

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

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

Completed acquisition by Facebook, Inc. of Giphy, Inc (the Merger)

Dear Mr. Parker

We refer to your submission dated 28 October 2021 requesting that the CMA consents to derogations to the Initial Enforcement Order of 9 June 2020 (the '**Initial Order**'). Unless otherwise stated, the terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, Facebook Inc. (**Facebook**)¹, Tabby Acquisition Sub, Inc. (**Tabby Acquisition**), Facebook UK Limited (**Facebook UK**) and their subsidiaries are required to hold separate the Facebook business from the business of Giphy, Inc. (**Giphy**) and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference.

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

1. Paragraph 5(I) of the Initial Order

Pursuant to the Directions issued by the CMA under paragraph 10 of the Initial Order on 15 October 2021 addressed to Facebook, Tabby Acquisition, Facebook UK and Giphy (the **Parties**), the Parties are required (amongst other things) to provide to the CMA an appropriate [X] for the [X].

In order to facilitate the [X], Facebook submits that it will need to hold discussions with [X] which may result in the provision to Facebook of confidential and/or commercially-sensitive information related to the Giphy business.

The CMA consents to a derogation from paragraph 5(I) of the Initial Order for certain identified individuals within the Facebook business to:

- (a) access certain confidential and commercially-sensitive information on [X] which is strictly necessary for the Parties to take all reasonable steps to [X]; and

¹ On 28 October 2021 Facebook, Inc. changed its name to Meta Platforms, Inc.. As the IEO was made in the name of Facebook, Inc. we will continue to refer to Meta Platforms, Inc. as 'Facebook'

(b) have one-to-one discussions with [X] concerning [X].

This derogation is granted from paragraph 5(l) of the Initial Order, strictly on the basis that:

- i. the Giphy information shared with the Facebook business is limited to information related to [X] which is strictly necessary to allow the Parties to take all reasonable steps to [X]. For the avoidance of doubt, no other Giphy commercially-sensitive information will be shared with the Facebook business pursuant to this derogation;
- ii. such information will only be shared with [X] (together, the **Identified Individuals**) who:
 - a. do not hold a day to day commercial or strategic role within the Facebook business; and
 - b. hold the necessary authority to bind the Facebook business;
- iii. the Monitoring Trustee will be informed in advance of any information to be shared and any discussions to take place under this derogation;
- iv. The Parties will seek to ensure that discussions are organised so as to facilitate attendance by the Monitoring Trustee who will attend all such discussions, including by phone, and the CMA will be provided at its request with a summary of the Giphy information exchanged between Giphy and the Identified Individuals, and a record of the discussions which have taken place;
- v. the Identified Individuals who are entitled to receive information under this derogation shall enter into a confidentiality undertaking in a form to be approved by the CMA;
- vi. the Identified Individuals must not share the information received under this derogation with any other individuals within the Facebook business, or consult with any other individuals within the Facebook business in relation to the information received under this derogation without the CMA's prior written consent (which can be provided via email);
- vii. firewalls and/or other ring-fencing measures will be put in place to prevent any other individual within the Facebook business (save for the Identified Individuals) from accessing the information shared in accordance with this derogation;
- viii. the list of Identified Individuals can only be changed with the prior written consent of the CMA (such consent can be provided by email); and

- ix. should the transaction ultimately be prohibited, Facebook will ensure that any confidential information received from Giphy for the purposes of this derogation will be returned or destroyed, except to the extent that record retention is required by law or regulation.

Yours sincerely,

Richard Romney

Director, Mergers

29 October 2021