

# FACEBOOK, INC (NOW META PLATFORMS, INC) / GIPHY, INC REMITTAL

18 July 2022

## Conduct of the remittal Notice of provisional findings on remittal

### *Introduction*

1. On 30 November 2021, the Competition and Markets Authority (**CMA**) announced its decision (**Phase 2 Final Report**)<sup>1,2</sup> that the completed acquisition by Facebook, Inc. (**Facebook**) (now Meta Platforms, Inc. (**Meta**))<sup>3</sup> and GIPHY, Inc. (**GIPHY**) (together, the **Parties**) (the **Merger**) has resulted or would result in a substantial lessening of competition (**SLC**):
  - (a) in the supply of display advertising in the UK due to horizontal unilateral effects arising from a loss of dynamic competition; and
  - (b) in the supply of social media services worldwide (including in the UK) due to vertical effects resulting from input foreclosure.
2. The CMA decided, in order to remedy the SLCs that it had found, to require the full divestiture of GIPHY.<sup>4</sup>
3. On 23 December 2021, Meta filed a Notice of Application (the **Application**) to the Competition Appeal Tribunal (**CAT**), challenging certain of the CMA's findings in the Phase 2 Final Report. Meta advanced six grounds of review:<sup>5</sup>
  - (a) **Ground 1**: challenge to the finding that the Merger would result in a Horizontal SLC;

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<sup>1</sup> The terms defined in the Phase 2 Final Report have the same meaning in this notice.

<sup>2</sup> Completed acquisition by Facebook, Inc. (now Meta Platforms, Inc) of GIPHY, Inc., [Phase 2 Final Report](#), 30 November 2021.

<sup>3</sup> On 28 October 2021, Facebook, Inc. changed its corporate name to Meta Platforms, Inc., pursuant to an amended and restated certificate of incorporation filed with the Delaware Secretary of State.

<sup>4</sup> [Final Order](#) made by the CMA pursuant to section 84 of the Enterprise Act 2002 (the **Act**).

<sup>5</sup> CAT, [Summary of Application under section 120 of the Act](#), case no. 1429/4/12/21, 5 January 2022.

- (b) **Ground 2:** the CMA's finding that there was a Horizontal SLC contradicts or is inconsistent with the CMA's definition of the market on which it alleged Meta competes;
  - (c) **Ground 3:** the counterfactual used by the CMA in the Phase 2 Final Report does not rationally follow from the CMA's findings of fact and is inadequately specified;
  - (d) **Ground 4:** the Phase 2 Final Report is procedurally flawed and otherwise unlawful;
  - (e) **Ground 4A:** the determination of the merger reference was unlawfully delegated;
  - (f) **Ground 5:** the CMA failed properly to assess the remedy it would have imposed in relation to the Vertical SLC in isolation and/or any option beyond the divestment of GIPHY by Meta; and
  - (g) **Ground 6:** the CMA made errors regarding remediation.
4. The CAT dismissed Meta's Application under Grounds 1, 2, 3, 4A, 5 and 6 but upheld the Application under Ground 4.<sup>6</sup> The CAT found that excisions made on confidentiality grounds to the provisional findings and Phase 2 Final Report were unlawful to the extent that the redacted material should have been disclosed to the affected parties to whom the CMA owed a duty to consult. The CAT further remarked that the CMA is required to balance the degree of sensitivity in the information against the necessity to make the disclosure to the parties to whom the duty to consult is owed. This may result in the full unredacted provisional findings or final report only being made available to a limited number of persons.<sup>7</sup> The CAT further noted that '*confidentiality rings confined only to the external advisers of the interested parties as an appropriate course of action in an appropriate case; and that the CMA is, in the first instance, the best judge of this*'.<sup>8</sup>
5. The way in which the CMA intends to conduct the remittal – in relation to the scope of the remittal, consultation, further information-gathering and the expected duration of the proceedings – is set out below.

### ***The scope of the remittal and Remittal Provisional Findings***

6. The Remittal Group intends to focus the scope of the remittal inquiry on addressing the specific failure identified by the Tribunal, viz. disclosing to

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<sup>6</sup> CAT, [Meta v CMA judgment \[CAT 26\]](#), case no. 1429/4/12/21, 14 June 2022.

<sup>7</sup> CAT, [Meta v CMA judgment \[CAT 26\]](#), case no. 1429/4/12/21, 14 June 2022, at [157] and [158].

<sup>8</sup> CAT, [Meta v CMA judgment \[CAT 26\]](#), case no. 1429/4/12/21, 14 June 2022, at [159].

Meta and GIPHY, and therefore enabling them to make representations on, the previously redacted material from the provisional findings and Phase 2 Final Report.

7. Accordingly, the Remittal Group has now adopted the Phase 2 Final Report as its provisional findings in the remittal, subject to any views or decisions included in the Phase 2 Final Report being now provisional (the **Remittal Provisional Findings**), and hereby gives notice of its provisional findings on remittal on the statutory questions it has to decide pursuant to section 35 of the Enterprise Act 2022 (the **Act**), ie that:
  - (a) the completed acquisition of GIPHY by Meta has resulted or would result in the creation of a relevant merger situation;
  - (b) the Merger has resulted or may be expected to result in an SLC:
    - (i) in the supply of display advertising in the UK due to horizontal unilateral effects arising from a loss of dynamic competition , and
    - (ii) in the supply of social media services worldwide (including in the UK) due to vertical effects resulting from input foreclosure ; and
  - (c) the full divestiture of GIPHY by Meta is an effective and proportionate remedy for the purposes of remedying, mitigating or preventing the each of the SLCs the CMA has identified.
8. The Remittal Group's reasons are set out in the [Phase 2 Final Report](#), which has now been adopted for the purposes of this remittal inquiry as the Remittal Provisional Findings (subject to any views or decisions included in the Phase 2 Final Report being now provisional). Meta, GIPHY and any other person wishing to comment on this document are now invited to provide the Remittal Group with their reasons in writing as to why these provisional findings should not become final (or, as the case may be, should be varied).
9. These reasons should be received by the Remittal Group by email ([facebook.giphy@cma.gov.uk](mailto:facebook.giphy@cma.gov.uk)) no later than **17:00 on Friday 29 July 2022**. The Remittal Group will have regard to any such reasons in making its final decisions on the statutory questions and actions. However, the Remittal Group shall not be obliged to take into account reasons which are provided after the deadline specified in this paragraph.

### ***Information gathering and consultation***

10. The CMA may collect further evidence from the Parties and third parties through voluntary or mandatory information requests and conference calls if

deemed necessary in order to assess submissions made in response to the Remittal Provisional Findings and reach a final decision on the statutory questions under section 35 of the Enterprise Act 2022.

***Duration of remittal***

11. The CMA anticipates publishing the Final Report on the remittal by early to mid-October 2022.
12. An administrative timetable is published along with this document. Compliance with any deadlines specified will help to ensure that the timetable is met.
13. The CMA invites written comments on any of the matters set out in this document by **17:00 on Friday 29 July 2022**. Comments should be made, by email or in writing, to: [facebook.giphy@cma.gov.uk](mailto:facebook.giphy@cma.gov.uk).

Stuart McIntosh  
CMA Inquiry Chair  
18 July 2022