

**DEROGATION LETTER
IN RESPECT OF FINAL ORDER ISSUED
PURSUANT TO SECTION 84 OF ENTERPRISE ACT 2002**

Consent pursuant to Article 11 of the Final Order made by the Competition and Markets Authority ('CMA') on 29 March 2022 to certain actions.

Completed acquisition by Facebook, Inc. (now Meta Platforms, Inc.) of Giphy, Inc (the 'Merger')

Dear Mr. Little,

We refer to your submissions dated 16 June 2022, 23 June 2022, 27 June 2022 and 30 June 2022, requesting that the CMA consents to derogations to the Final Order of 29 March 2022 (the '**Final Order**'). Unless otherwise stated, the terms defined in the Final Order have the same meaning in this letter.

Under the Final Order, save for prior written consent by the CMA, Meta Platforms, Inc. ('**Meta**') and its subsidiaries, and Giphy, Inc. ('**Giphy**') shall not, from the Commencement Date until the Final Disposal, take any action that might prejudice the Final Disposal, the CMA's decisions in the Final Report or otherwise impair the CMA's ability to take such action for the purpose of remedying, mitigating or preventing the SLCs or any adverse effect which has resulted from, or may be expected to result from, the SLC findings.

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

1. Paragraph 4(2)(a) and 4(2)(n) of the Final Order

Meta has informed the CMA that on 24 May 2022, a claim was filed in the District of Delaware, United States, naming both Meta and Giphy (the '**Parties**') as defendants. The claim alleges that the Parties have benefited from intellectual property ('**IP**') held by the plaintiff without license to do so (the '**Claim**').

Given that the Parties are both named as defendants to the Claim, Meta proposes to offer assistance to Giphy and envisages that the assistance would take the form of legal advice from Meta's external legal counsel, Mr. Ellisen Turner and Mr. Gregg LoCascio (both of Kirkland & Ellis) and Ms. Karen Jacobs (Morris, Nichols, Arsht & Tunnell) (together, Meta's '**External Counsel**') who would also act as Giphy's counsel of record for as long as Giphy does not request, or require, separate external legal representation. Meta also proposes, if necessary, to share information in Meta's possession which would help Giphy to defend itself against the Claim. Meta also submits that certain named individuals within its internal legal team will be required to liaise with Giphy, and exchange information with Giphy, in order to defend the Claim.

Meta submits that, at a minimum, its External Counsel will need to collect the following information from the Parties: [REDACTED] (the '**Litigation Information**'). Meta submits that the ultimate scope of the Litigation Information is largely dependent upon the plaintiff's demands, however, and could therefore expand or decrease. The CMA understands that the Litigation Information that will be produced in discovery by both Giphy and Meta to the plaintiff is confidential and may be commercially-sensitive to both Meta and Giphy.

After due consideration of Meta's request for a derogation and in the light of the information submitted by it, the CMA consents to a derogation from paragraphs 4.2(a) and 4.2(n) of the Final Order permitting:

- Meta to offer assistance to Giphy through its External Counsel;
- Meta to allow named individuals within its internal legal team to liaise with Giphy; and
- the Parties to exchange information,

as is strictly necessary for the purposes of preparing a joint defence to the Claim.

The CMA's consent is provided, strictly on the basis that:

- (i) Litigation Information of Giphy pertaining to the Claim, will only be shared with the following individuals within Meta's internal legal team for whom it is strictly necessary to see such information to prepare the joint defence to the Claim: [REDACTED] (the '**Named Individuals**'). None of the Named Individuals hold commercial or strategic role within the Meta business;
- (ii) Litigation Information of Meta pertaining to the Claim will only be shared with [REDACTED], for whom it is strictly necessary to see such information;
- (iii) Should the Parties wish to amend the list of Named Individuals and the Giphy representative [REDACTED] who are permitted to receive Litigation Information pursuant to this derogation, they will seek the prior written consent of the CMA (which can be provided via email);
- (iv) [REDACTED] and the Named Individuals will each enter into a confidentiality undertaking in a form approved by the CMA;
- (v) the Parties will keep a record of all Litigation Information exchanged in accordance with this derogation, which will be provided to the Monitoring Trustee, and will be made available to the CMA at its request;
- (vi) Should the Parties need to broaden the scope of the Litigation Information to be exchanged, they will promptly inform the CMA, and explain why the exchange of further information is strictly necessary for the purposes of preparing the joint defence, and seek the CMA's prior written consent (which can be provided by email) in advance of exchanging any additional information;
- (vii) Meta's External Counsel will be fully briefed by Meta on the Parties' obligations contained in the Final Order;

- (viii) firewalls and/or other ring-fencing measures will be put in place to prevent any unauthorised individuals within Meta and Giphy from accessing the Litigation Information exchanged between the Parties for the purposes of this derogation;
- (ix) Giphy will be able to make its own independent decisions during the course of defending the Claim, and is not bound by arguments or decisions taken by Meta on Meta's behalf. Further, Giphy can choose to seek separate representation to Meta at any time, and Meta (including its External Counsel) will not negotiate on Giphy's behalf without its consent;
- (x) this derogation only relates to the provision of legal advice and exchange of Litigation Information in connection with the Claim and does not permit any integration of the Meta and Giphy businesses, or any changes to the operation or functioning of the Giphy business; and
- (xi) this derogation will not result in any prejudice to the Final Disposal or otherwise impair the CMA's ability to take such action for the purpose of remedying, mitigating or preventing the SLCs or any adverse effect which has resulted from, or may be expected to result from, the SLC findings.

Stuart McIntosh

Chair, Remedies Implementation Group

30 June 2022