

Completed acquisition by Meta Platforms, Inc. of GIPHY, Inc.

Decision to impose a penalty on Meta Platforms, Inc., Tabby Acquisition Sub Inc., and Facebook UK Limited under section 94A of the Enterprise Act 2002

Summary of the decision

1. On 4 February 2022, the Competition and Markets Authority (the **CMA**) gave notice to Meta Platforms, Inc., Tabby Acquisition Sub Inc. and Facebook UK Limited (together, **Meta**) that it has imposed a penalty of £1.5 million. The CMA considers that Meta has, without reasonable excuse, failed to comply in certain respects with the requirements imposed on it by the initial enforcement order issued by the CMA under section 72 of the EA02 on 9 June 2020 to Meta and Giphy, Inc. (**Giphy**) (the **IEO**).

Failure to comply with the IEO

2. The CMA has found that Meta failed to comply with the IEO by failing to notify the CMA of key staff resigning and departing the employment of Meta, and to seek the prior written consent of the CMA in advance of the key staff departing the employment of Meta.
3. Specifically, the CMA has decided that Meta failed to comply with the IEO in the following respects:
 - (a) Failure to seek consent and actively inform the CMA of changes to key staff prior to the departure of [Ms A] and assumption of responsibilities by [Mr L];
 - (b) Failure to seek consent and actively inform the CMA of changes to key staff prior to the departure of [Mr B] and assumption of responsibilities by [Mr K]; and

(c) Failure to seek consent and actively inform the CMA of changes to key staff prior to the departure of [Mr C] and assumption of responsibilities by [Mr Z],

(together, the **Key Staff Departure Breaches**).

4. Prior to this decision, on 20 October 2021 the CMA imposed a penalty on Meta under section 94A of the EA02 for failures to comply with the IEO without reasonable excuse.

Risk of pre-emptive action

5. The CMA's ability to adopt interim measures has a similar purpose to the suspensory effect of merger notifications in many mandatory merger control regimes (such as the European Union). Interim measures play a critical role in preventing pre-emptive action. Breaches of the IEO undermine the CMA's ability to prevent, monitor and ultimately remedy any pre-emptive action taken by merger parties, ie action that might prejudice the outcome of the CMA's investigation or impede the taking of any remedial action that might ultimately be appropriate. The inclusion of [Ms A] and [Messrs B and C] in the list of key staff for the purposes of the Carve-Out Derogation followed extensive discussions with Meta on the scope of the IEO. Their inclusion reflected the importance of these three individuals to the Meta business, and of ensuring that the CMA remains aware of their departure and changes made to their role.
6. As a result of the failure to comply with the IEO, the CMA was not made aware of important developments at a business under investigation and this created the risk of prejudicing the CMA's ability to carry out important statutory functions under the UK merger regime.

No reasonable excuse

7. The CMA has carefully considered Meta's submissions and concluded that the explanations provided to the CMA do not amount to a reasonable excuse for the failure to comply with the IEO.
8. The Key Staff Departure Breaches were not caused by a significant and genuinely unforeseeable or unusual event. Nor were they caused by events beyond the control of Meta.

Decision to impose penalty

9. The CMA has decided, having had regard to its statutory duties and the CMA guidance ([Administrative penalties: Statement of Policy on the CMA's Approach](#) (CMA4)), and to all the relevant circumstances of the case, that:
- (a) it is appropriate to impose a penalty in connection with the Key Staff Departure Breaches, given the serious and particularly flagrant nature of Meta's failure to comply with the IEO in respect of the Key Staff Departure Breaches and the risks arising from them;
 - (b) the Key Staff Departure Breaches occurred after the CMA granted the Carve-Out Derogation and included a limited number of individuals in the list of key staff, and after the Monitoring Trustee provided recommendations designed to mitigate the risk of late notifications occurring. In the CMA's view these repeated instances of the same type of breach reflect Meta's failures to put in place sufficiently robust compliance processes which mitigated the effectiveness of Meta's ability to monitor planned and anticipated key staff changes. It is therefore appropriate to impose a single penalty in relation to the Key Staff Departure Breaches to better capture the gravity of Meta's conduct when taken in the round;
 - (c) it is appropriate and proportionate, in light of the nature and gravity of the Key Staff Departure Breaches, and of the CMA's policy objectives of incentivising compliance with interim measures and deterring future failures to comply by both Meta and other persons who may be considering future non-compliance, to impose a penalty of £1.5 million in relation to the Key Staff Departure Breaches; and
 - (d) in view of Meta's financial position and significant resources, the amount of the penalty for Meta's failure to comply is proportionate, given it is substantially below the statutory maximum of 5% of Meta's global turnover, it is not anomalous, nor would it affect Meta materially or disproportionately.