent to, the sectors in which the Parties operate.

Jurisdiction

45. The CMA has jurisdiction under the Enterprise Act 2002 (the **Act**) where arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation (**RMS**)¹² as a result of:

⁸ FMN, table 6.2.

⁹ FMN, paragraph 2.1.

¹⁰ The European Commission subsequently accepted a referral request from the Austrian Federal Competition Authority under Article 22(1) of the EU Merger Regulation (**EUMR**).

¹¹ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2revised), December 2020, part 5.

¹² Section 33(1)(a) of the Act.

- (a) two or more enterprises ceasing to be distinct; and
- (b) either of the jurisdictional thresholds under section 23 of the Act (the turnover test or the share of supply test) being met.

Enterprises ceasing to be distinct

- 46. Each of Facebook and Kustomer is an enterprise.
- 47. The Merger would result in two enterprises ceasing to be distinct as Kustomer would be brought under the control and ownership of Facebook.¹³

Turnover test

- 48. In its most recent financial year (2020), Kustomer generated GBP [X] in the UK.¹⁴ Accordingly, the Merger does not satisfy the turnover threshold set out in section 23(1)(b) of the Act.¹⁵

Share of supply test

- 49. Under section 23 of the Act, the share of supply test is satisfied if the merged enterprises both either supply or acquire goods or services of a particular description in the UK, and will, after the merger, supply or acquire 25% or more of those goods or services in the UK as a whole or in a substantial part of it (the ***share of supply test***).¹⁶
- 50. As described in paragraphs 34 and 38 above, both Parties offer messaging channels (Facebook's messaging channels¹⁷ and Kustomer's proprietary webchat channel, respectively) that can be used to facilitate communications between businesses and consumers. The CMA believes that the share of supply test is met on the basis of the Parties' combined share of supply of B2C messaging channels (comprising Rich Communication Service (**RCS**), webchat, over-the-top (**OTT**)¹⁸ and, on a conservative basis, SMS) in the UK.

¹³ Section 26 of the Act. See also FMN, paragraph 5.2.

¹⁴ FMN, table 6.2.

¹⁵ For completeness, the lower turnover test applicable to transactions that involve an enterprise being taken over which is active in the areas specified under section 23A of the Act is also not met.

¹⁶ See further [CMA2revised](#), paragraph 4.62.

¹⁷ In addition to offering its three main messaging channels, Facebook also allows businesses to enable Messenger on their websites with Chat Plugin which allows businesses to host Facebook's Messenger as a Webchat service on their websites (FMN, paragraph 3.2(ii)).

¹⁸ Facebook's messaging channels operate over-the-top (or OTT), meaning that real-time transmissions are via an internet connection rather than a telephone network. FMN, footnote 1.

The Parties' submissions

51. The Parties submitted that the Merger does not satisfy the share of supply test with respect to the Parties' activities in B2C communications as they do not account for 25% or more of the supply of B2C communication services or any conceivable sub-segment within the UK.¹⁹
52. Specifically, the Parties submitted that their combined share of B2C communications channels – comprising all B2C communication channels, including phone, email and messaging (SMS, RCS, webchat and OTT channels) – amounts to only [5-10]% in the UK.²⁰ The Parties also submitted that the only conceivable sub-segment within B2C communications in which the Parties activities overlap is in webchat, where the Parties' combined share is only [0-5]%.²¹

CMA's analysis

The supply of B2C messaging channels (RCS, webchat, OTT and SMS)

53. The CMA has a wide discretion to identify a specific category of goods or services supplied or procured by the merging parties for the purposes of the share of supply test.²² The CMA's Jurisdictional Guidance 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 share of supply test is not an economic assessment of the type used in the CMA's substantive assessment and therefore the group of goods or services to which the test is applied need not amount to a relevant economic market. Therefore, it is not necessary that the description of services for the purposes of the share of supply test aligns with the market definition analysis for the purposes of the substantive assessment.
 - (b) The CMA will have regard to any reasonable description of goods or services. Whilst the share of supply used may correspond with a standard recognised by the industry in question, this need not necessarily be the case.
54. The CMA believes that B2C communications via messaging channels (OTT, RCS, webchat) is a reasonable description of services.

¹⁹ FMN, paragraph 5.9(ii).

²⁰ FMN, paragraph 5.9(ii)(b).

²¹ FMN, paragraphs 5.9(ii), 13.3 and 14.7 (table 14.4)

²² Section 23(8) of the Act.

²³ [CMA2revised](#), paragraph 4.63.

55. The CMA considered whether, as argued by the Parties, all B2C communication channels should be included in the same segment when assessing the share of supply. The CMA found that industry reports regularly look at business messaging (including OTT, RCS, webchat and SMS) without reference to email and telephone communications, supporting the view that these could be considered as separate segments.²⁴ As explained further in paragraph 87 below, responses to the CMA's third party questionnaires indicated that phone and email are poor alternatives to messaging as a B2C communication channel. In addition, Facebook's internal documents, which are discussed in paragraph 88 below, consider messaging separately from email and telephone communications. On that basis, the CMA believes that email and telephone communications can reasonably be excluded from the description of services.
56. The CMA also considered whether it is reasonable to include webchat in the description of services. Industry articles indicate a distinction between older 'traditional' forms of webchat and newer webchat solutions (including Kustomer's proprietary webchat functionality) and indicate that such newer forms of webchat may be more closely substitutable with OTT and RCS messaging (discussed in paragraph 55). Views of respondents on the degree of substitutability between OTT messaging and webchat were mixed. Most respondents did not consider webchat a close alternative and noted several important differences. Key differences cited by respondents appear to relate to older or 'legacy' forms of webchat²⁵ and appear less relevant to newer forms of webchat, including Kustomer's proprietary webchat.
57. Both in submissions to the CMA and in public statements, the Parties have identified overlaps between OTT messaging and the webchat services offered by Kustomer. The Parties describe webchat providers as strong alternatives to Facebook's messaging channels and explain that 'webchat has the advantage of being available across desktop and mobile, and can include AI

²⁴ For example, Zendesk's 2020 report on the 'state of messaging' analyses the state of messaging with reference to the competitive landscape in business messaging (with a focus on OTT providers as distinct from SMS or RCS) and chatbots. See: Zendesk '[State of Messaging 2020](#)', 18 February 2020. Similarly, a Forrester report titled 'Use Popular third-party messaging platforms for customer service' dated 20 January 2021 considers channel and platform fragmentation across third-party messaging apps and webchat. See: Julie Ask and Ian Jacobs, 'Use Popular Third-Party Messaging Platforms for Customer Service', Forrester, 20 January 2021, Figure 3, page 5. Available for download at <https://quiq.com/forrester-report-messaging-platforms-for-customer-service/>. Gartner has also reported specifically on the use of messaging channels by customer service organisations. See: Gartner Press release, 'Gartner Predicts 80% of Customer Service Organizations Will Abandon Native Mobile Apps in Favor of Messaging by 2025' 12 January 2021. Available at <https://www.gartner.com/en/newsroom/press-releases/2021-01-12-gartner-predicts-80--of-customer-service-organization>.

²⁵ Older or 'legacy' forms of webchat require a 'live' session with an agent, making it more similar to a synchronous (live) phone call than to asynchronous conversation on OTT messaging channels, or require users to stay on the businesses webpage, or risk losing the chat history, meaning that webchat does not provide end-customers with the same flexibility as OTT messaging.

[artificial intelligence] and other rich functionality that economises on the use of human agents'.²⁶ In an article titled 'Live Chat vs Messaging Apps: The Modern Hybrid Solution' dated 2 August 2018, Kustomer describes its webchat functionality as a 'modern hybrid' solution that 'deliver[s] the best possible chat and messaging experience'. Kustomer also explains that 'modern chat gives you the best of both worlds' by bridging the gap between synchronous messaging associated with the 'old version of live chat' and asynchronous messaging apps, by providing customers with both live chat benefits and the ability to maintain an asynchronous state when agents are unavailable.²⁷ With respect to Kustomer's current webchat features, a recent article by Kustomer explains that the 'new version of Kustomer Chat delivers benefits for both consumers and businesses by making chat-based support interactions smarter, faster, and frictionless' and includes features such as 'Persistent Conversation History', which provides asynchronous functionality more commonly associated with messaging apps.²⁸

58. For the reasons set out above, the CMA believes that it is reasonable to include webchat in the description of services.
59. Finally, the CMA considered whether SMS should be included in the description of services. Industry reports discuss the current and future status of business messaging with reference, in particular, to OTT and RCS messaging channels as well as webchat and indicate that SMS is likely to become less relevant as a B2C communication channel in future.²⁹ With respect to the substitutability between SMS and OTT, views from respondents were mixed. While some considered them to be close alternatives, others highlighted distinctions in terms of OTT messaging providing a better user experience and branding/verification/rich features, which the CMA believes are likely to be valuable features for businesses and end-users for the purpose of B2C messaging (see paragraph 93). On this basis, the CMA

²⁶ FMN, paragraph 20.14.

²⁷ Kustomer, 'Live Chat vs Messaging Apps: The Modern Hybrid Solution', Kustomer, 2 August 2018.

²⁸ Kustomer, 'Kustomer Debuts Next Generation Chat Platform, Enabling Businesses to Deliver AI-Powered, Personalized Customer Service at Fraction of the Cost of Phone Support', 19 January 2021. Persistent Conversation History is described as a capability that 'Keep[s] conversations continuous even if the customer has momentarily left, with a persistent interaction history that allows anywhere, anytime engagement, without losing context or needing to repeat themselves.'

²⁹ See, for example Gartner Press release, 'Gartner Predicts 80% of Customer Service Organizations Will Abandon Native Mobile Apps in Favor of Messaging by 2025' 12 January 2021. Available at <https://www.gartner.com/en/newsroom/press-releases/2021-01-12-gartner-predicts-80-of-customer-service-organization> and Zendesk, 'State of Messaging 2020', 18 February 2020, which notes 'Typing indicators, read receipts, emojis, carousels and quick replies. These are a few of our favourite things about messaging. But too many businesses are taking 'texting' too literally. The protracted battle to replace SMS (Short Message Service) with RCS (Rich Communication Services) as the new text-messaging standard is part of a larger movement to make business messaging more interactive. Soon, everything will happen within the conversation.'

believes that it may be appropriate to exclude SMS from the description of services.³⁰

The UK or a substantial part of it

60. Services or goods are generally supplied in the UK where they are provided to customers which are located in the UK.³¹ As set out in Table 1 below, the CMA considered the Parties' combined share of supply on the basis of data provided by the Parties on the number of conversations by UK users.

The 25% threshold

61. 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.³²
62. The CMA believes that number of conversations is an appropriate metric. This is consistent with the metric used by the Parties in their submissions.³³
63. As set out in Table 1 below, on the basis of data provided by the Parties on the number of conversations by UK users, the Parties have a combined share of supply of [40-50]% with an increment of [0-5]% in the supply of B2C communications via messaging channels in the UK. As noted above, the CMA believes that the supply of B2C communication via messaging channels (OTT, RCS and webchat) is a reasonable description of services but has assessed whether the share of supply test is met by reference to a broader description of services which includes SMS on a conservative basis.
64. The Parties submitted that Kustomer's small increment demonstrates that it is not appropriate for the CMA to assert jurisdiction.³⁴ As explained in the CMA's Jurisdictional Guidance, where an enterprise already supplies or acquires 25% of any particular goods or services, the test is satisfied so long as its share is increased as a result of the merger, regardless of the size of the increment.³⁵ Furthermore, the increment is always likely to be small when a large company acquires a nascent or small company. In *Sabre Corporation v Competition and Markets Authority*,³⁶ the CAT found that there was no *de*

³⁰ In any event, as set out in paragraph 67 below, the share of supply test is met whether or not SMS is excluded.

³¹ [CMA2revised](#), paragraph 4.64(b).

³² Section 23(5) of the Act.

³³ FMN, table 14.4.

³⁴ Parties' response to the CMA's Issues Letter submitted on 6 September 2021 (**Parties' response to the Issues Letter**), paragraph 29.

³⁵ [CMA2revised](#), paragraph 4.69.

³⁶ *Sabre Corporation v Competition and Markets Authority* [2021] CAT 11 (**Sabre v CMA**).

minimis threshold when assessing the increment in the share of supply resulting from the merger, and that any increment is sufficient to find jurisdiction as long as the combined share is over the 25% threshold.³⁷ In this Merger, Facebook currently has [40-50]%.

65. In their response to the CMA's Issues Letter, the Parties stated that the CMA assessment largely relied on a 'functional characteristics' approach and did not assess how B2C communications are supplied or used.
66. The Parties further submitted that the jurisdictional overlap identified by the CMA did not relate to relevant commercial activity in respect of which there is a sufficient prospect of a competition concern arising as to render it worthy of investigation, and therefore the CMA has not taken account the statutory purpose of the share of supply test.³⁸
67. For the reasons set out above, the CMA considers that the evidence from both of the Parties and from third parties supports its conclusion that the supply of B2C communication via messaging channels is a reasonable and appropriate description of goods and services, and that even including SMS on a conservative basis there is a share of supply of over 25% and a relevant increment.
68. The CMA notes that the overlap in B2C communication via messaging channels does relate to commercial activity which raised a sufficient prospect of a competition concern for the purposes of its investigation in this case. For example, in this decision the CMA has considered B2C communication via messaging channels within a relevant product frame of reference,³⁹ and this description of services is relevant to theories of harm which the CMA has considered in the course of its investigation into the Merger.⁴⁰

³⁷ *Sabre v CMA*, paragraph 305 and 306.

³⁸ *Sabre v CMA*, paragraph 144.

³⁹ The CMA does not consider that it is necessary to reach finely balanced judgments on what is 'inside' or 'outside' the market for the purposes of its competitive assessment; the constraint posed by firms 'outside' the market will also be carefully considered: *Merger Assessment Guidelines*, paragraph 9.4. Consistent with this, goods or services which are 'outside' of a market but may pose a competitive constraint affecting the possibility of an SLC could also be considered to be within a relevant description of goods and services for the purposes of jurisdiction.

⁴⁰ For example, TOH2, which was taken to a Case Review Meeting and which is summarised below in this decision.

Table 1: Estimates of shares in the supply of B2C communications via messaging channels based on number of conversations in the UK

Company	Conversations (m/day) (2020)	Share (%)
Facebook	[X]	[40-50]
<i>Messenger</i>	[X]	[10-20]
<i>WhatsApp</i>	[X]	[10-20]
<i>Instagram</i>	[X]	[10-20]
Kustomer	[X]	[0-5]
Combined	[X]	[40-50]
Other messaging (SMS, webchat, OTT)	[X]	[50-60]
Total	[X]	100

Source: Response to Q13 in Annex S109.1.001 - Annex to Facebook's response to s109 notice dated 5 March 2021 (Updated - 26.03.2021).

Conclusion on jurisdiction

69. In light of the above, the CMA believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
70. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 2 August 2021 and the statutory 40 working day deadline for a decision is therefore 27 September 2021.

Counterfactual

71. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).⁴¹ For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.⁴²

⁴¹ [Merger Assessment Guidelines](#) (CMA129), 18 March 2021 (**Merger Assessment Guidelines**), paragraph 3.1.

⁴² [Merger Assessment Guidelines](#), from paragraph 3.12.

The Parties' submissions

72. The Parties submitted that the CMA should assess the competitive effects of the Merger against a counterfactual of the current or pre-merger conditions of competition.⁴³
73. In particular, the Parties submitted that the Merger does not fall within the three specific examples of situations where the CMA may use a different counterfactual identified in the CMA's Merger Assessment Guidelines⁴⁴ because there are no parallel transactions or competing bids, neither of the Parties can be considered a failing firm⁴⁵ and the Merger does not result in the loss of a potential entrant that would make a material impact on the competitive assessment.⁴⁶

The CMA's analysis

74. The CMA considered whether it should assess the competitive effects of the Merger against a counterfactual other than the prevailing conditions of competition. For the purposes of a Phase 1 investigation, the CMA considers the effect of the merger compared with the most competitive counterfactual providing always that it considers that situation to be a realistic prospect.⁴⁷
75. The CMA believes the relevant counterfactual to be that of the prevailing conditions of competition prior to the Merger. The customer service and support CRM, B2C messaging and online display advertising segments are all evolving and so the CMA carefully considered how competition in these segments is likely to develop in the future. The CMA aimed to conduct a dynamic review that takes into account future developments in the markets in which the Parties operate. The CMA considered potential developments in these markets, and in the Parties' activities, as part of its competitive assessment below.

Background

76. Businesses and consumers communicate with each other using a range of different communication channels, including phone, email, and messaging

⁴³ FMN, paragraph 11.1.

⁴⁴ [CMA129](#), paragraph 3.16; [FMN](#), paragraph 11.2.

⁴⁵ The CMA notes that the scenario discussed in [CMA129](#) (paragraphs 3.21 *et seq.*) refers to a scenario in which a firm is likely to have exited the market through financial failure or otherwise. The CMA considers that neither Party is likely to have exited the markets under consideration in these circumstances.

⁴⁶ FMN, paragraph 11.2.iii.

⁴⁷ [CMA129](#), paragraph 3.12.

(including webchat, OTT, SMS and RCS).⁴⁸ Facebook's messaging channels are OTT.

77. Businesses can procure B2C communications services either directly from the relevant provider or indirectly from intermediaries that offer tools that provide connectivity into multiple communication channels. Two types of such intermediaries are CRM software providers and communication platform-as-a-service (**CPaaS**) providers.⁴⁹
78. CRM software providers offer a range of functionalities, including customer service and support, sales, marketing and digital commerce.⁵⁰ CRM software solutions collate sets of data and display them in a user-friendly manner,⁵¹ and can be provided via the cloud or an on-premises solution.⁵²
79. CRM providers also offer connectivity into certain communication channels as part of their offering via APIs (rather than merely providing an interface with communication channels procured directly or indirectly by their customer). For example, some CRM providers buy access directly from the channel provider for resale to their business customers as part of their CRM software package.⁵³
80. CPaaS providers offer cloud-based middleware which allows businesses to integrate communication channels into their applications without needing to build backend infrastructure and interfaces. The CPaaS provider integrates with the relevant B2C communication channel provider via APIs and provides the business with access to the relevant channel.⁵⁴ APIs are a set of standard protocols that enable different software to share data and integrate with each other. Facebook offers access to its Messenger and Instagram Messaging channels to a wide range of third parties via its open access APIs, while it offers access to WhatsApp's business API only via approved 'channel partners', such as CPaaS providers Twilio and MessageBird.⁵⁵

⁴⁸ FMN, paragraph 2.5.

⁴⁹ FMN, paragraph 2.7.

⁵⁰ FMN, paragraph 13.3.

⁵¹ Case M.8124 – [Microsoft/LinkedIn](#) European Commission decision of 6 December 2016, paragraph 29; FMN, paragraph 13.2.

⁵² FMN, paragraph 13.3 (ii).

⁵³ FMN, paragraph 2.7 (ii).

⁵⁴ FMN, paragraph 2.7 (i).

⁵⁵ Facebook also provides direct access to WABAPI to some large companies, such as Uber and KLM, as WABAPI was originally sold directly to businesses; however, Facebook has shifted to providing access only through channel partners. FMN, footnote 13.

Frame of reference

81. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA has taken these factors into account in its competitive assessment.⁵⁶
82. For the purposes of its assessment, the CMA considered the appropriate frame of reference in relation to the following:
- (a) the supply of B2C communication services;
 - (b) the supply of CRM software; and
 - (c) the supply of advertising services.

Product scope

83. The CMA's approach to product scope is to start with the relevant products of the Parties and to pay particular regard to demand-side factors. The CMA may also consider supply-side factors.⁵⁷
84. In response to the CMA's Issues Letter, the Parties submitted that the CMA adopted a 'functional characteristics' approach to assessing the frame of reference and did not assess substitutability robustly. The Parties submitted that this led to the CMA defining the relevant product markets for the supply of CRM software, B2C communication and for advertising services on an inappropriately narrow basis.⁵⁸ With regard to this, the Parties stated that products may differ in their characteristics, price or use but nevertheless belong to the same relevant market if they are regarded as substitutable by customers. Findings of differences in characteristics alone without further assessment of substitutability are insufficient to conclude that the products belong to separate segments.⁵⁹

⁵⁶ [Merger Assessment Guidelines](#), paragraph 9.4.

⁵⁷ [CMA129](#), paragraph 9.7-9.8.

⁵⁸ Parties' response to the Issues Letter, paragraph 38.

⁵⁹ Parties' response to the EC's Decision under Article 6(1)(c) EUMR, dated 2 August 2021, Section 2, paragraph 2.

Supply of B2C communication services

85. The Parties submitted that the effect of the Merger should be considered within a frame of reference that includes all B2C communications channels, including phone, email and messaging (ie SMS, RCS, webchat and OTT channels). The reasons the Parties gave for the wide frame of reference are:⁶⁰
- (a) business customers' primary factor in choosing which B2C channels to use is whether they offer a means to contact the business that is generally available to consumers;
 - (b) the relative convenience or functionality of different communications channels is not sufficient to consider particular channels as distinct frames of reference because no single channel is used exclusively or predominantly for particular types of B2C communication and it is common for consumers to switch between different channels on a regular basis, including to contact the same business; and
 - (c) businesses and consumers are comfortable using multiple channels and can and do switch between them.
86. The CMA considered:
- (a) whether telephone and email should be included in the frame of reference;
 - (b) whether OTT messaging and webchat should be included in the same frame of reference; and
 - (c) whether OTT and SMS should be included in the same frame of reference.

Telephone and email

87. Evidence from third parties shows that most considered phone and email to be poor alternatives to messaging from the perspective of both businesses and end-customers.
- (a) Phone is a synchronous (live) channel whereas messaging channels are asynchronous. Synchronous and asynchronous channels provide very different user experiences and serve different use cases. Phone also lacks the ability to share rich content such as images, videos and links,

⁶⁰ FMN, paragraph 13.13.

and dynamic capabilities such as list pickers and carousels.⁶¹ Moreover, respondents noted that phone is more costly than messaging.⁶²

(b) Email is an asynchronous channel like messaging and one respondent submitted that messaging can to an extent replace transactional emails.⁶³ Nevertheless, most respondents considered email a poor alternative to messaging. In particular, [REDACTED]⁶⁴ submitted that messaging offers a superior experience and immediacy, while email is a poor alternative because it is seen by consumers as slow, too formal, and impersonal. Moreover, email is seen as a poor alternative as it is more likely to be marked as spam and subject to various internet protocols that can degrade the content [REDACTED].⁶⁵

88. Evidence from Facebook’s internal documents is consistent with third party views that phone and email provide significantly different functionality to OTT messaging. Several documents [REDACTED]. For example, [REDACTED].⁶⁶[REDACTED].⁶⁷
89. In its questionnaires, the CMA asked CRM competitors, B2C providers and CPaaS providers to rate the closeness of the other communications channels as alternatives to Facebook’s messaging channels.⁶⁸ On a scale of 1 to 5, where 1 was a poor alternative and 5 was a strong alternative, respondents gave an average score of 1.5 to phone and 1.9 to emails as an alternative to Facebook’s messaging channels.

OTT messaging and webchat

90. Respondents’ views were mixed on the degree of substitutability between OTT messaging and webchat but indicated that newer forms of webchat (which may have asynchronous capability) may be more closely substitutable. One respondent [REDACTED]⁶⁹ considered webchat an alternative form of asynchronous communication and one CPaaS provider [REDACTED]⁷⁰ submitted that it is a close alternative from the perspective of businesses and that businesses would try to push their customers to use a webchat. While most respondents did not consider it a close alternative and noted several important differences,

⁶¹ [REDACTED] response to CMA CRM competitor questionnaire, Q19.

⁶² [REDACTED] response to CMA B2C communications competitor questionnaire, Q7; [REDACTED] response to CMA CPaaS competitor questionnaire, Q15.

⁶³ [REDACTED] response to CMA CPaaS questionnaire, Q15.

⁶⁴ [REDACTED] response to CMA CPaaS competitor questionnaire, Q15 and 16.

⁶⁵ [REDACTED] response to CMA CRM competitor questionnaire, Q18 and 19.

⁶⁶ Facebook Attachment E401 - CMA_KS_0000401 - [REDACTED] to the FMN, page 6.

⁶⁷ Facebook Attachment E1010 - CMA_KS_0001040 - [REDACTED] to the FMN, page 2.

⁶⁸ See Q18 and Q19 of the CRM competitor questionnaire, Q15 and Q16 of the CPaaS providers questionnaire, and Q7 and Q8 of the B2C competitor questionnaire.

⁶⁹ [REDACTED] response to CMA Request for Input, Q8.

⁷⁰ [REDACTED] response to CMA CPaaS competitor questionnaire, Q15.

the key differences cited by respondents appear to relate to older or ‘legacy’ forms of webchat. For example, legacy webchat typically requires a ‘live’ session with an agent, making it more similar to a synchronous phone call than to asynchronous conversation on OTT messaging channels.⁷¹ Also, as users are required to stay on the businesses webpage, or risk losing the chat history,⁷² webchat does not provide end-customers with the same flexibility as OTT messaging. Such differences may not apply to newer forms of webchat, such as that provided by Kustomer. One respondent noted that while webchat may be an alternative for user-initiated conversations, it cannot be used for business-initiated ones.⁷³

91. Facebook’s internal documents indicate that [REDACTED].⁷⁴
92. Industry reports and articles indicate a distinction between older ‘traditional’ forms of webchat and newer webchat solutions that may be more closely substitutable with OTT messaging. Newer forms of webchat offer asynchronous communication and other capabilities associated with OTT messaging.⁷⁵

OTT messaging and SMS

93. Views from respondents were mixed on whether SMS and OTT messaging are close alternatives. While some B2C communication providers consider them close alternatives,⁷⁶ [REDACTED] noted that SMS tends to have higher cost and OTTs allow a better user experience.⁷⁷ Other respondents did not consider SMS a close alternative. One respondent [REDACTED] explained that this was due to the lack of branding/verification/rich features,⁷⁸ which the CMA considers are likely to be valuable features for businesses and end-users for the purpose of B2C messaging. For example, a CPaaS provider explained that such features

⁷¹ [REDACTED] response to CMA CRM competitor questionnaire, Q18 and 19.

⁷² [REDACTED] response to CMA CPaaS competitor questionnaire, Q16.

⁷³ [REDACTED] response to CMA B2C communications competitor questionnaire, Q7.

⁷⁴ Facebook Attachment E441 - CMA_KS_0000441 - [REDACTED] to the FMN, page 17. See also Facebook Attachment E229 - CMA_KS_0000229 - [REDACTED] to the FMN, page 7 (the CMA notes that this document was not produced within Facebook, but by a third-party firm).

⁷⁵ See, for example: Zendesk: ‘[A guide to the best live chat software](#)’ (accessed 20 September 2021); Helpshift ‘[Webchat 2.0: Behind the scenes of creating fully asynchronous messaging capabilities](#)’, 2 January 2019. Khoros describes its chat software as ‘modern, asynchronous chat software for your website’ which enables ‘chat with customers in real-time or anytime’. See, Khoros, ‘[Modern, asynchronous chat software for your website](#)’.

⁷⁶ [REDACTED] response to CMA B2C communications competitor questionnaire, Q7; [REDACTED] response to CMA B2C communications competitor questionnaire, Q7. In particular, [REDACTED] submitted that cellular-based B2C messaging services (such as SMS and RCS) and OTT B2C messaging services are strong competitors to one another and that, in either case, the customer user journey and business use case is the same. Although historically cellular-based messaging may have been reliant on a cellular-based platform, according to [REDACTED] there is no longer a meaningful distinction between cellular-based and OTT messaging given the widespread availability of wireless internet access. [REDACTED] response to CMA Request for Input, Q8.

⁷⁷ [REDACTED] response to CMA B2C communications competitor questionnaire, Q7; [REDACTED] response to CMA B2C communications competitor questionnaire, Q7.

⁷⁸ [REDACTED] response to CMA CPaaS competitor questionnaire, Q15.

are relevant because ‘when a user knows who is messaging, they are more likely to engage’,⁷⁹ while Kustomer highlights branding and customisation capability as a feature of its new chat offering.⁸⁰ One CPaaS provider [REDACTED]⁸¹ submitted that SMS serves only a smaller subset of use-cases.

94. Finally, RCS messaging was seen by several respondents as a close alternative to Facebook’s WhatsApp.⁸² In particular, one CPaaS provider [REDACTED] submitted that it is the ‘closest and only worldwide substitute to WhatsApp’.⁸³ While other respondents considered it a poor substitute, this was typically based on its currently limited popularity as a communication channel (and it not being supported on Apple devices) rather than on differences in functionality.
95. The evidence from the Parties’ internal documents as to the substitutability between OTT messaging and SMS suggests that [REDACTED].
- (a) In some documents, [REDACTED].⁸⁴ [REDACTED].⁸⁵
- (b) Other documents [REDACTED],⁸⁶ [REDACTED].⁸⁷
96. On the other hand, RCS messaging services, [REDACTED].

CMA’s view on the supply of B2C communications services

97. Based on the evidence discussed above, the CMA considers that the differences in use between OTT messaging and other communication channels such as phone, email and legacy forms of webchat (that do not allow for asynchronous communication) are significant enough for these other channels not to be included in the same frame of reference.
98. Contrary to the Parties’ submissions set out in paragraph 84, when assessing whether products were or were not close alternatives to Facebook’s messaging channels third parties typically described product characteristics.⁸⁸

⁷⁹ [REDACTED] response to CMA CPaaS competitor questionnaire, Q15.

⁸⁰ Kustomer, ‘Kustomer Debuts Next Generation Chat Platform, Enabling Businesses to Deliver AI-Powered, Personalized Customer Service at Fraction of the Cost of Phone Support’, 19 January 2021. Kustomer chat enables ‘Multi-Brand Customization’ that ‘Deliver[s] customized experience across multiple brands. Manage unique settings to create brand-specific experiences including branding, styles, language, conversational assistant, automations, SLAs, reporting, and more.

⁸¹ [REDACTED] response to CMA CPaaS competitor questionnaire, Q16.

⁸² RCS was seen by most respondents as a more distant alternative to Messenger or Instagram Messaging, as these channels operate within platforms, while RCS cannot connect to businesses directly on those platforms.

⁸³ [REDACTED] response to CMA CPaaS competitor questionnaire, Q15.

⁸⁴ Facebook Attachment E022 - CMA_KS_0000022 - [REDACTED] to the FMN, page 2.

⁸⁵ Facebook Attachment E167 - CMA_KS_0000167 - [REDACTED] to the FMN, page 33.

⁸⁶ Facebook Attachment E541 - CMA_KS_0000571 - [REDACTED] to the FMN, page 1.

⁸⁷ Facebook Attachment E0941 - CMA_KS_0000971 -D4 [REDACTED] to the FMN, page 1.

⁸⁸ Response to CMA CRM competitor questionnaire, Q18 and 19.

Therefore, the CMA considers that the correct frame of reference has been identified by considering the substitutability of the products.

99. Overall, the evidence reviewed by the CMA consistently indicates that the relevant frame of reference should include both OTT and RCS messaging channels. Regarding webchat, the evidence from third parties is less clear; however, industry reports and articles indicate that there may be a degree of convergence between webchat and messaging channels (OTT and RCS) for 'newer' forms of webchat that offer rich messaging and asynchronous capabilities. While the evidence indicates that SMS is a closer substitute to OTT and RCS messaging channels than other legacy channels (such as phone and email), it also indicates that there are important differences in terms of functionality and cost and that OTT messaging and SMS are less likely to be substitutes in future.

Supply of CRM software

100. The Parties submitted that there is a single market for the provision of CRM software.⁸⁹
- (a) In terms of functionality, the Parties submitted that Kustomer provides customer service CRM functionality and does not provide sales, marketing or digital commerce CRM functionality. The Parties submitted that even if the CMA decided to segment the market on the basis of functionality, this would not affect the competitive assessment because all the major players and Kustomer's key competitors provide customer service functionality.⁹⁰
- (b) In terms of customer size, the Parties submitted that segmentation between large enterprises and small and medium enterprises is not required as the different needs of businesses can be considered as part of the competitive assessment.
101. While the CMA acknowledges that many CRM platforms can and do provide solutions that offer a range of functionalities, it considers that there are many smaller CRM providers, such as Kustomer, which offer only one or a limited number of particular functions. Evidence received in response to the CMA's questionnaire and the Parties' internal documents suggests that the CRM market can be segmented by functionality and that these sub-segments are complementary rather than substitutable.

⁸⁹ FMN, paragraphs 13.4-13.5; Parties' response to the Issues Letter, paragraph 57.

⁹⁰ FMN, paragraph 13.5(i).

102. All but one of the customer respondents to the CMA's questionnaire said that they use different CRM platforms for different use cases within the business. One CRM competitor [REDACTED] stated that 'CRM software tends to specialise in particular use cases and functions' and that it is common for companies to utilise a separate CRM solution for each particular function.⁹¹
103. The Parties' internal documents also suggest that CRM software differs across functionality, [REDACTED].⁹² This is consistent with industry and market analysis data submitted to the CMA, which segments the CRM market by functionality, in particular identifying a distinct market for customer service and support software.⁹³
104. Accordingly, the CMA considers it appropriate to segment the market by CRM functionality (customer service and support, sales, marketing or digital commerce) and that there may be a separate relevant sub-segment for customer service and support CRM software.
105. While the CMA also considered the relevance of segmenting the CRM market based on the size of the businesses they focus on serving, and has seen some evidence to support this approach,⁹⁴ it does not consider it necessary to conclude on this segmentation. Any differences in competition based on the size of the targeted business are taken into account in the competitive assessment.

Supply of advertising services

106. The Parties submitted that the relevant frame of reference includes all advertising services both online and offline because:⁹⁵
- (a) Regarding demand-side substitutability, the advertising services market is dynamic and highly competitive, with various forms of media (eg news, entertainment, games and social media) across a variety of channels (eg print, TV, online and offline) all competing vigorously to attract and retain user engagement, and hence attract advertisers.⁹⁶ Further, advertisers' budgets are split across different channels in a way that maximises

⁹¹ [REDACTED] response to CMA CRM competitor questionnaire, Q8.

⁹² See Facebook Annex E15325 - CMA_KS_0015341 - [REDACTED] to the FMN, page 2.

⁹³ See Annex 1 to Kustomer's response to the CMA's s109 notice dated 20 April 2021, in which Gartner defines the customer engagement centre market as the market for software applications used to provide customer service and support. See also Annex 3 to Kustomer's response to the CMA's s109 notice dated 20 April 2021, which highlights customer service and support as the largest sub-segment of the CRM market.

⁹⁴ CRM providers who responded to the CMA's questionnaire indicated that Kustomer focuses on the small and mid-sized businesses (SMB) segment of the market, with one [REDACTED] indicating that it does not consider Kustomer to be a competitor on that basis. See, [REDACTED], [REDACTED], [REDACTED] responses to CMA CRM competitor questionnaire, Q11. See also Facebook Attachment, Annex E007 entitled [REDACTED] to the FMN, page 5, which describes [REDACTED].

⁹⁵ FMN, paragraphs 13.21-13.25.

⁹⁶ Parties' response to the Issues Letter, paragraph 66.

advertisers' return on investment.⁹⁷ The Parties submitted that certain evidence included in the CMA's recent Online Platforms and Digital Advertising Market Study (the **Market Study**) supports their assessment.⁹⁸

(b) Regarding supply-side substitutability, there has been (and continues to be) significant supply-side convergence between advertising formats and venues – advertising being a dynamic market characterised by rapid technological progress and innovation. Insofar as there might ever have been a discernible line between display and search advertising, that line has disappeared.⁹⁹

107. The Parties added that, as the Merger does not give rise to the possibility of an SLC in relation to the supply of advertising services on any basis, it is not necessary to conclude on the appropriate frame of reference.¹⁰⁰

108. As regards traditional (offline) and online advertising, contrary to the Parties' submissions, the evidence gathered during the Market Study showed that traditional advertising was unlikely to impose a competitive constraint on display advertising.¹⁰¹ All respondents (including both smaller and larger advertisers) to the CMA during the Market Study saw online digital advertising as more important than offline advertising and many did not use any offline advertising at all due to this.¹⁰² 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.¹⁰³ 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).¹⁰⁴ In the context of this Merger, the CMA has not seen any evidence contrary to that gathered in the Market Study. Hence, the CMA considers that traditional and online advertising are in separate frames of reference.

⁹⁷ FMN, paragraphs 13.21-13.25.

⁹⁸ The Market Study is available here: [CMA, Online platforms and digital advertising \(Market study Market Study\), 1 July 2020](#).

⁹⁹ Parties' response to the Issues Letter, paragraph 66.

¹⁰⁰ FMN, paragraphs 13.21-13.25.

¹⁰¹ [Market Study](#), paragraph 5.23.

¹⁰² [Market Study](#), Appendix N, paragraph 59.

¹⁰³ [Market Study](#), Appendix N, paragraph 59.

¹⁰⁴ [Market Study](#), Appendix N, paragraph 65.

109. In relation to online search and display advertising,¹⁰⁵ the Market Study found that they serve distinct purposes, with only limited substitutability between them.¹⁰⁶ All media agencies and most advertisers told the CMA that online search and display advertising were not substitutable. This is mainly because they perform different roles within the customer purchase journey.¹⁰⁷ Most advertisers set budgets for online search and display advertising independently and do not allocate them interchangeably.¹⁰⁸ Online display advertising is primarily chosen by advertisers with the objective of targeting increased brand awareness for specific audiences. In contrast, online search advertising is chosen by advertisers with the objective of converting 'in-market' consumers.¹⁰⁹
110. 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 online display advertising for in-market conversions too as well as for more general brand awareness.¹¹⁰ However, online search advertising is unlikely to be a viable alternative for those advertisers targeting brand awareness. The CMA has not seen any evidence to suggest that the conclusions in its recent Market Study are no longer appropriate. The CMA considers that for most advertisers the distinction between display and search persists, and online display advertising falls within a separate frame of reference from online search advertising.

Conclusion on product scope

111. For the reasons set out above, the CMA considered the impact of the Merger against the following product frames of reference:
- (a) the supply of B2C communication via messaging channels (OTT, RCS, webchat, SMS);
 - (b) the supply of customer service and support CRM software; and
 - (c) the supply of online display advertising.

¹⁰⁵ Online search advertising is where advertisers pay online companies to link their company website to a specific search word or phrase so that it appears in relevant search engine results. Online display advertising is where advertisers pay online companies to display advertising using a range of advertising content types shown within defined ad units on web pages or mobile apps. See [Market Study](#), paragraph 5.6.

¹⁰⁶ [Market Study](#), paragraph 5.370.

¹⁰⁷ [Market Study](#), Appendix N, paragraphs 67 to 76.

¹⁰⁸ [Market Study](#), Appendix N, paragraph 73.

¹⁰⁹ [Market Study](#), Appendix N, paragraphs 66 to 69.

¹¹⁰ [Market Study](#), paragraph 5.120.

Geographic scope

Supply of B2C communication via messaging channels

112. The Parties submitted that the appropriate frame of reference should be worldwide in scope for the following reasons:¹¹¹
- (a) Many providers of B2C communications channels offer their services on a global basis.
 - (b) Many businesses procure B2C communications services on a global basis, to allow communications with consumers to occur cross-border. This is particularly the case for email and messaging channels.
 - (c) The functionalities of B2C communications services do not vary materially across different regions and there are no material regulatory or technical differences between particular regions or countries.¹¹²
113. However, on a conservative basis the Parties considered the effects of the Merger specifically within the UK.¹¹³
114. The CMA has found that there are differences between countries regarding usage rates and preferences for B2C providers. For instance, market penetration rates for each of Messenger, Instagram and WhatsApp in 2018, 2019 and 2020 were [~~✗~~] in the UK than they were worldwide – suggesting substantial country to country variation in the ability of businesses to reach consumers via these channels.¹¹⁴ This may indicate that the appropriate frame of reference is narrower than EEA or worldwide.
115. However, the CMA has not found it necessary to reach a definitive conclusion on the specific geographic scope of the B2C messaging market in this case as it has not ultimately found competition concerns on any plausible geographic basis.

Supply of customer service and support CRM software

116. The Parties submitted that the market for CRM software is worldwide in scope. This is due to the fact that CRM software does not differ materially across regions and there are no regional regulatory, technological or customisable differences for CRM software (with the exception of the

¹¹¹ FMN, paragraphs 13.14-13.16.

¹¹² FMN, paragraph 13.14.

¹¹³ FMN, paragraph 13.16.

¹¹⁴ Facebook submission, Annex S109.3.002 to CMA S109 Notice 3 dated 30 June 2021, question 13.

requirement to host data locally in certain regions or language requirements; however, most CRMs offer embedded translation functions). Additionally, the Parties submitted that there are no significant regional or local competitors.¹¹⁵

117. The CMA has not seen any evidence to suggest that it should depart from the previous decisions cited by the Parties.¹¹⁶ Accordingly, the CMA considers the market for CRM software to be global or at least UK and EEA wide in scope.

Supply of online display advertising

118. In relation to advertising services, the Parties submitted that Facebook's ads services are available on a global basis and so are many of the competing (offline and online) ads services. Although some advertising demand may be national, competitive conditions in online ads services do not vary significantly across geographic areas. In any case, the Parties argued that the appropriate geographic frame of reference can be left open, since no competition concerns arise on any plausible basis.¹¹⁷
119. 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.¹¹⁸ In *Facebook/Instagram*, the OFT found that the provision of advertising is likely to be national.¹¹⁹ Moreover, in *Facebook/WhatsApp*, the European Commission concluded that the online advertising market and its sub-segments (including the display advertising market) should be defined as national in scope or alongside linguistic borders.¹²⁰
120. The CMA has not seen any evidence to suggest that an alternative geographic frame of reference for the supply of online display advertising would be appropriate.¹²¹ For these reasons, the CMA considers the impact of the Merger in the supply of online display advertising on a UK-wide basis.

¹¹⁵ FMN, paragraph 13.7.

¹¹⁶ FMN, paragraph 13.6; see also CMA Decision of 22 November 2019, case ME/6841/19 – [Salesforce.com, Inc /Tableau Software, Inc, \(Salesforce/Tableau\)](#), paragraph 70.

¹¹⁷ FMN, paragraph 13.27.

¹¹⁸ [Facebook advertising targeting options | Facebook for Business](#).

¹¹⁹ OFT Decision of 14 August 2012, case ME/5525/12 - [Facebook Inc/Instagram Inc \(Facebook/Instagram\)](#), paragraph 13.

¹²⁰ Case M.7217 - [Facebook/WhatsApp \(Facebook/WhatsApp\)](#) European Commission decision of 3 October 2014, paragraph 83.

¹²¹ The CMA does not consider the findings in *Google/Looker* in relation to the geographic scope of the frame of reference to be relevant in this case. This is because *Google/Looker* related to the supply of 'online advertising services', while this case considers the provision of online display advertising. Further, in *Google/Looker* the CMA did not conclude on the relevant geographic frame of reference. CMA decision of 16 March 2020, case ME/6839/19 – [Google LLC /Looker Data Sciences, Inc. \(Google/Looker\)](#) paragraph 100.

Conclusion on frame of reference

121. For the reasons set out above, the CMA considered the impact of the Merger in the following frames of reference:
- (a) the supply of customer service and support CRM software worldwide or at least UK and EEA in scope; and
 - (b) the supply of B2C communication via messaging channels at least UK-wide, although possibly broader, in scope; and
 - (c) the supply of online display advertising on a UK-wide basis.

Competitive assessment

Theories of harm

122. The CMA has assessed four theories of harm:
- (a) Theory of harm 1 (**TOH1**): Raised barriers to entry and expansion by increasing Facebook's data advantage in online display advertising;
 - (b) Theory of harm 2 (**TOH2**): Input foreclosure of Kustomer's customer service and support CRM software rivals by restricting or degrading their API access to Facebook's messaging tools;
 - (c) Theory of harm 3 (**TOH3**): Customer foreclosure of Facebook's B2C messaging rivals by restricting access to Kustomer's customer service and support CRM software; and
 - (d) Theory of harm 4 (**TOH4**): Raised barriers to entry and expansion in customer service and support CRM software.
123. The CMA's assessment of the Parties' submissions with respect to the rationale for the Merger is of relevance to these theories of harm and so is discussed below.

Rationale for the Merger

The Parties' submissions

124. The Parties submitted that the Merger is part of Facebook's vision 'for messaging to become the primary way that people and businesses communicate'.¹²²
125. In particular, the Parties submitted that Facebook considers that 'different business customer segments require different tools and a different approach for taking those tools to market'. As such, Facebook has a three-fold strategy for delivering tools to facilitate the uptake of B2C messaging to businesses of different sizes.¹²³
- (a) Tail (ie very small) businesses generally do not have the scale or resources to use paid customer service and support CRM software.¹²⁴ Facebook has a free service called Unified Inbox that enables small businesses to aggregate the messages that they receive on Messenger and Instagram, and comments on Facebook and Instagram posts, in one consolidated inbox.¹²⁵
- (b) Torso (ie small and medium) businesses have a higher volume of interactions with consumers and dedicated customer service personnel. These businesses often use customer service and support CRM software to manage their interactions with consumers. The Parties submitted that the primary rationale for the Merger is to increase the use of messaging for B2C communications generally, but noted that Kustomer may be more attractive for torso businesses.¹²⁶
- (c) Head businesses (ie large enterprises) generally require customised customer service and support CRM software. Facebook plans to continue to support these businesses through partnerships and APIs that allow the integration of Facebook's messaging channels into their existing business systems (including CRM software).
126. The Parties submitted that the wider strategy of the Merger is to create a 'showcase' that will be used to show other CRM providers and all types of

¹²² FMN, paragraph 2.12; see also, Facebook Attachment E029 - CMA_KS_0000029 - [REDACTED] to the FMN, page 5.

¹²³ FMN, paragraph 2.16.

¹²⁴ These types of businesses generally do not have dedicated customer service personnel and instead will respond to consumer enquiries in the ordinary course of running their business.

¹²⁵ Facebook is planning to enhance the functionality of Unified Inbox to make it even easier for tail businesses to manage their interactions with consumers, with a goal of increasing the use of its messaging channels by those businesses.

¹²⁶ Parties' response to the Issues Letter, paragraph 88(b).

businesses that using Facebook's messaging channels is an effective and useful way to communicate with their customers.¹²⁷ For example, the Parties submitted that the Merger will provide Facebook with a high-quality messaging-centric customer support CRM software, which it believes can be used to encourage the use of messaging channels for B2C communications by businesses.¹²⁸ The CMA has seen limited evidence to support this 'showcase' strategy.

127. In addition, Facebook submitted that the Merger would provide a key revenue opportunity for Facebook as it would support the growth of B2C messaging, which Facebook expects will generate significant revenues in future.¹²⁹
128. The Parties submitted that the Merger may provide Facebook with additional data 'signal'¹³⁰ originating from businesses' use of Kustomer CRM software by virtue of (improved) access to data collected and processed by Kustomer.¹³¹ The Parties submitted that such 'signal' comprises conversions data (which the Parties referred to in their submissions as customer transaction data) and other event data¹³² only and that businesses share such data with Facebook today (**Opt-In Offsite Data**¹³³).
129. The Parties also acknowledged that there are Facebook internal documents which relate to [REDACTED].¹³⁴
130. However, the Parties explained that getting access to data for use in its ads services business is not Facebook's primary Merger rationale.

¹²⁷ FMN, paragraph 2.21 and 10; Parties' Issues Meeting presentation, slides 6 and 7.

¹²⁸ FMN, paragraph 2.17.

¹²⁹ FMN, paragraph 2.22.

¹³⁰ FMN, paragraph 20.35. The CMA's understanding is that 'signal', 'ads signal' or 'data signal' mean data about consumer actions which is valuable for ads purposes.

¹³¹ FMN, paragraph 20.35.

¹³² According to Facebook's Business Tools Terms, 'Event Data' is 'information that [the relevant business] share about people and the actions that they take on [the business'] websites and apps or in [the business'] shops, such as visits to [the business'] sites, installations of [the business'] apps and purchases of [the business'] products'. This includes: (A) Conversions data (ie data on completed transactions); and (B) Other data on customer actions falling short of purchases (sometimes referred to as 'mid-funnel' events), including website views, adds to cart, adds to wish list, store visits, app downloads, or other 'custom events' that a business may decide to record and share with Facebook (referred to as 'other event data') (FMN, paragraph 2.23(ii), footnote 35).

¹³³ In this Decision, the CMA uses '**Opt-in Offsite Data**' to refer collectively to customer transaction data and other event data that Kustomer's business customers may choose to share with Facebook via the opt-in functionality post-Merger.

¹³⁴ Parties' response to the Issues Letter, paragraph 124.

CMA assessment

Facebook's ambitions in B2C messaging

131. Facebook's internal documents indicate that the promotion of B2C messaging, [REDACTED].¹³⁵
132. In particular, Facebook's internal documents evidence [REDACTED].
- (a) A Facebook's presentation on strategic options for business messaging dated May 2019 stated that [REDACTED].¹³⁶
- (b) In an email dated August 2020, [REDACTED], stated that [REDACTED].¹³⁷
- (c) In an email dated October 2020, [REDACTED], stated that the main goal for Facebook was for [REDACTED].¹³⁸
- (d) An email from [REDACTED], to [REDACTED],¹³⁹ dated 26 July 2020 and written in the context of the Merger refers to [REDACTED].¹⁴⁰
133. Facebook's internal documents further indicate that Facebook considers the acquisition of a customer service and support CRM software [REDACTED].¹⁴¹ The Parties submitted that Facebook considered whether to build or buy a product that would provide torso businesses with the tools required to encourage adoption of messaging channels but concluded that an acquisition was necessary for Facebook's entry, as building a customer service and support CRM software was not a commercially viable option given build time, Facebook's relative lack of CRM industry expertise and integration and sales expertise.¹⁴²

'Signal' gains as a result of the Merger

134. Facebook's internal documents also place significant emphasis on [REDACTED]. In particular, Facebook's internal documents indicate that:

¹³⁵ Facebook Attachment E548 - CMA_KS_0000578 - [REDACTED] to the FMN, page 7.

¹³⁶ Facebook Attachment E167 - CMA_KS_0000167 - [REDACTED] to the FMN, page 32.

¹³⁷ Facebook Attachment E666 - CMA_KS_0000696 - [REDACTED] to the FMN.

¹³⁸ Facebook Attachment E14095 - CMA_KS_0014114 - [REDACTED] support to the FMN.

¹³⁹ Negotiations with respect to the Merger were primarily conducted by [REDACTED], with the support of [REDACTED] and [REDACTED] (all from Facebook's [REDACTED]) overseen by [REDACTED] and [REDACTED]. Facebook's Response to Q2 of the CMA's s109 notice dated 5 March 2021, paragraph 2.1.

¹⁴⁰ Facebook Attachment E19448 - CMA_KS_0012351 - [REDACTED] to the FMN.

¹⁴¹ See for example: Email from [REDACTED] to [REDACTED] and [REDACTED], Facebook Attachment E0941 - CMA_KS_0000971 -D4 [REDACTED] to the FMN; Attachment E655 - CMA_KS_0000685 - [REDACTED] to the FMN; and Facebook Attachment E10003 - CMA_KS_0010022 - [REDACTED] to the FMN.

¹⁴² FMN, paragraph 18.8.

(a) [REDACTED]¹⁴³[REDACTED].¹⁴⁴

(b) [REDACTED].

(c) Consistent with the Parties' own submissions,¹⁴⁵ [REDACTED].

135. Each of (a) and (b) is addressed in further detail in paragraph 156 *et seq.* below.

Wider strategic benefits

136. Facebook's internal documents indicate that, in the longer term, [REDACTED].¹⁴⁶ These documents include [REDACTED]¹⁴⁷ [REDACTED].¹⁴⁸

TOH1: Raised barriers to entry and expansion by increasing Facebook's data advantage in online display advertising

137. The concern under this theory of harm is that the Merger would raise barriers to entry and expansion in online display advertising, as a result of the impact of the Merger on Facebook's data advantage. To assess the likelihood of harm, the CMA considered:

(a) whether Facebook has market power and a competitive data advantage in online display advertising pre-Merger;

(b) whether and to what extent the Merger gives rise to an increment to Facebook's data advantage; and

(c) the impact of the increment to Facebook's data advantage arising from the Merger relative to other providers and the resulting impact of the Merger on competition in online display advertising.

138. With respect to each of the propositions set out in 137(a)-(c), the CMA considered evidence from (i) the Market Study findings, (ii) the Parties'

¹⁴³ Conversions API 'is a tool built for advertisers to use data to target, optimise and measure their Facebook campaigns. As the pixel loses some effectiveness due to browser and mobile platform changes, integrating Conversions API will establish a more reliable data connection by sending web events directly to Facebook from servers rather than browsers.' <https://en-gb.facebook.com/business/news/how-conversions-api-gets-businesses-closer-to-customers>.

¹⁴⁴ As explained at paragraph 160 below, a third party indicated that the Merger would give Facebook access to data it does not have today. Note of a call with [REDACTED].

¹⁴⁵ Facebook submission, Annex 74 – 'Submission on Ads Data' to the FMN, paragraph 2.1.

¹⁴⁶ See, for example Facebook Attachment E548 – CMA_KS_0000578 – [REDACTED], page 7; Facebook Attachment E004 CMA_KS_0000004 – [REDACTED] to the FMN, page 6; Facebook Attachment E419 – CMA_KS_0000419 – [REDACTED] to the FMN, slide 12 and 31; Facebook Attachment E409 – CMA_KS_0000409 – [REDACTED] to the FMN, slide 19; and Facebook Attachment E0936 6 – CMA_KS_0000966 -D4 [REDACTED] to the FMN, page 2.

¹⁴⁷ Facebook Attachment E409 – CMA_KS_0000409 – [REDACTED] to the FMN, slide 19.

¹⁴⁸ Facebook Attachment E0936 6 – CMA_KS_0000966 -D4 [REDACTED] to the FMN, page 2.

submissions, (iii) the Parties' internal documents, and (iv) third parties' submissions in response to the CMA's market investigation.

Facebook's pre-Merger market power and data advantage in online display advertising

Parties' submissions

139. As noted above, the Parties consider that the relevant frame of reference includes all ads services (online and offline).^{149,150} They submitted that even on the narrow segment of online ads services, Facebook's share of supply in the UK was [10-20]% in FY2019.¹⁵¹ The Parties also submitted that there have been 'major examples' of entry since the Market Study and there has been 'intense competition' within online display advertising.¹⁵² The Parties have not made any submissions with respect to whether, pre-Merger, Facebook has a data advantage.

Market Study findings

140. In its Market Study, the CMA found that Facebook's superior access to data gives it a significant competitive advantage over other market participants and that, compared with Facebook, other platforms' data targeting and attribution capabilities are relatively limited as they rely on user data from their own services and limited reach on third-party sites and apps.^{153,154} In its Market Study, the CMA found that Facebook (including Instagram) had a share of [50-60]% of online display advertising expenditure in 2019. The second largest supplier was YouTube (owned by Google), which was much smaller with a [5-10]% share.¹⁵⁵ In its Market Study the CMA also found that Facebook is viewed as a 'must have' by many advertisers because of its reach and extensive data on users and faces limited competitive constraints

¹⁴⁹ FMN, paragraph 13.25.

¹⁵⁰ Parties' response to the Issues Letter, paragraph 105.

¹⁵¹ FMN, table 14.6.

¹⁵² Parties' response to the Issues Letter, paragraphs 81 and 83.

¹⁵³ [Market Study](#), Appendix F, paragraph 58.

¹⁵⁴ The Parties submitted that they do not agree with the findings of the Market Study and that relying on the Market Study fails to account for important developments since the Market Study concluded. The Parties further noted that since many of the assertions in the Market Study were not susceptible to full rights of defence, they should not be used in the merger context without independent corroboration with primary evidence (Parties' response to the Issues Letter, paragraph 81). Given that the Market Study is recent and that the CMA has not seen any evidence during its Merger investigation which undermines the evidence base used in it, or conclusions reached in it, the CMA considers that it is appropriate to take account of the Market Study findings as part of its assessment where relevant.

¹⁵⁵ [Market Study](#), paragraph 5.131.

from other online display advertising platforms, or from search and other forms of advertising.¹⁵⁶

141. The Market Study considered the impact of Google's announcement in January 2020 that it intended to phase out support for third-party cookies in Chrome within two years on the availability of data and the targeting ability of its competitors.¹⁵⁷ In this respect, the Market Study noted that targeting using first-party data and authenticated user data does not require cross-site tracking and is unaffected by the demise of third-party cookies. Therefore, large incumbent platforms with leading consumer-facing services like Facebook are significantly less dependent on third-party cookies for delivery of high-performing targeted ads and continued advertising revenues than, for instance, small publishers with free-to-read content that does not require login.¹⁵⁸
142. In the context of this Merger, the CMA considered the impact of recent and anticipated regulatory developments and third-party platform changes to privacy policies which impact tracking technologies¹⁵⁹ on Facebook's data advantage and significant market power in online display advertising as assessed by the CMA in its Market Study.
143. As discussed in more detail below, the evidence the CMA has seen in internal documents and has received from third parties supports the Market Study findings that Facebook's access to data gives it a significant competitive advantage and that Facebook has significant market power in online display advertising.

Facebook's internal documents

144. Facebook's internal documents indicate that [REDACTED].
145. For example, Facebook's most recent business plan identifies [REDACTED].¹⁶⁰

Third party views

146. Evidence from third parties indicated that Facebook has significant market power in online display advertising. One advertising competitor [REDACTED] said that

¹⁵⁶ [Market Study](#), paragraph 5.373.

¹⁵⁷ [Market Study](#), paragraph 5.321.

¹⁵⁸ [Market Study](#), paragraph 5.324.

¹⁵⁹ Including, for example, new policies introduced as part of Apple's recently announced iOS 14 and 14.5 updates, which require apps to ask users for permission to collect and share data using Apple's device identifier and introduce an App Tracking Transparency feature.

¹⁶⁰ Facebook Attachment C001 CMA_KS_0000001 – [REDACTED] to the FMN, page 7. The CMA notes that this document also includes [REDACTED].

Facebook offers advertisers ‘unparalleled reach and micro-targeting capabilities’; it also said that Facebook is ‘leveraging its huge userbase and user data and social graph to make itself a one-stop shop for e-commerce vendors’ and that ‘dominance in e-commerce feeds back into the dominance for display advertising because the more entrenched a business is in the Facebook ecosystem, the more ad dollars they will commit to Facebook’s ad products’.¹⁶¹ Another advertising competitor [X] said that ‘Facebook’s key advantage in display advertising’ is its ‘significantly higher user engagement compared to other social networking platforms. Further, Facebook has a massive amount of advertising inventory and leverages the large amount of data about its users obtained both on and off its different platforms (e.g., through social plugins on third party platforms and pixels on third party websites) to offer more targeted advertising and greater ROI to advertisers than most other online ad providers.’¹⁶² Another advertising competitor [X] referred to Facebook’s ‘strong position’ with regard to its data ownership.¹⁶³

147. Third parties also considered that access to data constituted a barrier to entry. An advertising competitor [X] said that there are ‘likely to be existing barriers to entry and expansion for any provider who would like to offer online display advertising. These barriers are often related to establishing a provider’s reach and audience’. It said that demonstrating the ability to reach large numbers of consumers or targeting particular categories of consumers ‘will often rely on a large and diverse data set, which comes both from economies of scale and from having a large network of users. These considerations will often favor a large incumbent. [...] A more established player, or a player with access to particularly valuable forms of data, may therefore have an immediate advantage over new entrants in this respect’.¹⁶⁴
148. Evidence from third parties indicated that regulatory and platform policy changes are going to affect most providers of online display advertising. Third party views also indicated that Facebook’s ongoing access to a large amount of ‘onsite’ data would result in it being less harmed by these changes than smaller providers. These views were shared by several providers of online display advertising who responded to the CMA’s questionnaire [X].¹⁶⁵
149. One third party provider [X] submitted that the impact on Facebook ‘will be less than the impact on smaller players, because Facebook has and maintains far more first-party and third-party data on its users than smaller

¹⁶¹ [X] response to CMA advertising platform competitor questionnaire, Q12.

¹⁶² [X] response to CMA advertising platform competitor questionnaire, Q4.

¹⁶³ [X] response to CMA advertising platform competitor questionnaire, Q13.

¹⁶⁴ [X] response to CMA advertising platform competitor questionnaire, Q8.

¹⁶⁵ [X] response to CMA advertising platform competitor questionnaire, Q5; [X] response to CMA advertising platform competitor questionnaire, Q5; [X] response to CMA advertising platform competitor questionnaire, Q5.

platforms. Moreover, most online advertisers already have an advertising presence on Facebook, with years of experience advertising on their platforms.’ As changes to Apple’s and Google’s policies will reduce the ability of advertising platforms to demonstrate ad effectiveness robustly, ‘it will be easier for Facebook to continue a relationship with existing advertisers than for a smaller company to convince a new advertiser to advertise on its platform.’ Thus, according to this provider [X], ‘the changes will likely further entrench Facebook’s dominant position in digital display advertising’.¹⁶⁶ Another provider [X] submitted that, ‘longer-term, Facebook’s emerging on-site commerce experiences and payment services’ will provide it with ‘direct response attribution capabilities that recreate the ability for granular attribution and return on ad spend measurement’, therefore further limiting the impact of current changes.¹⁶⁷

CMA’s view on Facebook’s pre-Merger data advantage and market power in online display advertising

150. Based on the evidence received, the CMA considers that Facebook has both significant market power in online display advertising and a significant data advantage that acts as a barrier to entry and expansion in the supply of online display advertising. These findings are consistent with the findings of the Market Study. The CMA also considers that Facebook is better positioned than most of its rivals to access data which mitigates the impact of recent and anticipated regulatory and platform policy changes.

The extent to which the Merger gives rise to an increment to Facebook’s data advantage

151. The CMA considers that the Merger will give Facebook access to additional data. In particular, the CMA considered (a) incremental data directly resulting from businesses’ use of Kustomer, in particular Opt-In Offsite Data, and (b) incremental data generated by increased adoption of B2C messaging and CTM ads both directly by businesses using Kustomer adopting B2C messaging and CTM ads and indirectly by Facebook’s use of the Merger to promote adoption of its B2C messaging channels and CTM ads.¹⁶⁸ For clarity, the Merger does not lead directly to an increment in Facebook’s share of the online display advertising market; the increment in question is to the data that Facebook holds and may use to target advertisements as part of its online

¹⁶⁶ [X] response to CMA advertising platform competitor questionnaire, Q5.

¹⁶⁷ [X] response to CMA advertising platform competitor questionnaire, Q5.

¹⁶⁸ The Parties have not disputed the CMA’s view that the Merger will increase the data available to Facebook through these two distinct channels.

display advertising business. This section considers the qualitative and quantitative value of this incremental data.

The Parties' submissions

152. As discussed in paragraphs 124 to 129, the Parties submitted that the primary rationale for the Merger is to increase the use of messaging for B2C communications. The Parties also submitted that the Merger may provide Facebook with additional data 'signal' from businesses' use of Kustomer CRM software. The Parties also acknowledged that internal documents show [REDACTED].
153. The Parties submitted that the Merger does not risk increasing data-based barriers to entry in ads services because:¹⁶⁹
- (a) such a theory of harm would require an efficiency (giving businesses the choice to more easily share Opt-In Offsite Data with Facebook) to be treated as a competitive harm;
 - (b) the theory of harm has no relation to the Merger rationale (which is to drive the use of messaging in B2C communications);
 - (c) Kustomer has an extremely small market presence, with only approximately [REDACTED] customers globally. The Merged Entity will therefore have access to very little Opt-In Offsite Data of businesses that use CRMs. Any Opt-In Offsite Data to which Facebook may have (improved) access via Kustomer would represent only a fraction of the Opt-In Offsite Data held by competing CRM providers; and
 - (d) the Merger will not lead to Facebook acquiring exclusive Opt-In Offsite Data. Kustomer's customers – not Kustomer – control their Opt-In Offsite Data.¹⁷⁰
154. Further, the Parties submitted that any sharing of Opt-in Offsite Data would not involve Facebook accessing any new types of data that it could not access before the Merger. Businesses can (and do) already share all such data with Facebook via its existing tools, including data which originated outside Facebook channels or surface.¹⁷¹

¹⁶⁹ Facebook submission, Annex 74 – 'Submission on Ads Data' to the FMN, paragraph 4.3.

¹⁷⁰ Further, the Parties submitted that Kustomer only stores a copy of that data on behalf of its customers and is not (to its knowledge) the exclusive repository of any of that data for any of its customers. Even if businesses share Opt-In Offsite Data with Facebook via Kustomer, those businesses can share that same data with anyone they wish, including rival ads companies. At most, Facebook stands to be provided with a non-exclusive copy of Opt-In Offsite Data. Facebook submission, Annex 74 – 'Submission on Ads Data' to the FMN, paragraph 4.3.

¹⁷¹ Facebook's existing tools include:

155. The Parties submitted that the incremental ads revenue associated with Opt-In Offsite Data shared with Facebook by Kustomer’s business customers would be immaterial (projected to be USD [X] in 2025 in Facebook’s ‘success case’ set out in the Quantitative Deal Valuation, which amounts to less than [X]% of Facebook’s forecast 2025 ads revenue).¹⁷² Furthermore, Facebook plans to use Opt-In Offsite Data to improve its ads services for Kustomer businesses that consent to sharing that data with Facebook ads services. The Merger does not result in an automatic increase to Facebook’s access to data.¹⁷³
156. As explained at paragraph 134, Facebook’s internal documents indicate that: [X]¹⁷⁴ [X].
157. Regarding B2C messaging, the Parties submitted that certain messaging interactions on Facebook channels may generate forms of data signals that will be unaffected by the Merger.^{175, 176} Regarding the content of B2C messages, the Parties submitted that it is generally ‘unstructured’ data and is ‘therefore not typically capable of being used for ads purposes unless a business uses that data to create a structured “event” (e.g. an in-thread purchase)’.¹⁷⁷
158. Finally, the Parties submitted that, if the Merger led to increased data from B2C messaging, this would imply that the Merger has played a significant market-wide role in improving the quality of CRMs, B2C messaging and ads.¹⁷⁸

Opt-in Offsite Data

159. The CMA considers that the data shared by Kustomer’s customers would be valuable for Facebook for advertising purposes beyond optimising Kustomer’s

-
- Conversions API
 - Offline Conversions API, which allows advertisers to send ‘offline events data directly to Facebook.’ <https://www.facebook.com/business/help/1142103235885551?id=565900110447546>
 - App Events API, which allows advertisers ‘to track actions that occur in your mobile app or web page such as app installs and purchase events.’ [App Events API - Marketing API \(facebook.com\)](#)
 - Facebook Pixel, which allows advertisers to ‘know when a customer took an action after seeing your Facebook ad’ including conversions on advertisers’ own websites, and allows advertisers ‘to reach this customer again by using a Custom Audience’. [Facebook pixel: Measure, optimise and retarget with Facebook ads | Facebook for Business](#)
 - SDKs Custom, which ‘automatically logs app installs, app sessions, and in-app purchases’ in the App Events. [Overview - App Events \(facebook.com\)](#).

¹⁷² FMN, paragraph 20.38(v).

¹⁷³ FMN, paragraph 20.36.

¹⁷⁴ Facebook submission, Annex 74 – ‘Submission on Ads Data’ to the FMN, paragraph 2.1.

¹⁷⁵ Parties’ response to the EC’s RFI 6, dated 25 May 2021, paragraph 25.12. Also provided to the CMA as Facebook Annex 61 to the FMN, paragraph 25.12.

¹⁷⁶ [X].

¹⁷⁷ Parties’ response to the Issues Letter, paragraph 126.

¹⁷⁸ Parties’ response to the Issues Letter, paragraph 116.

customers' advertisements. This is supported by a Facebook strategy report, which the CMA understands to be from summer 2020, which shows that [REDACTED].¹⁷⁹ Another document also suggests that [REDACTED].¹⁸⁰

160. Some third parties [REDACTED] also considered that incremental data directly resulting from businesses' use of Kustomer, including Opt-In Offsite Data, is valuable and that data shared by Kustomer's customers could be used by Facebook for advertising purposes beyond optimising advertising for those customers, at least in the medium to longer term. For example, a third party [REDACTED] said that the Merger would give Facebook access to 'service signals' which are not currently visible to it, including what is happening on other channels, for example, Snapchat or Gmail.¹⁸¹ It also said that it believed that Facebook will be able to leverage the Kustomer data to improve its overall offering to all customers, not just those businesses that generate the data through Kustomer, as this is what it has previously done using Facebook Pixel. Because of some reluctance from businesses to share data with Facebook, Kustomer's terms of service may not be changed immediately, but the third party expects that they would eventually be aligned with those of Facebook's other services and that once a small or medium enterprise has its data stored in Kustomer and therefore Facebook, it will be much harder for it to move the data away.¹⁸²
161. While Opt-In Offsite Data would only be available to Facebook with specific consent, the CMA considers that the Merged Entity could easily encourage Kustomer's customers to consent to share data with other parts of Facebook's business. Facebook's internal documents show confidence that [REDACTED].¹⁸³ Third parties also considered that Facebook would be able to obtain consent to access data. For example, an advertising competitor [REDACTED] noted that firms might be reluctant to share data for the purposes of ads targeting, but they may be willing to share it for 'valid' reasons such as facilitating returns and customer service interactions. The acquisition of Kustomer would enable

¹⁷⁹ Facebook Attachment E682 - CMA_KS_0000712 - [REDACTED] to the FMN, page 2.

¹⁸⁰ The CMA believes that, although the Merger is not explicitly mentioned, Facebook's CRM strategy ultimately culminated in the acquisition of Kustomer and therefore this document is relevant to the current Merger. Facebook Attachment E659 CMA_KS_0000689 [REDACTED] to the FMN, page 12.

¹⁸¹ The Parties submitted that this refers to 'unstructured' data which is not typically capable of being used for ads purposes. Parties' response to the Issues Letter, paragraph 132. As noted in paragraph 172, the CMA considers that 'unstructured' B2C messaging data is potentially a rich source of information.

¹⁸² Note of a call with [REDACTED].

¹⁸³ For example, a Facebook document states that [REDACTED]. Facebook Attachment E655 - CMA_KS_0000685 - [REDACTED] to the FMN. In addition, another Facebook document entitled [REDACTED] and dated 10 September 2020 states that [REDACTED]. Facebook Attachment E027 - CMA_KS_0000027 - [REDACTED] to the FMN, page 4.

Facebook to collect this data for ‘valid’ reasons, and then use it for ads targeting.^{184, 185}

162. However, the CMA notes that discussions in internal documents also show that [X]. For example, an email from [X] regarding Kustomer’s valuation, dated 15 July 2020, states [X]¹⁸⁶
163. Overall, the CMA considers that Facebook may use Opt-In Offsite Data for both advertising campaigns of businesses that consent to share it and for its ads services more widely and that the requirement to ‘opt-in’ is not a material barrier to Facebook gaining access to such data.
164. However, the CMA considers that the potential increment to Facebook’s data gathered directly from businesses’ use of Kustomer, in particular Opt-In Offsite Data, is likely to be small. Kustomer currently has around [X] customers globally.¹⁸⁷ Even taking into account Facebook’s plans to rapidly grow Kustomer under Facebook’s ownership,¹⁸⁸ Facebook estimates that Kustomer will only account for around [0-5]% of the customer service and support CRM space in 2025.¹⁸⁹ Even if these estimates understate Kustomer’s future growth, Kustomer could grow significantly faster than predicted and still have a small share of the customer service and support CRM space. As a result, Kustomer would only be able to provide Facebook with access to data from a relatively small number of businesses. For the reasons explained in paragraph 250, the CMA considers Kustomer is a relatively stronger competitor in certain customer service and support CRM segments; nevertheless, the CMA considers that, on the evidence available to it, Kustomer’s reach today is small and, even taking account of Facebook’s investment growth, may remain limited.
165. In addition, Facebook has an average 2.8 billion monthly active users worldwide,¹⁹⁰ compared to the much smaller average number of individual customers per month who interacted with businesses on Kustomer worldwide

¹⁸⁴ [X] response to CMA advertising platform competitor questionnaire, Q7.

¹⁸⁵ The CMA notes that the Facebook has publicly announced that ‘Facebook will not automatically use Kustomer data to inform the ads that a user sees, businesses will have the option to use their data at Kustomer for their own marketing purposes, which may include separate advertising services on Facebook’. [Kustomer to Join Facebook - About Facebook \(fb.com\)](#) However, the CMA considers that it cannot place substantial weight on this statement as it has no binding force and the CMA’s assessment suggests that the Merged Entity may have the incentive to renege on it in the future.

¹⁸⁶ Facebook Attachment E675 - CMA_KS_0000705 - [X], page 2.

¹⁸⁷ FMN, paragraph 20.39 (i) (a).

¹⁸⁸ Facebook estimates that, following the Merger, Kustomer will serve [X] torso customers and generate [X] messages per day on Facebook channels in 2025 (up from an estimated [X] customers and [X] messages per day in 2022). FMN, Figure 2.3.

¹⁸⁹ Parties’ response to the Issues Letter, page 92.

¹⁹⁰ Facebook had 2.80 billion monthly active users as of December 31, 2020, [Facebook - Facebook Reports Fourth Quarter and Full Year 2020 Results \(fb.com\)](#).

in 2020 ([REDACTED] individual customers per month).¹⁹¹ Given that these groups are not mutually exclusive, the CMA considers that this is further evidence that the increment to Facebook's data from data directly from businesses' use of Kustomer, in particular Opt-In Offsite Data, would likely be small. The CMA considers that the foreseeable Merger-specific increment to Facebook's data advantage as a result of Kustomer's business customers sharing Opt-In Offsite Data in the medium term is likely to remain small.

'Signal' generated by B2C messaging and CTM ads due to the Merger

166. Several Facebook internal documents describe [REDACTED].¹⁹² The CMA considers that these documents are relevant to the Merger in the context of the Merger rationale to increase Facebook's B2C messaging, beyond usage by Kustomer's customers, but notes that the Merger is part of a broader strategy to increase the signal available to Facebook from B2C messaging and that Facebook is pursuing a number of ways of achieving this (see paragraph 125).
167. For example, a Facebook long range planning document sets out [REDACTED].¹⁹³ The CMA notes that this document [REDACTED]. Nevertheless, the CMA considers that this document demonstrates that valuable signal is generated from B2C messaging.
168. Further evidence of the value of signal from B2C messaging is provided by an earlier document from September 2019 that sets out the background context to the Merger.¹⁹⁴ [REDACTED]. The CMA considers that this document indicates that CTM ads are a source of onsite data which can be used for advertising purposes. [REDACTED].
169. From this document, the CMA understands that CTM ads are a source of lower funnel onsite signal, and that [REDACTED], particularly as this is supported by other Facebook documents.
170. For example, an advertising strategy document, dated July 2020 and produced for senior management in [REDACTED].¹⁹⁵ Similarly, a strategy plan [REDACTED].¹⁹⁶ The CMA notes that the Parties submitted that owning Kustomer does not

¹⁹¹ CMA calculation using Kustomer data for 2020 for overall end-customer interactions with Kustomer. Annex to Kustomer's response to Q2 of the CMA's s109 notice dated 29 June 2021.

¹⁹² Parties' response to the Issues Letter, paragraph 125.

¹⁹³ Facebook Attachment E541 CMA_KS_0000571 - [REDACTED] to the FMN, pages 1 to 4.

¹⁹⁴ Facebook Attachment E05391 - CMA_KS_0005410 - [REDACTED] to the FMN, slides 1, 2, 4 and 13. The CMA notes that this slide deck was shared by [REDACTED] with the caveat that it was [REDACTED], Facebook Attachment E05390 - CMA_KS_0005409 - [REDACTED], nevertheless the CMA considers that the document shows early thinking about [REDACTED].

¹⁹⁵ Facebook Attachment E438 CMA_KS_0000438 - [REDACTED] to the FMN, page 6.

¹⁹⁶ Facebook Attachment E561 - CMA_KS_0000591 - [REDACTED] to the FMN, page 1.

provide the Merged Entity with any ‘special treatment’ under the Google or Apple restrictions.¹⁹⁷ However, the CMA considers documents such as the one described here show that [REDACTED]. The CMA considers that the Merger contributes to this strategy.

171. Facebook’s documents indicate that [REDACTED].¹⁹⁸

(a) [REDACTED].¹⁹⁹ A document refers to [REDACTED].²⁰⁰ Another document states that [REDACTED].²⁰¹

(b) An email from [REDACTED] dated 27 March 2019 [REDACTED].²⁰²

(c) A document from June 2019 [REDACTED].²⁰³

172. The Parties’ internal documents further show that, contrary to the Parties’ submissions and despite being ‘unstructured’ data, [REDACTED].²⁰⁴ [REDACTED]. For example, a presentation by [REDACTED] to the Facebook Transaction Team in May 2020 refers to [REDACTED].²⁰⁵ As such, the CMA considers that B2C messaging data is a potentially rich source of information despite being ‘unstructured’²⁰⁶ and that, even if Facebook’s use of unstructured data for advertising is currently limited, it would be able to use this data for advertising purposes in future.

173. Regarding B2C messaging, some third parties considered that providing B2C messaging gives Facebook access to data which is relevant and valuable for advertising purposes. For example:

(a) An advertising competitor [REDACTED] said that through B2C messaging data Facebook would ‘gain access to broad swaths of new user data’ which would be valuable for identifying customer preferences (eg enquiries about vegan options), which allow it to better target advertisements.²⁰⁷

¹⁹⁷ Parties’ response to the Issues Letter, paragraph 113.

¹⁹⁸ This is consistent with the CMA’s Market Study which found that types of data that are closer to the bottom of the marketing funnel, such as purchase intent data, are generally valued more than data that is more removed. Market Study, Appendix F, paragraph 128.

¹⁹⁹ Facebook Attachment E01136 - CMA_KS_0001155 - [REDACTED] to the FMN.

²⁰⁰ Facebook Attachment E01136 CMA_KS_0001155 - [REDACTED] to the FMN, page 10.

²⁰¹ Facebook document entitled [REDACTED], dated 6 November 2019. Facebook Attachment E05968 CMA_KS_0005987 - [REDACTED] to the FMN, page 8.

²⁰² Email from [REDACTED] to [REDACTED] dated 27 March 2019. Facebook Attachment E02540 - CMA_KS_0002559 - [REDACTED] to the FMN.

²⁰³ Facebook Attachment E03597 - CMA_KS_0003598 - [REDACTED] to the FMN, slide 21.

²⁰⁴ The document does, however, note that this data [REDACTED]. Facebook Attachment E339 - CMA_KS_0000339 - [REDACTED] to the FMN, page 5.

²⁰⁵ Facebook Attachment E010 - CMA_KS_0000010 - [REDACTED] to the FMN, page 10.

²⁰⁶ This is also supported by industry reports, for example [Unstructured Data Vs. Structured Data: A 3-Minute Rundown \(hubspot.com\)](https://www.hubspot.com/unstructured-data-vs-structured-data).

²⁰⁷ For example, ‘data on returns, data on number of customer service interactions, data on users’ specific preferences, time and date of purchase, type of purchase, location, device used, etc.’ [REDACTED] response to CMA advertising platform competitor questionnaire, Q6 and Q7.

(b) Another advertising competitor [X] said that B2C messaging gives access to ‘product interest data (devices, travel, consumer electronics...)’ and ‘product ownership in customer household’, which combined with Facebook’s ‘existing 1st party data’ ‘allows Facebook an unrivalled cross device data offer’.²⁰⁸

174. However, another advertising competitor [X] recognised potential value from B2C messaging data but did not consider that the Merger would raise existing barriers to entry. It said B2C messaging data could potentially include ‘information like shopping activity, purchase data, actions on a website or other forms of event data’. It said that ‘Any increase in the quantity and diversity of data about users could be expected to provide some targeting and personalization improvements’ and consumer transaction data ‘would also be expected to improve attribution considerably.’ However, it also said that ‘Kustomer is far from the only available data source’ and it did not expect the Merger to interfere with its own access to data sources.²⁰⁹ Nor did it expect Facebook’s intention to ‘create more native commerce experiences’²¹⁰ via Facebook’s B2C messaging to ‘significantly alter’ the existing barriers to entry in online display advertising as these are ‘often related to establishing a provider’s reach and audience, rather than pure technical barriers’.²¹¹

175. Another third party [X] noted that Facebook is ‘already very strong in the B2C space’ and this Merger is ‘potentially one of many bets it is making to strengthen its position in the B2B [business to business] space’.²¹²

CMA’s view on the increment to Facebook’s data advantage resulting from the Merger

176. The CMA considers that the Merger will give Facebook access to incremental data directly resulting from businesses’ use of Kustomer, in particular Opt-In Offsite Data. The CMA also considers that Facebook may use Opt-In Offsite Data for both advertising campaigns of businesses that consent to share it and for its ads services more widely, and that the requirement to ‘opt-in’ is not a material barrier to Facebook gaining access to such data.

177. The CMA also considers that the Merger will give Facebook access to some incremental data generated by increased adoption of B2C messaging and CTM ads both directly via Kustomer and indirectly by Facebook’s use of the Merger to promote adoption of its B2C messaging and CTM ads. However,

²⁰⁸ [X] response to CMA advertising platform competitor questionnaire, Q6.

²⁰⁹ [X] response to CMA advertising platform competitor questionnaire, Q6 and Q7.

²¹⁰ As noted in Facebook’s Q2 2021 Earnings Call, [FB Q2 2021 Earnings Call Transcript \(q4cdn.com\)](https://www.facebook.com/fb2021earningscall), page 2.

²¹¹ [X] response to CMA advertising platform competitor questionnaire, Q8.

²¹² Note of a call with [X].

the CMA also notes that Facebook is pursuing a number of strategies to grow B2C messaging and CTM ads, for example via its Unified Inbox, which enables small businesses to aggregate the messages received via Facebook's channels, and through partnerships and APIs which allow large businesses to integrate messaging channels into their existing business systems (see paragraph 125).

178. The 'down funnel' nature of the types of data described in paragraphs 176 and 177 means they are valuable for Facebook's online display advertising.
179. However, the CMA considers that the current size of Kustomer and its likely growth trajectory mean that the incremental data directly resulting from businesses' use of Kustomer, in particular Opt-In Offsite Data, is unlikely to be significant. Regarding the increased signal from B2C messaging and CTM ads, the CMA notes that Facebook has a broad strategy to increase B2C messaging, of which the Merger is only a part. The CMA considers that Facebook will grow in B2C messaging and that, because this generates valuable signal, this will raise barriers to entry and expansion in online display advertising. The CMA specifically considered the extent to which the Merger will increase barriers to entry and expansion in online display advertising (through the growth of Facebook's B2C messaging business and Facebook's access to other data sources through Kustomer). Kustomer is small, and will remain relatively small even if it were to grow substantially larger than is projected in Facebook's internal documents, and the additional data that Facebook will gain as a result of its acquisition of Kustomer is limited. As such, the CMA does not consider that the Merger alone will have a substantial impact on barriers to entry and expansion in online display advertising.

Impact of the increment to Facebook's data advantage arising from the Merger relative to other providers and the resulting impact of the Merger on competition in online display advertising

180. This section considers whether the incremental access to offsite and onsite data resulting from the Merger will increase Facebook's existing competitive advantage relative to its competitors and the resulting impact of the Merger on competition in online display advertising.

Parties' submissions

181. As noted in paragraph 153, the Parties submitted that the Merger does not risk increasing data-based barriers to entry in ads services because, among other things, the Merger will not lead to Facebook acquiring exclusive Opt-In Offsite Data. Kustomer's customers – not Kustomer – control their Opt-In Offsite Data and are free to share it with rivals.

182. Regarding increased use of B2C messaging and CTM ads by businesses not using Kustomer, the Parties submitted that this theory of harm presupposes that Facebook has succeeded in using Kustomer to encourage other CRMs and businesses to make greater use of B2C messaging. They said that this theory of harm assumes that the Merger ‘will play a significant market-wide role in improving the quality of CRMs, B2C messaging and ads’. They submitted that this is a ‘huge pro-competitive factor’.²¹³

Parties’ internal documents

183. There is some evidence from Facebook’s internal documents that [REDACTED].
- (a) As noted in paragraph 168, a document from September 2019²¹⁴ setting out the background context to the Merger suggests that [REDACTED].
- (b) An internal Facebook presentation prepared by [REDACTED] for [REDACTED] senior management from June 2020, [REDACTED].²¹⁵

Third party views

184. The majority of advertising competitors who responded to the CMA’s questionnaire did not express concern about the Merger generally or with respect to Facebook’s increased access to data specifically.
185. Considering incremental data directly resulting from businesses’ use of Kustomer, including Opt-In Offsite Data, there was mixed evidence from third parties with respect to rivals’ ability to access equivalent data for the purpose of targeting and of verification and attribution:
- (a) One third party [REDACTED] explained that advertising providers’ access to data stored in CRM software is qualitatively and quantitatively different from the data which Facebook would have access to as a result of the Merger. In particular it said that, typically, companies do not send all the data stored in CRM software to advertising providers. Instead they share things like customer lists including unique identifiers (name, address, email etc) and demographic profiles of valuable customers for the purpose of targeting; and/or transaction data to capture offline sales for the purpose of verification and attribution.²¹⁶ Moreover, third parties told the CMA that the data stored in CRM software and shared with advertising providers is

²¹³ Parties’ response to the Issues Letter, paragraph 125.

²¹⁴ Facebook Attachment E05391 - CMA_KS_0005410 - [REDACTED] to the FMN, page 13. As noted in footnote 194, this document was caveated by its author, [REDACTED]; nevertheless, the CMA considers that the document shows early thinking about [REDACTED].

²¹⁵ Facebook Attachment E419 - CMA_KS_0000419 - [REDACTED] to the FMN, slide 12 and 31.

²¹⁶ Note of a call with [REDACTED].

typically used only to optimise the campaign of the individual business sharing the data.²¹⁷ As discussed in paragraphs 159 to 163 above, Facebook is likely to use Kustomer's incremental data directly resulting from businesses' use of Kustomer, including Opt-In Offsite Data, to optimise advertising beyond that of the business sharing the data.

(b) However, some third parties thought that alternative datasets may be available to advertising competitors. For example, one CRM competitor [X] said that customers can buy lists of data and use that to inform ad campaigns.²¹⁸ Another advertising competitor [X] said that it expects that data similar to the incremental data directly resulting from businesses' use of Kustomer, including Opt-In Offsite Data, would be available 'from various other CRM providers' and that industry changes such as those described in paragraphs 141 and 142 could 'potentially incentivize other online display advertisers to seek out similar sources of first-hand data to compensate for data sources effected [sic] by these changes'.²¹⁹

186. Considering Facebook's access to incremental data generated by increased adoption of B2C messaging and CTM ads, both directly via Kustomer and indirectly by Facebook's use of the Merger to promote adoption of B2C messaging and CTM ads, there was limited evidence from third parties that this would give it an advantage over its competitors. However, one advertising competitor [X] said that B2C messaging data, combined with Facebook's existing first-party data, allows Facebook an 'unrivalled cross-device data offer'.²²⁰

CMA's view on the impact of the increment to Facebook's data relative to other providers

187. The CMA notes advertising competitors' lack of concern about the Merger and the potential for advertising competitors to access at least some data similar to the incremental data directly resulting from businesses' use of Kustomer, including Opt-In Offsite Data, that Facebook may gain access to due to the Merger. Together these indicate that the incremental access to offsite and onsite data resulting from the Merger will not substantially increase Facebook's existing competitive advantage relative to its competitors.

²¹⁷ Responses to CMA CRM competitor questionnaire, Q27 and to CMA CPaaS competitor questionnaire Q23 and Q24.

²¹⁸ [X] response to CMA CRM competitor questionnaire, Q26.

²¹⁹ [X] response to CMA advertising platform competitor questionnaire, Q10.

²²⁰ [X] response to CMA advertising platform competitor questionnaire, Q6.

Conclusion on TOH1

188. For the reasons set out above, the CMA considers that Facebook has significant market power and its data advantage is a barrier to entry and expansion in the supply of online display advertising. Therefore, a merger which increases Facebook's access to data could give rise to an SLC in online display advertising by increasing barriers to entry and expansion. The CMA also considers that Facebook is better positioned than rivals to access data which mitigates the impact of recent and anticipated regulatory and platform policy changes. However, given the size and likely growth trajectory of Kustomer, the likely size of the data increment due to the Merger, rivals' ability to access some similar data, and the lack of concern from advertising competitors, the CMA believes that the Merger will not materially raise barriers to entry and expansion in online display advertising, in particular as a result of the impact of the Merger on Facebook's data advantage. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of raising barriers to entry and expansion by increasing Facebook's data advantage in relation to online display advertising.

TOH2: Input foreclosure of Kustomer's customer service and support CRM software rivals by restricting or degrading their API access to Facebook's messaging tools

189. The concern with an input foreclosure theory of harm is that the merged entity may restrict its rivals in one market from accessing supplies using its strong position in another vertically linked market, such that the merger gives rise to foreclosure. This might then harm overall competition in the downstream market, to the detriment of customers.²²¹ The CMA typically uses the ability, incentive and effect framework to analyse input foreclosure theories of harm.
190. The CMA considered whether the Merged Entity could foreclose customer service and support CRM software providers that compete with Kustomer by restricting or degrading their API access to Facebook's messaging tools. The CMA considered two possible foreclosure strategies:
- (a) total non-price foreclosure: not providing to competing suppliers of customer service and support CRM software access to Facebook's B2C messaging products; and
 - (b) partial non-price foreclosure: foreclosing competing suppliers of customer service and support CRM software by, for example, reducing the quality of

²²¹ [Merger Assessment Guidelines](#), paragraph 7.9-7.22.

the integration between to Facebook's B2C messaging products and third-party software.²²²

Parties' submissions

191. The Parties submitted that the Merger would not give rise to an SLC from foreclosure of competing customer service and support CRM software providers for the following reasons.²²³

(a) Facebook does not have market power in B2C communication services and therefore could not drive material switching to Kustomer from rival CRM software providers in the event of any attempted foreclosure.²²⁴

(i) Businesses have many alternative ways to communicate with consumers, as Facebook accounts for only [5-10]% of B2C communications.²²⁵

(ii) Businesses typically multi-home across multiple B2C channels and would be able to shift their B2C communications in the event of foreclosure of Facebook's B2C channels with no material detriment to the quality of their offerings.²²⁶

(iii) Consumers use many channels for B2C communications and Facebook's channels are among those used least frequently.²²⁷

(b) Facebook has no incentive to pursue a foreclosure strategy and instead has 'every incentive' to drive the adoption of its messaging channels across the B2C communications ecosystem.²²⁸

(i) The primary deal rationale is to increase revenue from business messaging in the future.²²⁹

²²² The CMA also considered partial price foreclosure, such as increasing the price to access the APIs for Facebook's B2C messaging products to competing providers of customer service and support CRM software. However, as the price to access messaging APIs is a small fraction of the overall price businesses pay for customer services and support CRM software, the CMA considers that there is no viable mechanism that would give Facebook the ability to partially foreclose CRMs through price increases. In 2020 the average price that businesses paid for access to the WhatsApp API was [X] of the average price that businesses paid for Kustomer's CRM service. (Parties' response to the Issues Letter, paragraph 182).

²²³ The Parties characterised this ToH as conglomerate foreclosure but noted that there is significant overlap in the assessment with a vertical input foreclosure ToH (FMN, paragraph 20.2). The CMA considers that the restriction or degradation of API access is best assessed as a vertical foreclosure ToH.

²²⁴ FMN, paragraph 20.4.

²²⁵ FMN, paragraph 8 provides '[m]essaging accounts for only around 18% of all B2C communications.'

²²⁶ The Frontier Economics Paper titled 'Acquisition by Facebook, Inc. of Kustomer, Inc. Analysis of vertical effect' submitted 31 May 2021 (**The Frontier Paper**), page 2.

²²⁷ The Frontier Paper, page 2.

²²⁸ FMN, paragraph 20.4.

²²⁹ FMN, paragraph 2.22.

- (ii) Any attempt to foreclose rival CRM software providers would undermine Facebook's messaging vision in that it would make it more difficult for businesses to use Facebook's messaging channels.²³⁰

CMA's assessment

192. The CMA assessed TOH2 using the standard ability, incentive and effect framework used to analyse vertical theories of harm.

Ability

193. To assess the ability of the Merged Entity to foreclose competing customer service and support CRM software providers the CMA considered the following:
- (a) Are B2C messaging channels important inputs to customer service and support CRM software?
 - (b) Are Facebook's B2C messaging products important inputs to customer service and support CRM software?
 - (c) Is it technically possible for the Merged Entity to affect integration between Facebook's B2C messaging products and competing customer service and support CRM software?
 - (d) Can Facebook target foreclosure at specific customer service and support CRM rivals?
- *Are B2C messaging channels important inputs to customer service and support CRM software?*
194. The Parties submitted that the availability of messaging channels on a CRM platform is of limited importance to customers in selecting a CRM provider. The Parties argued that while channel availability is one factor considered by customers, greater emphasis is given to other factors such as AI capabilities, price and technical support.²³¹
195. Although B2C messaging is still at an early stage of its adoption, it has grown rapidly and is likely to become more important in future. For instance, data provided by Facebook shows that B2C messaging grew more quickly than other types of B2C communications between 2019 and 2020. Specifically,

²³⁰ FMN, paragraph 17 of the Executive Summary.

²³¹ Parties' response to the Issues Letter, paragraph 164. The Parties cited Gartner's 2021 'Magic Quadrant' report (available [here](#)) in making this point.

worldwide B2C messaging via Facebook's channels grew by [REDACTED]% between 2019 and 2020.²³² The Parties' internal documents also reference growing demand for B2C messaging. For example, a Facebook document from January 2020 states that [REDACTED].²³³

196. The Parties noted that although B2C messaging is growing and the Merger rationale is to foster continued growth, B2C messaging makes up a small proportion of B2C communication globally and therefore the growth in absolute terms is low.²³⁴
197. Customer service and support CRM software providers have told the CMA that they need to be able to provide their business customers access to the communication channels their end customers use. Once a communication channel achieves reasonably widespread adoption among a business's end customers, that business will want to be able to access that channel through its CRM software. As such, CRM providers consider communication channels to be complementary rather than substitutable. For example, customer service and support CRM software providers have told the CMA that individuals often have different preferences for how they engage with businesses, and expect to be able to engage with businesses on their own terms.²³⁵ Different communication channels can reach different audiences and serve different purposes.²³⁶ In addition, CRM providers told the CMA that offering 'omnichannel' access is very important.²³⁷
198. CPaaS providers also noted that being able to offer omnichannel access, including access to a range of B2C messaging channels, is important for them to win customers.²³⁸ Moreover, half of Kustomer's customers that responded to the CMA's questionnaire stated that omnichannel was a factor for them choosing their current CRM provider.
199. The Parties argued that the CMA cannot rely on the information gathered from customers of Kustomer because the sample size is too small and these are

²³² Annex S109.3.002 to Facebook's response to the CMA's s109 Notice dated 30 June 2021 Although 2020 was not a typical year because of the Covid-19 pandemic, internal documents show that [REDACTED]. For example, Facebook Attachment E003 - CMA_KS_0000003 - 2020.04.17 - [REDACTED] to the FMN, page 5, says [REDACTED]

²³³ Facebook Attachment E07333 - CMA_KS_0007352 - [REDACTED] to the FMN, page 7.

²³⁴ Parties' response to the Issues Letter, paragraph 165.

²³⁵ [REDACTED] response to CMA CRM competitor questionnaire, Q15.

²³⁶ [REDACTED] response to CMA CRM competitor questionnaire, Q15 and [REDACTED] response to CMA CRM competitor questionnaire.

²³⁷ See for example: [REDACTED] response to CMA CRM competitor questionnaire, Q15; [REDACTED] response to CMA CRM competitor questionnaire, Q15, [REDACTED] response to CMA CRM competitor questionnaire, [REDACTED], response to CMA CRM competitor questionnaire, Q15.

²³⁸ See for example: [REDACTED] response to CMA CPaaS competitor questionnaire, Q12; [REDACTED] response to CMA CPaaS competitor questionnaire, Q12; [REDACTED] response to CMA CPaaS competitor questionnaire, Q12; [REDACTED] response to CMA CPaaS competitor questionnaire response, Q12; [REDACTED] response to CMA CPaaS competitor questionnaire Q12; [REDACTED] response to CMA CPaaS competitor questionnaire response, Q12.

businesses that have already selected Kustomer (which bills itself as an omnichannel CRM) and therefore are biased. The Parties argued that actual usage data from Kustomer's customers contradicts the evidence gathered by the CMA: they noted that B2C messaging is only used for around a third of B2C communications, and email is used more often, accounting for around half of communications.

200. The data presented by the Parties is not inconsistent with the evidence gathered by the CMA: Kustomer's customers are using multiple channels to communicate with their end customers, which is consistent with a finding that these channels are complementary.²³⁹ The CMA considers that the information provided by Kustomer's customers is useful in understanding market dynamics, and notes that it is consistent with input from both CRM and CPaaS providers regarding the complementarity of messaging channels.
201. The need for customer service and support CRM software providers to provide access to a range of B2C communication products is also supported by the fact that Kustomer's CRM software integrates with a 'wide range of B2C communication channels'.²⁴⁰ Kustomer integrates with 11 different communication channels, including phone, email, webchat, SMS, Messenger, WhatsApp, Instagram, Twitter and form messages.²⁴¹ This is also the case for other CRM providers that responded to the question relating to which B2C communication channels they integrate with, with all supporting Messenger, webchat, SMS, form messages, Twitter, phone and email, and several either currently supporting or planning to support Apple and Google messaging channels.²⁴²
202. Therefore, the CMA considers that access to B2C messaging channels is an important input for customer service and support CRM software providers.
- *Are Facebook's B2C messaging products important inputs to customer service and support CRM software?*
203. The Parties submitted that Facebook's messaging channels are not 'must have' products for CRM software or for business customers and will not become so in the next five years, and that they are not sufficiently important that reducing access to these channels would affect a business's choice of

²³⁹ The CMA does not consider this data to be conclusive evidence either that communication channels are complementary or substitutable. The data is, however, consistent with a finding, as suggested by the other evidence gathered by the CMA, that communication channels are complementary.

²⁴⁰ FMN, paragraph 3.6(ii).

²⁴¹ Form messages enable a business to configure a series of questions for a customer to complete, including details such as the name of the customer, reason for communication, and contact details.

²⁴² The respondents considered are [redacted].

CRM software.²⁴³ The Parties also submitted that while the use of messaging channels is forecast to grow, this is not going to happen ‘to the extent that Facebook’s B2C communication channels could become “must-have” products for businesses’.²⁴⁴

204. The Parties argued that in considering the importance of Facebook’s messaging channels to businesses, the CMA must take into account the constraint from other messaging channels (including RCS and Apple messaging) and from legacy communication channels.
205. Facebook’s internal documents show that Facebook considers [REDACTED]. These documents, which were prepared and reviewed by members of senior management, include statements such as ‘[REDACTED]’,²⁴⁵ [REDACTED]²⁴⁶ [REDACTED]. Facebook’s internal documents do also [REDACTED].²⁴⁷
206. The data obtained by the CMA, and summarised in Table 2 below, supports the conclusion that Facebook currently has a strong position in B2C messaging compared to Google and Apple. The volume of conversations taking place through Facebook’s channels is orders of magnitude larger than through Google’s and Apple’s channels.

Table 2: Average number of B2C conversations per day for 2020²⁴⁸

	UK	EEA and UK	Worldwide
	Conversations per day	Conversations per day	Conversations per day
Facebook	[REDACTED]	[REDACTED]	[REDACTED]
Apple Business Chat	[REDACTED]	[REDACTED]	
Google			
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: [REDACTED] and Response to Q14 in Annex S109.3.002 – Annex to Facebook’s response to s109 notice dated 30 June 2021.

²⁴³ FMN, paragraph 20.9.

²⁴⁴ FMN, paragraph 20.13.

²⁴⁵ Facebook Attachment E409 - CMA_KS_0000409 - [REDACTED] to the FMN, page 4.

²⁴⁶ A document from May 2019 observes that [REDACTED]. It also [REDACTED]. Facebook Attachment E167 - CMA_KS_0000167 - [REDACTED] to the FMN.

²⁴⁷ Facebook, Attachment E0941 - CMA_KS_0000971 -D4 [REDACTED] to the FMN.

²⁴⁸ Please note that the parties listed in Table 2 do not define ‘conversation’ consistently; therefore, the comparisons in Table 2 may not be like-for-like. However, the CMA does not consider the variations in methodology would substantially change the order of magnitude of Facebook’s strength in B2C messaging.

207. While the CMA considered the role of B2C messaging competitors, and Google and Apple in particular, in assessing the importance of Facebook's messaging channels, the evidence gathered in the course of the investigation suggests that Facebook's channels are the most important B2C messaging channels.²⁴⁹
208. The Parties' internal documents also indicate that [REDACTED]. One document states that [REDACTED].²⁵⁰ Another document notes that [REDACTED].²⁵¹
209. Evidence received from third parties also indicates that Facebook's B2C communication channels are important in B2C messaging. CRM providers described Facebook's channels as being already important to them and likely to become more important in future.²⁵² All CPaaS providers that responded to the CMA's request for information also indicated that Facebook's B2C messaging products are important in B2C communication.²⁵³ Finally, the B2C messaging competitors that responded to the CMA's questionnaire also indicated that Facebook's channels are very important in this segment.²⁵⁴
210. Further, half the CRM providers, including [REDACTED], and the large majority of CPaaS providers that responded to the CMA's questionnaires submitted that due to the importance of Facebook's messaging channels, they expect that their businesses would be adversely affected if they no longer had access to Facebook's channels, and that it was likely that their customers would switch to other suppliers.²⁵⁵
211. All Kustomer's customers that responded to the CMA's questionnaire submitted that they use Facebook's messaging channels to communicate with their customers.²⁵⁶

²⁴⁹ The CMA also notes that Kustomer provides B2C messaging through its webchat functionality but is very small in comparison to Facebook, Apple and Google, with approximately [REDACTED] messages per day worldwide. FMN, Table 14.4.

²⁵⁰ Facebook Attachment E458 - CMA_KS_0000458 - [REDACTED] to the FMN, page 1.

²⁵¹ Facebook Attachment E479 - CMA_KS_0000479 - [REDACTED] to the FMN, page 1.

²⁵² Note of a call with [REDACTED]; [REDACTED] response to CMA CRM competitor questionnaire, Q23; Note of a call with [REDACTED].

²⁵³ [REDACTED] response to CMA CPaaS competitor questionnaire, Q12; [REDACTED] response to CMA CPaaS competitor questionnaire, Q8; [REDACTED] response to CMA CPaaS competitor questionnaire, Q12. The Parties submitted that customer penetration rates of Facebook's messaging channels are not informative of those messaging channels for B2C communications (Parties' response to the CMA Issues Letter, paragraph 175(a)). However, the CMA notes the evidence suggests that it is important for businesses to meet customers on the channels they are using and therefore considers customer penetration rates to provide an indication of the future importance of those channels.

²⁵⁴ [REDACTED] response to CMA B2C communications competitor questionnaire, Q7 and [REDACTED] response to CMA B2C communications competitor questionnaire, Q5.

²⁵⁵ See for example: [REDACTED] response to CMA CRM competitor questionnaire, Q23; note of a call with [REDACTED]; note of a call with [REDACTED]; [REDACTED] response to CMA CPaaS competitor questionnaire, Q20; [REDACTED] response to CMA CPaaS competitor questionnaire, Q20; [REDACTED] response to CMA CPaaS competitor questionnaire, Q20; and [REDACTED] response to CMA CPaaS competitor questionnaire, Q20.

²⁵⁶ [REDACTED] responses to CMA's Kustomer's customers questionnaire, Q8.

- *Is it technically possible for the Merged Entity to affect the integration between Facebook's B2C messaging products and competing customer service and support CRM software?*
212. Integration between Facebook's messaging products and competing CRM software is made possible through API access, which enables access to the communication channel by multiple agents/employees in a business. B2C messaging channel providers may choose to offer free access to their channels, such as via open public API access, restrict access only to specific providers, and/or charge a fee for API access. Facebook currently offers different levels of API access for its three main B2C messaging channels:
- (a) Access to the WhatsApp Business API (**WABAPI**) is offered only via approved 'channel partners', such as CPaaS providers Twilio and MessageBird,²⁵⁷ [X].²⁵⁸
 - (b) Facebook's Messenger is provided as an open access public API.
 - (c) Instagram Messaging is provided as an open access public API.
213. The CMA considered whether Facebook could restrict or degrade rival CRM providers' level of API access.
214. Facebook submitted that there is no viable mechanism that would give Facebook the ability to partially foreclose CRMs by reducing the quality of the integration between Facebook's B2C messaging channels and competing providers of customer service and support CRM software,²⁵⁹ that Facebook has not considered degrading or restricting API access, and that it has publicly committed to maintaining access.²⁶⁰
215. The CMA will be particularly cautious in relying on a bare assertion that there is no technical ability to develop a foreclosure mechanism. In this case the CMA considers that Facebook has not shown that it could not develop a mechanism enabling partial foreclosure of CRMs. The CMA notes that in the Facebook/WhatsApp merger review, Facebook submitted to the European Commission²⁶¹ that 'integration between WhatsApp and Facebook would pose significant technical difficulties' and that 'Facebook would be unable to automatically and reliably associate a Facebook ID with a valid phone number

²⁵⁷ Facebook also provides direct access to WABAPI to some large companies, such as Uber and KLM, as WABAPI originally sold directly to businesses; however, Facebook has shifted to providing access only through channel partners. FMN, footnote 13.

²⁵⁸ FMN, paragraph 20.21(iv) and footnote 14.

²⁵⁹ Parties' response to the Issues Letter, paragraph 184.

²⁶⁰ Parties' response to the Issues Letter, paragraph 185.

²⁶¹ At that time, which was prior to EU exit, the European Commission was reviewing the effect of the transaction across the EU including the UK.

used by a user on WhatsApp. Matching of WhatsApp profiles with Facebook profiles would most likely have to be done manually by users'.²⁶² Within two years of completing that review, Facebook successfully introduced the type of integration that it had previously indicated would not be possible.

216. In 2017 the European Commission found that, 'contrary to Facebook's statements in the 2014 merger review process, the technical possibility of automatically matching Facebook and WhatsApp users' identities already existed in 2014 and that Facebook staff were aware of such a possibility', and fined Facebook €110 million for providing incorrect or misleading information during the Commission's investigation.²⁶³
217. The CMA has accordingly carefully considered below the extent to which there is evidence to support the Parties' submissions regarding their ability to affect API integrations.

Restriction or denial of API access

218. The CMA first considered whether Facebook would have the technical ability to restrict, or deny, access to its APIs by certain CRM providers.
219. The existing differences in API access across Facebook's messaging channels indicate that Facebook has the ability to choose the level of API access it allows for each of its channels. Facebook could also opt to refuse access or to grant access selectively only to certain counterparties.²⁶⁴
220. All except one CRM competitor,²⁶⁵ and most CPaaS [REDACTED] providers,²⁶⁶ that replied to the CMA's questionnaires told the CMA they believe that Facebook would have the ability to restrict or block API access to its messaging channels.²⁶⁷ Several respondents also noted that, from a contractual

²⁶² Case M.7217 – Facebook/ WhatsApp Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004, paragraph 138.

https://ec.europa.eu/competition/mergers/cases/decisions/m7217_20141003_20310_3962132_EN.pdf

²⁶³ European Commission press release 'Mergers: Commission fines Facebook €110 million for providing misleading information about WhatsApp takeover' dated 18 May 2017.

https://ec.europa.eu/commission/presscorner/detail/pl/IP_17_1369

²⁶⁴ Attachment E0738 - CMA_KS_0000768 -D4 [REDACTED] to the FMN.

²⁶⁵ [REDACTED] responses to CMA CRM competitor questionnaire, Q20 One competitor [REDACTED] submitted that it does not know if Facebook has the ability to restrict or block API access to its messaging channels because it does not have insight into Facebook's internal business mechanisms or technical infrastructure.

²⁶⁶ [REDACTED] responses to CMA CPaaS competitor questionnaire, Q17. Two out of the seven CPaaS providers that responded to this question [REDACTED] did not express a view on Facebook's ability to restrict or block API access to its messaging channels, but only submitted views on Facebook's incentives.

²⁶⁷ [REDACTED] responses to CMA CRM competitor questionnaire, Q20 and [REDACTED] response to CMA CPaaS competitor questionnaire, Q17.

perspective, Facebook is able to control access to its APIs and can change the terms of access as it sees fit.²⁶⁸

221. Facebook submitted that the contractual terms and policies that these third parties are referring to are intended to provide Facebook with the rights to limit or terminate access to its B2C messaging channels by particular business users for security and integrity purposes.²⁶⁹ The CMA reviewed the contractual terms in question, and they are not limited in this way. As such, the CMA does not believe that the contracts between Facebook and CRM providers would prevent the Merged Entity from using these contractual terms and policies to restrict access to its APIs (see paragraph 234 below).
222. Facebook's internal documents indicate [REDACTED]. An email from [REDACTED] to senior Facebook personnel stated that [REDACTED]²⁷⁰ Facebook submitted that [REDACTED].²⁷¹ However, [REDACTED].

Degradation of API access

223. The CMA then considered whether Facebook would have the technical ability to degrade access to its APIs.
224. The majority of CRM providers²⁷² and CPaaS providers²⁷³ that responded to the CMA's questionnaire indicated that they believe Facebook would have the ability to degrade API access. Facebook could introduce rate limits to allow fewer data transactions in a given period of time, could restrict the features that are available through the API, and could limit types of data that can be sent through the API.²⁷⁴
225. In addition, the CMA considers that Facebook could upgrade the quality of API access that Kustomer would have relative to third parties. Facebook could offer increased functionality to Kustomer, such as automated responses via the WABAPI,²⁷⁵ WhatsApp Business Manager, and machine learning advancements. This approach was considered in Kustomer's internal documents, [REDACTED].²⁷⁶ Moreover, Facebook submitted that through its Strategic Partnership programme it provides some companies with 'access to test beta

²⁶⁸ [REDACTED] responses to CMA CPaaS competitor questionnaire, Q17 and [REDACTED] response to CMA CRM competitor questionnaire, Q20.

²⁶⁹ Parties' response to the Issues Letter, paragraph 185.

²⁷⁰ Attachment E0738 - [REDACTED] to the FMN.

²⁷¹ Parties' response to the Issues Letter, paragraph 188.

²⁷² See for example [REDACTED] responses to CMA CRM competitor questionnaire, Q21.

²⁷³ See for example [REDACTED] responses to CMA CPaaS competitor questionnaire, Q18.

²⁷⁴ Responses to CMA CPaaS competitor questionnaire, Q18.

²⁷⁵ Facebook's response to Q3 of the CMA's request for information dated 16 July 2021.

²⁷⁶ Kustomer Annex KUST000206, '4c-7.pdf - "[REDACTED]" to the FMN, page 6.

products or features of the WABAPI', which indicates that it has the ability to offer different functionality to different third parties.²⁷⁷

226. Evidence received from third parties indicates that they also believe that Facebook could offer better functionality and products only to Kustomer post-Merger.²⁷⁸ The CMA notes that [REDACTED]. While this statement may have reassured these partners, it does also suggest that these partners could have a concern that their access would be changed.ⁱ

- *Can Facebook target foreclosure at specific customer service and support CRM rivals?*

227. As discussed above, the CMA considers that Facebook can decide to what extent and to whom it grants API access. The Parties submitted that a targeted foreclosure strategy would also require Facebook to foreclose CPaaS providers because businesses could circumvent a foreclosure strategy by accessing Facebook's channels through CPaaS providers and would not have to switch to Kustomer to access Facebook's channels.²⁷⁹ Facebook also submitted that CPaaS providers are 'key' to driving the adoption of its messaging channels and therefore, it is unlikely that Facebook would restrict API access for CPaaS providers.²⁸⁰

228. Businesses can access Facebook's CRM channels either directly or through a CPaaS provider. CPaaS providers can integrate with a CRM software solution so that a business can use Facebook's channels with its CRM software even if the CRM software does not directly integrate with Facebook.²⁸¹

229. Currently, businesses access Facebook's channels through CPaaS providers at similar rates as via CRM providers.²⁸² Also, several CRM software solutions provide their customers the ability to integrate Facebook's messaging channels via CPaaS providers and do not integrate directly with Facebook.²⁸³

²⁷⁷ Facebook's response to CMA request for information dated 30 April 2021.

²⁷⁸ [REDACTED] response to CMA CRM competitor questionnaire, Q30, [REDACTED] responses to CMA CPaaS competitor questionnaire, Q18, [REDACTED] response to CMA CPaaS competitor questionnaire, Q17, and Note of a call with [REDACTED]. However, when [REDACTED].

²⁷⁹ Parties' response to the Issues Letter, page 74 and The Frontier Paper, footnote 1.

²⁸⁰ FMN, paragraph 20.21.iii.

²⁸¹ FMN, paragraph 2.8.

²⁸² Facebook's response to question 10 of the CMA's s109 dated 30 June 2021, Annex S109.3.002, tab 'Q10'. Totalling the 2020 global average daily messages from the top 10 CRM and CPaaS providers via each of Facebook's channel indicates that the volumes through each of these channels are comparable, with greater Messenger volumes via CRM providers but greater WhatsApp volumes via CPaaS providers.

²⁸³ For example, [REDACTED] as set out in their responses to CMA CRM competitor questionnaire, Q5. Although, the CMA notes that [REDACTED].

230. The CMA believes that CPaaS providers are an important way for customer service and support CRM software to provide businesses access to Facebook's B2C messaging channels. Several third parties suggested to the CMA that if Facebook stopped providing them with direct API access to its messaging channels, they might be able to access those same channels via third-party providers.²⁸⁴
231. Therefore, for Facebook to target foreclosure at a subset of customer service and support CRM rivals it would need to be able to prevent CPaaS providers from offering Facebook's messaging channels to those same customer service and support CRM rivals. In order to do this Facebook would first need to be able to determine who CPaaS providers provide access to.
232. The CMA has considered whether Facebook would have the ability to identify whether competing CRM providers were using CPaaS providers to connect to its messaging channels. Facebook submitted that where businesses use the WABAPI or the Messenger API, Facebook is generally aware of (or could establish) the CRM provider that a business is using in connection with its use of those channels.²⁸⁵ Facebook can also collect other data on the use of those channels and request information on CPaaS customers that use WhatsApp.²⁸⁶ Therefore, the CMA considers that Facebook would have the ability to determine who a CPaaS provider provides access to.
233. It is unclear whether Facebook could technically prevent CPaaS providers providing access to Facebook's messaging channels to specific CRM rivals through changes to the APIs. It appears there may be means by which CRM suppliers could rely on CPaaS connections to evade such a foreclosure strategy, but it is not clear whether there is an absolute technical bar to such a strategy.
234. Even if there was a technical bar to such a strategy, Facebook could use contractual means to prevent CPaaS providers from supplying specific customer service and support CRM software providers. Contracts that the CMA has reviewed include clauses [REDACTED].²⁸⁷ The Parties submitted that this clause is in its standard agreements with all WhatsApp business solution providers as well as its WhatsApp business terms of service and is not specific to CRM and CPaaS providers. Facebook also submitted that the contractual terms and policies that these third parties are referring to are

²⁸⁴ For example, [REDACTED] response to CMA CRM competitor questionnaire, Q23, [REDACTED] response to response to CMA CRM competitor questionnaire, Q20, and [REDACTED] response questionnaire to CMA CPaaS competitor questionnaire, Q19.

²⁸⁵ FMN, paragraph 19.5.

²⁸⁶ Facebook Attachment E1020 - CMA_KS_0001050 - [REDACTED] to the FMN, page 1.

²⁸⁷ For example, Facebook Attachment E1020 - CMA_KS_0001050 - [REDACTED] to the FMN, clause 4.2.

intended to provide Facebook with the rights to limit or terminate access to its B2C messaging channels by particular business users for security and integrity purposes.²⁸⁸ However, nothing in these clauses limits their use to those purposes and the CMA does not believe that the Merged Entity would be prevented from using these contractual terms and policies to prevent CPaaS providers from supplying specific customer service and support CRM software providers.

235. Therefore, the CMA considers that Facebook could restrict which customers access its channels through CPaaS providers, which could prevent rival CRM providers from using CPaaS providers to bypass any attempted foreclosure from Facebook.

236. The CMA also considered whether Facebook could degrade or restrict API access to Facebook's messaging channels to a subset of customers (such as torso customers) of any customer service and support CRM software provider.²⁸⁹ While it is unclear whether Facebook could technically providing differential API access to a CRM competitor, the CMA cannot rule out the possibility.

- *Conclusion on ability*

237. The CMA's believes that the Merged Entity would have the ability to foreclose rival customer service and support CRM software providers by restricting or degrading their API access to Facebook's messaging tools because:

- (a) Customer service and support CRM software providers need to provide business customers access to the messaging channels their customers use and therefore each messaging channel appears to be complementary rather than substitutable;
- (b) Facebook's B2C messaging products are currently important inputs to customer service and support CRM software, and this is likely to increase over time;
- (c) Facebook has the technical ability to deny access or degrade the quality of its API access to rival providers of customer service and support CRM software; and

²⁸⁸ Parties' response to the Issues Letter, paragraph 202.

²⁸⁹ This would involve Facebook providing unrestricted API access to some groups of customers, while restricting API access to other groups of customers of the same CRM provider.

(d) Facebook could use contractual means to prevent specific customer service and support CRM rivals from accessing its messaging channels via a CPaaS provider.

Incentive

238. The Parties submitted that Facebook would have no incentive to foreclose competing CRM providers because:²⁹⁰

(a) such a strategy would be irreconcilable with Facebook's broader vision to increase the use of messaging for B2C communications; and

(b) the costs of a foreclosure strategy could never be outweighed by its benefits, especially given the (low) likelihood of material switching to Kustomer as a result of such a strategy.

239. In assessing the Merged Entity's incentive to engage in foreclosure the CMA considered:

(a) the business strategy of Facebook; and

(b) the relative gains and losses from a foreclosure strategy.

- *Business strategy*

240. The Parties submitted that Facebook's vision is to increase the use of messaging channels for B2C communications. The Merger forms part of Facebook's vision 'for messaging to become the primary way that people and businesses communicate'.²⁹¹ The Parties also noted that Facebook's internal documents [redacted].²⁹²

241. The Parties added that integration into CRM software is key to the success of Facebook's messaging vision. If CRM providers do not seamlessly integrate messaging channels in their software, businesses will not be able to use messaging to its full potential. Therefore, Facebook's strategy is to promote the integration of B2C messaging amongst all CRM providers. A foreclosure strategy would therefore be 'entirely irrational and contrary to Facebook's core messaging vision'.²⁹³

242. Moreover, the Parties submitted, attempting to degrade the interoperability of rival CRM software with Facebook's B2C channels (eg by degrading the

²⁹⁰ FMN, paragraph 20.18.

²⁹¹ FMN, paragraph 2.12.

²⁹² FMN, paragraph 20.21.

²⁹³ FMN, paragraph 19 of the Executive Summary.

effectiveness of API 'keys' that link rival CRM software to WABAPI and the Messenger API) would damage Facebook's reputation among messaging partners, most importantly the leading CPaaS providers, who are key to driving adoption of its messaging channels.²⁹⁴

243. The evidence on this point is mixed. On the one hand, the CMA has identified a number of Facebook's internal documents that [REDACTED].²⁹⁵ On the other hand, there are also examples of documents where [REDACTED].²⁹⁶ Facebook submitted that [REDACTED].²⁹⁷

244. Following the Merger, Facebook will clearly have an incentive to pursue whatever strategy is in its own best interest. The internal documents suggest that [REDACTED].²⁹⁸ It is not necessary for the CMA to conclude on the specific strategy Facebook will pursue in future;²⁹⁹ it is clear that Facebook has considered and could pursue a strategy involving restrictions to API access.

- *Gains and losses from foreclosure*

245. Any foreclosure strategy would plausibly result in, on the one hand, an increase in the number of businesses using Kustomer and, on the other hand, a decrease in the use of Facebook's messaging channels by those businesses that would not switch to Kustomer. Assessing the incentive to foreclose requires an understanding of:

(a) the gains Facebook would generate from businesses switching to Kustomer;

(b) the losses that Facebook would incur in relation to businesses that keep using foreclosed CRM providers; and

(c) the relative size of these two groups of businesses.

246. There are several ways that the Merged Entity would benefit if businesses switch to Kustomer, and these benefits are recognised in Facebook's internal documents:

²⁹⁴ FMN, paragraph 20.24.

²⁹⁵ See for example Facebook Attachment E027 - CMA_KS_0000027 - [REDACTED] to the FMN, page 4, where [REDACTED].

²⁹⁶ Facebook Attachment E0738 - CMA_KS_0000768 - [REDACTED] to the FMN.

²⁹⁷ Parties' response to the Issues Letter, paragraph 209.

²⁹⁸ Facebook Attachment E004 - CMA_KS_0000004 - [REDACTED] to the FMN, page 13.

²⁹⁹ Even if the CMA had found a realistic prospect of an SLC in this case, it would not have been necessary for the CMA to conclude on the specific strategy Facebook would pursue in order to reach such a finding.

(a) Facebook would generate revenues from the sale of CRM licences.³⁰⁰
The CMA notes that [REDACTED].³⁰¹

(b) [REDACTED].

(c) Any switching businesses would likely increase their use of Facebook messaging channels for their B2C communication. This is because [REDACTED].³⁰² The increased use of Facebook messaging channels would [REDACTED].³⁰³

(d) [REDACTED].³⁰⁴

(e) Finally, as discussed in paragraph 136, in the longer term, an increase in the number of businesses using Kustomer would allow Facebook to realise further strategic gains from keeping businesses within the Facebook ecosystem for a greater set of activities.

247. Following any input foreclosure strategy implemented by the Merged Entity, if a business keeps using one of the foreclosed customer service and support CRM software solutions, its use of Facebook's messaging channels would likely be reduced (very substantially in the case of total foreclosure, or to a lesser extent in the case of partial foreclosure). This would reduce the revenue Facebook can generate from this business in the following ways.

(a) Facebook would lose revenues from providing API access to its messaging channels. Facebook only currently charges for access to the WABAPI,³⁰⁵ with access to Messenger and Instagram Messaging being free. While the revenues Facebook currently generates from API access are low, [REDACTED].³⁰⁶

(b) Facebook would also generate a lower volume of onsite data from those businesses as they reduce their use of Facebook's messaging channels,

³⁰⁰ Facebook Attachment E1005 [REDACTED] to the FMN, tab [REDACTED].

³⁰¹ See for example Facebook Attachment E018 - CMA_KS_0000018 - [REDACTED] to the FMN, page 13; Facebook Attachment E551 [REDACTED] to the FMN, page 13. Kustomer Annex KUST-FTC-00000008, [REDACTED] to Q19 of the CMA's s109 Notice dated 5 March 2021; and Facebook Attachment E0962 - CMA_KS_0000992 - [REDACTED] to the FMN.

³⁰² For example, Facebook Attachment E10003 - CMA_KS_0010022 - [REDACTED] to the FMN, page 3.

³⁰³ See, for example, Facebook Attachment E144 - [REDACTED], page 8.

³⁰⁴ For example, Facebook Attachment E682 - CMA_KS_0000712 - [REDACTED] to the FMN, page 4.

³⁰⁵ Facebook does not charge for messages sent within 24 hours of a consumer communication but does charge a fee for messages sent after 24 hours on WhatsApp (Facebook response to Q11 of the CMA's s109 notice dated 26 February 2021).

³⁰⁶ See, for example, FMN, paragraph 20.21.ii and footnote 223, Facebook Attachment E0930 - CMA_KS_0000960 - [REDACTED] to the FMN, page 6; Facebook Attachment E07333 - CMA_KS_0007352 - [REDACTED] to the FMN, page 5; and Facebook Attachment E414 - CMA_KS_0000414 - [REDACTED] to the FMN, pages 1 and 2.

and reduced revenue from CTM ads on its platforms.³⁰⁷ Facebook submitted that it forecasts CTM ads revenue to be USD [X] by 2024.³⁰⁸

- (c) To the extent that there may be longer term gains to the Merged Entity from an increased use of other Facebook products by businesses using Kustomer, there could also be a corresponding reduction in usage of other Facebook products by businesses that stopped using Facebook B2C messaging channels as a result of foreclosure.
- (d) As submitted by the Parties, there may also be damage to Facebook's reputation among its messaging partners following a foreclosure strategy, which may in turn lead to losses in messaging-related revenues.³⁰⁹

248. The Parties submitted that any foreclosure strategy would result in 'substantial' losses in the adjacent B2C communications market without generating greater sales in the focal CRM software market.³¹⁰ This is because:³¹¹

- (a) Kustomer is a 'very small' player in the CRM space;
- (b) Kustomer is 'not a close competitor of the major CRM providers (like Salesforce, Oracle, SAP and Microsoft) whose customers represent the majority of CRM revenues'; and
- (c) any switching would have to overcome 'significant cost and complexity.'

249. The Parties submitted that any assessment of the Merged Entity's incentive to foreclose should be based on a 'quantified analysis of the conditions that would have to hold for a foreclosure strategy to be profitable'.³¹² However, the CMA considers that, in the context of this Merger, a precise quantification of the gains and losses described above would not be meaningful. In particular, quantifying the value of the increased adoption of Facebook's messaging channels for B2C communication and of the incremental data Facebook would have access to has proved challenging for Facebook itself, and could not be reflected in Facebook's deal valuation. Any attempt at a precise quantitative assessment would require the use of strong assumptions, themselves based on little existing evidence, which would undermine the

³⁰⁷ However, given the high share of online display advertising accounted for by Facebook's platforms (the CMA found that Facebook had a share of [50-60]% of online display advertising expenditure in 2019 ([Market Study](#), paragraphs 5.131)), it is likely that a significant proportion of the lost revenue from CTM ads would be recaptured by Facebook in the form of other forms of online display advertising.

³⁰⁸ Parties' response to the Issues Letter, paragraph 215(b).

³⁰⁹ FMN, paragraph 20.24.

³¹⁰ FMN, paragraph 20.22.

³¹¹ FMN, paragraph 20.23.

³¹² Parties' response to the Issues Letter, paragraph 224.

reliability of the results. Therefore, the CMA considers that a careful, reasoned assessment based on qualitative evidence would be the most appropriate approach to the analysis of the Merged Entity's incentives. This analysis is developed in the remainder of this section.

250. First, the CMA considers that the Merged Entity would not have an incentive to foreclose CRMs serving large businesses, because that would affect Facebook's ability to promote B2C messaging to those large businesses. The CMA notes that Kustomer is designed to support 'torso' businesses (ie SMB and mid-market (MM) businesses).³¹³ Kustomer is not a close competitor for large enterprises as its product does not support a high degree of customisation, organisational integration, analytics and ongoing support which is generally required by large enterprise customers.³¹⁴ Therefore, the Merged Entity will continue to have an incentive to partner with traditional CRMs (such as Salesforce and Oracle) that supply these customers in order to promote Facebook's B2C messaging products to them.
251. The CMA also considers that a strategy of degrading or restricting API access to Facebook's messaging channels to a subset of customers (such as torso customers) of a traditional CRM provider (such as Salesforce) would likely lead to that provider reducing support for Facebook's B2C messaging channels more generally. The CMA therefore would expect that Facebook will continue to provide full API access to those traditional CRMs in an effort to promote messaging use to their very large customer bases.
252. The CMA has therefore considered whether a foreclosure strategy targeted at smaller CRMs that compete directly with Kustomer (such as Zendesk, Intercom, Freshdesk, Gorgias, Gladly)³¹⁵ and serve the same types of customers could be profitable.
253. The CMA notes that a targeted foreclosure strategy would not affect all CRM providers competing for torso businesses. This is because traditional CRMs such as Salesforce and Oracle provide solutions for torso businesses in competition with Kustomer.

³¹³ Kustomer Attachment KUST000198 to the FMN, slide 5.

³¹⁴ FMN, paragraph 20.23.ii.

³¹⁵ FMN, table 15.1 presents the Parties' estimates at Kustomer's win/loss data between [REDACTED], indicating [REDACTED] as competitors, along with [REDACTED]. The CMA has not been able to check the accuracy of this data but notes that the Parties also submitted that [REDACTED] (FMN, paragraph 20.23.ii.).

(a) [REDACTED].³¹⁶[REDACTED],³¹⁷ [REDACTED].³¹⁸

(b) Evidence from CRM suppliers that serve large business customers confirms that these suppliers also have offerings that support SMBs. In particular, [REDACTED].³¹⁹ For example, Salesforce Essentials Edition is a version of Salesforce's CRM software that is designed for growing organisations and that Salesforce markets to business with up to 10 users.³²⁰ [REDACTED].³²¹

(c) Kustomer also presents itself as an alternative to Salesforce, directly comparing itself to Salesforce and Oracle on its website across a range of metrics, including ease of use and setup, customisation and reporting.³²²

254. The Parties provided win-loss data for Kustomer which indicates that [REDACTED].³²³ Although this data does not differentiate between customer type, [REDACTED].³²⁴

255. In response to the foreclosure of Kustomer's 'closest' competitors, businesses could therefore divert either to Kustomer or to one of the larger, traditional CRMs. The CMA considers that many more businesses would divert to traditional CRM providers like Salesforce and Oracle, which would not be foreclosed, than to Kustomer, for the following reasons:

(a) Kustomer has an extremely small market presence, with only approximately [REDACTED] customers globally, or [0-5]% market share.³²⁵ Although Facebook has plans to grow Kustomer's customer base to [REDACTED] businesses by 2025,³²⁶ Facebook has estimated that Kustomer will still only account for around [0-5]% share of the customer service and support CRM space in 2025.³²⁷ Even if Kustomer's growth substantially exceeded Facebook's forecasts, its share of this segment would remain small.

³¹⁶ See for example: Kustomer Annex KUST000020 to the FMN; Kustomer Annex KUST000156 to the FMN; Kustomer Annex KUST000022 to the FMN; Kustomer Annex KUST000026 to the FMN; Kustomer Annex KUST000121 to the FMN; Kustomer Annex KUST000048 to the FMN; Kustomer Annex KUnST000050 to the FMN; Kustomer Annex KUST000104 to the FMN; Kustomer Annex KUST000168 to the FMN; Kustomer Annex KUST000068 to the FMN.

³¹⁷ Kustomer Annex KUST000059 to the FMN, [REDACTED].

³¹⁸ Kustomer Annex KUST000068 to the FMN, [REDACTED], page 23; Facebook Attachment E557 – CMA KS 0000587 – [REDACTED] to the FMN; and Kustomer Annex KUST000165, '[REDACTED]' to the FMN, page 16 and 26.

³¹⁹ Note of a call with [REDACTED].

³²⁰ See: <https://www.salesforce.com/uk/editions-pricing/sales-cloud/> (accessed 27 September 2021).

³²¹ Note of a call with [REDACTED].

³²² See: <https://www.kustomer.com/compare/salesforce-service-cloud/> and <https://www.kustomer.com/compare/oracle/> (accessed 17 September 2021).

³²³ FMN, Table 15.1 and Kustomer's response to Q13 of the CMA's s109 notice dated 5 March 2021.

³²⁴ The CMA notes that this ignores any time differences in these wins and losses and that some businesses could have been won from [REDACTED] and subsequently lost.

³²⁵ FMN, table 14.2.

³²⁶ FMN, paragraph 2.21.

³²⁷ Parties' response to the Issues Letter, page 92.

(b) A foreclosure strategy targeting SMB-focused CRMs could make the torso segment more attractive for traditional CRMs, and these large providers would have an even greater incentive to develop products for SMBs.

(c) Traditional CRMs have significant resources, technical capabilities and brand recognition to offer a credible alternative to Kustomer.

256. As a result, the CMA considers that the gains to the Merged Entity from businesses diverting to Kustomer are unlikely to compensate for the losses listed in paragraph 247 above. Further, Facebook would be unlikely to take steps that cut across its strategic aim to promote B2C messaging (as described at paragraphs 131 to 133). Therefore, the Merged Entity is unlikely to have the incentive to foreclose rival customer service and support CRM software providers.

Effect

257. Having found that the Merged Entity would not have the incentive to engage in any type of foreclosure of competing customer service and support CRM software providers, the CMA did not need to assess the possible effects of such strategies.

Conclusion on TOH2

258. For the reasons set out above, the CMA believes that the Merged Entity will not have the incentive to foreclose rival customer service and support CRM software providers' API access to Facebook's messaging tools. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of the input foreclosure of Kustomer's customer service and support CRM software rivals by restricting or degrading their API access to Facebook's messaging tools.

TOH3: Customer foreclosure of Facebook's B2C messaging rivals by restricting access to Kustomer's customer service and support CRM software

259. The concern in a customer foreclosure theory of harm is that the Merged Entity may foreclose upstream competitors by restricting their access to a sufficient customer base.³²⁸ The CMA typically uses the ability, incentive and effect framework to analyse customer foreclosure theories of harm.

³²⁸ [Merger Assessment Guidelines](#), paragraph 7.23-7.29.

260. As discussed in paragraphs 131 to 133, part of Facebook's rationale for purchasing Kustomer is to drive adoption of B2C messaging. It aims to win B2C messaging ahead of B2C messaging rivals.
261. The CMA has investigated whether the Merged Entity could harm Facebook's rivals and lessen current and future competition in B2C messaging by restricting rivals' integration with Kustomer's customer service and support CRM software.

Ability

262. To assess the ability of the Merged Entity to foreclose competing B2C messaging providers the CMA considers that the following conditions would need to be satisfied:
- (a) B2C messaging providers rely on integration with customer service and support CRM solutions to develop a competitive product and as a key access point to reach business customers; and
 - (b) the Merged Entity has sufficient market power in customer service and support CRM software that restricting access to Kustomer significantly reduces B2C messaging rivals' customer base.
263. The following paragraphs assess the evidence on each of these conditions in turn.

B2C messaging providers rely on integration with customer service and support CRM solutions to develop a competitive product and as a key access point to reach business customers

264. The CMA reviewed evidence on the importance of integration with customer service and support CRM solutions for the development of a competitive B2C messaging product. The CMA considered whether customer service and support CRM solutions are a key access point for B2C messaging providers to reach business customers.
265. Facebook's internal documents suggest that [REDACTED]. Facebook's internal documents also indicate that [REDACTED].³²⁹ Facebook submitted that the acquisition

³²⁹ Facebook Attachment E548 - CMA_KS_0000578 - [REDACTED] to the FMN, page 7.

of a customer service and support CRM platform [REDACTED].³³⁰ Facebook's internal documents further comment on how [REDACTED].³³¹

266. Facebooks' internal documents also suggest, however, that [REDACTED]. In particular, one Facebook document notes [REDACTED].³³²
267. The assessment in Facebook's internal documents about the access points that its competitors would likely rely on to build their B2C messaging services is generally supported by evidence received from third party B2C messaging providers. While one provider indicated that integration with CRM software was important to it,³³³ most indicated either that integration with CRM solutions was not important,³³⁴ or that, while they do integrate with CRM providers, they also integrate with other access points (and do not see Kustomer in particular as important).³³⁵
268. The evidence indicates that for most other B2C messaging providers there are alternative ways to reach business customers and, as such, that Facebook would not have the ability to foreclose competing B2C messaging providers. However, on a conservative basis the CMA has also considered whether the Merged Entity would have sufficient market power in the provision of customer service and support CRM software.

The Merged Entity has sufficient market power in customer service and support CRM software

269. The CMA considered whether Kustomer might currently have market power in customer service and support CRM software, or whether it might foreseeably expand to have such market power in the future. Kustomer has grown rapidly since it was established in 2015. The average number of active seats with Kustomer increased from [REDACTED] in the first quarter of 2018 to [REDACTED] in the first quarter of 2020 (an average yearly increase of over [REDACTED]%).³³⁶ This was reflected in the growth of Kustomer's worldwide revenues from B2C businesses, which increased from \$[REDACTED] in 2018 to \$[REDACTED] in 2020,³³⁷ an average growth rate of over [REDACTED]% per year.

³³⁰ FMN, paragraph 18.8.

³³¹ See for example: Email from [REDACTED] to and , Facebook Attachment E0941 - CMA_KS_0000971 - [REDACTED] to the FMN; Facebook Attachment E655 - CMA_KS_0000685 - [REDACTED] to the FMN; and Facebook Attachment E10003 - CMA_KS_0010022 - [REDACTED] to the FMN.

³³² Facebook Attachment E655 - CMA_KS_0000685 - [REDACTED] to the FMN.

³³³ [REDACTED] response to CMA CRM competitor questionnaire, Q13.

³³⁴ [REDACTED] response to Q1 of the CMA's s109 notice dated 19 August 2021 and [REDACTED] response to CMA CRM competitor questionnaire, Q13.

³³⁵ [REDACTED] response to Q2 of the CMA's s109 notice dated 16 August 2021.

³³⁶ Kustomer internal document '[REDACTED]', page 6.

³³⁷ Annex 3 to Kustomer's response to the CMA's s109 notice dated 29 June 2021, Q3.

270. The CMA also notes that under Facebook's ownership Kustomer has the potential to grow even more rapidly. Facebook estimates that following the Merger Kustomer will serve [X] torso customers and generate [X] messages per day on Facebook channels in 2025 (up from [X] customers and [X] messages per day in 2022).³³⁸
271. However, even taking into account the Facebook's projected growth of Kustomer, Facebook has estimated that Kustomer will still only account for around [0-5]% share of the customer service and support CRM space in 2025.³³⁹ Further, even if Kustomer were to grow significantly faster than Facebook has projected, it would be expected to have a limited share of the customer service and support CRM space in 2025.
272. Therefore, if the Merged Entity refused rival B2C messaging integrations with Kustomer, the CMA believes it would not significantly reduce their access to a large proportion of the business customers.

Conclusion on ability

273. The CMA believes that the available evidence, as described above, indicates that the Merged Entity would not have the ability to foreclose competing B2C messaging providers. Several competing B2C messaging rivals have alternative ways to reach business customers, and even to the extent that B2C messaging rivals may rely on CRM software to reach customers, Kustomer is only a small provider and therefore they could still access a large part of the market through other customer service and support CRM software providers.

Incentive

274. Having found that the Merged Entity would not have the ability to engage in any type of foreclosure of competing B2C messaging providers, the CMA did not need to assess the possible incentives of such strategies.

Effect

275. Having found that the Merged Entity would not have the ability to engage in any type of foreclosure of competing B2C messaging providers, the CMA did not need to assess the possible effects of such strategies.

³³⁸ FMN, Figure 2.3.

³³⁹ Parties' response to the Issues Letter, page 92.

Conclusion on TOH3

276. For the reasons set out above, the CMA believes that the Merged Entity will not have the ability to engage in customer foreclosure of Facebook's B2C messaging rivals. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of customer foreclosure of Facebook's B2C messaging rivals by restricting access to Kustomer's customer service and support CRM software.

TOH4: Raised barriers to entry and expansion in customer service and support CRM software

277. The CMA considered whether the Merged Entity could raise barriers to entry and expansion in the provision of customer service and support CRM software by cross-subsidising CRM services with advertising revenues generated from businesses adopting Kustomer's CRM software.

278. Advertising on Facebook properties is common among businesses serving consumers; in its recent Market Study the CMA found that Facebook is viewed as a 'must have' by many advertisers because of its reach and extensive data on users and faces limited competitive constraints from other online display advertising platforms, or from search and other forms of advertising.³⁴⁰ In the Market Study the CMA found that Facebook's properties accounted for more than half of expenditure in UK online display advertising. Moreover, as discussed in paragraph 246(d), Facebook expects that businesses adopting Kustomer CRM software would increase their advertising spend on Facebook. This increased advertising spend may give Facebook the ability and incentive to cross-subsidise Kustomer software with advertising revenues, for example by offering it for free. The concern under this theory of harm is that such a strategy may increase barriers to entry and expansion in customer service and support CRM software to such an extent that other providers, who would not be able to generate additional revenues from advertising spend to the same extent as Facebook, would be unable to compete effectively, at least with respect to the segment of businesses targeted by Kustomer. This would reduce competition in the market in the medium term.

279. The Parties submitted that the strategy described above would represent price reductions associated with a marginal cost reduction for Facebook, not a cross-subsidy, and that it would be highly beneficial to businesses purchasing CRM software.³⁴¹ The CMA agrees that the Merged Entity's incentive to offer

³⁴⁰ [Market Study](#), paragraphs 5.373.

³⁴¹ Parties' response to the Issues Letter, paragraph 234.

Kustomer software for free or at a particularly low price would result from merger efficiencies and that, at least in the short term, businesses would benefit from the lower price of Kustomer software. However, the CMA considers that, when one of the merging parties already has significant market power, the presence of large merger-specific efficiencies may result in a reduction of competition in the longer term that more than offsets the short-term customer benefits. The CMA has therefore considered whether there is a realistic prospect of this happening in the context of the Merger.

280. The CMA considered:

- (a) whether the Merged Entity would have an incentive to implement such a strategy. In particular, the CMA has looked at the revenues, other than CRM fees, that the Merged Entity could derive from businesses using Kustomer's CRM services and at evidence that a cross-subsidisation strategy was discussed within Facebook.
- (b) the impact that this strategy would have on competition in the provision of customer service and support CRM software and, in particular, rival providers' ability to respond to such a strategy.

The Merged Entity's incentive to cross-subsidise Kustomer's software with revenue from advertising

281. The CMA considers that Facebook would have an incentive to cross-subsidise Kustomer, as losses on the provision of CRM software would be compensated by higher revenues from online display advertising and, in the longer term, further services to businesses.

- (a) As discussed in paragraph 133, Facebook sees adoption of its CRM software as [REDACTED].
- (b) As seen in paragraph 246(d), [REDACTED].
- (c) Finally, the data that Facebook will be able to collect from Kustomer's customers and that generated through the increased use of its messaging channels are expected to further increase its advertising revenues, as discussed in paragraphs 159 to 163 and 166 to 175.

282. In the longer term, further revenues could be generated from keeping businesses within the Facebook ecosystem for a greater set of activities, as

discussed in paragraph 136. In an internal presentation about the value of a CRM offering, [REDACTED].³⁴²

283. The statements referenced above from Facebook's internal documents correspond with some of the CMA's findings in its recent Market Study. The CMA found that one of the defining features of Facebook's business is that it has built a large 'ecosystem' of complementary products and services around its core service.³⁴³ The CMA considered that integration of a wide range of products and services can deliver efficiency savings and can also improve the consumer experience overall, by increasing the ease with which a range of different services are accessed.³⁴⁴ Yet the increasing expansion of Facebook's ecosystem can also give rise to competition concerns.³⁴⁵
284. For example, by surrounding its core service with a large number of complementary products and services, a platform can further insulate its most profitable service from competition.³⁴⁶ If a platform can manage to convince consumers to operate to a large degree within their ecosystem online, then a new entrant would need to compete on many fronts to displace that platform.³⁴⁷ Platforms with market power can also leverage their position into downstream or adjacent markets, giving themselves an advantage over potential competitors and undermining competition in those markets.³⁴⁸
285. Facebook's internal documents indicate that Facebook has considered [REDACTED]:
- (a) In an internal presentation about the value of a CRM offering, [REDACTED]³⁴⁹ [REDACTED].
 - (b) In an email sent in April 2020 to senior Facebook Personnel, [REDACTED].³⁵⁰
 - (c) A Facebook internal document from April 2020 [REDACTED].³⁵¹

³⁴² The CMA believes that, although the Merger is not explicitly mentioned, Facebook's CRM strategy ultimately culminated in the acquisition of Kustomer and therefore this document is relevant to the current Merger. Facebook Attachment E659 - CMA_KS_0000689 - [REDACTED] to the FMN, page 3 and 5.

³⁴³ [Market Study](#), paragraph 56.

³⁴⁴ [Market Study](#), paragraph 57.

³⁴⁵ [Market Study](#), paragraph 57.

³⁴⁶ [Market Study](#), paragraph 2.38.

³⁴⁷ [Market Study](#), paragraph 2.38. By way of example, the CMA noted that by launching its video calling 'Portal' products, Facebook will secure demand for its services WhatsApp and Facebook Messenger, the functionality of which are built into the devices. By gaining control of these adjacent markets, the platforms are able to control the entry points to their core markets, and in doing so protect the primary source of their revenue.

³⁴⁸ [Market Study](#), paragraph 2.38.

³⁴⁹ Facebook Attachment E659 - CMA_KS_0000689 - [REDACTED] to the FMN, page 12.

³⁵⁰ Facebook Attachment E738 - CMA_KS_0000768 -D4 [REDACTED] to the FMN.

³⁵¹ Facebook Attachment E004 - CMA_KS_00000004 - 2020.04.30 - ' [REDACTED]' to the FMN, page 5.

- (d) In an email chain from June 2020 including various members of Facebook's senior management, [REDACTED]³⁵² [REDACTED]³⁵³
- (e) In an email from September 2020, [REDACTED].³⁵⁴
- (f) A presentation from Kustomer to Facebook [REDACTED].³⁵⁵
286. The CMA notes that offering a CRM service for free would be consistent with Facebook's overall business model, which is based on offering free services and generating revenues through advertising.
287. The Parties submitted that documents relating to both deal valuation and KPIs approved by Facebook's board [REDACTED].³⁵⁶ However, the CMA considers [REDACTED] indicates that [REDACTED] was considered plausible and suggests that it may be adopted in the future if deemed profitable.³⁵⁷
288. As an alternative to offering Kustomer CRM services for free, one third party [REDACTED] submitted that Facebook could implement a cross-subsidisation strategy by developing Unified Inbox, a free Facebook service that enables small businesses to aggregate the messages that they receive on Facebook channels, with additional CRM functionalities taken from Kustomer. If Facebook offered a Unified Inbox 'plus' service (eg adding some self-service CRM functionality), it could be attractive to businesses just starting to think about CRM and potentially act as a pipeline for businesses to use Kustomer's full CRM as their needs grow.³⁵⁸
289. Facebook's internal documents show [REDACTED]. An internal presentation titled [REDACTED].³⁵⁹

The impact on competition in customer service and support CRM software

290. In order for the strategies discussed above to result in a reduction of competition, rival customer service and support CRM software providers (either existing or future entrants) would need to be placed at such a

³⁵² Email from [REDACTED] to [REDACTED] and [REDACTED], dated 4 June 2020. Facebook Attachment E0962 - CMA_KS_0000992 -[REDACTED] to the FMN.

³⁵³ Email from [REDACTED] to [REDACTED] and [REDACTED], dated 3 June 2020. Facebook Attachment E0962 - CMA_KS_0000992 -[REDACTED] to the FMN.

³⁵⁴ Email from [REDACTED] to [REDACTED] and [REDACTED], Facebook Attachment E0941 - CMA_KS_0000971 -[REDACTED] to the FMN.

³⁵⁵ Facebook, Attachment E018 'CMA_KS_0000018 - [REDACTED] to the FMN, page 13.

³⁵⁶ Parties' response to the Issues Letter, paragraph 237.

³⁵⁷ The CMA also notes that the deal valuation [REDACTED]. An email within the deal team for the Merger sent by [REDACTED] to [REDACTED] entitled [REDACTED] and dated 22 July 2020 [REDACTED]. Facebook Attachment E0963 - CMA_KS_0000993 [REDACTED] to the FMN, page 2.

³⁵⁸ Note of a call with [REDACTED].

³⁵⁹ The CMA believes that, although the Merger is not explicitly mentioned, Facebook's CRM strategy ultimately culminated in the acquisition of Kustomer and therefore this document is relevant to the current Merger. Facebook Attachment E659 - CMA_KS_0000689 - [REDACTED] to the FMN, page 24.

disadvantage that their ability to compete is substantially limited. The reduction in competition needs to be significant enough that the long-term impact on price, quality and innovation in customer service and support CRM software more than offsets the short-term customer benefits from the lower price of Kustomer software. However, the CMA considers that these conditions are not met in the context of the Merger.

291. The likelihood that merger efficiencies may have a long-term anti-competitive effect is greater in the case of mergers involving a large provider with significant existing market power, or a smaller firm operating in a market with no large established suppliers. In the context of the Merger, the CMA observes that Kustomer is currently a very small provider of customer service and support CRM software (see paragraph 164), and that the market is characterised by the presence of large and established competitors, such as Salesforce, SAP and Oracle. In such a context, merger efficiencies affecting the price at which Kustomer CRM software can be offered would tend to increase the competitive pressure on the larger providers.
292. Not all providers of customer service and support CRM software may be able to replicate the Merged Entity's strategy. One CRM provider [REDACTED] submitted that if Facebook were to introduce a business model where a customer purchases more advertising from Facebook and receives Kustomer for free in return, this would not be a level playing field, as other CRM providers do not have an advertising product with which to subsidise their CRM solution.³⁶⁰ If Facebook were to adopt a free or freemium model for Kustomer, it may be the case that certain suppliers would struggle to compete. The CMA, however, needs to consider the effect of a merger on competition in the market rather than on individual competitors. The CMA considers that, even if some competitors would struggle to respond to such a strategy, sufficient competitive constraints would remain. For example, the CMA considers that the largest providers may be in a position to adopt a freemium model, or to develop a basic low-price CRM product targeted at small businesses, with the expectation that CRM revenues would increase as businesses' needs become more complex.
293. Most importantly, it is not necessary for other customer service and support CRM software providers to replicate the Merged Entity's strategy in order to remain competitive. While price is certainly an important dimension of competition, there are several other dimensions along which CRM providers could compete against the Merged Entity. The Parties submitted that there are many factors driving a business' choice of CRM, including AI capabilities

³⁶⁰ Note of a call with [REDACTED].

and technical support.³⁶¹ Similarly, one CRM provider [X] submitted that the market for CRM software solutions is rapidly evolving and subject to changing technology, shifting customer needs and frequent introductions of new products and services.³⁶² In this context, both large providers and more niche suppliers can be expected to be able to remain competitive through technical innovation, offering CRM products that businesses will continue to be willing to pay for.

Conclusion on TOH4

294. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of a cross-subsidisation strategy leading to increased barriers to entry and expansion in customer service and support CRM software.

Third party views

295. The CMA contacted customers and competitors of the Parties and other interested third parties. A few customers, CRM and B2C messaging competitors, and other third parties raised concerns regarding the potential for the Merger to lead to reduced competition in online display advertising and reduced choice in customer service and support CRM software. The majority of CRM and CPaaS providers expressed conditional views that as long as API access to Facebook's B2C messaging channels remains open and not degraded, they had no concerns, while the majority of B2C messaging and ad service competitors either did not have sufficient knowledge of the Merger to opine or were not concerned.

296. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

297. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.

298. The Merger will therefore **not be referred** under section 33(1) of the Act.

Andrea Coscelli

³⁶¹ Parties' response to the Issues Letter, paragraph 164.

³⁶² [X] response to the CMA CRM competitor questionnaire, Q12.

**Chief Executive
Competition and Markets Authority
27 September 2021**

ⁱ The second sentence of paragraph 226 should be read as follows 'The CMA notes that [~~ⓧ~~].'